

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

Re:

**Amendment of the Commission's Rules with Regard to Commercial Operations
in the 3550-3650 MHz Band, GN Docket 12-354;**

**Reexamination of Roaming Obligations of Commercial Mobile Radio Service
Providers and Other Providers of Mobile Data Services, WT Docket 05-265;**

**Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer
Control of Licenses and Authorizations, MB Docket 14-90;**

Protecting and Promoting the Open Internet, GN Docket 14-28;

Framework for Broadband Internet Service, GN Docket 10-127

Comment of MFRConsulting

MFRConsulting

144 Beacon Street

Boston, Massachusetts 02116-1449

Author: Martyn Roetter, mroetter@gmail.com, (617) 216-1988

May 5th. 2015

Another Anti-Competitive Initiative From AT&T

AT&T and ten other major mobile operators from around the world, including the three national Chinese operators (China Mobile, China Telecom, and China Unicom), recently submitted a proposal¹ to the 3GPP² (Third Generation Partnership Project) that is designed to stifle competition from sources that have already generated substantial value on behalf of users of wireless and fixed broadband access, as well as providers of content, applications and services delivered over broadband facilities. In the past AT&T has used this global organization to introduce standards

¹“*WF on precluding standalone access of LTE on unlicensed carriers.*” at the 3GPP TSG RAN WG1 Meeting, Belgrade, Serbia, 20th – 24th April, 2015, Agenda item: 7.2.4.2 - <http://5gwnews.com/90-r/230-at-t-china-telecom-dt-ft-excluding-all-competition-from-lte-u>; see also <http://portal.3gpp.org/ngppapp/CreateTdoc.aspx?mode=view&contributionId=637628>

² 3GPP is the international body in charge of standards for LTE in mobile networks. LTE is well on the way to becoming) the basis of mobile broadband networks worldwide, as well as in the US, comparable in importance to global standards, such as Ethernet. The full list of sources of this proposal includes four European incumbents (Orange, Telecom Italia, Telefonica, Deutsche Telekom) and and its US subsidiary T-Mobile USA as well as Sprint and Korea Telecom.

that unfairly and unreasonably harm competition in the US wireless market, through its unilateral introduction of non-interoperability in the Lower 700 MHz Band³.

This latest demonstration of AT&T's anti-competitive behavior is directed at unlicensed spectrum, and the use of LTE-U (unlicensed), in combination with carrier aggregation (CA), or so-called LTE-U/LAA (Licensed Assisted Access). The strategic goal is to adopt an LTE standard in 3GPP Release 13 that will allow the largest existing incumbent operators, i.e., in the US the four current national wireless service providers, AT&T, Verizon, Sprint and T-Mobile USA⁴, and in China the three national operators, to use carrier aggregation between their exclusive licensed frequencies and unlicensed spectrum, most notably in the 3.5 GHz and 5 GHz bands.

The anti-competitive consequences of this proposal, if adopted, and the harm to consumers that would be caused by restricting their choices by impairing some sources of innovative services, would:

1. Impede and/or prevent other legitimate users and uses, because the four national cellular operators in the US would acquire privileged rights to exploit a substantial portion of unlicensed spectrum that is supposed to be available to all comers on an equitable basis, subject to widely agreed rules of access and use;
2. Hamper the ability of other unlicensed Wi-Fi or similar services providers to augment the coverage of smaller cellular operators, with limited geographic coverage of their licenses and network facilities, so as to enable them to provide competitive service to their mobile customers outside their coverage areas. These smaller operators have found it difficult, if not impossible, to obtain reasonable roaming agreements from the national operators in order to achieve this purpose, which is essential if they are to be able to compete in a national wireless market.

The 3GPP Standards Committee is comprised of knowledgeable engineers who have often reached technical decisions that make sense for operators, along with equipment and device vendors, while also supporting and protecting the public interest. However, in this instance, there are serious issues to consider around the tensions and trade-offs between public and diverse private interests in the use of unlicensed spectrum. These issues should not be resolved by a specialized body, operating independently, that is focused on, and driven by, one category of providers, i.e., licensed cellular operators and their equipment and device suppliers. In these circumstances, standards setting should be open, and decisions reached

³ FCC Interoperability Order of October 2013 at https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-136A1.pdf; "The Erosion of Competition Through Non-Interoperability," Information Age Economics at <http://apps.fcc.gov/ecfs/document/view?id=7520933726>

within forums, or arenas, that reflect the multi-stakeholder approach that has traditionally been, and still is, endorsed by the US and the European Union for resolving issues with broad implications, such as rules about the use of unlicensed spectrum, a key and scarce resource.

The 3GPP does not include customers (consumers or business and institutional users) and is far from being representative of all the significant legitimate interests in the exploitation of unlicensed spectrum. Moreover, in addition to questions of the consequences for competition and innovation, and hence the impact on customers' choices, there are significant unresolved issues about the potentially adverse effects of LTE-U/LAA operation on other providers of services in unlicensed spectrum and their customers⁵. Stakeholders, in addition to cellular operators, have the right to assess these interference issues independently of the 3GPP and its most influential members.

A proposal such as the one presented by AT&T, that will have a major impact on how unlicensed spectrum can be accessed and used, should not be a matter for the 3GPP to decide on its own. Unlicensed spectrum is a significant asset, whose exploitation will influence, as it has done already, the evolution and development of the Internet for the benefit of users and all manner of content, applications and services providers, thanks to its role in both wireless and fixed⁶ broadband access.

AT&T's participation in this initiative within the 3GPP is further evidence of its willingness to discriminate unfairly against legitimate competitors, both current and foreseeable, and the low priority it gives to the best interests of its subscribers. It also reveals this operator's lack of commitment to the multi-stakeholder governance of the Internet. Moreover it demonstrates AT&T's readiness to cooperate with other major operators subject to the direct influence of governments in countries that are known for their practices of restricting access to information and ideas in ways that are contrary to the values of free speech that AT&T professes to uphold. AT&T's collaboration in this instance with these foreign operators is inconsistent with the emphasis it places in its lobbying in the US in favor of minimizing government influence over its business practices and the markets it serves. Incumbent mobile operators are making common cause to gain an advantage over competitors by seeking to obtain special privileges through spectrum policy that should be formulated and implemented with due consideration of the interests of, and value of spectrum for, all providers of wireless-based services and categories of use.

AT&T already makes substantial use of unlicensed spectrum in order to offload data traffic from its subscribers' mobile devices, and is doubtless aware of competition

⁵ See for example, <http://www.cablelabs.com/wi-fi-vs-eu-lbt-houston-we-have-a-problem/>

⁶ Use of unlicensed spectrum to provide local connectivity to fixed broadband access facilities is a well-established means for offloading traffic to and from mobile devices, in order to mitigate problems of congestion on and limited in-building coverage of mobile radio access networks that use licensed frequencies.

from Wi-Fi, and other services exploiting unlicensed spectrum, that threaten its ability to generate more revenue from its subscribers⁷.

However, there is no justification for this attempt by AT&T to inhibit other value-creating services providers from exploiting unlicensed spectrum to their disadvantage by using a standards organization and process in which these other providers do not participate. Standards setting should be inclusive, not exclusive. Decisions regarding a possible extension of an LTE standard (in Release 13) into unlicensed spectrum should only be taken after vigorous public debate in a multi-stakeholder forum.

⁷ <http://www.bloomberg.com/bw/articles/2014-01-02/what-wi-fis-popularity-means-for-cell-phone-carriers>; <http://www.bloomberg.com/bw/articles/2014-09-08/wi-fi-should-scare-the-hell-out-of-verizon-and-at-and-t>