

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Mobility Spectrum LLC; BellSouth)	
Mobile Data, Inc.; New Cingular Wireless)	RM-11731
PCS, LLC; and SBC Telecom Inc.)	
)	
Petition for Rulemaking Amending)	
WCS Technical Standards Rules)	

To: The Commission

REPLY COMMENTS OF AT&T

AT&T Mobility Spectrum LLC; BellSouth Mobile Data, Inc.; New Cingular Wireless PCS, LLC; and SBC Telecom Inc. (together with their ultimate parent, AT&T Inc., and its other affiliates, “AT&T”) hereby offer reply comments in support of their Petition for Rulemaking to amend certain Part 27 rules governing the C and D Blocks of the Wireless Communications Services in the 2.3 GHz band (the “WCS band”).¹ As described in the Petition, the proposed rule changes will enable AT&T to use its C and D Block spectrum for the air-to-ground component of its planned LTE-based in-flight connectivity service for airlines and passengers.² In its Comments, AT&T explained that it had reached an agreement to protect Sirius XM Radio Inc. (“Sirius XM”) from harmful interference;³ that it is engaged in similar discussions with the

¹ Petition for Rulemaking (filed Aug. 8, 2014) (“Petition”). AT&T amended its proposals in the Comments it filed in this proceeding. Comments of AT&T at 2-3 (filed Sept. 22, 2014) (“AT&T Comments”).

² See Press Release, AT&T Inc., Mobilizing the Sky: AT&T Building 4G LTE In-Flight Connectivity Service, *available at* http://about.att.com/story/mobilizing_the_sky_att_building_4g_lte_in_flight_connectivity_service.html (Apr. 28, 2014) (“*Mobilizing the Sky*”).

³ AT&T Comments at 3; *see also* Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T Inc., and James S. Blitz, Vice President, Regulatory Counsel, Sirius XM Radio Inc., to Marlene H. Dortch, Secretary, FCC (filed Sept. 22, 2014) (attaching Coordination Agreement and Interference Resolution Between AT&T and Sirius XM for WCS C & D Blocks).

Aerospace and Flight Test Radio Coordinating Council (“AFTRCC”) and RigNet, Inc. (“RigNet”) to ensure the in-flight connectivity service does not cause harmful interference to aeronautical mobile telemetry or RigNet’s facilities;⁴ and that adopting AT&T’s proposed rules would serve the public interest.⁵

No commenter has disputed AT&T’s showings. ARRL and the Competitive Carriers Association (“CCA”) raise issues that are not germane to the technical standards governing the WCS C and D Blocks.⁶ For its part, Garmin International, Inc. (“Garmin”) suggests an interference concern⁷ that is addressed adequately by the proposed rules.⁸ On the record in this proceeding, therefore, the Commission should move swiftly to the next step in this rulemaking and issue a notice of proposed rulemaking.

I. ARRL’s Comments Amount to a Late-Filed Petition to Reconsider the Rules for the A and B Blocks

ARRL’s comments fail to address the technical changes that AT&T has proposed for the WCS C and D Blocks. Instead, incorrectly suggesting that AT&T’s proposals also apply to the A and B Blocks,⁹ ARRL attempts to relitigate claims of protection for amateur use of 2300-2305

⁴ AT&T Comments at 7; *see also* AFTRCC Comments at 2.

⁵ AT&T Comments at 3-4.

⁶ *See* Comments of ARRL at 1 (filed Sept. 19, 2014) (“ARRL Comments”); Comments of Competitive Carriers Association at 1 (filed Sept. 22, 2014) (“CCA Comments”).

⁷ *See* Comments of Garmin International, Inc. at 1 (filed Sept. 22, 2014) (“Garmin Comments”).

⁸ Gogo Inc.’s comments address various procedural questions. *See* Comments of Gogo Inc. (filed Sept. 22, 2014) (“Gogo Comments”). They also reflect confusion over whether AT&T intends to use the WCS A and B Blocks in the in-flight connectivity service. Gogo Comments at 4-5. As AT&T previously has stated, it intends to use the A and B Block spectrum solely for terrestrial service. *See Application of New Cingular Wireless PCS, LLC and Unrestricted Subsidiary Funding Company for Consent to Assign Licenses*, WT Docket No. 14-83, Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, at 1 (filed July 14, 2014).

⁹ AT&T’s proposed changes only affect the C and D Blocks. All of the language in the rules proposed in AT&T’s Petition that affects the A and B Blocks is unchanged from the existing rules. In setting forth its proposed rules, AT&T included both the existing and the new language

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MHz¹⁰ that it has advanced and lost at least twice. In neither its 2010 nor its 2012 orders did the Commission reduce the restrictions on out-of-band emissions into the 2300-2305 MHz band that the Commission established in 1997, and AT&T is not asking the Commission to do so here. In 2012, the Commission held, “To the extent that ARRL is asking that we revisit the attenuation factor originally established for the WCS and that was left unmodified in the Commission’s most recent decision, we conclude that such a request for reconsideration is not timely filed and is not appropriate for reconsideration.”¹¹ That conclusion applies equally to ARRL’s Comments in this proceeding.

II. The Commission Should Not Regulate the Terms and Conditions of AT&T’s In-Flight Connectivity Service Contracts

CCA’s Comments likewise concentrate on an issue outside the scope of this proceeding: instead of addressing the technical questions AT&T has presented to the Commission, CCA asks the Commission to limit the ways in which AT&T can provide its future in-flight connectivity service.¹² Even if this request were within the scope of this proceeding, CCA offers no support to justify the Commission’s first step into regulating the terms and conditions of Wi-Fi service availability. AT&T has no plan to restrict access to its Wi-Fi-based in-flight connectivity service to existing AT&T customers. While service availability will be subject to the agreements AT&T reaches with its airline partners, it is likely that airlines will want all their passengers with a Wi-

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for the sake of completeness. AT&T does not intend the addition of “, except for avionics stations,” in the first sentence of the proposed version of Section 27.50(a)(3)(i) to suggest that avionics stations may transmit over the A or B Blocks.

¹⁰ See Comments of ARRL, at 6-7 (filed Sept. 19, 2014).

¹¹ *Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Order on Reconsideration, 27 FCC Rcd. 13651, 13695 ¶ 108 (2012); see generally 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(d).

¹² Comments of the Competitive Carriers Association at 3.

Fi-capable device to be able to use the service. In any event, CCA's speculation about commercially unreasonable discrimination¹³ against its members' customers' access to a not-yet-available service is, well, speculative and, thus, does not justify Commission intervention in potential commercial relationships.¹⁴

III. Users of Garmin's Equipment Will Be Protected

AT&T's proposed rules adequately protect users of Garmin equipment installed on aircraft from harmful interference. According to Garmin, its equipment is used to receive Sirius XM's satellite digital audio radio services ("SDARS") aboard aircraft, and Garmin fears that reception of those services will suffer interference from AT&T's base station transmissions.¹⁵

The proposed rules limit permissible base station transmissions in a way that will protect Garmin's equipment from harmful interference.¹⁶ In addition, as noted above, AT&T and Sirius

¹³ As an information service, *see Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd. 5901, 5901 ¶ 1 (2007), AT&T's in-flight connectivity service cannot be held to the more stringent nondiscrimination standard applicable to common carriers. *See Verizon v. FCC*, 740 F.3d 623, 649-50 (D.C. Cir. 2014) (quoting 47 U.S.C. § 153(51)) ("A telecommunications carrier shall be treated as a common carrier under this [Act] only to the extent that it is engaged in providing telecommunications services."); *id.* at 657 (striking down the Open Internet Order's anti-discrimination requirement because, "[u]nlike the data roaming requirement at issue in *Cellco*, which set forth a 'commercially reasonable' standard, the language of the *Open Internet Order*'s anti-discrimination rule mirrors, almost precisely, section 202's language establishing the basic common carrier obligation not to 'make any unjust or unreasonable discrimination'") (citations omitted).

¹⁴ *See, e.g., Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21591 ¶ 181 (2004) (dismissing claims that Cingular will have the incentive and ability to charge discriminatory roaming rates as "unsupported speculation") (citing *Telephone and Data Systems, Inc. v. FCC*, 19 F.3d 42, 47-48 (D.C. Cir. 1994) (rejecting claim that transferee would act anticompetitively as "'unadorned speculation'")).

¹⁵ Garmin Comments at 3-4.

¹⁶ Garmin incorrectly defines harmful interference "as interference that degraded the Sirius XM signal sufficiently to result in a three-percent bit error rate." *Id.* at 4. Section 27.64(d) of the rules, which was based on testing, specifies that harmful interference to SDARS receivers occurs when the input interference power level from the WCS C or D Blocks is -55 dBm or greater; the bit error rate is not part of the definition. *See* 47 C.F.R. § 27.64(d).

XM have entered into an agreement on coordination and interference resolution to ensure that Sirius XM's subscribers – including those receiving the services with Garmin equipment – are protected from harmful interference from AT&T's in-flight connectivity service. This agreement ensures that users of Garmin's equipment, like other Sirius XM subscribers, will continue to be able to enjoy Sirius XM's services.

IV. Conclusion

With its proposed in-flight connectivity service, AT&T has found a way to put the WCS C and D Block spectrum to productive use without infringing upon its spectral neighbors. AT&T plans a robust, rapid, and nationwide deployment of facilities using the WCS C and D Blocks, while avoiding the interference problems that have bedeviled past efforts to use this spectrum intensively. Amending Part 27 of the rules as proposed in the Petition will permit the this innovative service to take flight, and none of the comments filed offers any serious opposition to AT&T's proposals. The Commission, thus, should grant AT&T's Petition as quickly as possible.

Respectfully submitted,

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