

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

In the Matter of)	
)	
Policies Regarding Mobile Spectrum Holdings)	WT Docket No. 12-269
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	

OPPOSITION OF AT&T TO SPRINT'S PETITION FOR RECONSIDERATION

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Pursuant to the Commission’s August 21, 2014 Public Notice, AT&T Inc., on behalf of itself and its affiliates (collectively “AT&T”), respectfully submits this opposition to the Petition for Reconsideration filed by Sprint Corporation (“Sprint”)¹ of the Commission’s *Spectrum Order*.²

INTRODUCTION AND SUMMARY

In the petition, Sprint seeks the incorporation of frequency-specific spectrum weighting into the Commission’s revised spectrum screen, a proposal that the Commission expressly rejected in the *Spectrum Order*.³ AT&T opposes the petition both procedurally, because the petition raises no new facts or arguments, and substantively, because the Commission correctly rejected spectrum weighting.

¹ Sprint Corporation, Petition For Reconsideration, WT Docket No. 12-269 (filed Aug. 11, 2014) (“Sprint Pet.”). Notice of Sprint’s petition for reconsideration was published on September 9, 2014.

² Report and Order, *Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, FCC 14-63 (rel. June 2, 2014) (“*Spectrum Order*”).

³ Sprint “is not seeking reconsideration of any other aspect” of the *Spectrum Order*. Sprint Pet. at 1 n.1.

The relief that Sprint seeks is foreclosed by the Commission's rule governing petitions for reconsideration, which bars reconsideration based on arguments that were fully considered and rejected by the Commission. The petition is nothing more than a re-hash of arguments that it and other commenters raised in numerous submissions in this proceeding and that the Commission expressly rejected. Sprint does not get a second bite at the apple.

Even if the petition were not procedurally defective, Sprint has not provided any reason for the Commission to revisit its decision to reject spectrum weighting. The Commission's rejection of spectrum weighting, and Sprint's proposals in particular, was amply supported by the record evidence and the Commission's reasoning. First, the Commission correctly held that the record did not support "categorical" distinctions between different spectrum bands to a degree that would justify incorporating any rigid, "one-size-fits-all" weighting scheme into the spectrum screen. Second, the Commission also properly found that Sprint's particular weighting proposals were unsupported by record evidence, and Sprint has provided no new facts or other analysis that would address the Commission's concerns. The Commission was on firm ground in determining that Sprint's spectrum weighting proposals were based on flawed economic and engineering assumptions, could lead to errors in the regulatory review process, and would not serve the public interest.

I. THE PETITION IS PROCEDURALLY DEFECTIVE BECAUSE IT RAISES ARGUMENTS THAT WERE FULLY CONSIDERED AND REJECTED BY THE COMMISSION.

Sprint's petition should be rejected as procedurally defective. Under the Commission's rule governing petitions for reconsideration, a petition does not warrant relief if it relies "on arguments that have been fully considered and rejected by the Commission within the same

proceeding.”⁴ Sprint’s pleading is a classic request to re-litigate an issue that was extensively explored and expressly addressed by the Commission in the original order. As Sprint acknowledges, in the NPRM that initiated this proceeding, the Commission sought comment on whether it should adopt spectrum weighting as part of its spectrum screen and asked the parties to submit specific weighting proposals.⁵ Sprint and other commenters urged the Commission to adopt spectrum weighting schemes and submitted weighting proposals.⁶ AT&T and others vigorously contested the economic and engineering rationales for these spectrum weighting schemes, and also argued that the specific weighting proposals were fundamentally flawed.⁷

After considering commenters’ extensive briefing on this issue, and discussing Sprint’s weighting proposals, the Commission properly rejected spectrum weighting.⁸ It concluded that

⁴ 47 C.F.R. § 1.429(1)(3). See *Royce International Broadcasting Co.*, 26 FCC Rcd. 9249, ¶ 2 n.3 (2011) (“Longstanding Commission policy holds that petitions for reconsideration may not be used to reargue points previously rejected.”); *State of Indiana and Sprint Nextel Corp.*, 26 FCC Rcd. 5067, ¶ 14 (2011) (“It is well established that the Commission does not grant reconsideration for the purpose of allowing a petitioner to reargue matters already presented, considered, and disposed of by the Commission. Otherwise, the Commission would be involved in a never-ending process of review that would frustrate the Commission’s ability to conduct its business in an orderly fashion.”) (citing Memorandum Opinion and Order, *Warren Price Communications, Inc.*, 7 FCC Rcd. 6850 (1992)).

⁵ Sprint Pet. at 14 (citing Notice of Proposed Rulemaking, *Policies Regarding Mobile Spectrum Holdings*, 27 FCC Rcd. 11710, ¶¶ 36-39 (2012)).

⁶ See *Spectrum Order* ¶ 268 (listing commenters who supported spectrum weighting); Comments of Sprint Nextel Corporation, WT Docket No. 12-269, at 11-12 (Nov. 28, 2012); Letter from Lawrence R. Krevor (Sprint) to Marlene H. Dortch (FCC), WT Docket No. 12-269 (Feb. 11, 2014) (Sprint weighting proposal) (“Sprint February 11 Ex Parte”); Letter from Lawrence R. Krevor (Sprint) to Marlene H. Dortch (FCC), WT Docket No. 12-269 (May 5, 2014) (Sprint alternative weighting proposal) (“Sprint May 5 Ex Parte”).

⁷ See *Spectrum Order* ¶ 268 (listing commenters who opposed spectrum weighting); see also Comments of AT&T Inc., WT Docket No. 12-269, at 61-73 (Nov. 28, 2012) (“AT&T Nov. 28 Comments”); Reply Comments of AT&T Inc., WT Docket No. 12-269, at 22-27 (Jan. 7, 2013) (“AT&T Jan. 7 Reply Comments”); Letter from David L. Lawson (representing AT&T) to Marlene Dortch (FCC), WT Docket No. 12-269 (Mar. 14, 2014) (“AT&T March 14 Ex Parte”).

⁸ *Spectrum Order* ¶¶ 268-78.

“at this time, we cannot justify, on the basis of the record, adopting specific weighting factors for each spectrum band.”⁹ Although the Commission found that the record demonstrated that “there are significant differences in deployment costs between low-band and high-band spectrum,”¹⁰ it noted the difficulties and uncertainties of establishing specific weighting factors.¹¹ It therefore concluded that “treating below-1-GHz spectrum concentration as an enhanced factor in our case-by-case analysis is a better approach at this time because we are able to distinguish between the characteristics of different frequency bands without imposing a weighting schema that may fail to accurately reflect their competitive significance.”¹² The Commission also expressly addressed Sprint’s argument that adopting a revised spectrum screen that did not incorporate spectrum weighting would prevent beneficial transactions, and rejected this argument as “unfounded.”¹³ The Commission explained that the revised screen would not “prevent” any transactions because “it is a screen, not a cap,” and the Commission retains the authority to approve transactions that trigger the screen.¹⁴ In short, the Commission fully considered commenters’ arguments in favor of more extreme spectrum weighting schemes (including Sprint’s arguments and weighting proposals specifically) and properly rejected them.

Sprint’s petition does not bring any new facts to the Commission’s attention, or make any new arguments to justify its reconsideration request. Instead, Sprint merely re-hashes arguments

⁹ *Spectrum Order* ¶ 274; *id.* at ¶ 276 (“a spectrum weighting schema would not be in the public interest at this time”).

¹⁰ *Id.* ¶ 274.

¹¹ *See, e.g., id.* ¶ 275 & n. 728 (discussing the difficulties of adopting appropriate assumptions regarding band-specific signal propagation characteristics); *id.* & n. 729 (discussing the difficulties of weighting spectrum by its “value”).

¹² *Id.* ¶ 276.

¹³ *Id.* ¶ 277.

¹⁴ *Id.*

that the Commission considered and rejected.¹⁵ Thus, the relief that Sprint requests is squarely foreclosed by the Commission’s rule governing reconsideration, and its petition should be summarily rejected.¹⁶

II. THE PETITION LACKS SUBSTANTIVE MERIT BECAUSE SPECTRUM WEIGHTING WOULD BE INAPPROPRIATE.

Even if the Commission could consider the petition on its merits, Sprint has provided no substantive basis for the Commission to revisit its rulings in the *Spectrum Order*. Sprint advances two sets of claims: (1) the Commission should have adopted some sort of weighting scheme in the spectrum screen, and (2) there was “record support” for Sprint’s proposed weighting schemes in particular. The Commission fully considered and correctly rejected both arguments.

Weighting Schemes. Sprint continues to argue that the Commission should incorporate a weighting scheme into the spectrum screen based solely on regulatory determinations of the “competitive utility” of different spectrum frequencies derived *solely* from their propagation

¹⁵ Compare Sprint Pet. at i-ii, 12-13, 19-20 (arguing that without spectrum weighting, the spectrum screen will result in “false positives” and “false negatives”), with *Spectrum Order* ¶ 277 (rejecting this exact argument as “unfounded”); Sprint Pet. at 10 & n.16 (arguing that the *Spectrum Order* is “inconsisten[t]” and contains a “logical disconnect” because the Commission found important differences among spectrum bands, but declined to weight spectrum in the spectrum screen), with *Spectrum Order* ¶ 278 (rejecting this argument and explaining that the *Spectrum Order* is not internally inconsistent); Sprint Pet. at 4 (arguing that the spectrum screen improperly “treat[s] all spectrum bands alike”), with *Spectrum Order* ¶ 277 n.730 (rejecting this argument as inaccurate).

¹⁶ See Order on Reconsideration, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, DA 14-865, ¶¶ 10-11 (rel. June 25, 2014) (denying petition for reconsideration because it was based on arguments that have “already been fully considered and rejected by the Commission”); Second Memorandum Opinion and Order, *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband over Power Line Systems*, 28 FCC Rcd. 4995, ¶ 22 (2013) (denying petition for reconsideration that was “largely a rehash of previous filings” and raised arguments that “have already been fully considered by the Commission”).

characteristics and what those characteristics may imply for the cost of deploying cell sites.¹⁷ There is no economic or engineering grounds for any such scheme,¹⁸ and the Commission properly held that it could not “justify, on the basis of the record, adopting specific weighting factors for each spectrum band.”¹⁹

First, as AT&T demonstrated in its comments and other submissions, a weighting scheme based solely on propagation differences would be inconsistent with basic principles of economics.²⁰ Sprint’s proposals focus on one characteristic of spectrum – propagation – and how that characteristic affects only one aspect of a provider’s costs – its cost to deploy cell sites. The total economic costs of deploying a network, however, include the cost of *both* cell-site deployment *and* the underlying spectrum licenses. Accordingly, even if it were always true that it is more costly to deploy high-band spectrum, those higher deployment costs (like all other factors that affect the competitive value of spectrum) will be reflected in the price of the spectrum licenses. If some spectrum will cost more to deploy, then, all else equal, it will sell for lower prices at auction or in secondary market transactions, and the two effects will largely offset

¹⁷ Sprint Pet. at 9-14; *see also id.* at 17.

¹⁸ *See* Letter from Peter D. Keisler (representing AT&T) to Marlene Dortch (FCC), GN Docket No. 12-268 & WT Docket No. 12-269, at 7-8 & nn. 6-12 (May 7, 2014) (“AT&T-Keisler May 7 Ex Parte”) (summarizing record evidence on these issues).

¹⁹ *Spectrum Order* ¶ 274.

²⁰ *See* AT&T Nov. 28 Comments at 61-73; Mark A. Israel & Michael L. Katz, *Economic Analysis of Public Policy Regarding Mobile Spectrum Holdings* (Nov. 28, 2012) (“Israel/Katz Decl.”), attached to AT&T Nov. 28 Comments; AT&T Jan. 7 Reply Comments at 22-27; Mark A. Israel & Michael L. Katz, Reply Declaration, *Economic Analysis of Public Policy Regarding Mobile Spectrum Holdings: Reply Declaration* (Jan. 7, 2013) (“Israel/Katz Reply Decl.”), attached to AT&T Jan. 7 Reply Comments; *see also* AT&T March 14 Ex Parte; Letter from David L. Lawson (representing AT&T) to Marlene Dortch (FCC), WT Docket No. 12-269 (May 7, 2014) (“AT&T May 7 Ex Parte”).

one another.²¹ Sprint still offers no answer to this dispositive point. It would be arbitrary to base a weighting scheme solely on deployment costs while ignoring the impact those costs have on spectrum prices, and courts have consistently reversed the Commission when it has adopted regulations that fail to account for basic principles of economics and the natural dynamics of the marketplace.²²

Second, a weighting scheme based solely on propagation differences would be arbitrary for the additional reason that propagation characteristics are not the only or even the most important determinant of how providers “value” spectrum. Sprint continues to ignore the fact that there are many other factors that actually favor higher frequency spectrum. The Commission expressly noted a number of these factors in the *Spectrum Order*. For example, the Commission pointed out that Sprint itself acknowledged that high-frequency spectrum “is better suited to increasing network capacity, as opposed to coverage, in highly populated areas, where mobile wireless demand tends to be more concentrated.”²³ Similarly, the Commission

²¹ Israel/Katz Decl. ¶¶ 91-92; Israel/Katz Reply Decl. ¶¶ 9, 22-24; *see also* Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andres V. Lerner, “Sprint’s Proposed Weighted Spectrum Screen Defies Economic Logic and Is Inconsistent with Established Facts” (March 13, 2014), attached to AT&T March 14 Ex Parte (“Katz/Haile/Israel/Lerner Decl.”).

²² *See, e.g., United States Telecom Ass’n v. FCC*, 290 F.3d 415, 425, 429 (D.C. Cir. 2002) (“*USTA I*”) (“naked disregard of the competitive context” is arbitrary, and Commission must “confront[]” the facts of competition and the incentive effects of its regulations); *see also Tripoli Rocketry Ass’n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 437 F.3d 75, 77 (D.C. Cir. 2006) (agency action is arbitrary and capricious if its explanation “lacks any coherence” and is not “logical and rational”). As the Commission noted in the *Spectrum Order*, after extensive criticism Sprint did ultimately submit an analysis (at least for “rural” and “suburban” areas) that attempted to account for the offsetting effect of spectrum costs. *See Spectrum Order* ¶ 275 n.729; Letter from Lawrence R. Krevor (Sprint) to Marlene H. Dortch (FCC), WT Docket No. 12-269 (April 4, 2014), at 9 (“Sprint April 4 Ex Parte”). The Commission correctly found, however, that Sprint “d[id] not explain how it determined” the spectrum prices on which it relied, and Sprint does not offer the missing explanation in its petition. *Spectrum Order* ¶ 275 n.729; *see also* AT&T May 7 Ex Parte at 4-5, 7-9.

²³ *Spectrum Order* ¶ 34 (citing Sprint Feb. 11, 2014 Ex Parte at 19).

acknowledged that high-frequency spectrum “possesses certain technical advantages allowing for the transmission of large amounts of information” as compared to low-frequency spectrum.²⁴ As AT&T and others documented, the value a provider places on any given band of spectrum can vary with many additional factors, including the available channel sizes (which are typically larger with high-frequency spectrum), compatibility with the provider’s existing spectrum holdings and geographic footprint, susceptibility to interference, regulatory burdens and restrictions, and standardization and international harmonization.²⁵

Thus, contrary to Sprint’s contention,²⁶ the Commission did not find that low-frequency spectrum is unambiguously “better” in all circumstances than high-frequency spectrum in a manner that would “logically” lead to fixed numerical weights for spectrum bands that would categorically apply to all transactions and in all circumstances.²⁷ The Commission instead correctly found that the record does not support “categorical distinctions” between different groupings of spectrum.²⁸ Indeed, the Commission found that such a weighting scheme would reduce, not enhance, the accuracy of the spectrum screen. The Commission ultimately determined that weighting schemes “may fail to accurately reflect [the] competitive significance” of different frequency bands.²⁹ It noted the difficulty of “establish[ing] specific weighting

²⁴ *Id.* ¶ 3.

²⁵ *See, e.g.*, AT&T March 14 Ex Parte; *see also* Jeffrey H. Reed and Nishith D. Tripathi, *The Value of Spectrum* (March 14, 2014) at §§ 2.1-2.6, attached to AT&T March 14 Ex Parte (“Reed/Tripathi Decl.”).

²⁶ *See* Sprint Pet. at 9-10; *see also id.* at 10 (contending that there is a “logical disconnect” between the Commission’s findings and its rejection of spectrum weighting).

²⁷ *Spectrum Order* ¶ 278 (whatever differences may exist between different spectrum bands do not compel “an assignment of specific weighting factors to individual spectrum bands” in the spectrum screen).

²⁸ *Id.* ¶ 55.

²⁹ *Id.* ¶ 276.

factors,” much less making appropriate assumptions to support these factors.³⁰ It also cited the difficulty of establishing accurate weighting factors based on the purported “value” of the spectrum.³¹ Indeed, it would have been unlawfully arbitrary for the Commission to adopt a weighting scheme based on only the supposed advantages of low-frequency spectrum while ignoring the countervailing benefits of high-frequency spectrum.³²

Sprint’s argument is also refuted by real-world empirical evidence, including the evidence in the record that carriers can and do compete successfully in the marketplace without substantial low-frequency spectrum holdings.³³ In fact, Sprint’s own behavior belies its position that propagation is always the end-all, be-all of spectrum value: Sprint has just sold its nationwide swath of 900 MHz (*i.e.*, sub-1 GHz) spectrum to Pacific DataVision.³⁴

Given the multitude of factors that can affect the competitive significance of the spectrum bands at issue in particular transactions, Sprint has provided no basis for reconsidering the Commission’s decision to reject an inflexible, “one-size-fits-all” quantitative weighting scheme for the spectrum screen. It has been settled for decades that an agency has broad discretion to choose to regulate either on a case-by-case basis or by prophylactic rule,³⁵ and the Commission

³⁰ *Id.* ¶ 275.

³¹ *Id.* & n.729.

³² *See, e.g., NARUC v. Department of Energy*, 680 F.3d 819, 824-25 (D.C. Cir. 2012) (agency cannot lawfully consider only factors that cut one way and ignore relevant factors that cut the other way).

³³ Letter from Peter D. Keisler (representing AT&T) to Marlene Dortch (FCC), WT Docket No. 12-269 (May 7, 2014) at 7-8 (“AT&T Keisler May 7 Ex Parte”).

³⁴ Tammy Parker, “Sprint sells 900 MHz spectrum to firm led by Nextel co-founders,” *Fierce Wireless* (Sept. 17, 2014), *available at* <http://www.fiercewireless.com/tech/story/sprint-sells-900-mhz-spectrum-firm-led-nextel-co-founders/2014-09-17> (Pacific Datavision “acquired from Sprint the top 20-25 markets, 60 percent of all the 900 MHz spectrum”).

³⁵ “[T]he decision whether to proceed by rulemaking or adjudication lies within the broad discretion of the agency,” and deference to an agency decision is “particularly appropriate”

correctly held that a new rule was not appropriate in these circumstances. Although Sprint claims that a rigid rule would provide greater regulatory “certainty,”³⁶ the Commission properly determined that regulatory certainty should not be pursued at the expense of other public interest objectives, including accuracy. For example, with respect to its overall approach to reviewing secondary market transactions, the Commission rejected “*ex ante* limits on spectrum aggregation” because they “may prevent transactions that are in the public interest.”³⁷ It similarly rejected spectrum weighting based on concerns that any such scheme would “fail to accurately reflect the[] competitive significance” of proposed transactions.³⁸ Although very few transactions in today’s competitive marketplace could raise any legitimate spectrum foreclosure concern, Sprint remains free to raise objections in any specific transaction if it believes that the propagation (or other) characteristics of the spectrum at issue may impact competition. Nothing in either the *Spectrum Order*’s findings or Sprint’s petition requires the Commission to reconsider that approach.³⁹

because “the breadth and complexity of the Commission’s responsibilities demand that it be given every reasonable opportunity to formulate methods of regulation appropriate for the solution of its intensely practical difficulties.” *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144, 1166 (D.C. Cir. 1985) (quoting *Permian Basin Area Rate Cases*, 390 U.S. 747, 790 (1968)) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 202–03 (1947)).

³⁶ Sprint Pet. at 5, 11, 13-14, 19, 20.

³⁷ *Spectrum Order* ¶ 231.

³⁸ *Id.* ¶ 276.

³⁹ In addition, the Commission’s findings that it would be difficult to establish accurate weighting factors, much less continually update them to reflect dynamic market conditions, refutes Sprint’s assertion that there would be greater certainty with spectrum weighting. To the contrary, any weighting scheme that the Commission adopted would be subject to ongoing controversy and calls for reform, which on balance would undermine – rather than promote – certainty for applicants.

Sprint's Proposals. Sprint also contends that the record supported its specific weighting proposals,⁴⁰ but the Commission was on firm ground in rejecting these claims. Sprint has provided no new facts or other basis for the Commission to reconsider its conclusions.

In fact, Sprint submitted various proposals in which its proposed weighting factors swung wildly back and forth, which betrayed the fact that Sprint had no sound method for calculating how to “weight” different bands of spectrum according to its “competitive utility.” For example, Sprint submitted a proposed weighting scheme in February 2014 that, as AT&T showed, relied on a broad range of untenable assumptions about how deployment costs would vary for different bands of spectrum. In response to criticisms, Sprint later modified its analysis of deployment costs to account for additional variables, which reduced Sprint’s estimate of how much more a provider of 2.5 GHz spectrum would have to spend to deploy a suburban network than a provider of 700 MHz from *seven times* to *1.9 times*. Then, Sprint submitted yet another iteration, which relied on arbitrary 1.5, 1.0, and 0.5 weightings of “low”, “mid” and “high” frequency spectrum, respectively, that would have counted AT&T’s 700 MHz and 850 MHz cellular spectrum three times as much as Sprint’s large holdings of 2.5 GHz spectrum.⁴¹ These wild swings in Sprint’s own calculations and proposals transparently show the arbitrariness of Sprint’s assumptions and results-oriented methods; they do not reflect any underlying competitive reality.

The Commission’s rejection of Sprint’s arguments is abundantly supported by the record. As the Commission noted, AT&T submitted detailed critiques of Sprint’s weighting proposals.⁴² Specifically, AT&T showed that all of Sprint’s proposals suffered from numerous fundamental

⁴⁰ Sprint Pet. at 14-21.

⁴¹ See Letter from Gardner H. Foster (Sprint Corp.) to Marlene H. Dortch (FCC), GN Docket No. 12-268 & WT Docket No. 12-269 (May 1, 2014).

⁴² *Spectrum Order* ¶¶ 269-71; see Sprint Pet. at 15-16.

flaws – both in terms of their underlying economic and engineering assumptions and their practical implementation – which rendered the resulting weights wholly arbitrary.⁴³ For example, AT&T showed that Sprint’s proposals: (1) ignored numerous determinants of spectrum “value” that cut in favor of high-frequency spectrum; (2) wrongly assumed that network deployment is driven by coverage, rather than capacity, concerns; (3) ignored that network design is impacted by existing spectrum holdings, and does not occur in “green-field” scenarios; (4) were based on faulty engineering studies; (5) did not comport with real-world facts; and (6) employed flawed analyses of deployment costs in suburban and rural areas.⁴⁴ Sprint’s petition does not contain any new facts or other analysis that attempts to meet any of these objections.

Verizon also demonstrated that Sprint’s attempts to place fixed values on spectrum bands overlooked pertinent factors and ignored that the value of spectrum bands will fluctuate significantly over time.⁴⁵ As technologies evolve, consumer preferences and demands change, and markets develop, the value of particular spectrum bands will vary significantly. As a result, “[t]oday’s ‘beachfront’ spectrum may be different than tomorrow’s.”⁴⁶ Sprint’s weighting proposals made no attempt to address or reflect the dynamic nature of the spectrum market.

In short, there was an overwhelming record demonstrating that Sprint’s specific proposals were arbitrary, and Sprint provides no legal or factual basis for the Commission to reconsider its ruling that Sprint’s analyses and proposals were unreliable and did not justify the incorporation

⁴³ See AT&T March 14 Ex Parte; AT&T May 7 Ex Parte.

⁴⁴ *Id.*

⁴⁵ *Spectrum Order* ¶ 271; see also Letter from Tamara Preiss (Verizon) to Marlene H. Dortch (FCC), GN Docket No. 12-268 & WT Docket No. 12-269, at 2-3 (March 10, 2014) (“Verizon March 10 Ex Parte”).

⁴⁶ Verizon March 10 Ex Parte at 3.

of a weighting scheme into the spectrum screen. Indeed, courts consistently have struck down arbitrary numerical constructs and thresholds when the agency failed adequately to justify them.⁴⁷

The only constant in Sprint's proposals was that they were all calibrated to give Sprint extraordinary flexibility to acquire very large amounts of additional spectrum without triggering the screen, to a degree that would have led to absurd results. Although Sprint already holds more spectrum than AT&T and Verizon combined, Sprint's proposed screens would have placed artificial limits on the ability of AT&T and Verizon to acquire additional spectrum, even when such transactions would raise no competitive concerns, while allowing Sprint to amass a very large percentage of the available spectrum in most areas with no regulatory scrutiny.⁴⁸ Indeed, Sprint already holds a mix of low, mid, and high-frequency spectrum and has already announced that it will use its 800 MHz spectrum as the low-frequency spectrum foundation of its Sprint Spark service, which "will work via the combination of its 800 MHz, 1.9 GHz and 2.5 GHz LTE spectrum."⁴⁹ When Sprint announced last week that it would not participate in the Commission's upcoming AWS-3 auction, it made clear that those three bands gave it enough spectrum to offer unlimited data plans for the iPhone 6.⁵⁰ And yet, Sprint's proposals would

⁴⁷ See *Time Warner Entm't Co. v. FCC*, 240 F.3d 1126, 1136 (D.C. Cir. 2001) (striking down 30 percent cable ownership limit as not sufficiently justified); *USTA v. FCC*, 188 F.3d 521, 525-26 (D.C. Cir. 1999) (striking down 6 percent X-Factor as not sufficiently justified).

⁴⁸ See AT&T March 14 Ex Parte; AT&T May 7 Ex Parte.

⁴⁹ Phil Goldstein, "Sprint Spark to combine LTE in 800 MHz, 1.9 GHz and 2.5 GHz, will offer 50-60 Mbps peak speeds," *FierceWireless* (Oct. 30, 2013), *available at* <http://www.fiercewireless.com/story/sprint-spark-combine-lte-800-mhz-19-ghz-and-25-ghz-will-offer-50-60-mbps-pe/2013-10-30#ixzz2z0BbdEpU>.

⁵⁰ Nicole Arce, "Sprint CEO Marcelo Claure has a great comeback plan and it involves iPhone 6," *Tech Times* (Sept. 12, 2014), *available at* <http://www.techtimes.com/articles/15433/20140912/sprint-ceo-marcelo-claure-has-a-great-comeback-plan-and-it-involves-iphone-6.htm> ("We can offer unlimited data because of Spark,"

have left it with enormous remaining “headroom” to acquire additional spectrum while all but eliminating any further headroom for providers like AT&T – thus threatening the success of the Commission’s 600 MHz auction.⁵¹ The Commission correctly rejected these transparently one-sided weighting proposals, and properly determined that spectrum weighting, and Sprint’s proposals in particular, “would not be in the public interest.”⁵²

CONCLUSION

For the foregoing reasons, the Commission should deny Sprint’s Petition for Reconsideration.

Respectfully Submitted,

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Dated: September 24, 2014

[Sprint CEO Marcelo] Claure says, referring to Sprint’s 2.5 gigahertz spectrum acquired from Clearwire.”).

⁵¹ For example, Sprint’s final weighted screen proposal would have left AT&T with less than 10 MHz of screen “headroom” going into the 600 MHz action in 70 of the top 100 CMAs (even after including 2.5 GHz and AWS-4 spectrum).

⁵² *Spectrum Order* ¶ 276. Sprint repeatedly complains about the Commission’s decision to increase the amount of 2.5 GHz spectrum that will be included in the spectrum screen, *see* Sprint Pet. at i, 2 n.2, 4, 5, but it wisely does not seek reconsideration of this aspect of the *Spectrum Order*, *id.* at 1 n.1. Reconsideration of this issue is procedurally barred because the Commission fully considered and rejected Sprint’s extensive arguments on it. *See Spectrum Order* ¶¶ 107-25. In any event, Sprint raises no new facts or legal arguments that could provide any basis for the Commission to revisit its well-supported conclusions.