

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

AT&T Inc. and Deutsche Telekom AG Seek)	
FCC Consent to the Transfer of Control of)	
the Licenses and Authorizations held by	)	WT Docket No. 11-65
T-Mobile USA, Inc. and its Subsidiaries	)	DA 11-799
to AT&T Inc.)	
)	
T-Mobile License LLC, KNLF202	)	0004669383
Cook Inlet GSM IV PCS Holdings, LLC, KNLF504	)	00044673673
Powertel Memphis Licenses, Inc., KNLF255	)	0004673727
SunCom Wireless License Company, LLC, KNKN557	)	0004673730
T-Mobile Puerto Rico LLC, KNLF249	)	0004673732
T-Mobile West Corporation, KNLF227	)	0004673735
Voice Stream Pittsburgh, L.P., KNLF242	)	0004673737
WALLC License, LLC, WPNL499	)	0004673739
CookInlet/VS GSM VII PCS, LLC, WQCS389	)	0004675960
Iowa Wireless Services Holding Corporation, KKNLG769	)	0004703157

To: The Commission

PETITION TO DENY

Green Flag Wireless, LLC ("Green Flag"), by its attorneys, hereby files this limited petition to deny the applications covered by this Docket. While Green Flag has serious concerns about the overall consolidation of the wireless industry – an industry which is already seeing reduced levels of competition by virtue of previous transactions and which will only be worsened by the proposed merger – this Petition will focus primarily on the spectrum which is and should be included in the spectrum screen used by the Commission to identify excessive concentrations.

Green Flag is a mutually exclusive applicant with certain subsidiaries of AT&T, Inc("AT&T") for a large number of WCS licenses. AT&T or its predecessors have held this valuable broadband spectrum for well over a decade without putting it to significant use. As will

be set forth in greater detail below, AT&T currently holds and has held anywhere from 10 to 30 MHz of this spectrum in certain markets of the country and its failure to put this spectrum to effective use over the many years it has held it casts further doubt on the major premise of AT&T and T-Mobile's justification for the proposed merger: that this transaction is necessary to ensure that the combined company will have sufficient spectrum to meet its broadband needs for the immediate and foreseeable future. Other commentators have observed that AT&T has been warehousing large swaths of fallow spectrum in other segments of the electromagnetic band; this Petition points specifically to a relatively unsung but sizable lode of spectrum which AT&T has been keeping in mothballs: the WCS A, B, C and D blocks in the 2310 - 2350 MHz band. In assessing the merged entity's true needs for spectrum as well its domination of the mobile spectrum marketplace, the Commission must be sure to take into account all relevant spectrum when making its spectrum screening calculations.

At pages 76 - 78 of the Public Interest Statement submitted by AT&T and T-Mobile ("the Merger Proponents"), the Merger Proponents correctly identify the current components of the "spectrum screen." These include the cellular, PCS, SMR and 700 MHz bands, as well as the AWS-1 and BRS bands in certain circumstances. Employing the spectrum blocks identified in this paragraph yields a total screen 145 MHz in markets where both AWS-1 and BRS are available, 125 MHz where only AWS-1 is available, 115 MHz where only BRS is available, and 95 MHz where neither is available. Green Flag agrees that the spectrum screen should be updated to account for industry developments since 2008 when the Commission last reviewed it, but not quite as the Merger Proponents suggest.¹

¹ Green Flag believes that the spectrum screen should also account for the relative unusability of lower band Block A 700 MHz spectrum due to the interference potential from television channel

A. Inclusion of BRS Spectrum. The Merger proponents suggest that the entire BRS spectrum block (77 MHz) be included in the universe of spectrum realistically available for mobile voice service. This proposal overstates the amount of BRS spectrum genuinely available by a wide margin. To be sure, because of the substantial service deadline that all BRS licensees were confronted with as of May 1, 2011, there has been a significant increase in the number of markets with active BRS operations. While we have not done a market by market, license by license, analysis, it appears that the vast majority of BRS licenses and market areas are presently being served to one degree or another by BRS. But that last qualifier is an important one. An examination of the BRS filings appears to indicate that many of the substantial service showings involve fairly limited offerings over a small subset of the channels available to the licensees. Under the BRS rules, a BTA licensee may have the right to operate on as much as 77 MHz of spectrum in its market, yet in order to fulfill its obligations with respect to substantial service, it needed only to provide service over a single 5.5 MHz channel. The same principle applies to site-based BRS licensees who hold 4-channel licenses – they only needed to be operating over one channel. Indeed, in many markets, while there are BRS facilities available to theoretically serve 30% of the market area, there are only a handful of actual current recipients of the service.

So, while the BRS "roll-out" at first blush may appear to be national in scope, the reality is that in a large number of markets, a commercially viable wireless voice and/or data product does not exist in this band. Under the conditions described above, the inclusion of all 77 MHz of BRS spectrum in each and every market for purposes of the spectrum screen would inaccurately

51. That particular segment of 700 MHz spectrum should be excluded from the screen since it is not now effectively available for mobile communications purposes.

skew the measurement of total spectrum in favor of the Merger Applicants and thus further contribute to the declining levels of competition within the wireless industry.

Accordingly, while we support the inclusion of BRS spectrum in the spectrum screen, it should not be factored in universally or automatically. Just as the Commission has recognized that spectrum-clearing issues could delay the roll-out of service over AWS-1 spectrum, it should also recognize that outside of the major metropolitan markets, a significant portion of the BRS spectrum band remains fallow. We are aware of the fact that the deployment of BRS spectrum is in flux, For example, Clearwire continues its work toward reaching a target of 9.5 million subscribers by year-end 2011². Other smaller carriers in the space are also rolling out service, but BRS remains very much a patchwork service. The Commission should therefore include BRS in its analysis but limit the application of BRS spectrum to markets where the Commission can verify that a truly viable commercial launch (service to at least 250 people) has taken place.

Ideally, this information would be available from publicly searchable databases, but it is not. As a proxy for more direct commercial information, the Commission and Merger Applicants should be permitted to rely on substantial service filings made by BRS licensees. If the showings demonstrate that service is being provided over 50% or more the licensee's available bandwidth, the spectrum should be included in the screen. In order to further simplify this demonstration, site-based BRS licensees should be deemed to be part of the BTA market where the center point of their nominal 35 mile radius lies.

² Clearwire Corporation press release, May 4, 2011.

Consistent with the Commission's analysis in the *Verizon-ALLTEL Order*,³ the Commission should continue to exclude from relevant BRS spectrum the MBS channels, the J and K guard bands, and channel 1.

B. Exclusion of EBS Spectrum. The Merger Proponents urge the Commission briefly to include all Educational Broadband Service (EBS) spectrum in the spectrum screen. Doing so would add almost 115 MHz to the screen. This huge expansion of the screen would give the Merger Proponents (who, of course, hold no EBS spectrum) considerable additional wiggle room under the screen. The Proponents offer virtually no support for this proposition, perhaps because there is no sound basis for including spectrum dedicated by law to educational and non-profit purposes in a screening tool used to assess commercial competitive impacts.

To be sure, in some cases a portion of excess EBS spectrum is being leased out to commercial operators, but that is not universally the case. In many instances the EBS licensees are using their spectrum entirely for educational purposes. Furthermore, where a portion of the excess spectrum is leased, the EBS licensee must, by law, provide a minimum of 20 hours per week of educational service per channel and must maintain rights to recapture leased spectrum so that if need be, it may provide more for educational purposes. This, we assume, is why the Commission has not previously considered the inclusion EBS spectrum in its screen analysis during earlier reviews. There is no reason to deviate from that position now.

C. Inclusion of WCS Spectrum. Although AT&T has for some time been including its significant WCS holdings in the spectrum screen showings it submits in

³ Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer of Control of Licenses, Authorizations, and Spectrum Manger and De Facto Leasing Arrangements and Petition for Declaratory ruling That the Transaction is Consistent with Section 310(b)(4) of the Communications Act, FCC 08-258, rel. Nov. 10, 2008. ("*Verizon-ALLTEL Order*")

connections with routine assignment applications, it chose not to include those holdings in the spectrum screen revisions it proposes here. The reason for that is obvious. AT&T holds the 10 MHz A and/or B WCS Blocks in some 34 MEAs across the United States, as well as the 5 MHz C and/or D Blocks in much of the eastern U.S. While these holdings were never placed into service during the first ten years of AT&T's license term, AT&T is now faced with an obligation to build-out and initiate operations on this spectrum no later than February of 2014. This spectrum is suitable for WiMax (including mobile voice operations) in the same way that BRS spectrum is being used commercially in many major markets.⁴ Accordingly, AT&T has not only the capability but the obligation to put this spectrum to substantial use in the very immediate future.

We understand why AT&T would choose not to mention this spectrum in connection with spectrum screening. If 9 MHz of this 25 MHz of spectrum were added to the screening threshold per the Commission's usual formula, AT&T would be charged with an additional 10, 20 or even 30 MHz of spectrum holdings against that threshold. However, given the clarity of the Commission's Order⁵ with respect to WCS spectrum that was issued in 2010, it is entirely fitting and proper that the Commission now include this spectrum in the screening process in this proceeding. To ignore that spectrum would be to ignore a major holding of virgin broadband spectrum which AT&T will be able to put to competitive use. This holding must also be weighed in the overall assessment of the sheer enormity of the combined AT&T/T-Mobile spectrum aggregation.

⁴ Due to constraints imposed by the Commission on the C and D blocks, only 25 MHz of the total WCS spectrum band can realistically be used for mobile purposes.

⁵ FCC 10-82 Report and Order and Second Report and Order issued 05/24/2010 Section I paragraph 1: "By our action today, we make available an additional 25 megahertz of spectrum for mobile broadband service in much of the United States."

D. Exclusion of MSS Spectrum. The Merger Proponents also suggest that the 90 MHz of MSS spectrum licensed to MSS be included in the market for terrestrial mobile communications. This suggestion is based on the possibility that LightSquared, if it can resolve some fundamental GPS interference issues, which to date have not yet been resolved, will be using this spectrum to provide mobile services to wholesale customers. There are multiple problems with this suggestion. First, no one should minimize the difficulties that LightSquared will have to overcome in dealing with its GPS issues. These concerns may delay or permanently circumscribe LightSquared's ability to provide any service. Second, the Commission has always treated the mobile satellite communications market as separate from the terrestrial market – for good reason. The cost structure for service and handsets, and therefore the target customer base, has always had little overlap with the terrestrial mobile market. Third, the Merger Proponents' characterization of LightSquared's spectrum as "MSS/ATC" is misleading. The fact is that that spectrum is MSS spectrum – not ATC spectrum.⁶ By definition and by the terms of LightSquared's waiver from the Commission⁷, any terrestrial use of the spectrum must be *ancillary* to the primary satellite use. So while there may be some ancillary terrestrial service, such service will necessarily be limited in scope and extent. Nor is the entirety of LightSquared's spectrum to be devoted to ATC but rather only a portion of it.⁸ Given these facts, we think that it this spectrum should be excluded from the spectrum screening process. If Commission should

⁶ The Commission did recently modify the allocation for 2 GHz MSS spectrum to give ATC co-primary status, but as the Commission noted, there is no one currently providing ATC service in that band and no immediate likelihood of such service.

⁷ *In the Matter of LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, DA 11-133, rel. Jan. 26, 2011.

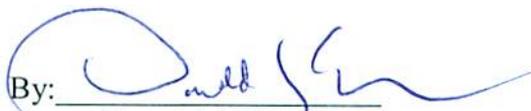
⁸ *Id.*

elect to allow this spectrum to be factored in at all, its use should be limited to the megahertz that are allocated for used in the terrestrial network. In no way should the entire MSS spectrum allocation be dumped cavalierly into the spectrum screen bucket.

E. The Revised Screen Threshold. Taking the above factors into account, the spectrum screen should incorporate the traditional 95 MHz of cellular, PCS, SMR and 700 MHz spectrum, plus AWS-1 spectrum where microwave clearing has occurred and the licensee has given notice of intention to begin operations, plus the amount of BRS spectrum identified by licensees in their substantial service showings as being used, plus 25 MHz of WCS spectrum. The proposed merger should be evaluated under these guidelines, and if the concentration of spectrum exceeds the modified screening thresholds, the Commission should give such concentration careful scrutiny and, if warranted, deny the proposed merger.

Respectfully submitted,

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May 31, 2011

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CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that a true copy of the foregoing PETITION TO DENY was forwarded by email this 31st of May, 2011, to the following:

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