

May 17, 2012

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

In a recent ex parte filing, MetroPCS argues that Verizon's announced plans to sell its Lower 700 MHz A and B block licenses somehow shows that Verizon does not need the AWS spectrum it is acquiring here, continues it attempts to use this proceeding to advance its separate regulatory agenda relating to regulation of roaming arrangements, and alleges that SpectrumCo engaged in trafficking with respect to the AWS spectrum. Its arguments are without merit.

As an initial matter, MetroPCS argues that Verizon Wireless' planned sale of its 700 MHz A and B block licenses is somehow an "admission" that it does not need the AWS spectrum.¹ That has matters backwards. Verizon Wireless needs the AWS spectrum to meet its customers' rapidly growing demands for a wide array of innovative new applications, devices, and services over Verizon's 4G LTE network. Absent additional spectrum to accommodate this growing demand, both customers and providers of the apps, devices, and services that use the LTE network will be adversely affected by the congestion caused by rapidly increasing traffic volumes. Verizon Wireless is willing to consider sale of its 700 MHz A and B block spectrum precisely *because* the AWS spectrum at issue here offers a more cost-effective and spectrally efficient way for Verizon Wireless to expand capacity on its LTE network to meet customers' demands.²

¹ Letter from Carl W. Northrup, Counsel for MetroPCS to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-4, filed April 26, 2012 ("April 26 Letter") at 2-3.

² See, e.g., Declaration of William H. Stone, Executive Director of Network Strategy for Verizon, at 12-13, attached as Exhibit 3 to Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4 (filed Dec. 16, 2011)(AWS spectrum is more suitable than Lower 700 MHz spectrum for Verizon Wireless' capacity requirements).

And while MetroPCS's ex parte suggests that the A and B block spectrum is not useful to other providers, the market proves otherwise: some wireless providers have already agreed to purchase Lower A Block licenses from Verizon Wireless, and others have expressed interest in doing so.³ Indeed, MetroPCS's Vice Chairman explained to analysts that this and other available spectrum are viable options for MetroPCS:

Yes, on the spectrum, we are absolutely interested in any options out there. We currently own some 700. It is a viable option. Like all sources of spectrum, there are potential issues, but we will certainly be taking a very close look at that. The other potential sources we've commented on in the past, we continue to aggressively work all options.⁴

With respect to roaming, MetroPCS claims that it has been unable to negotiate reasonable roaming rates with Verizon Wireless, particularly with respect to data services and LTE.⁵ MetroPCS also argues that the proposed spectrum deals would remove the Cable Companies as potential roaming partners, and decrease Verizon Wireless' incentive to negotiate roaming agreements by supposedly eliminating its need to rely on roaming and exacerbating Verizon Wireless' allegedly superior bargaining power.⁶

First, Verizon Wireless' acquisition of spectrum from the Cable Companies will have no effect on the availability of any roaming services. The Cable Companies do not sell or purchase any roaming services, so Verizon Wireless' acquisition of their spectrum will have no effect on the market for roaming. The Cable Companies have made the

³ E.g., Applications of Verizon Wireless and Leap Wireless for Commission Consent to the Exchange of 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses, ULS File No. 0004952444 (filed Nov. 21, 2011)(Leap Wireless acquiring Verizon Wireless' Lower 700 MHz A block license); Public Notice, Report Number 7561 (WTB, Feb. 22, 2012)(reflecting consent to assignment of Lower 700 MHz A block licenses from Verizon Wireless to Texas Energy Network, LLC); Letter from Grant Spellmeyer, U.S. Cellular, to Marlene H. Dortch, FCC, WT Docket No. 12-4 (filed May 9, 2012)(U.S. Cellular "would consider acquiring A and B Block licenses from Verizon Wireless"; "the proposed sale of A Block license by Verizon holds the potential for positive impact"); see also *United States Cellular Corp. and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of Four Lower 700 MHz A Block Licenses*, ULS File No. 0005167598, Public Notice, DA 12-764 (WTB, rel. May 15, 2012).

⁴ Thomson Reuters Streetevents, Q1 2012 MetroPCS Communications, Inc. Earnings Conference Call Edited Transcript at 12 (attached as Exhibit 1).

⁵ April 26 Letter at 3-4.

⁶ MetroPCS Reply at 17-19.

decision not to enter the market as facilities-based providers and are thus not potential providers of roaming services. Accordingly, the license assignments at issue here will have *no* effect on the number of roaming providers. Moreover, Verizon Wireless' deployment of this spectrum will *increase* the amount of spectrum capacity Verizon Wireless will have available to support roaming by other providers.

Second, Verizon Wireless is a net purchaser of roaming services, meaning it continues to rely substantially on the roaming services of other providers and has every incentive to offer reasonable rates, terms and conditions for roaming services it provides.

Third, because the license assignments at issue here will not expand Verizon Wireless' geographic footprint, they also will not affect the extent to which the company relies on roaming services to fill out its footprint. Likewise, because Verizon Wireless is not acquiring any customers in the transactions, its relative size and bargaining strength will not change.

Fourth, to the extent MetroPCS implies that Verizon Wireless has been unwilling to negotiate roaming agreements, it is simply wrong. MetroPCS and Verizon Wireless have been engaged in roaming discussions, and they exchanged rate proposals last November. Verizon Wireless also offered to extend the negotiations, which had previously focused on voice and EVDO data roaming, to include discussions toward an LTE roaming agreement. In February, Verizon Wireless sent MetroPCS a revised offer and attempted to contact MetroPCS to continue negotiations, but until this week MetroPCS had not responded. It appears that MetroPCS has decided to try to wring conditions out of the regulatory process rather than negotiate commercial arrangements.

Fifth, to the extent MetroPCS suggests that the FCC should now dictate a specific rate for roaming services, the Commission has repeatedly rejected similar requests. For example, in the voice roaming proceeding, MetroPCS commented that

A carrier refusing roaming service to a requesting carrier on the same terms and conditions, including rates, as such carrier provides the service to its affiliates and third parties (including resellers and MVNOs) should have to prove that the cost to provide the service to the requesting carrier is greater than the cost to provide the service to itself, to its affiliates and to third parties.⁷

The Commission declined to regulate rates in that proceeding, finding that rate regulation has the potential to distort carriers' incentives and behavior with regard to pricing and

⁷ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Comments of MetroPCS, filed November 28, 2005, at 15.

investment in network build-out, and finding that requiring most favored roaming partner rates would distort competitive market conditions.⁸ Similarly, in the Alltel merger proceeding, MetroPCS asked the Commission to

Require Verizon to provide automatic roaming at rates that are the lower of: (a) the rate at which such automatic roaming services are offered by Verizon to any person, including Verizon's affiliates; and (b) \$0.05/minute from answer supervision (or equivalent) to call termination (or equivalent) for voice (with a corresponding reasonable level for data).⁹

Again, however, the Commission declined to do so.¹⁰ Finally, the Commission recently rejected requests by numerous parties to impose general roaming requirements on AT&T as a condition to its acquisition of Lower 700 MHz licenses from Qualcomm, noting that it had recently adopted data roaming rules.¹¹

The Commission has adopted specific processes for negotiating voice and data roaming, including the ability to pursue a complaint before the Commission

⁸ See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd at 15832, 15834 (“*Voice Roaming Order*”). See also *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Second Report and Order 26 FCC Rcd at 5422-5423 (“*Data Roaming Order*”) (finding that adopting a general requirement of commercial reasonableness, as opposed to specific prescriptive regulation of rates as requested by some commenters, will give host providers appropriate discretion in the structure and level of rates that they offer and protect the competitive benefits that flow from providers differentiating themselves in the marketplace).

⁹ *Applications of Atlantis Holdings, LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Section 214 and 310 (d) of the Communications Act*, WT Docket No. 08-95, Petition of MetroPCS Communications and NTELOS Inc. to Condition Consent or Deny Applications, filed August 11, 2008, at iii.

¹⁰ *Applications of Atlantis Holdings, LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to the Transfer of Control of Commission Licenses and Authorizations Pursuant to Section 214 and 310 (d) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17525 (2008).

¹¹ *Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations*, WT Docket No. 11-18, Order, 26 FCC Rcd 1758917613-14 (2011).

as needed.¹² Rather than following those processes, however, it appears MetroPCS would prefer to bypass them and instead leverage the regulatory process in a wholly-unrelated proceeding. The Commission should not permit competitors to manipulate its transaction review procedures to advance their separate regulatory agendas, especially where, as here, there is no evidence of transaction-specific harm.

Finally, MetroPCS alleges again that SpectrumCo engaged in trafficking with regard to the AWS spectrum. The allegation is false, as the parties have demonstrated several times in this proceeding. For example, in the Public Interest Statement, Joint Opposition, and their responses to the Information and Discovery Requests, the Applicants set out the facts, which are uncontroverted: over the course of several years, SpectrumCo undertook extensive and time-consuming efforts to investigate the provision of mobile broadband service using the AWS spectrum, including:

- SpectrumCo invested more than \$20 million to clear incumbent microwave links in the AWS spectrum service area. More than 500 incumbents have been cleared.
- SpectrumCo conducted, between 2007 and 2009, extensive operational testing of different 4G technologies for use with AWS spectrum, including WiMAX, UMB, and LTE.
- SpectrumCo tested equipment for use with AWS spectrum, independently and with other equipment manufacturers, such as Qualcomm.¹³

SpectrumCo considered a variety of factors relevant to the spectrum, including the significant cost of building a wireless network and capacity requirements in light of consumers' increasing demand for data-rich mobile services. SpectrumCo explored a variety of different business plans and ventures for providing advanced wireless services over the spectrum, such as acquisitions, joint ventures, and network sharing arrangements with other wireless companies.¹⁴ As one spectrum expert explained, "SpectrumCo did

¹² See 47 C.F.R. §§ 20.12(d) (voice), 20.12(e) (data).

¹³ See Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses, WT Docket No. 12-4, filed Dec. 16, 2011, Public Interest Statement at 20-21; Declaration of Robert Pick ("Pick Declaration") at ¶¶ 3-9; Joint Opposition to Petitions to Deny and Comments ("Joint Opposition"), WT Docket No. 12-4, filed March 2, 2012, at 33-34. See also David L. Cohen, *Clarifying Comcast's Spectrum Position*, COMCAST VOICES, Jan. 17, 2012, <http://blog.comcast.com/2012/01/clarifying-comcasts-spectrum-position.html>.

¹⁴ See Pick Declaration at ¶ 16; Joint Opposition at 35.

everything a reasonably diligent new entrant AWS licensee might be expected to do within the first third of its license term and took meaningful steps to develop, use, and identify long-term business plans for the spectrum.”¹⁵

MetroPCS also criticizes SpectrumCo for failing to defend against allegations of trafficking with a showing of “changed circumstances.”¹⁶ Such a showing is not required by the rules. Notwithstanding, had MetroPCS more carefully reviewed SpectrumCo’s filings in this proceeding, it would have seen numerous descriptions of changed circumstances that affected SpectrumCo’s decision-making, including this discussion in the Public Interest Statement:

The conclusion that SpectrumCo ultimately would need to acquire more spectrum was informed by trends that emerged after SpectrumCo acquired the spectrum, including consumers’ increasing desire for sophisticated mobile devices which require additional spectrum. In June 2007, just seven months after SpectrumCo acquired the AWS licenses, the first iPhone became available to consumers, with the iPad following in 2010. The first Android-powered phone became commercially available in late 2008. As addressed above, the increasing use of these and other data intensive devices has led to skyrocketing capacity demands.¹⁷

SpectrumCo and its owners explored the available options for the AWS spectrum, and only after doing so did they conclude that there were substantial financial risks associated with construction of a wireless network, whether independently or in combination with another provider, with no guarantee of a return on the investment.¹⁸ As a result, SpectrumCo made the business decision not to become a standalone, facilities-based wireless provider and instead entered into the proposed transaction with Verizon Wireless. Neither MetroPCS nor any other party has provided any facts to support a claim of trafficking. Nor, given the documented, significant commitment of time and resources over many years, is such a claim supportable.

¹⁵ See Joint Opposition, Exh. 3 ¶ 35 (“Declaration of David E. Borth”).

¹⁶ April 26 Letter at 4.

¹⁷ Public Interest Statement at 22 (internal citations omitted); *see also* Joint Opposition at 5-8; Comcast Response to Information and Discovery Request, WT Docket No. 12-4, filed Mar. 22, 2012, at 20-21; Time Warner Cable Response to Information and Discovery Request, WT Docket No. 12-4, filed Mar. 22, 2012, at 10-11; Bright House Networks Response to Information and Discovery Request, WT Docket No. 12-4, filed Mar. 22, 2012, at 13-14.

¹⁸ *See* Public Interest Statement at 20-23; Pick Declaration ¶¶ 10-15; Joint Opposition at 35-36.

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In sum, MetroPCS's claims regarding Verizon's need for spectrum, roaming, and trafficking are unsupported by evidence regarding the actual markets for spectrum and roaming services and the facts established in this proceeding.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions, please contact the undersigned.

Sincerely,

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