

**Before the  
Federal Communications Commission  
Washington, DC 20554**

AT&T Inc., Cellco Partnership D/B/A )	WT Docket No. 13-56
Verizon Wireless, Grain Spectrum, LLC, )	
and Grain Spectrum II, LLC Seek FCC )	
Consent to the Assignment of )	
Advanced Wireless Services and Lower )	
700 MHz Band B Block Licenses and )	
To Long-Term De Facto Transfer )	
Spectrum Leasing Arrangements )	
Involving Advanced Wireless Services )	
and Lower 700 MHz Band B Block )	
Licenses )	
)	
AT&T Inc. and Atlantic Tele-Network, )	WT Docket No. 13-54
Inc. Seek FCC Consent to the Transfer )	
of Control and Assignment of Licenses, )	
Spectrum Leasing Authorizations, and )	
an International Section 214 )	
Authorization )	

**PETITION TO DENY OF PUBLIC KNOWLEDGE AND THE WRITERS GUILD OF AMERICA, WEST**

The Commission should deny AT&T and Verizon's applications<sup>1</sup> because there is no reliable objective basis by which to judge them. It should first issue an Order modernizing its spectrum aggregation policies in its pending proceeding on

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<sup>1</sup> See Application of AT&T Inc., Cellco Partnership D/B/A Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC for Consent to the Assignment of Advanced Wireless Services and Lower 700 MHz Band B Block Licenses and To Long-Term De Facto Transfer Spectrum Leasing Arrangements Involving Advanced Wireless Services and Lower 700 MHz Band B Block Licenses, WT Docket No. 13-56, ULS File No. 0005627587; Application of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent to the Transfer of Control and Assignment of Licenses, Spectrum Leasing Authorizations, and an International Section 214 Authorization, WT Docket No. 13-54, ULS File No. 0005632405.

this topic,<sup>2</sup> and allow AT&T and Verizon to re-submit their applications under the new standard.

It is beyond serious question that the Commission's spectrum screen policies need revision.<sup>3</sup> The policies that are in place are static measures that do not take into account the differential value of spectrum bands, and the different value of spectrum in different geographic areas. By the time the current screen is triggered the holdings of a particular carrier may already be disproportionate, giving it an advantage over competitors that may be impossible to overcome. But while AT&T and Verizon made their applications during the pendency of the Commission's spectrum aggregation proceeding, they made no effort to justify the transactions under any of the proposed, more stringent standards.

These transactions highlight the shortcomings of the Commission's spectrum policies, and demonstrate how those shortcomings undermine its competition policies in other areas. By requiring divestitures in major transactions—but then allowing divested spectrum to end up back in the hands of one of the two major carriers—the FCC simply facilitates a game of spectrum musical chairs, where the public is left standing when the song runs out.

The ATNI spectrum was divested by Verizon upon its purchase of AllTel. The Commission granted Verizon's application to transfer control of AllTel's licenses

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<sup>2</sup> *Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11,710, WT Docket No. 12-269 (rel. Sep. 28, 2012).

<sup>3</sup> See *id.* ¶¶ 9-10, which shows that AT&T, Verizon, Sprint, T-Mobile, RCA, RTG, Leap Wireless, Free Press, and Public Knowledge all agree that current policies are inadequate.

only because it found that the divestitures eliminated several competitive harms.<sup>4</sup> It is difficult to conceive how spectrum that would have been competitively harmful if controlled by Verizon, does not cause similar competition harms if controlled by its peer, AT&T. Similarly, the spectrum that AT&T seeks to get from Verizon was made available for sale by Verizon in response to competitive concerns that were raised by the Department of Justice and the FCC over its SpectrumCo transaction.<sup>5</sup> In the absence of an updated spectrum screen, the Commission's default assumption should be that any given license would do more for the public, and competition, in the control of a competitive carrier—particularly when previously-divested spectrum is finding its way back to carriers of the same scale as the carrier that divested it in the first place. The applicants should demonstrate why their transactions do not cause the same competitive harms the Commission previously sought to avoid. Because they have not, the Commission should deny their applications until it updates its spectrum aggregation policies. Finally, these transfers actually do trigger the screen in two places.<sup>6</sup> Plainly this should be a signal that the Commission should review these transactions under an improved framework.

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<sup>4</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95 23 FCC Rcd 17,444, at ¶¶ 157-58 (rel. Nov. 10, 2008).

<sup>5</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 12-4, 27 FCC Rcd 10,698, ¶ 19, (rel. Aug. 23, 2012).

<sup>6</sup> See AT&T/Allied Public Interest Statement at 14; AT&T/Verizon Public Interest Statement at 15.

If the Commission allows these transactions to proceed despite its broken toolbox it should take protective steps to ensure they have a pro-competitive effect—the FCC may not approve any transactions unless they promote the public interest,<sup>7</sup> and given the concentrated state of the wireless marketplace<sup>8</sup> the public interest requires policies that promote competition. To that end it should require that the licensees take steps that would promote competition and offset any harms caused by granting the transfers.

The licenses at issue are for 700 MHz “beachfront” spectrum, and Verizon and AT&T can use them (along with their other 700 MHz licenses) to fragment the market in a way that makes it difficult for smaller competitors to deploy devices on their smaller holdings. This has several negative effects. It makes it harder for users to switch carriers, since even without any form of deliberate locking they will not be able to take their equipment with them. It means that low-cost equipment will only be available with larger carriers who can create the incentive for equipment makers to create devices that work with their networks. And it means that smaller carriers may have difficulty even using the licenses they have purchased—keeping spectrum underused, and networks undeveloped through no fault of their own.<sup>9</sup> To remedy this, the Commission should require that AT&T and Verizon not subdivide band classes or otherwise take steps to make their networks technologically incompatible

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<sup>7</sup> 47 U.S.C. § 310(d).

<sup>8</sup> *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, WT Docket No. 11-186 (rel. March 21, 2013), at ¶ 2 (failing to find, consistent with past reports, that the wireless market is effectively competitive).

<sup>9</sup> *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69, Notice of Proposed Rulemaking, 27 FCC Rcd 3521, ¶ 2 (rel. Mar. 21, 2012).

with those of smaller operators. By doing this, the Commission will ensure that low-cost devices will be widely available, because smaller carriers will benefit from manufacturing economies of scale as well as larger ones. But in addition to benefiting the subscribers of small carriers, this policy will “promote the widest possible deployment of communications services, ensure the most efficient use of spectrum, and protect and promote vibrant competition in the marketplace.”<sup>10</sup> But this is not merely good policy: it is a transaction-specific remedy to the specific harms that these transactions would create, which would partially undo the harms caused by allowing the largest carriers to swap spectrum among themselves and strengthen their relative positions while leaving smaller carriers to make do with scraps.

Similarly, carriers should not use their economic clout to enter into exclusive deals for devices. Consumers benefit when smaller carriers can offer a full range of devices, but further cementing the spectrum holdings of the largest carriers makes it that much more likely that they will be able to use their buying power to get exclusives and disadvantage smaller providers. Thus, the Commission should require as a condition of any license transfers that AT&T and Verizon do not acquire any exclusive equipment deals that disadvantage smaller operators.

Neither should users be prevented from switching carriers by early termination fees that are used, not as a mechanism to protect equipment subsidies, but as a means to prevent customers from switching providers and an opportunity for double-charging. To the extent that AT&T and Verizon should be permitted to

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<sup>10</sup> *Id.* at ¶ 1.

have early termination fees at all, the Commission should require that they tie them to specific equipment costs. The total fee should never exceed the amount of the subsidy for the individual handset, and should be gradually and evenly prorated to zero.<sup>11</sup> For instance, a handset that costs \$500 at retail, for which the customer has paid \$200 from the carrier, would have a maximum ETF of \$300. Because carriers charge higher monthly rates to make up for this subsidy, it should be prorated. In this example, over a two-year contract, the ETF should decrease by \$12.50 monthly, ending at zero. This way of transparently setting and prorating ETFs would allow carriers to cover the costs of subsidized equipment but would keep ETFs low enough that more users would be able to switch providers, increasing the level of competition between them.<sup>12</sup>

Finally, carriers with an advantage in special access and backhaul provision are able to leverage that to keep their costs low. Indeed, a major wireless operator in a given market might have monopoly control over the special access lines that are necessary to provision towers—thus ensuring that its competitors will not be able to undercut it on price. To help offset this, as a condition of any spectrum transfer that would increase the market power of a dominant provider, the Commission should require that such provider make its backhaul and special access services available to competitors on the same terms it itself enjoys. While the Commission

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<sup>11</sup> See Nate Anderson, *Digging Into AT&T's New \$325 Early Termination Fee*, ARS TECHNICA, May 25, 2010, <http://arstechnica.com/tech-policy/2010/05/digging-into-atts-new-325-early-termination-fee>, for a discussion of this idea.

<sup>12</sup> Additionally, setting the ETFs in this way would introduce more price competition to the handset market itself, which suffers inflated costs and inefficiencies due to the absence of a “user pays” pricing approach.

has recently improved its special access methodology<sup>13</sup> and has a pending proceeding that looks at some of these issues,<sup>14</sup> its obligation to ensure that license transfers serve the public interest justifies its taking extra steps to ensure that the special access practices of transferees serve the interests of competition.

The Commission should deny these applications because the transactions will only serve to increase and entrench the largest wireless carriers' market dominance—exactly the opposite result that these spectrum divestitures were expected to have when they were first announced or ordered. The Commission's spectrum screen is out of date and in the process of revision, and the applicants have failed to take this into account by demonstrating that their transactions would not cause competitive harm even under a significantly stronger screen (or cap). Nevertheless, if the Commission grants these transfers it should impose conditions that make them serve the public interest. At a minimum, it should ensure that artificial barriers do not impair the ability of users to switch to competitive carriers.

April 4, 2013

Respectfully submitted,

/s John Bergmayer  
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PUBLIC KNOWLEDGE

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<sup>13</sup> *Special Access for Price Cap Local Exchange Carriers*, Report & Order, 27 FCC Rcd 10, 557, WC Docket No. 05-25 (rel. Aug. 22, 2012).

<sup>14</sup> *Special Access for Price Cap Local Exchange Carriers*, Report & Order & Further Notice of Proposed Rulemaking, WC Docket No. 05-25, 27 FCC Rcd 16,318 (rel. Dec. 18, 2012).