

MASSACHUSETTS
40 main st, suite 301
florence, ma 01062
tel 413.585.1533
fax 413.585.8904

WASHINGTON
501 third street nw, suite 875
washington, dc 20001
tel 202.265.1490
fax 202.265.1489



December 20, 2011

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: WT Docket No. 11-18; RM-11592

Dear Chairman Genachowski:

Free Press writes to join other public interest organizations¹ and wireless industry representatives² urging the Commission to require pro-competitive conditions to offset the harms posed by AT&T's proposed acquisition of spectrum licenses from Qualcomm. Free Press remains opposed to this transaction because additional accumulation of spectrum licenses by AT&T will further distort competition in the wireless market, as no other carrier besides Verizon Wireless has comparable spectrum holdings and market position. The Commission is currently reviewing four spectrum license transfers,³ three of which involve the sale of spectrum licenses to the two largest (and the only two vertically integrated) carriers, AT&T and Verizon Wireless. By further empowering the two burgeoning duopolists, these transactions would greatly harm competition and undermine the language and intent of the Telecommunications Act of 1996. No ancillary conditions can fully offset this harm.⁴

Should the Commission choose to approve the AT&T/Qualcomm transaction, however, it must alleviate the harms to the greatest extent possible by adopting conditions that could benefit the public interest. At a minimum, such conditions should include prohibitions on exclusive agreements for handsets that use the spectrum, as well as a mandate on interoperability across the

¹ E.g. Notice of *Ex Parte* presentation of Harold Feld, Legal Director, Public Knowledge, WT Docket Nos. 08-94, 08-95, 11-18, RM-11498 (Dec. 14, 2011).

² E.g. Letter from Lawrence R. Krevor and Trey Hanbury, Sprint Nextel Corporation, to Marlene H. Dortch, Federal Communications Commission, WT Docket Nos. 11-18, 06-150, GN Docket No. 09-51 (Dec. 16, 2011) (*Sprint Letter*); Notice of *Ex Parte* presentation of Rebecca Murphy Thompson, RCA, WT Docket No. 11-18, RM-11592 (Dec. 13, 2011); Notice of *Ex Parte* presentation of Benjamin M. Moncrief, C Spire Wireless, WT Docket No. 11-18, RM-11592 (Dec. 5, 2011); Notice of *Ex Parte* presentation of Scott Wills, Paul Nagle, Paul Kolodzy, and Michele Farquhar, Vulcan Wireless, WT Docket No. 11-18, RM-11592 (Dec. 12, 2011) (*Vulcan Wireless Notice*).

³ In addition to this transaction, the Commission is currently reviewing two separate purchases of AWS spectrum by Verizon Wireless from Cox and from the cable consortium SpectrumCo, and one transfer of spectrum to DISH Network.

⁴ Free Press continues to believe that the most valuable and efficient use of the spectrum would be as a nationwide unlicensed channel to be included in the White Spaces database and incorporated into future dynamic radio technologies, making the spectrum available for all competitors to use, not just AT&T. See Petition to Deny of Free Press, Public Knowledge, Media Access Project, Consumers Union and the Open Technology Initiative of the New America Foundation, WT Docket No. 11-18, DA 11-252, at 12-16 (Mar. 11, 2011) (Public Interest Petition).

lower 700 MHz spectrum bands,⁵ as AT&T has made clear its own 700 MHz spectrum holdings will be paired with the Qualcomm spectrum holdings.

Spectrum availability, roaming, and access to devices are among the most significant obstacles to effective wireless competition.⁶ This transaction would represent a setback for the first of these factors, by further increasing the disparity between AT&T's spectrum holdings and the holdings of its smaller competitors. That disparity is already significant, particularly for so-called "beachfront" spectrum under 1.0 GHz.⁷ However, conditions prohibiting exclusive agreements and requiring interoperability could balance the harm in part by helping to improve the ability of smaller carriers to offer their subscribers the same popular smartphones that large carriers do.

Compliance with these conditions is feasible for AT&T. The relevant standards bodies have defined a single device band class that includes both AT&T's 700 MHz spectrum licenses and the licenses of many smaller competitors. AT&T can be required to deploy and offer devices that work across all of the lower 700 MHz bands. In response to such a requirement, phone manufacturers would simply install a different - rather than an additional - radio chipset in their phones, producing equivalent devices at equivalent cost. The same phones would then be equally functional on AT&T's licensed spectrum and on nearby spectrum licensed to its competitors. Because the phones would be able to work on both networks, such a condition would also greatly assist future effectiveness of the Commission's data roaming order⁸ by eliminating the risk of device-level technological incompatibilities across otherwise compatible networks.

Contrary to AT&T's objections, there do not appear to be insurmountable technical challenges to adopting or implementing these requirements. AT&T's allegations of interference risks⁹ can, and must, be properly evaluated by the Commission's engineers. But its objections based on reliance on Band 17 and on alleged and unsubstantiated cost increases or device development challenges must be dismissed, as the costs of interoperability here are far outweighed by the public benefits.¹⁰ The creation of individual band classes following the 2008 auction - a major deviation from past band class designs - was a mistake for competition and for optimal spectrum utilization,¹¹ and the harms it poses for device interoperability and roaming are only now beginning to be realized. The Commission should act at every opportunity to correct these harms, including in this transaction and in the pending (but languishing) rulemaking proceedings on these topics.

⁵ See, e.g., *Vulcan Wireless Notice* at 1-2.

⁶ See, e.g., Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge, WT Docket No. 09-66, at 21 (June 15, 2009) (flagging spectrum availability, roaming, backhaul, and device exclusivity as "high barriers" to competitive entry and growth).

⁷ See Public Interest Petition at 11-12.

⁸ In the Matter of Reexamination of Roaming Obligations of Commercial Radio Service Providers and Other Providers of Mobile Radio Services, *Second Report and Order*, FCC 11-52 (rel. Apr. 7, 2011).

⁹ See, e.g., *Sprint Letter* at 3-4.

¹⁰ See, e.g., *id.* at 3.

¹¹ See, e.g., Peter Cramton, "700 MHz Device Flexibility Promotes Competition" (Aug. 9, 2010), *available at* <http://www.cramton.umd.edu/papers2010-2014/cramton-700-mhz-device-flexibility-promotes-competition.pdf>.

Sincerely,

/s/ Chris Riley

M. Chris Riley
Matthew F. Wood
Free Press
501 Third St. NW, Suite 875
Washington, DC 20001
(202) 265-1490