

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
AT&T Inc. and Atlantic Tele-Network, Inc. Seek)
FCC Consent to the Transfer of Control and) WT Docket No. 13-54
Assignment of Licenses, Spectrum Leasing)
Authorizations and an International Section 214)
Authorization)

To: The Commission

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”)¹ files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) public notice (“*Public Notice*”) regarding the above-captioned applications.² RTG has long advocated that the Commission change its policies regarding mobile spectrum holdings so that no single carrier can hold more than 25 percent of all the suitable and available commercial mobile radio service (“CMRS”) spectrum available in any given county and no more than 40 percent of all of the suitable and available CMRS spectrum below one Gigahertz (“GHz”) in any given county.³

¹ RTG is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RTG’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RTG’s member companies serves less than 100,000 subscribers.

² *In the Matter of AT&T, Inc. and Atlantic Tele-Network, Inc. Seek FCC Consent to the Transfer of Control and Assignment of Licenses, Spectrum Leasing Authorizations, and an International Section 214 Authorization*, Public Notice, WT Docket No. 13-54, DA 13-352 (released March 5, 2013) (“*Public Notice*”).

³ See generally *In the Matter of Policies Regarding Mobile Spectrum Holdings*, Comments of the Rural Telecommunications Group, Inc., WT Docket No. 12-269 (filed November 28, 2012) (“*RTG Comments*”); *In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum*, Petition for Rulemaking of the Rural Telecommunications Group, Inc., RM No. 11498 (filed July 16, 2008). RTG sought to impose a spectrum cap of 110 megahertz on all spectrum below 2.3 GHz. RTG’s petition was dismissed following the Commission’s review of spectrum holdings in WT

AT&T, Inc. (“AT&T”) and Atlantic Tele-Network, Inc. (“ATNI”) seek the Commission’s consent to enter into a transaction that will allow AT&T to not just increase its suitable and available CMRS spectrum holdings in the states of Alabama, Georgia, Idaho, Illinois, North Carolina, Ohio, South Carolina and Washington, but also remove forever the last vestiges of a long-standing independent rural carrier and the ALLTEL brand. When Verizon was forced in 2009 to divest various wireless operating units after closing on the purchase of ALLTEL (at that time the country’s fifth largest wireless carrier), ATNI purchased licenses in all of those markets not already snapped-up by AT&T. Not even four years later, AT&T is now poised to pick up all of those remaining ALLTEL properties included in that original divestiture. Thus continues the onslaught of continual spectrum consolidation by the Twin Bells of AT&T and Verizon Wireless.

If this potential assignment of spectrum is approved in full, in some counties AT&T stands to control over one-third of all suitable and available CMRS spectrum, and in many instances, over 60 percent of all suitable and available CMRS spectrum below 1 Gigahertz (GHz). Spectrum holdings of this size, in any county, make it extremely difficult for at least four mobile wireless service providers to effectively compete – regardless of whether they are nationwide providers or smaller local or regional providers. Until the Commission concludes its review of spectrum holdings in WT Docket No. 12-269 with an eye towards bright line spectrum aggregation limits (*i.e.*, a spectrum cap), it should review any proposed spectrum transactions in the interim (including the one entered into between AT&T and ATNI) with a reduced spectrum

Docket No. 12-269 (See *In the Matter of Petition of Rural Telecommunications Group, Inc. to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Order, RM 11498 (Terminated), DA 12-1702 (released October 23, 2012).

screen and an analysis that fosters the existence of at least four separate carriers with sufficient spectrum in every affected county.

I. ALLOWING FEWER THAN FOUR CARRIERS IN A MARKET HARMS COMPETITION

The record shows that both the Commission⁴ and the U.S. Department of Justice⁵ have recognized the competitive harms stemming from spectrum concentration resulting in less than four nationwide carriers. Such competitive harm results from spectrum concentration resulting in *any* market with fewer than four carriers, regardless of whether those carriers are nationwide or not. Ensuring the competitive presence of at least four carriers in a market is critical to maintaining competition in the market. Failure to do so does two things. First, it further entrenches the Twin Bells and the two smaller nationwide carriers (Sprint and T-Mobile), and makes it exceedingly difficult for other competitive, regional or start-up carriers to develop a nationwide footprint that will allow them to truly compete with these spectrum behemoths. Second, it handicaps smaller carriers, including RTG members, by eliminating competitive pressure on those nationwide carriers to maintain reasonable roaming rates and compete fairly. The only way to absolutely ensure that four carriers can not only survive, but thrive, in a market is to cap the overall amount of spectrum each can hold at 25 percent of all suitable and available spectrum. To the extent that one of the four nationwide carriers does not approach this 25 percent cap, this leaves more spectrum for a fifth or sixth competitive presence in the market. To the extent a carrier already controls more than 25 percent of suitable and available spectrum in a

⁴ *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, WT Docket No. 11-65, DA 11-1955 (released November 29, 2011) at ¶ 3; see <http://transition.fcc.gov/transaction/DA-11-1955.pdf>.

⁵ United States of America, Department of Justice, Antitrust Division, et. al., vs. AT&T Inc., T-Mobile USA, Inc., and Deutsche Telekom AG, Amended Complaint, Civil Action No. 11-01560 (ESH) at ¶36; see <http://www.justice.gov/atr/cases/f275100/275128.pdf>.

market, the Commission should allow this preexisting, disproportionate level of spectrum aggregation to remain but impose conditions (discussed in Section III below) that limit the pernicious effects of reduced competition on those carriers precluded from accessing more spectrum (and their customers). The need for a minimum of four carriers per market is urgent in both rural and urban areas. Allowing AT&T, Verizon Wireless and other carriers to continue amassing spectrum holdings that exceed 25 percent of all suitable and available spectrum in a market harms those who work, live and travel in rural America by denying those consumers the benefits of competition brought about by the presence of at least four spectrum enriched carriers.

II. AT&T'S SPECTRUM POSITIONS POST-CLOSING THREATEN TO REDUCE MEANINGFUL COMPETITION.

In order to foster competition between no fewer than four separate carriers in each market, the FCC should continue to consider spectrum based on its suitability and availability for mobile telephony/broadband services. "Suitable and available spectrum" should include at this time the following spectrum:

- Cellular (824-849 MHz, 869-894 MHz) (50 megahertz total).
- Personal Communications Service (PCS) (1850-1915 MHz, 1930-1995 MHz) (130 megahertz total).
- Specialized Mobile Radio (SMR) (817-824 MHz, 862-869 MHz) (14 megahertz total).
- 700 MHz Band (698-757 MHz, 776-787 MHz) (70 megahertz total).
- Advanced Wireless Services-1 (AWS-1) (1710-1755 MHz, 2110-2155 MHz) (90 megahertz total).
- Broadband Radio Service (BRS) (2618-2673.5 MHz) (55.5 megahertz total).
- Wireless Communications Service (WCS) (2305-2315 MHz, 2350-2360 MHz) (20 megahertz total).

The transaction proposed by AT&T and ATNI contemplates AT&T acquiring all of ATNI's customers and network, as well as significant amounts of Cellular, PCS and Lower 700 MHz spectrum in eight states. Even more, the deal eliminates ATNI, operating as ALLTEL Wireless, from the industry's competitive playing field. In all of these counties, there currently

exists 429.5 megahertz of spectrum in these seven bands considered by the Commission to be suitable and available for mobile telephony/broadband services.⁶ Any carrier holding one quarter (25 percent) of this suitable and available spectrum would control just over 107 megahertz (“MHz”) of total spectrum from those seven bands while any carrier holding forty percent of the suitable and available Cellular, SMR and 700 MHz Band spectrum would control just over 53 megahertz of these “lower three” bands.

AT&T already holds more than 25 percent of the suitable and available spectrum (*i.e.*, more than 107 megahertz) in two Cellular Market Areas (CMAs) included in this proposed transaction.⁷ Assuming this transaction proceeds as initially proposed by the applicants, AT&T will control more than 25 percent of all suitable and available spectrum in 24 CMAs (covering 74 counties) and more than 40 percent of all suitable and available spectrum below 1 GHz in 13 CMAs (covering 69 counties).⁸ In some markets, such as Ohio 3 Ashtabula (CMA 587), AT&T will hold over 36 percent of all suitable and available spectrum. This exacerbation of spectrum hoarding is in addition to the fact that ALLTEL will completely disappear as a marketplace alternative to the four national carriers. The net result of this acquisition is that AT&T removes a marketplace competitor and controls excessive amounts of spectrum in 102 of the 162 counties

⁶ The seven bands with suitable and available spectrum are: Cellular, PCS, SMR, 700 MHz, AWS-1, BRS and WCS. While the amount of SMR spectrum deemed suitable and available is currently higher than 14 megahertz, the Commission’s *Notice of Proposed Rulemaking* in WT Docket No. 12-269 notes that “it may be appropriate to reduce the amount of suitable SMR spectrum from 26.5 megahertz to 14 megahertz to reflect the portion of SMR spectrum through which mobile broadband services can be provided.” (*Notice of Proposed Rulemaking* at ¶ 29.)

⁷ AT&T already exceeds 107 megahertz today in Massac County, IL in the license area of Illinois 8 – Washington (CMA 401) and Ashtabula County, OH in the license area of Ohio 3 – Ashtabula (CMA 587).

⁸ These CMAs include Lima, OH (CMA 158), Hickory, NC (CMA 166), Anderson, SC (CMA 227), Mansfield, OH (CMA 231), Georgia 6 – Spalding (CMA 376), Georgia 7 – Hancock (CMA 377), Georgia 8 – Warren (CMA 378), Georgia 9 – Marion (CMA 379), Georgia 10 – Bleckley (CMA 380), Georgia 12 – Liberty (CMA 382), Idaho 1 – Boundary (CMA 388), Idaho 2 – Idaho (CMA 389), Idaho 3 – Lemhi (CMA 390), Illinois 9 – Washington (CMA 401), Illinois 9 – Clay (CMA 402), North Carolina 2 – Yancey (CMA 566), North Carolina 5 – Anson (CMA 569), Ohio 2 – Sandusky (CMA 586), Ohio 3 – Ashtabula (CMA 587), Ohio 5 – Hancock (CMA 589), Ohio 6 – Morrow (CMA 590), South Carolina 1 – Oconee (CMA 625), South Carolina 2 – Laurens (CMA 626), and South Carolina 7 – Calhoun (CMA 631).

included in this transaction. If the FCC were to approve the proposed transaction, it is questionable whether those impacted CMAs could support even three healthy carriers (*i.e.*, each with enough spectrum resources to remain viable), much less four.

III. IF THE COMMISSION APPROVES THE APPLICATIONS, IT MUST REQUIRE DIVESTITURE OF SPECTRUM IN CERTAIN MARKETS OR ALTERNATIVELY GRANDFATHER AT&T AND REQUIRE CONDITIONS TO PRESERVE COMPETITION.

AT&T's bid to remove yet another regional carrier catering to the rural marketplace (while simultaneously hoarding disproportionate amounts of spectrum) is not in the public interest. Accordingly, with respect to these markets where spectrum concentration is already an issue, the FCC should require AT&T to divest or lease spectrum exceeding the 25 percent or 40 percent thresholds to an independent third party within an 18 month period. Alternatively, if the FCC does not order the spectrum to be divested or leased in these counties, the Commission should only approve the transaction with the conditions set forth below. Until the Commission completes its review of spectrum holdings in WT Docket No. 12-269, all case-by-case reviews of spectrum holdings in the secondary marketplace should be conducted with an eye towards supporting a competitive environment for mobile telephony/broadband services wherein no fewer than four licensees/operators have access to a sufficient amount of spectrum to remain competitively viable. If AT&T desires to hold spectrum positions that exceed 25 percent of all suitable and available spectrum in a county (or exceed 40 percent of that same spectrum below 1 GHz), then it should only be allowed to do so if also committing to satisfy conditions that protect consumers.

In its comments filed in the FCC's proceeding on spectrum holdings, RTG urged the Commission to impose rules that require all carriers to divest excess spectrum within 18 months of RTG's proposed rules coming into effect. While a typical divestiture of excess spectrum is

the most efficient manner in which to allow competitors access to an otherwise scarce resource, RTG is now proposing an alternative to spectrum divestiture: long-term spectrum leasing. Specifically, RTG proposes that carriers such as AT&T who may have excess spectrum in certain counties be permitted to enter into long-term spectrum leases as an alternative to divestitures, provided that such leases are with independent third parties at established market rates, and that such third parties do not themselves exceed either of the applicable caps. Allowing for long-term spectrum leases in lieu of license divestitures avoids spectrum remaining fallow and permits the licensee to re-utilize the spectrum at a later date once the 25 or 40 percent cap permits the acquisition of more spectrum due to an increase in the amount of suitable and available spectrum.

Should the Commission allow AT&T to retain spectrum that exceeds the spectrum threshold discussed herein 18 months after RTG's proposed rules have gone into effect, the Commission should require AT&T to accept certain conditions in exchange for being allowed to keep more than 25 percent of suitable and available spectrum in that market (or 40 percent of all suitable and available spectrum below 1 GHz). In this particular instance, AT&T will hold excess spectrum in 24 CMAs (covering 102 counties) where it is acquiring Cellular, PCS and Lower 700 MHz Band licenses from ATNI. Because this spectrum aggregation by AT&T will diminish competition, such spectrum consolidation should only be allowed if AT&T agrees to certain conditions. Specifically, in those markets where AT&T will hold 25 percent of the suitable and available spectrum, or more than 40 percent of the suitable and available spectrum below 1 GHz, it must: (1) offer data roaming to any requesting carrier at commercially reasonable rates, terms and conditions; (2) offer to its own customers devices that are fully interoperable (*i.e.*, the mobile device must work on all spectrum that is available and usable in that particular spectrum band, as well as any other spectrum band where the carriers offer

service); and (3) work to ensure that mobile devices it sells to its own customers are available on a non-exclusive basis to Tier II and Tier III carriers who utilize the same technology as AT&T.

IV. CONCLUSION

For the foregoing reasons, RTG urges the Commission to review AT&T's proposed takeover of ATNI in a manner that ensures future competition between no fewer than four carriers in any given county. The best means to effectuate this policy, before the Commission promulgates new rules industry-wide pertaining to spectrum holdings, is to: (1) require AT&T to divest or lease excess spectrum, or (2) permit AT&T to hold greater than 25 percent (or 40 percent) of all suitable and available spectrum in any given market, but only if AT&T agrees to support commercially reasonable data roaming with requesting roaming partners, sell fully-interoperable mobile devices, and take the necessary steps to ensure that all of the mobile devices they sell to their own customer base are also available on a non-exclusive basis to Tier II and Tier III carriers who utilize the same technology as AT&T.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

/s/ Tanya Sullivan

Tanya Sullivan, Executive Director
James Mardis, Director of Industry Affairs
10 G Street, NE
Suite 710
Washington, DC 20002
(202) 551-0025

April 4, 2013