

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)	
)	
Seventeenth Annual Report on the)	WT Docket No. 13-135
State of Mobile Wireless Competition)	
)	
)	

COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST, INC.

Ellen Stutzman
Director of Research & Public Policy

June 17, 2013

Emily Sokolski
Research Analyst

Writers Guild of America, West, Inc.
7000 West Third Street
Los Angeles, CA 90048
(323) 782-4660

Introduction

Writers Guild of America, West, Inc. (WGAW) is pleased to submit the following comments in response to the Federal Communication Commission's (FCC) Public Notice, "Wireless Telecommunication Bureau Seeks Comment on the State of Mobile Wireless Competition," released on May 17, 2013, WT Docket No. 13-135.

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media, including news and documentaries. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA"). Increasingly, video programming produced for initial distribution over the Internet is also written by WGA members.

The WGAW is concerned about competition in the wireless market because mobile video distribution represents a new way for content creators to reach consumers. With the proliferation of tablets and smartphones, consumers are no longer confined to watching video content in their living room or even in their home. Importantly, they are also no longer limited to watching only the content offered by multichannel video programming distributors (MVPDs). The openness of wired and wireless Internet platforms has created space for new video distributors and is leading to an increase in independent content offered to consumers. However, the lack of sufficient competition among wireless carriers threatens to limit the development of robust mobile video offerings. AT&T and Verizon's duopoly control of the wireless market has kept data prices high and recently reported plans to allow incumbent content providers to pay for special treatment on wireless networks will undermine competition in video offerings. We urge the Commission to adopt policies that promote competition in the mobile industry. Such policies should include

weighted spectrum aggregation limits that incorporate difference in spectrum frequency, transparent performance requirements for spectrum license holders and dedicated spectrum for unlicensed use. Absent Commission action, we fear wireless providers will further raise prices and serve as content gatekeepers of the wireless platform, to the detriment of competition, diversity and innovation.

The Wireless Market Lacks Sufficient Competition

The Commission's decision to remove a cap on spectrum holdings in 2001 has had a detrimental impact on competition.¹ Between 2001 and 2011, a number of mergers increased consolidation in the wireless market. Significantly, Nextel and Sprint merged, AT&T and BellSouth merged, and Cingular and AT&T merged. By 2011, four nationwide providers—AT&T, Verizon, T-Mobile and Sprint—accounted for 90% of the nation's mobile subscribers, down from six national providers in 2000.² Removing the spectrum cap also allowed the large carriers to use their size and incumbency advantage to win spectrum at auction, with the effect, if not the intent, of foreclosing competition. In the 2008 spectrum auctions Verizon and AT&T were able to win approximately 60% of MHz-POPs, to the detriment of new competition.³ As a result, Verizon and AT&T now control 64% of subscribers and 85% of the MHz-POPs of the low-frequency spectrum.⁴

¹ Federal Communications Commission, Report and Order, *2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services*, WT Docket 01-14.

² Federal Communications Commission, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, 15th Report, WT Docket 10-133, 2011, Table 4.

³ Bryan Gardiner, "In Spectrum Auction, Winners Are AT&T, Verizon and Openness," *Wired*, March 20, 2008, <http://www.wired.com/business/2008/03/fcc-releases-70/>, and *Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, RM-11498 (filed July 16, 2008).

⁴ SNL Kagan, "Wireless Industry Benchmarks—Wireless Subscribers 2012 Q3," <http://www.snl.com> and Federal Communications Commission, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, 16th Annual Report, WT Docket 11-86, p 18.

The harmful effects of consolidation are evident in the expensive data plans offered by market leaders AT&T and Verizon. In 2011 both carriers phased out unlimited data plans and replaced them with more expensive offerings. AT&T charges \$50 a month for 5 GB of data and \$15 for each GB over. An AT&T subscriber would need 10 GB of data each month to watch just an hour of HD video a day, bringing the subscriber's data plan to \$125 a month.⁵ Verizon's data calculator estimates that an hour of streaming a day on a smartphone would require 10 GB, costing a subscriber \$100 a month. Tablets on Verizon's 4G network require even more data—a single hour of HD video streaming on a 4G tablet uses 1 GB of data.⁶ At these prices, very few consumers can afford to watch video on mobile networks.

While wireless carriers claim that the rates charged for their data plans are necessary because of congestion and high costs of data distribution, research by The New America Foundation suggests that network management practices and infrastructure upgrades can help address congestion without limiting consumer use.⁷ In addition, the recent revelation that ESPN may pay wireless providers to ensure that ESPN mobile traffic is not counted against a user's monthly data caps suggests that network congestion may not be the real reason data caps exist.⁸ Rather, it appears that the lack of competition in the wireless market allows Verizon and AT&T to use data caps to charge monopoly rents for access to their networks. Although Sprint and T-

⁵ AT&T, Data Calculator and Individual Data Plans,

<http://www.att.com/att/datacalculator/index.html#fbid=mDr3ZnVdLNo>, Accessed June 13, 2013.

⁶ Verizon, Data Calculator and Share Everything Plans. Data estimated for smartphone and 4G Tablet.

<http://www.verizonwireless.com/b2c/splash/dataShareCalculator.jsp?popup=true>, Accessed June 17, 2013.

⁷ Hibah Hussain, Danielle Kehl, Benjamin Lennett and Patrick Lucey, "Capping the Nation's Broadband Future?," New America Foundation, 12/17/2012,

http://www.newamerica.net/publications/policy/capping_the_nation_s_broadband_future.

⁸ USA Today, "Report: ESPN may subsidize wireless data plans," USA Today, June 10, 2013,

<http://www.usatoday.com/story/tech/2013/05/10/espn-wireless-subsidy/2151261/>.

Mobile offer less expensive data plans, their combined market share of 27% does not represent enough of a threat to Verizon and AT&T to make data prices more affordable.⁹

Spectrum Policy Can Promote Competition in the Mobile Wireless Market

Spectrum is an essential input for mobile network deployment. As such, competition among wireless carriers depends on access to spectrum, particularly low-frequency spectrum. As the WGAW noted in the Commission's ongoing spectrum proceedings, WT Docket 12-268 and WT Docket 12-269, a weighting mechanism that recognizes the value of low-frequency spectrum and establishes aggregation limits can help promote competition in the wireless industry.¹⁰ The propagation characteristics of low-frequency spectrum can reduce infrastructure costs in network deployment, making control of such spectrum a competitive advantage. A cell tower in the lower 700 MHz range will cover 100 meters whereas four towers are required to cover 100 meters for spectrum above 1.9 GHz. A single cell tower can cost up to \$200,000 to construct, demonstrating the cost-savings of network deployment on lower frequency spectrum.

Because the Commission's existing spectrum screen does not account for differences in spectrum frequencies, AT&T and Verizon hold the majority of low-frequency spectrum. Verizon holds 45% of the Cellular and 700 MHz spectrum combined, and AT&T holds 39%.¹¹ As such, the development of a weighting mechanism would represent a significant improvement to the FCC's current screen of 1/3 of available spectrum because it would limit further aggregation of such valuable spectrum, making room for more competition. Employing the screen in the

⁹ SNL Kagan, "Wireless Industry Benchmarks—Wireless Subscribers 2012 Q3," <http://www.snl.com>.

¹⁰ See Comments of the Writers Guild of America, West, Inc., *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No 12-269, November 28, 2012.

¹¹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, 16th Annual Report, WT Docket 11-86, p 17.

upcoming auctions would ensure that smaller carriers have an opportunity to bid on low-frequency spectrum.

Performance Requirements Will Incentivize Network Investment

Performance requirements are necessary to promote competition in the wireless industry and ensure that spectrum acquired through auctions or transactions is not warehoused. The WGAW supports Commission actions to institute performance requirements, including build-out timelines, for spectrum licensees. We also encourage the Commission to regularly and transparently evaluate the deployment status of spectrum holdings. While the Commission frequently imposes build out and service conditions in spectrum transactions, there is often insufficient follow up to ensure compliance. For example, AT&T promised to bring high-speed internet to communities in Mississippi in order to gain regulatory approval for their purchase of BellSouth in 2006. AT&T's then-CEO Edward Whitacre testified before Congress that allowing the merger would help rural residents by bringing AT&T's services to their communities.¹² The FCC conditioned the AT&T/BellSouth merger on the expansion of broadband service to every customer within AT&T's territory by the end of 2007. Six years after approval of the acquisition, some residents in parts of Mississippi are still waiting for access to high-speed internet.¹³

Companies that seek to license valuable spectrum must adhere to performance requirements that ensure their use of this public resource serves the public interest. Licensees should be required to meet multiple, quantifiable service benchmarks throughout the license

¹² Senate Judiciary Committee, Subcommittee on Antitrust, Competition Policy and Consumer Rights; Testimony of Edward Whitacre, June 22, 2006 available at http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da1172414&wit_id=e655f9e2809e5476862f735da1172414-1-1.

¹³ Gerry Smith, "Many Rural AT&T Customers Still Lack High-Speed Internet Despite Merger Promise," Huffington Post., November 18, 2012, http://www.huffingtonpost.com/2012/11/18/rural-att-customers-merger-Internet_n_1914508.html.

term. Reports on network deployment should be made annually and should be accessible to the public. Companies that do not meet build out requirements should be subject to “use it or share it” conditions, making spectrum available to competitive carriers at affordable rates.

Wireless Transactions Must Enhance Competition

In recent years, several transactions to merge carriers or acquire spectrum have come before the Commission. The WGAW opposed the AT&T – T-Mobile merger and Verizon’s acquisition of spectrum from SpectrumCo because we believe that increasing AT&T and Verizon’s control of the wireless market does not serve the public interest.¹⁴ We have also joined with Public Knowledge to oppose AT&T’s acquisition of spectrum formerly held by Verizon.¹⁵ The Commission required Verizon to divest in the spectrum at issue because of competitive concerns. We do not see how transfer of spectrum from one dominant firm to the other does not also raise concerns about competitive harm. We urge the Commission to approve transactions only if they will result in increased wireless competition. For instance, recent transactions involving Sprint and T-Mobile could inject more competition into the wireless industry. T-Mobile’s AWS spectrum, acquired from AT&T and MetroPCS, will support LTE deployment. T-Mobile plans to deploy LTE in 90% of the top 25 US markets by the end of 2013. Sprint’s

¹⁴ See Joint Petition to Deny of Center for Media Justice, Consumers Union, Media Access Project, New America Foundation, and Writers Guild of America, West, *In the Matter of Application of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket 11-65, May 31, 2011 and Petition to Deny of Public Knowledge, Media Access Project, New America Foundation Open Technology Initiative, Benton Foundation, Access Humboldt, Center for Rural Strategies, Future of Music Coalition, National Consumer Law Center, on behalf of its low-income clients, and Writers Guild of America, West, *In the Matter of Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses*, WT Docket No. 12-4, February 21, 2012.

¹⁵ See Petition to Deny of Public Knowledge and The Writers Guild of America, West, *In the Matter of AT&T Inc., Cellco Partnership D/B/A Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC, For Consent to Assign Licenses and Grant Long-Term De Facto Transfer Spectrum Leasing Arrangements*, WT Docket 13-56, and *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*, WT-Docket 13-54, April 13, 2013.

plan to acquire Clearwire will allow it to provide faster network speeds and provide additional competition in the mobile industry. The WGAW supports such transactions because we believe making T-Mobile and Sprint stronger competitors will serve the public interest.

Unlicensed Spectrum is Necessary for Competition

Unlicensed spectrum promotes competition and innovation in the wireless market, allowing anyone to develop and market wireless products and services without the permission of gatekeeping spectrum license holders. In addition, Wi-Fi networks utilizing unlicensed spectrum make it possible for consumers to watch videos on wireless devices, offsetting costly data plans. An estimated 40 to 90% of mobile broadband data delivered to mobile devices use open wireless systems, representing cost-savings for consumers.¹⁶ Increasing the amount of unlicensed spectrum available would help the development of the wireless video market and could incentivize wireless carriers to offer more affordable data plans in competition with Wi-Fi. We encourage the Commission to dedicate a set amount of unlicensed spectrum by geographic area in order to protect this competitive resource.¹⁷

Conclusion

Mobile platforms have created new ways to communicate, consume and engage with content. Robust development of content offerings is dependent upon a competitive market of wireless carriers. With AT&T and Verizon exercising duopoly control of the wireless market, consumers face high prices that limit their ability to take full advantage of the content and devices developed for mobile use. The Commission has the ability to address competition in the

¹⁶ Yochai Benkler, "Open Wireless vs. Licensed Spectrum: Evidence from Market Adoption," Berkman Center for Internet & Society at Harvard University, November 7, 2011, http://www.benkler.org/Open_Wireless_V_Licensed_Spectrum_Market_Adoption_current.pdf, p 1.

¹⁷ See Comments of the WGAW, Docket 12-268, 1/25/2013, p 8.

wireless industry by enacting policies that make room for competition beyond AT&T and Verizon. Adopting a weighted spectrum aggregation limit, implementing performance requirements on spectrum licensees, approving only those spectrum transactions that enhance competition and increasing unlicensed spectrum are critical actions that would significantly increase competition.