

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Mobility Spectrum LLC and)	WT Docket No. 11-18
Qualcomm Incorporated Seek FCC)	DA 11-252
Consent to the Assignment of)	ULS No. 0004566825 (lead)
Lower 700 MHz Band Licenses)	

**REPLY OF THE RURAL CELLULAR ASSOCIATION
TO JOINT OPPOSITION OF AT&T AND QUALCOMM**

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March 28, 2011

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The Rural Cellular Association (“RCA”) hereby replies to AT&T and Qualcomm’s opposition¹ (“the Opposition”) in the above-captioned docket.

The central concerns raised by RCA and other parties in this proceeding are that the concentration of significant amounts of spectrum in the hands of AT&T already has contributed powerfully to AT&T’s dominance, and that this transaction will exacerbate the problem. These risks are especially troubling in light of AT&T’s history of transactions through which it has accumulated vast amounts of spectrum on an iterative basis, and AT&T’s avowed desire (and apparently, willingness) to exert its market power in a variety of contexts.² This transaction threatens to cause potentially irreparable harm to competition.

¹ Joint Opposition of AT&T Mobility Spectrum LLC and Qualcomm Incorporated to Petitions to Deny or to Condition Consent and Reply to Comments, WT Docket No. 11-18 (filed March 21, 2011).

² For example, AT&T has in recent years employed hammer and tong to resist targeted voice and data roaming obligations—notwithstanding the near-universal policy consensus of the entire balance of carriers and other members of the wireless industry community that such obligations are critical—because AT&T has been permitted to consolidate to a scale where it can selectively benefit or handicap competitors according to its own business imperatives.

AT&T's recent announcement that it will pay \$39 billion to acquire T-Mobile dramatically increases the stakes and the risks of competitive harms arising from AT&T's spectrum grab. In light of this seismic announcement, there is no meaningful way for the Commission to accurately measure the short-term or long-term competitive impact of this particular transaction in isolation, and it should not attempt to do so. The Commission should wait to evaluate this proposed acquisition of Qualcomm's valuable beach-front spectrum as part of a comprehensive analysis of the competitive implications of both this transaction and the AT&T/T-Mobile transaction.

Even aside from the AT&T/T-Mobile transaction (which the Applicants do not even mention in their Opposition, in spite of the deal's announcement the evening before its filing), the Opposition only reaffirms RCA's concerns over the transaction's fallout. The evidence in the record establishes that AT&T and Verizon are dominant carriers that can, and do, foreclose competition, and the Applicants do not meaningfully rebut the assertion that this transaction will increase AT&T's dominance. The Opposition touts the virtue of spectrum screens,³ but provides no basis to believe that those screens adequately address the competitive harms arising from this transaction. And while the Applicants labor mightily to find some reason for the Commission not to consider the significance of the 700 MHz spectrum's unique propagation characteristics and its ability to reach rural areas, their efforts only highlight the fact that AT&T wants to control significant amounts of scarce spectrum that could be put to valuable use by competitive mid-sized, regional, and rural carriers. The Opposition also does not genuinely contest that this transaction will increase AT&T's leverage to foreclose competition by impairing data roaming and imposing device interoperability restrictions.

³ Opposition at 10.

When the Commission permitted the combination of AT&T and Cingular in 2004, it aptly noted that “[t]he wireless industry in the United States has evolved through several successive phases, each marked and shaped by certain regulatory choices and marketplace responses.”⁴ One of the chief regulatory choices that has served U.S. consumers well was the process of “transition[ing] the cellular duopoly to a far more competitive market in mobile telephony services.”⁵ Put simply, we are now moving backwards. The Commission cannot promote a “vibrant, transparent, and competitive”⁶ wireless marketplace while approving transactions such as this one, and it certainly cannot do so without evaluating the combined impact of this transaction and AT&T/T-Mobile. For the reasons stated in RCA’s petition to deny, and for the reasons that follow, the Commission should deny the Application.

I. THE COMMISSION SHOULD POSTPONE REVIEW OF THIS TRANSACTION UNTIL IT CAN COMPREHENSIVELY EVALUATE ITS COMBINED COMPETITIVE IMPACT WITH THE PROPOSED AT&T/T-MOBILE MERGER

The central issue presented by this transaction is the competitive impact of AT&T’s proposal to acquire yet another large and valuable swath of spectrum that will further solidify its dominant position. In light of AT&T’s announcement of its agreement to acquire T-Mobile, including the acquisition of the spectrum portfolio of the fourth largest nationwide carrier, there is no meaningful way to evaluate the competitive impact of the two deals on a standalone basis. The potential harms arising from AT&T’s spectrum accumulation implicate both this and the AT&T/T-Mobile transactions. Indeed, it is the combined impact of both spectrum transfers that

⁴ *In the Matter of Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21553-54 (2004).

⁵ *Id.*

⁶ *See* Remarks by Chairman Julius Genachowski, CTIA Wireless 2011 (March 22, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305309A1.pdf.

is among the most troubling aspects of each proposed deal—*i.e.*, there is little point in trying to measure the impact of AT&T eating the twelfth cupcake without also considering the wedding cake that it wants to devour next.

AT&T's pattern of acquisitions has enabled it to engage in piecemeal analysis of each transaction without considering the cumulative impact on the wireless marketplace. The combination of this proposed acquisition and AT&T's proposed acquisition of T-Mobile gives the Commission an opportunity to engage in more comprehensive evaluation that is difficult to perform in the context of a smaller, isolated transaction. For the sake of preserving the long-term competitive landscape in the wireless industry, the Commission must be able to consider the cumulative impact of both this acquisition and the acquisition of T-Mobile's spectrum holdings.

II. GRANTING THE APPLICATION WOULD FORTIFY AT&T'S DOMINANT POSITION, PARTICULARLY IN LIGHT OF ITS INTENT TO ACQUIRE T-MOBILE

A. This Transaction, Coupled with AT&T's Acquisition of T-Mobile, Would Significantly Decrease Competition at the National Level

The Opposition claims that the wireless industry is competitive at a national level,⁷ but simply asserting that the industry is “fiercely competitive” does not end the discussion. The Opposition does not dispute RCA's point that that the industry overwhelmingly is controlled by two dominant competitors, AT&T and Verizon. Indeed, the Commission's Fourteenth Wireless expressly commented on the significant increase in concentration in recent years—up 32 percent since 2003, and 6.5 percent in the most recent year for which data was available—as one of the major trends in the industry.⁸ Moreover, while the Opposition proclaims that “U.S. wireless

⁷ Opposition at 5-6.

⁸ *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to*

consumers enjoy choice at every level of the wireless ecosystem,”⁹ it fails to acknowledge that AT&T repeatedly has stymied competition through, among other things, refusing to enter into data roaming agreements, securing handset exclusivity arrangements, and impairing device interoperability.

If there were any question that the industry is marching towards duopoly, AT&T’s proposed acquisition of T-Mobile confirms it. Based on year-end 2009 numbers in the Commission’s Fourteenth Wireless Competition Report, AT&T (after its acquisition of T-Mobile) and Verizon together would have 76% of all wireless subscribers.¹⁰ That dominance is a significant reason why the Commission for the first time was unable to certify that the wireless market is subject to effective competition, and has only increased over the last year.

The Opposition also gives no confidence that AT&T actually will deploy this spectrum in a timely manner. It candidly admits that AT&T cannot move forward until new technical standards and equipment have been developed, tested, and deployed.¹¹ With AT&T expected to devote extensive resources to securing approval of its T-Mobile acquisition over at least the next year, AT&T’s professed intention to deploy the Qualcomm spectrum is at best optimistic.

Commercial Mobile Services, Fourteenth Report, WT Docket No. 09-66, ¶ 4 (May 20, 2010).

⁹ Opposition at 5.

¹⁰ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66, ¶ 4 (chart titled “Net Additions by Service Provider”) (May 20, 2010).

¹¹ Opposition at 27.

B. The Use of Spectrum Screens to Evaluate Competition in Local Markets Cannot Substitute for Evaluation of Actual Harms to Competition

The Opposition's principal objection to looking beyond spectrum screens is that any further analysis would be "amorphous."¹² That is not true. RCA and other commenters have identified actual harms to competition that this transaction will aggravate: AT&T's spectrum hoarding excludes competitors from accessing needed spectrum resources, enables AT&T to harm consumers by imposing device interoperability restrictions, and facilitates its ability to foreclose competition by impeding data roaming, among other harms. There is nothing amorphous about analyzing whether this specific transaction will increase AT&T's ability to engage in these forms of harmful conduct.

The Applicants claim that this transaction will fall below the Commission's spectrum screens even when including WCS spectrum,¹³ but in light of the harms identified by the commenters, that argument only confirms why spectrum screens cannot be the only tools in the Commission's arsenal. If spectrum screen analysis has the effect of reinforcing a duopoly that harms consumers and competitors, then it is a tool of limited value. The Commission has never suggested that spectrum screens obviate the need for any further analysis of localized harm to competition, and this transaction is a prime example of why a more probing review is necessary.

The Opposition also has no response to RCA's point that this transaction cannot be divorced from historical context: over the last decade, AT&T has engaged in approximately a dozen transactions, each of which significantly increased its spectrum holdings.¹⁴ During that period, industry concentration has skyrocketed, and AT&T and Verizon have gained controlling

¹² *Id.*

¹³ Opposition at 8.

¹⁴ RCA Comments at 3.

positions in the industry. The AT&T/T-Mobile transaction of course would greatly exacerbate the problem.

The Commission should be especially attuned to the fact that this acquisition involves low-frequency spectrum that is particularly valuable in reaching rural areas. 700 MHz spectrum is especially well-suited for providing coverage in rural areas, and AT&T's advocacy cannot obscure the truths of physics—Applicants' own experts concede, as they must, that “all else being equal, lower-frequency signals carry further and may penetrate buildings more readily than higher frequency signals.”¹⁵ The Opposition's extended efforts to dissuade the Commission from considering that reality highlights the Applicants' concern that any focus on the particular characteristics of this spectrum will confirm its importance for deploying broadband to rural America, and therefore will accentuate the severe opportunity costs that this transaction represents. The Applicants argue that the beneficial deployment characteristics of low-band spectrum should be balanced against AT&T's goal of improving capacity for its customers.¹⁶ But for the millions of unserved and underserved Americans, deployment is the priority, and the National Broadband Plan confirms the Commission's goal of providing broadband to all Americans.¹⁷ Excluding millions of Americans from broadband service altogether, needless to say, is not in the public interest.

¹⁵ Opposition, Exhibit 1, J. Reed and N. Tripathi, *Comparative Analysis of Suitability of Lower and Higher Frequency Bands for Cellular Network Deployments*, at 1.

¹⁶ Opposition at 12-13.

¹⁷ See Federal Communications Commission, *Connecting America: The National Broadband Plan*, at xi (purpose of plan is “to ensure that every American has ‘access to broadband capability’”).

III. RCA'S PROPOSED CONDITIONS ARE TRANSACTION-SPECIFIC AND ESSENTIAL

The Applicants argue that, because there are other proceedings addressing issues such as device interoperability and data roaming on a broader scale, the concerns that commenters raised about those issues in this proceeding cannot possibly be transaction-specific.¹⁸ They are wrong. RCA calls for conditions regarding interoperability and data roaming precisely because this particular transaction will increase harm to competition in those areas. The extent of AT&T's ability to impair device interoperability and to impede data roaming is directly correlated to the leverage it enjoys as a result of its spectrum holdings. To the extent that this transaction increases AT&T's leverage, then it increases the harms to competition, and those marginal harms flow directly from this acquisition of spectrum.

CONCLUSION

For the foregoing reasons, the Commission should wait to evaluate this transaction in connection with its review of the forthcoming application for transfer of control of T-Mobile to AT&T. Ultimately, the Commission should deny the Applications. In the alternative, and at a minimum, the Commission should impose the conditions proposed in RCA's petition in order to ensure that the transaction does not harm the public interest.

Respectfully submitted,

- /s/ -

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March 28, 2011

CERTIFICATE OF SERVICE

I, James H. Barker, certify that on this 28th day of March, 2011, I caused the foregoing Reply of the Rural Cellular Association to Joint Opposition of AT&T and Qualcomm to be served upon the following recipients as follows:

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