Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Sprint Nextel Corporation and Clearwire Corporation Application for Consent to Transfer Control of Licenses and Authorizations	)	WT Docket No. 08-94

OPPOSITION TO AT&T'S PETITION TO DENY

Media Access Project, on behalf of the Public Interest Spectrum Coalition,[1] files this *Opposition* to the *Petition to Deny* filed by AT&T on July 24, 2008.

ARGUMENT

As long-time proponents of spectrum caps, PISC's members would normally welcome AT&T's sudden enlightenment on the valuable nature of this tool in fostering competition. But when one of the largest wireless carriers suddenly switches from consistent opposition to spectrum caps to sudden support, particularly when that carrier is vertically integrated with one of the nation's dominant wireline providers and is a recent beneficiary of the Commission's decision to relax even the existing spectrum screen, it calls for a healthy dose of skepticism. Contrary to AT&T's apparent belief, nothing requires those concerned about wireless consolidation to rise to this obvious

[1]The Public Interest Spectrum Coalition Consists of, in alphabetical order: The CUWiN Foundation (CUWIN), Consumer Federation of America (CFA), Consumers Union (CU), EDUCAUSE, Free Press (FP), the International Association of Community Wireless Networks (IACWN), Media Access Project (MAP), the National Hispanic Media Coalition (NHMC), the New America Foundation (NAF), the Open Source Wireless Coalition (OSWC), Public Knowledge (PK), and U.S. PIRG.

bait.

The Commission should reject AT&T's attempt to invoke the spectrum screen for what it is: a hypocritical and blatantly anti-competitive move designed to muddy the waters around the increasing demand for spectrum caps that genuinely promote competition in wireless services. In the past, AT&T has strenuously objected to application of a spectrum screen as a precondition for bidding in the700 MHz auction.[2] In its application to acquire Dobson Communications, AT&T persuaded the Commission to raise the existing screen by including other spectrum, such as the 700 MHz spectrum. *AT&T Dobson Order*, 22 FCCRcd 20295, 20311-13 (2006) (setting current screen at 95 MHz). When AT&T's acquisition of Aloha's spectrum triggered review even under this more relaxed screen, AT&T once again persuaded the Commission that the universe of potential competitors warranted grant of its applications without divestitures or significant conditions. *AT&T-Aloha Order*, 23 FCCRcd 2234, 2236-37 (2008). AT&T's successful bids for numerous 700 MHz licenses further compounds this overwhelming spectrum advantage. *See Public Notice: Auction of 700 MHz Band Licenses Closes*, 233 FCCRcd 4572 (2008).

AT&T's effort to invoke the spectrum screen here defies the imagination. AT&T seeks to take a tool designed to detect mergers which raise issues even under the Commission's existing relaxed standards to block one of the very competitors it previously claimed justified relaxing the screen. As if this were not brazen enough,

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[2] *See. e.g., AT&T Opposition to Petition for Reconsideration*, Docket No. 06-150 (filed October 17, 2007); Comments of AT&T, Docket No. 06-150 (filed May 23, 2007) at 20-34.

AT&T argues that the Commission's decision in the *AT&T-Dobson Order* to consider the possibility of potential BRS competitors, which it used to justify the additional concentration brought about by absorbing Dobson (and later Aloha's spectrum), now compels the Commission to use the screen to thwart the emergence of the very competitor it claimed justified its acquisitions of Dobson Communications and Aloha's 700 MHz licenses.

This is not, as AT&T claims, regulatory even-handedness. It is to stand the very purpose of the spectrum screen on its head. Setting aside the public interest commitments made by the Clearwire Applicants, AT&T ignores critical differences between BRS spectrum and its own spectrum. The 95 MHz screen is not a mechanical application that suddenly springs into existence for any spectrum allocated for any purpose. Rather, it is designed to help the Commission identify the relevant service market and determine whether competitors exist that mitigate against the harms from increased competition.

The BRS spectrum at issue here does not have anywhere close to the capacity as the 700 MHz, 900 MHZ, 1.5 Ghz, and 2.3 GHz spectrum available to AT&T. Further, the applicants here must contend with the enormous difficulties that have consistently inhibited transition of this band from a "wireless cable" service to a potential broadband provider. For AT&T to pretend that notions of equity and regulatory parity require the Commission to mechanically apply the screen here, in a situation where even AT&T acknowledges the Commission has never before applied the screen, is simply laughable. The Commission should see through this transparent attempt for

what it is, an effort to cloud the debate on the very real problem of increasing concentration in the mobile services market by blocking a potential competitor and raising a regulatory red-herring, and deny AT&T's *Petition*.

PISC stresses that it does not propose that the Commission simply grant the Application without searching review or suitable conditions. Rather, PISC simply request that the Commission reject AT&T's self-serving *Petition to Deny* as a transparent sham. As others have already observed, the Commission must require further detail from the Applicants to determine if the proposed benefits genuinely serve the public.[3] While PISC certainly favors the introduction of a new wireless broadband competitor, and notes that several of the commitments made in public interest statement mirror conditions PISC has sought in other proceedings, the Applicants have not explained in any detail how they will fulfill these obligations. Nor have they explained how they will insulate these commitments from any future changes in business model or corporate governance structure. These are matters the Commission must certainly address before approving the Application.

But even at this preliminary stage, the Commission has enough information to reject AT&T's *Petition to Deny* and the twisted rationale it proposes under the guise of "fairness" and "level playing field." To allow AT&T to receive privileged treatment and evade any conditions in the *AT&T-Dobson Order* and the *AT&T-Aloha Order* would be the exact opposite of a "level playing field." It would advantage the largest, vertically

[3] *See Comments of Southernlinc Wireless* (filed July 24, 2008).

integrated incumbent, at the expense of a possible new entrant. The Commission must not allow AT&T to obscure the very real problems of wireless consolidation by giving serious consideration to AT&T's purported concerns about regulatory parity and competition. The Commission should therefore reject AT&T's *Petition to Deny*.

CONCLUSION

WHEREFORE, the Commission should reject the AT&T's *Petition to Deny*.

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