

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

In the Matter of)
)
Analysis of Competitive Market Conditions) WC Docket No. 15-125
With Respect to Mobile Wireless,)
Including Commercial Mobile Services)

COMMENTS OF SPRINT CORPORATION

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Sprint Corporation (“Sprint”), pursuant to the Public Notice released on May 29, 2015 (DA 15-647), hereby respectfully submits its comments regarding competitive conditions in the mobile wireless market. As discussed below, the retail commercial mobile radio services (“CMRS”) market currently is competitive, with carriers such as Sprint working aggressively to provide high quality and attractively priced voice and data services over expanding broadband networks. In order to sustain competition in the retail CMRS market, and to increase competition in the wholesale market, the Commission must affirmatively pursue a pro-competitive regulatory strategy.

Serious distortions exist at the wholesale level, particularly in the provision of special and broadband access, and continue to affect competition at the retail level. ILEC-centric high-cost USF policies skew both intermodal and wireless competition. The lack of access to critical low-band spectrum threatens to undermine the ability of smaller carriers to continue to compete with the two dominant wireless providers.

To promote and ensure vigorous competition in the CMRS market, the Commission must act expeditiously to address these distortions. The Commission should promptly complete its open special access data investigation and adopt meaningful

reforms to ensure that critical bottleneck access facilities are available on just and reasonable rates, terms and conditions; implement reforms to the USF distribution and contribution mechanisms to ensure a viable, fair support program; and carefully craft and implement spectrum policies to ensure fair access to this vital resource, including by revising its flawed spectrum aggregation policies to reflect the Commission’s well-developed record on the varying competitive impact of different spectrum bands.

I. INTRODUCTION AND SUMMARY.

As the Commission found in the *Seventeenth Report*, there are many factors which indicate that the retail wireless market is currently competitive: over 99% of the US population has a choice (two or more) of mobile wireless service providers; over 99% of total POPs have 3G and 4G mobile broadband coverage; the number of mobile devices and the volume of data being transmitted continue to grow; retail prices have been stable or have declined; and demand for spectrum continues to increase.¹ Mobile handsets “are no longer used just for voice communications, email, social networking, and web browsing, but increasingly as hubs for entertainment, mobile commerce, and to connect other personal devices....”² If competition for the provision of these retail mobile services is to continue to flourish, steps must be taken to ensure that critical wholesale inputs associated with the underlying mobile infrastructure are available at just and reasonable, competitive rates, terms and conditions.

¹ *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Seventeenth Report*, 29 FCC Rcd 15311 (2014). See, e.g., Chart III.A.1; Table II.A.2; Chart III.C.2; Chart V.C.1; Table II.D.ii.

² *Id.* ¶ 1.

The market situation in early 2015 suggests that many of the positive trends in the retail mobile market have continued, at least as regards Sprint. For the fiscal year ending March 31, 2015, Sprint's capital expenditures totaled \$6 billion, much of it invested in network upgrades and expansion that have dramatically improved service to its 57.1 million wireless customers. Sprint introduced several new state-of-the-art handsets: smartphones comprised 88% of Sprint's phone connection base and 97% of the phones sold for the quarter ending March 31, 2015. Sprint rolled out numerous new calling plans and enhanced capabilities to make Sprint mobile services faster, better, more economical, and easier to use for retail subscribers.

Sprint's competitive efforts and accomplishments are particularly noteworthy in light of the entrenched dominant positions of the two largest (by far) wireless carriers. As the *Seventeenth Report* made clear, AT&T and Verizon Wireless dominate the wireless market. Their combined market share actually increased from 66.2% to 69% (2011 to 2013) as measured by revenues, and from 66.3% to 69.1% (2011 to first half of 2014) as measured by connections.³ Their EBITDA (earnings before interest, taxes, debt and amortization) per subscriber was substantially higher than that of smaller carriers⁴ -- Verizon Wireless, for example, had an EBITDA almost 4 times higher than US Cellular.

Data for the quarter ending March 31, 2015 indicate that AT&T's and Verizon Wireless' dominance has continued. Consider, for example:⁵

³ *Seventeenth Report*, Tables II.C.2 and II.B.1.

⁴ *Id.* at Table II.D.2.

⁵ Market capitalization as of June 23, 2015. Revenue and customer data are for quarter ending March 31, 2015 (see <http://www.verizon.com/about/investors/quarterly-reports/1q-2015-quarter-earnings-conference-call-webcast>; <http://www.att.com/gen/investor-relations?pid=268>;

	----- Quarter ending March 31, 2015 -----			
	Market Cap	Total Revenues	Wireless Revenues	Wireless Connections
Verizon	\$195.7 b.	\$32.0 b.	\$22.3 b.	108.6 m. (retail only)
AT&T	\$187.8 b.	\$32.6 b.	\$18.2 b.	121.8 m.
Sprint	\$ 18.5 b.	\$ 8.3 b.	\$ 7.8 b.	57.1 m.
T-Mobile US	\$ 32.0 b.	\$ 7.8 b.	\$ 7.8 b.	56.8 m.

The Verizon and AT&T results above do not include the impact of two major transactions – Verizon’s \$4.4 billion acquisition of AOL (consummated on June 23, 2015), or AT&T’s pending \$49 billion acquisition of DirectTV. Both of these transactions will significantly bolster Verizon’s and AT&T’s competitive arsenal.

Verizon and AT&T have a tremendous competitive advantage due to their corporate affiliations – they both have wireline affiliates which control bottleneck facilities that are critical to the provision of wireless service, for which there are scant competitive alternatives, and which are grossly overpriced and subject to anticompetitive terms and conditions. In addition, the AT&T and Verizon wireline affiliates receive hundreds of millions of dollars per year in legacy high-cost USF support, and are eligible to receive an additional \$494 million and \$144 million respectively, per year, for 6 years in CAF Phase II subsidies on a right of first refusal basis.⁶ These vast USF subsidies (paid in large part by wireless service providers such as Sprint) and ILEC-centric high-cost universal service policies continue to distort competition.

<http://investors.sprint.com/Cache/1500071434.PDF?Y=&O=PDF&D=&fid=1500071434&T=&iid=4057219>; <http://investor.t-mobile.com/Cache/1001197522.PDF?Y=&O=PDF&D=&fid=1001197522&T=&iid=4091145>.

⁶ See *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers To Expand Rural Broadband*, Public Notice, DA 15-509, at 3 (rel. April 29, 2015).

Finally, AT&T and Verizon hold a significant advantage over their competitors through their control of the vast majority of spectrum below 1 GHz. These extraordinarily valuable holdings provide significantly greater coverage (allowing less infrastructure investment and lower operating costs to achieve wide-area coverage) and better in-building penetration than spectrum bands above 1 GHz. The looming spectrum crunch threatens continued growth in the wireless market, particularly for smaller carriers if additional spectrum is, as a practical matter, made available only to the largest and richest carriers. Prompt Commission action to address each of these issues is needed to knock down these competitive barriers, promote growth, and fuel broadband deployment.

II. SPRINT HAS CONTINUED TO ACT AS A COMPETITIVE CATALYST IN THE WIRELESS MARKET.

In the past year, Sprint has continued to act as a competitive catalyst in the CMRS market. One keystone to Sprint's competitive efforts has been its massive "rip and replace" Network Vision project. Network Vision is a multi-billion dollar initiative to consolidate Sprint's networks and technologies into a single nationwide 3G and 4G network, resulting in enhanced voice quality, improved data speeds, and expanded coverage for Sprint customers. As of May 2015, Sprint's 4G LTE service reached more than 280 million people. Sprint continues to build out its LTE network using its 800 MHz and 2.5 GHz spectrum, and is deploying 2x20 carrier aggregation on 2.5 GHz for faster data speeds.

Sprint also has been focusing on enabling its customers to move smoothly between trusted WiFi and cellular networks to improve the mobile experience in more locations while lowering the cost of data usage. For example:

- Sprint announced a new collaboration with Boingo to enable WiFi roaming and provide Sprint customers with a free, seamless and secure connection on capable devices in 35 major airports across the country;
- Sprint has made WiFi calling, which enables customers to use voice and messaging services anywhere they have WiFi connectivity, a free standard feature for the iPhone 6, iPhone 6 Plus, iPhone 5c and iPhone 5s, and most of its Android Smartphones;
- Sprint launched WiFi Connect, a consumer WiFi router that prioritizes Sprint specific WiFi Calling over all other WiFi traffic and includes Smart Connect technology that dynamically manages 2.4GHz and 5GHz WiFi bands for optimal WiFi data performance; and
- Sprint is investing in outdoor small cells that will enable it to strategically add capacity in targeted high-traffic areas and extend coverage to hard-to-reach locations.

Sprint also has focused its competitive efforts on direct end-user initiatives. It introduced numerous attractive new calling plans, including the “cut your rate in half” offers, a shared family plan, and the International Value Roaming plan,⁷ while maintaining a wide range of post- and pre-paid calling plans, including the popular flat-rated unlimited usage calling plan. Sprint rolled out “Direct 2 You” shopping in several cities (a trained Sprint representative brings and sets up devices wherever and whenever the customer wants); and doubled its company-owned retail footprint by opening 1,435 Sprint-Radio Shack stores.

All of these initiatives and investments are designed to make Sprint mobile services faster, better, more economical, and easier to use for retail subscribers. These Sprint initiatives are spurring competition in the wireless market, offering end users an attractive and viable alternative to the wireless services offered by AT&T, Verizon and

⁷ This plan offers free unlimited international roaming, unlimited texting and \$.20 per minute voice calling to customers traveling in major areas of Latin America, Central America, Europe and the Far East.

other carriers. To enhance and expand competition, however, the Commission must address the underlying structural challenges discussed below.

III. EXCESSIVELY PRICED SPECIAL ACCESS BACKHAUL REMAINS A SERIOUS COMPETITIVE ROADBLOCK.

Wireless carriers rely on backhaul to connect their cell towers to their networks. These backhaul connections are primarily provisioned over wireline facilities, although in limited instances microwave or other wireless spectrum is used. This backhaul is a significant portion of the cost of providing wireless service. As Sprint has noted elsewhere, the cost of backhaul is approximately 30 percent of the cost of operating a base station.⁸ For this reason, backhaul has an important effect on the cost of wireless service.

There is substantial evidence that the price of backhaul is well above cost. Whether compared to the regulated price of unbundled network elements (UNEs) or to the competitive price of broadband services that offer similar speeds (*e.g.*, Verizon FiOS, or AT&T U-verse), the prices for single DS1s and DS3s appear to be well above cost.⁹ Verizon and AT&T do not, by and large, compete against each other in the provision of special access facilities in their respective ILEC footprints, and broadband access facilities provided by cable companies are neither ubiquitous nor priced as aggressively as would be expected in a truly competitive market.

⁸ See, *e.g.*, Letter from Gil M. Strobel, Counsel to Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, at 4 (Oct. 5, 2007).

⁹ See, *e.g.*, Comments of Sprint Nextel Corp., *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, at 23 and Exhibit 3 (Aug. 8, 2007) (“Sprint Special Access Comments”); Letter from Anna Gomez, Vice President – Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at Attachment slide 11 (filed Aug. 22, 2007).

The Commission and other interested parties are actively analyzing data filed in WC Docket 05-25 to determine what changes to the special access regulations for price cap ILECs may be warranted to reflect the current state of competition. Sprint is confident that these analyses will confirm that AT&T and Verizon overwhelmingly dominate the special access (both TDM- and IP-based) market, and urges the Commission to promptly implement reforms to regulations governing price cap special access rates, terms and conditions, to reflect the lack of competition in this market.

By themselves, above-cost special access prices would not necessarily have a detrimental effect on competition for wireless service, although they would cause the price of wireless service to be higher than it needs to be. However, because two of the largest sellers of special access, Verizon and AT&T, are also the largest wireless carriers, above-cost backhaul prices skew competition in the wireless market. Verizon and AT&T can self-provision backhaul in their ILEC service territories, and thus face only the economic cost of backhaul rather than the above-cost prices that other wireless carriers must face. AT&T and Verizon can either take the difference in costs in the form of higher profits, or they can charge rates to their retail customers that are lower than those which Sprint is able to offer those same customers. In addition, because they are both sellers and purchasers of backhaul, AT&T and Verizon have better information on the true cost of backhaul. This informational advantage gives them a stronger bargaining position in the limited cases where there are alternative providers of backhaul, which could allow them to achieve lower backhaul prices than the non-affiliated wireless carriers, even outside their respective ILEC territories.

IV. ILEC-CENTRIC USF POLICIES CONTINUE TO SKEW THE COMPETITIVE BALANCE.

In its *ICC/USF Transformation Order*,¹⁰ the Commission revised the high-cost universal service fund mechanism, providing for explicit support for broadband deployment, phasing out legacy support mechanisms, and cushioning the impact on ILECs of the Order's intercarrier compensation reforms. While some of the goals underlying the Commission's USF policies (*e.g.*, transitioning to bill-and-keep for certain ICC rate elements, making subsidies explicit, encouraging broadband deployment) are in the public interest, the resulting high cost/broadband universal service fund is far too large, and its ILEC-centric focus skews both intermodal competition and wireless competition.

The high-cost USF budget has been set at \$4.5 billion per year for the next several years.¹¹ Of this amount, over 84% in support is slated for ILECs: the Connect America Fund ("CAF") Phase II provides \$2.0 billion per year to rate-of-return ILECs, and \$1.8 billion to the price cap ILECs on a right of first refusal basis, compared to the \$500 million Mobility Fund Phase II (\$100 million of which is designated for Tribal areas), and the \$100 million Remote Area Fund. Indeed, the CAF Phase II support offered just to AT&T and Verizon (combined \$638 million) exceeds the *total* Mobility Fund support by 27.6%. As noted, AT&T, Verizon and other ILECs may accept the proffered CAF Phase II subsidies on a right of first refusal basis; in contrast, Mobility Fund support will

¹⁰ *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, 26 FCC Rcd 17663 (2011).

¹¹ *ICC/USF Transformation Order* ¶ 17.

be distributed among wireless ETCs (potentially scores of carriers) via a reverse auction process.

The Commission's ILEC-centric USF policies create a drag on competition for several reasons. First, the disparity in high-cost/broadband support allocated to ILECs as compared to mobile and other competitive carriers is glaring. A multi-billion, multi-year 6:1 (\$3.8 billion versus \$600 million) subsidy ratio is bound to affect intermodal competition, in effect tipping the scale in favor of wireline technologies and wireline carriers.

Second, the fact that the two largest wireless carriers are directly affiliated with ILECs who receive hundreds of millions of dollars in USF has a direct impact on competition in the wireless market. In 2014, AT&T's ILECs received approximately \$171 million in frozen high-cost USF, and Verizon's ILECs received approximately \$112 million,¹² and have been offered \$494 million and \$144 million respectively per year for each of the next six years in CAF Phase II subsidies.¹³ For AT&T Corporation and Verizon Corporation, the availability of these large ILEC subsidies "frees up" corporate cash that can then be made available to their respective wireless entities, giving AT&T Wireless and Verizon Wireless a substantial competitive advantage over carriers such as Sprint which do not have a subsidized ILEC affiliate.

Third, high-cost and broadband USF subsidies funneled to ILECs are financed in large part from contributions from wireless carriers such as Sprint and its subscribers.

¹² See <http://www.usac.org/hc/tools/disbursements/results.aspx>. AT&T ILECs included in this estimation were Cincinnati Bell, Nevada Bell, Pacific Bell, South Central Bell, Southwestern Bell, SNET, and Southern Bell. Verizon ILECs included were GTE and Verizon.

¹³ See footnote 6 *supra*.

End users do not have unlimited telecommunications budgets, and dollars siphoned off to finance ILEC high-cost and CAF subsidies are dollars that are not available to purchase a richer Sprint calling plan or an additional product or service. Not only is Sprint not eligible to receive ILEC high-cost and CAF subsidies; it also is required to finance these ILEC payments through foregone sales to its own customers.

To reduce the anti-competitive impact of ILEC-centric USF policies, the Commission should reduce the overall size of the ILEC high-cost and broadband subsidies.

V. THE SPECTRUM INPUT MARKET REMAINS CONCENTRATED AND SUSCEPTIBLE TO MARKET POWER ABUSES.

Spectrum represents a vital, irreplaceable input for the provision of mobile broadband services. The Commission fulfills its spectrum management obligations to protect and promote competition, and prevent excessive concentration of licenses, in two key ways: a spectrum screen used to identify acquisitions of spectrum that have the potential to undermine the competitive ability of rival firms, and design of systems of competitive bidding to safeguard future economic opportunity and competition by ensuring that new and innovative technologies are readily accessible through deterrence of excessive concentration of licenses in primary distributions of spectrum.¹⁴

The Commission made important advances in each of these areas last year when it completed its first comprehensive review of its mobile spectrum holdings policies in over a decade. In initiating this review, the Commission observed that in the decade since its last review, wireless operators of all sizes, public interest groups and other interested

¹⁴ See, e.g., *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, ¶ 5 (2001); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 238, ¶ 227 (1994).

parties had expressed concern that the Commission’s spectrum screen needed revision. In particular, the Commission noted changes in technology, spectrum availability, and the marketplace that might affect firms’ access to spectrum – and by extension on the competitive effects of any firm’s acquisition of spectrum on the downstream market for mobile wireless services.

While the Commission’s overall spectrum holdings policies are broader than the spectrum screen alone, the screen represents a key tool with which the Commission performs its statutory obligations to promote wireless competition and prevent excessive concentration of licenses.¹⁵ In developing a competition policy, the Commission has concluded that spectrum concentration directly implicates market power and has focused on the ways that spectrum “affects the structure, conduct, and performance” of competing providers.¹⁶ The spectrum screen thus serves as a diagnostic aid used to identify acquisitions of spectrum that have the potential to undermine the competitive ability of rival firms, and thereby pose a threat to downstream mobile broadband competition. When triggered, the spectrum screen consequently prompts further regulatory scrutiny.

¹⁵ See, e.g., *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, Report and Order*, 16 FCC Rcd 22668, ¶ 54 (2001) (“*Spectrum Cap Sunset Order*”).

¹⁶ See, e.g., *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 Mobile Services, Notice of Inquiry*, 24 FCC Rcd 11357, ¶ 24 (2009) (“*Thirteenth Report*”); *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition, Public Notice*, 25 FCC Rcd 8416, 8430 (2010) (“*Fourteenth Report*”); *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition, Public Notice*, 26 FCC Rcd 15595, 15607 (2011) (“*Fifteenth Report*”); *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition, Public Notice*, 28 FCC Rcd 7305, 7309 (2013) (“*Sixteenth Report*”).

An analysis of spectrum concentration, therefore, should reliably predict when acquisitions of spectrum are anticompetitive and when they are not.

Beginning in 2010, the Commission had begun to acknowledge important differences between spectrum bands – differences that engender fundamental competitive differences in the ability of operators to deploy robust and nationwide service. As the Commission had acknowledged in three of its last four *Wireless Competition Reports* prior to 2014, a licensee’s “*particular mix of spectrum holdings may affect its ability to provide efficient mobile wireless service.*”¹⁷ Most notably, “[G]iven the superior propagation characteristics of spectrum under 1 GHz, particularly for providing coverage in rural areas and inside buildings, providers whose spectrum assets include spectrum below 1 GHz may possess *certain competitive advantages for providing robust coverage* when compared to licensees whose portfolio is exclusively comprised of higher frequency spectrum.”¹⁸

Based on an overwhelming amount of evidence that low-band spectrum confers especially significant cost- and competitive advantages on operators, the Commission in May 2014 formalized its precedent of giving heightened scrutiny to transactions resulting in a carrier holding one-third or more of the existing low-band spectrum in any given market.¹⁹ The *Report and Order* expressly found that the “obvious and unavoidable”

¹⁷ *Sixteenth Report* ¶ 127; *Fifteenth Report* ¶ 297; *Fourteenth Report* ¶ 273 (emphasis added).

¹⁸ *See Sixteenth Report* ¶ 135; *Fifteenth Report* ¶ 307; *Fourteenth Report* ¶ 283 (emphasis added).

¹⁹ *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, ¶ 286 (2014) (“*Mobile Spectrum Holdings Order*”)

differences between low and higher band spectrum are “relevant to our mobile spectrum holdings policies.”²⁰ Similarly, the Commission found that while high-band spectrum can be useful in enhancing system capacity, “[s]pectrum below 1 GHz has, compared to spectrum above 1 GHz, distinct propagation advantages for network deployment over long distances, while also reaching deep into buildings and urban canyons.”²¹ The record demonstrated that these advantages make it much less costly, and provide greater operational flexibility, to deploy a wireless network using low-band spectrum compared to higher band spectrum. As the Commission found, “the data submitted on the record does demonstrate that there are significant differences in deployment costs between low-band and high-band spectrum.”²² Further, the Commission observed that “the record contains substantial evidence that the disadvantages of high-band spectrum resulting from poor in-building coverage and increased obstacles today to siting of new facilities are more than mere cost disadvantages.”²³

The Commission’s rules for the 600 MHz Incentive Auction also reflected a recognition of the competitive advantages associated with low-band holdings. To avert the very real threat of dominant providers “raising rivals’ costs or foreclosing competition by denying competitors access to low-band spectrum,” the Commission adopted policies pursuant to its “statutory mandate under 47 U.S.C. 309(j)” to “ensure that the spectrum [it is] auctioning will be used to promote robust competition and to limit the potential for

²⁰ *Mobile Spectrum Holdings Order* ¶ 63.

²¹ *Mobile Spectrum Holdings Order* ¶ 3.

²² *Mobile Spectrum Holdings Order* ¶ 274.

²³ *Id.* ¶ 65.

future excessive concentration of low-band spectrum holdings.”²⁴ Specifically, the spectrum reserve established in the *Mobile Spectrum Holdings Order* is the Commission’s chosen method to safeguard “the last opportunity in the foreseeable future for providers to acquire licenses for below-1 GHz spectrum at auction.”²⁵ The Commission selected the spectrum reserve from a wide array of proposed competitive safeguards, including spectrum caps, auction-specific limits, and extension of the spectrum screen to the auction (including with potential post-auction divestitures).

Despite these important, and overdue, improvements to the Commission’s policies, significant additional refinements to the Commission’s spectrum aggregation policies are needed. Most notably, the spectrum screen still retains the fundamental defect of treating all spectrum as effectively substitutable. As carriers have assembled portfolios of spectrum in distinct band combinations, with an embedded base of devices and network equipment supporting those specific combinations, the mere availability of spectrum in *some* alternative band is not – in and of itself – determinative of a carrier’s ability to respond competitively.

The distinct propagation characteristics of spectrum bands significantly affect the non-price rivalry between carriers, most prominently seen in the differences in coverage and in-building penetration facilitated by low-band spectrum. The effectiveness of a particular band for enabling such a competitive response – or for foreclosing a competitive response – can only be evaluated in reference to the critical characteristics affecting the cost to deploy and operate a particular band: most notably propagation, but

²⁴ *Id.* ¶ 45.

²⁵ *Id.* ¶ 153.

also any distinct regulatory encumbrances, interference risks and the availability of equipment and devices. To this end, the record in the Commission’s *Mobile Spectrum Holdings* proceeding overwhelmingly indicated support for adopting a more nuanced approach to spectrum, including through the use of spectrum weighting, to make the screen more reflective of the varying competitive impact of different bands.²⁶

Notwithstanding this extensive evidence, the Commission not only preserved the screen’s indifference to propagation, it also *exacerbated* the central defect of the screen by adding a substantial amount of high-band spectrum to the screen. As a result, the

²⁶ See, e.g., Comments of the Competitive Carriers Association, WT Docket No. 12-269, at 11 (Nov. 28, 2012) (“[T]o make the screen reflective of the technical, economic, and deployment differences that different spectrum bands pose for carriers (and competition), the Commission should acknowledge the disparate technical and economic characteristics of different spectrum bands. This could include assigning weights to spectrum bands based on reported valuation by carriers, engineering-based calculations, benchmarks to auction results and secondary market transactions, or some combination thereof.”); Comments of Free Press, WT Docket No. 12-269 at 11 (Nov. 28, 2012) (“But today this simplistic method [of treating all spectrum bands equally] ignores the large differences in value and utility between bands like 700 MHz and BRS. . . . If the Commission maintains a case-by-case evaluation approach, it has the flexibility and the duty to consider the difference in value between spectrum blocks, which is determined by wavelength, contiguous block size, block pairing, interference issues, market density, and market demographics.”); Petition to Deny of T-Mobile USA, Inc., WT Docket No. 12-4, Exhibit C (Feb. 21, 2012) (attaching Declaration of Professor Peter Cramton with spectrum weighting methodology); Comments of Public Knowledge and Jon Peha, WT Docket No. 12-269 (Nov. 28, 2012) (arguing that the Commission’s spectrum screen “must treat spectrum assignments differently depending on their frequency bands,” and proposing numerous ways in which the Commission can do so); Reply Comments of Leap Wireless International, Inc., and Cricket Communications, Inc., WT Docket No. 12-269, at 6-8 (Jan. 7, 2013) (“The Commission should seize on this proposed weighting approach to reflect the propagation characteristics and device ecosystem of each band, including additional bands that are now suitable and available for mobile broadband services.”); Comments of the Writers Guild of America, West, Inc., WT Docket No. 12-269, at 9 (Nov. 28, 2012) (“[A]ppropriate weighting of spectrum to include qualitative differences is the critical first step towards a spectrum policy that promotes competition and limits control of the most valuable spectrum by the top firms within the industry. We urge the Commission to develop a system that weights valuable spectrum and limits the amount of such spectrum any one company can control.”).

screen will yield numerous “false positives” in some cases and “false negatives” in others.²⁷ The false positives can subject transactions involving higher band spectrum to greater scrutiny even where such transactions raise no significant spectrum aggregation issues; an unweighted screen risks creating mistaken impressions regarding the competitive effects of such transactions and imposes unnecessary delays and uncertainty in the Commission’s review of pro-competitive, pro-consumer transactions. At the very least, false positives can directly harm the subject operator, exposing it to higher transaction costs and delaying its access to needed spectrum. False *negatives*, by contrast, potentially harm not only competing operators but also *downstream competition*, failing to apply closer scrutiny (and potential conditions or denial) to a transaction that *does* reduce the ability of rival firms to respond to an attempted exercise of market power by an operator acquiring additional, competitively-impactful spectrum. Moreover, though the Commission’s ‘enhancement factor’ serves as a modest deterrent of *future* concentration of critical low-band spectrum, the Commission noted “the vast bulk of that spectrum has already been acquired,” casting doubt on the efficacy of this policy.²⁸

The Commission’s mechanism to prevent *future* concentration – a market-based spectrum reserve in the 600 MHz Incentive Auction – holds uncertain promise for rectifying this competitive imbalance. In contrast to proposals such as spectrum caps offered by the Department of Justice, the Commission’s spectrum reserve and proposed implementation rules leave the nation’s two dominant carriers significant opportunities to both acquire large amounts of additional low-band spectrum and/or *raise the cost of low-*

²⁷ Petition for Reconsideration of Sprint Corporation, *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, at 12-13 (Aug. 11, 2014).

²⁸ *Mobile Spectrum Holdings Order* ¶ 46.

band acquisitions for competitors. While extensive changes to these policies appear unlikely, the Commission can ensure the Incentive Auction at least modestly advances the Commission's competitive objectives by preserving the efficacy of the reserve. Specifically, in its comments in the Commission's Incentive Auction proceeding, Sprint noted a number of ways in which the effectiveness of the spectrum reserve in enabling competitive carriers to obtain competitively-significant amounts of low band spectrum could be undercut and encouraged the Commission to modify its reserve implementation plans to fully realize the statutory objectives it was established to achieve.²⁹

As both courts and the Commission have repeatedly emphasized, the Commission possesses extensive authority to manage spectrum in the public interest.³⁰ Sprint encourages the Commission to utilize this authority to arrest the trend towards duopoly that spectrum concentration supports and exacerbates.

²⁹ Comments of Sprint Corporation, GN Docket No. 12-268, at 40-47 (Feb. 20, 2015); Reply Comments of Sprint Corporation, AU Docket No. 14-252, GN Docket No. 12-268, at 21-29 (Mar. 13, 2015); *Ex Parte* Letter from Lawrence R. Krevor, Vice President, Legal and Governmental Affairs—Spectrum, Sprint Corporation to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (filed May 20, 2015).

³⁰ *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6196-6203 ¶ 207 (2014) ("*Mobile Spectrum Holdings R&O*") ("... Title III grants the Commission 'expansive authority' to regulate mobile wireless licenses, and that authority includes our power to regulate concentration in mobile wireless markets."); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order, at ¶ 296 (March 12, 2015) (noting the "broad authority" conferred by Title III); *Cellco Partnership v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012) ("Although Title III does not 'confer an unlimited power,' the Supreme Court has emphasized that it does endow the Commission with 'expansive powers' and a 'comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest.'" (internal citations omitted) (quoting *NBC v. United States*, 319 U.S. 190, (1943)).

VI. CONCLUSION.

The retail CMRS market today is competitive, and carriers such as Sprint continue to aggressively deploy their resources to expand and upgrade their networks and to provide high quality, attractively priced service plans and equipment. However, in order to help ensure robust competition in the wireless market, the Commission must address underlying competitive distortions, including excessively priced special access backhaul; a heavily ILEC-centric high-cost and broadband universal service fund; and a transactional analysis which fails to account for the varying competitive impact of different spectrum bands and thus fails to ‘flag’ competitively problematic transactions. The Commission has the jurisdiction and the obligation to address these competitive roadblocks, and a comprehensive record in multiple pending proceedings which justify adoption of orders resolving these issues. To preserve and promote competition in the retail CMRS market, and to address serious competitive inequities relating to special access, high-cost/CAF USF subsidies, and the spectrum screen policies and regulations, Sprint urges the Commission to act aggressively in this and related proceedings to address competitive distortions in the wholesale markets discussed above.

Respectfully submitted,

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