

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act)	GN Docket No. 09-47
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996)	GN Docket No. 09-137
)	

**BRIGHT HOUSE NETWORKS
COMMENTS -- NBP PUBLIC NOTICE #6**

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October 23, 2009

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SUMMARY

Bright House Networks (“BHN”) commends the Federal Communications Commission (“FCC”) for separately inquiring about the sufficiency of spectrum, particularly in the bands below 3.7 GHz, to meet the acknowledged burgeoning demand for wireless broadband services. As others have recognized, current spectrum inventory is insufficient and competition and innovation are being thwarted by rules and policies which permit a limited number of entities to dominate the marketplace for the most valuable spectrum.

Accordingly, BHN recommends that the FCC conduct an inventory of spectrum that may be used for mobile wireless broadband services. Based on that inventory, the FCC should make more spectrum available for mobile wireless broadband services, particularly in the bands below 1 GHz. The FCC should consider the relocation elsewhere of services for which mobility, propagation characteristics, or international allocation requirements do not mandate their location below 1 GHz. Spectrum below 1 GHz is uniquely valuable for mobile wireless services and should be dedicated to those services to the extent possible. The newly available spectrum should be licensed in smaller geographic areas, to encourage the participation of entities that wish to provide more localized services. The FCC should also restrict entities that already have significant mobile wireless spectrum holdings, particularly below 1 GHz, from obtaining newly available spectrum. The increasing consolidation in the wireless industry ill-serves consumers. The addition of wireless competitors will result in service innovation and greater price competition.

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Bright House Networks, by its counsel, hereby submits its comments in response to NBP Public Notice #6 (“Notice”), released by the Federal Communications Commission (“FCC” or “Commission”) on September 23, 2009 in the above-referenced proceedings.^{1/} The Commission issued the Notice to solicit comments on the sufficiency of current spectrum allocations in spectrum bands, including but not limited to the “prime” spectrum bands below 3.7 GHz pursuant to the American Recovery and Reinvestment Act of 2009 (“ARRA”) and for other purposes.^{2/}

I. INTRODUCTION

BHN is the nation’s seventh largest cable Multiple System Operator (“MSO”). BHN is a full-service communications provider in Florida, Alabama, California, Indiana, and Michigan,

^{1/} *Comment Sought on Spectrum for Broadband*, NBP Public Notice #6, DA 09-2100 (rel. Sept. 23, 2009).

^{2/} Notice at 1.

with approximately 2.4 million customers. For the fourth year in a row, BHN was rated highest in customer satisfaction by J.D. Power and Associates among U.S. telephone service providers in the South.^{3/} It has won similar awards for its provision of Road Runner high speed Internet access service.^{4/} In each of its systems, BHN offers advanced digital video, high speed data, and facilities-based competitive voice service.

While BHN is an active competitor in the wireline telecommunications marketplace, it is committed to providing a variety of broadband options in response to consumer demand. One of the means by which it contemplates extending its existing broadband services is through wireless broadband platforms. BHN has already invested significant resources in the introduction of wireless broadband technologies and expects to invest additional resources to deploy wireless broadband. In particular, BHN has obtained access to Advanced Wireless Services (“AWS”) spectrum through the SpectrumCo LLC joint venture,^{5/} participated in the 700 MHz Auction,^{6/} and invested in the construction of an advanced mobile WiMAX broadband network through Clearwire Corporation.^{7/}

Based on BHN’s interest in the wireless marketplace, it provided the Commission with comments in response to the FCC’s Public Notice soliciting information for what the Commission expected to be its Fourteenth Annual Report and Analysis of Competitive Market

^{3/} Press Release, Bright House Networks, *Bright House Networks Continues to Rank Highest In Customer Satisfaction in the South for Home Phone* (Sept. 16, 2009), available at <http://brighthouse.com/newsroom/article.aspx?id=39018>.

^{4/} Press Release, Bright House Networks, *Again and Again Bright House Networks Ranks Highest in Customer Service* (Nov. 25, 2008), available at <http://www.mybrighthouse.com/newsroom/article.aspx?id=29942>.

^{5/} See, e.g., Comments of SpectrumCo LLC, WT Docket Nos. 07-195 and 04-356 (filed July 25, 2008).

^{6/} BHN participated in the 700 MHz auction as Advance/Newhouse Communications.

^{7/} See, e.g., Application of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations, WC Docket No. 08-94 (filed June 6, 2008).

Conditions with Respect to Commercial Mobile Services (“14th CMRS Competition Report Public Notice”).^{8/} It also submitted comments in response to the Notice of Inquiry (“NOI”) that the FCC initiated to expand the inquiry that the Commission undertook in the 14th CMRS Competition Report Public Notice.^{9/} BHN’s comments in response to the 14th CMRS Competition Report Public Notice and the NOI focused on the need for the FCC to ensure that carriers have meaningful access to roaming rights for all services on fair and non-discriminatory bases. BHN pointed out that without such rights, competitors will be thwarted from entering the marketplace, limiting consumer choice and impeding innovation.

While BHN continues to believe that FCC action is necessary to ensure that carriers have the roaming rights they need to fairly compete, it commends the Commission for specifically reviewing, in this proceeding, the question of whether there is sufficient spectrum to support the growth and deployment of broadband technologies. Without adequate spectrum, potential new entrants to the wireless industry simply will not have the basic input material to provide pro-competitive services. The Commission has noted that participants in its broadband proceedings “have raised the issue that the United States will not have sufficient spectrum to meet demands for wireless broadband in the near future.”^{10/} Those spectrum needs are being driven by the growth of wireless technologies that support broadband applications.^{11/}

^{8/} *Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Conditions*, Public Notice, 24 FCC Rcd 5618 (2009).

^{9/} *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless Including Commercial Mobile Services*, Notice of Inquiry, 24 FCC Rcd 11357 (2009).

^{10/} Notice at 1.

^{11/} *See, e.g.*, September Commission Meeting, Broadband.gov, Sept. 29, 2009, at 65, 67, 72 (highlighting the surge in smartphones and use of wireless devices to access data services); Press Release, Federal Communications Commission, *Broadband Task Force Delivers Status Report on Feb. 17 National Broadband Plan*, Sept. 29, 2009, at 3 (noting that “smartphone sales are projected to overtake sales of standard phones by 2011”); Antony Bruno, *Mobile Usage a Rare Highlight in Music Biz*, WASH. POST, Sept. 28, 2009 (reporting that wireless devices are frequently used to listen to music); Brad Stone,

BHN supports the Commission's adoption of a National Broadband Plan and, as noted above, already has participated in other phases of this proceeding. As explained more completely below, the Commission should address the recognized lack of spectrum by taking at least the following steps: (1) conducting an inventory of spectrum that may be used for mobile wireless broadband services; (2) based on that inventory, make more spectrum available, particularly in the bands below 1 GHz; (3) license any newly available spectrum in smaller geographic areas; and (4) restrict access to newly available spectrum for entities that already have significant mobile wireless spectrum holdings, particularly in bands below 1 GHz. BHN is pleased to have the opportunity to submit the following comments to more fully develop these recommendations.^{12/}

II. COMMENTS

A. The Ability of Current Spectrum Allocations to Support Next-Generation Build-Outs and the Anticipated Surge in Demand and Throughput Requirements

The Commission asks about the potential impact of more spectrum on increasing competition.^{13/} The addition of wireless competitors certainly will result in innovation and likely will produce price competition among providers -- both of which will result in meaningful benefits to consumers. However, consumers will not have the benefits of wireless innovation and lower service prices if the FCC continues to permit the largest national carriers to accumulate spectrum unfettered. AT&T and Verizon have dominated the last several spectrum auctions. For example, in last year's 700 MHz auction, "[t]he nation's two largest carriers,

Mobile Phone Movies: From the Big Screen to the Smallest One, N.Y.TIMES, Sept. 29, 2009 (describing the increased use of mobile devices to watch movies); Brad Stone, *MLB.com Streams Live Baseball Games to the iPhone*, N.Y.TIMES, June 17, 2009 (discussing the ability to watch sports on wireless devices).

^{12/} The Public Notice asks 29 separate questions related to spectrum issues. BHN limits its comments to those it believes most relevant to its potential entrance into the mobile wireless marketplace.

^{13/} Notice at 5 (Question 1(f)).

Verizon and AT&T, won 80 percent of the airwaves auctioned, [paying] \$16 billion of the \$19.6 billion raised for the U.S. Treasury.”^{14/} Press reports described widespread disappointment at these results, stating that “Verizon and AT&T were the big winners . . . , solidifying their dominance in the cellphone market and dashing hopes that the bidding would yield a new national competitor . . . Big regional carriers that could have used the auction to stockpile airwaves and challenge the giants largely came away empty.”^{15/} Similarly, with respect to the result of the 700 MHz auction, then FCC Commissioner Jonathan S. Adelstein declared that “we lost the war for competition and diversity.”^{16/} Then Stifel Nicolaus analyst, former FCC chief of staff and current Executive Director of the FCC’s Omnibus Broadband Initiative Blair Levin commented that the auction “reinforced the existing dynamics of the top two getting stronger.”^{17/}

Despite the fact that there are four major wireless carriers, the majority of the market is increasingly controlled by the two most dominant carriers, Verizon and AT&T. In the second quarter of 2009, smaller carriers generally lost subscribers while AT&T added 1.4 million new wireless subscribers, for a total of 79.6 million subscribers, and Verizon added 1.1 million new

^{14/} Cecilia Kang, *FCC Names Winners of Wireless Auction*, WASH. POST, March 21, 2008 (“The two carriers’ increasing control over the nation’s airwaves raised some concerns that smaller rivals will be left in a weaker position.”);

^{15/} Paul Davidson, *Verizon Wireless, AT&T Win Big in Airwave Auction*, USA TODAY, March 21, 2008; see also Peter Kaplan, *Verizon and AT&T Dominate Airwaves Auction*, REUTERS, March 20, 2008 (“[T]he two largest U.S. mobile phone companies grabbed the lion’s share of a \$19.12 billion auction of airwaves . . . the auction results dimmed hopes that the newly available spectrum would lead to a major new competitor in the wireless business.”); Spencer E. Ante, *FCC Auction: The Big Get Bigger*, BUSINESSWEEK, March 20, 2008 (quoting Stifel Nicolaus analyst Rebecca Arbogast as stating “I think the big just got bigger . . . No matter how you look at it, they clearly bulked up in this auction.”);

^{16/} Cecilia Kang, *FCC Names Winners of Wireless Auction*, WASH. POST, March 21, 2008.

^{17/} Olga Kharif, *FCC Wireless Auction Faulted*, BUSINESSWEEK, Apr. 21, 2008 (“More vexing still for critics is that the auction’s biggest winners were carriers that already dominate the industry. AT&T and Verizon Wireless already control 75% of the country’s total wireless service revenues and nearly 53% of U.S. wireless subscribers.”)

subscribers, for a total of 87.7 million subscribers during that same time period.^{18/} The ability of the two largest carriers to acquire any new spectrum that becomes available coupled with their already existing market dominance will re-create the cellular-based wireless duopoly that existed in most markets prior to the Commission's licensing of additional spectrum for mobile wireless services.^{19/}

This unchecked spectrum aggregation has a particularly deleterious effect on consumers to whom BHN now provides wireline broadband services. By preventing others from having access to wireless spectrum, the dominant wireless carriers prevent consumers from taking both wireline and wireless broadband services from BHN. Yet Verizon, for example, because of its dual position as a wireline provider and significant spectrum holder, is able to provide both wireline and wireless services to consumers who would like the convenience of using one provider for both types of services. BHN cannot compete for that business -- and provide the pro-competitive benefits that such competition offers -- if it does not have access to spectrum. Accordingly, the FCC should not continue to perpetuate the spectrum aggregation that has resulted in limiting consumer choice.^{20/} BHN below provides particular suggestions regarding

^{18/} Marguerite Reardon, *Verizon, AT&T: Net Neutrality Not OK for Wireless*, CNET NEWS, Sept. 21, 2009.

^{19/} Olga Kharif, *FCC Wireless Auction Faulted*, BUSINESSWEEK, Apr. 21, 2008 (quoting Brattle Group industry analyst Coleman Bazelon).

^{20/} It is no response that BHN and others should simply participate in spectrum auctions and obtain the resources necessary to compete. With superior financial resources, the largest wireless providers will be able to pay more for spectrum than new entrants in order to inhibit competition. Even the resources of the country's largest cable company --- Comcast Corporation -- with reported annual revenues of approximately \$34.3 billion is dwarfed by Verizon's annual revenues of nearly \$100 billion. See Comcast Corporation, 2008 Annual Report (Form 10-K), at 1; Press Release, Verizon Communications Inc., *Verizon Reports Sustained Revenue Growth and Continued Strong Cash Flows for 4Q and Full-Year 2008* (Jan. 27, 2009). If the largest cable company's resources are dwarfed by Verizon, the FCC cannot expect other, even well established, competitors to be successful in an auction with Verizon. Verizon can dedicate more resources -- even when it may not be economically rational -- to obtaining additional spectrum in order to limit competition when others cannot. The establishment of auction prices based on

how the FCC can limit carriers with excessive spectrum holdings from continuing to dominate the marketplace.

B. The Spectrum Bands Best Positioned to Support Mobile Wireless Broadband

1. The Commission Should Inventory Existing Spectrum and Reallocate Services to Dedicate Additional Mobile Wireless Broadband Below 1 GHz

The Commission asks about the current stock of spectrum available to support mobile wireless broadband and the methodology it should use to distinguish between the capacity or viability of different bands to support mobile wireless broadband.^{21/} BHN strongly supports the Commission’s efforts to inventory spectrum that may be dedicated to mobile wireless broadband technologies. In March, 2009, U.S. Senators John Kerry and Olympia Snowe introduced the Radio Spectrum Inventory Act, which would give the FCC and the National Telecommunications and Information Administration (“NTIA”) 180 days to present Congress with a complete inventory of the radio spectrum that they manage from 300 MHz to 3.5 GHz.^{22/} Upon introduction of the bill, Senator Kerry stated, “Our public airwaves belong to the American people, and we need to make certain we are putting them to good use in the best interests of those citizens. . . . [This initiative is] evidence of how valuable spectrum is and how it serves as fertile grounds for innovation. We need to make sure we’re making as much of it available to innovators and consumers as possible.”^{23/} Likewise, Senator Snowe stated, “[A]s radio spectrum is already a scarce yet valuable resource in many areas, we must ensure that this public good is

keeping others out not only results in reduced competition, which is contrary to the public interest, but also higher fixed costs that providers must pass along to consumers to recoup their spectrum investments.

^{21/} Notice at 5 (Question 2(a)).

^{22/} Press Release, Office of Senator John Kerry of the Commonwealth of Massachusetts, *Kerry, Snowe Call for Inventory of Airwaves* (March 19, 2009).

^{23/} *Id.*

allocated and used efficiently for the needs of the American people.”^{24/} The Senate Commerce Committee approved the bill in July of 2009, and it is now pending full Senate approval.^{25/}

However, the Commission need not wait for a Congressional directive. Instead, it should undertake such an inventory on its own so it can dedicate additional spectrum resources to mobile wireless broadband. In conducting such a spectrum inventory, the FCC must determine if there is under-used as well as unused spectrum. Spectrum dedicated for services that are no longer robust should be reallocated. The FCC has already mandated the re-location of licensees in heavily used bands;^{26/} it can certainly mandate the relocation (or sunset of spectrum rights) in bands that no longer support meaningful operations.

As noted further below, when the FCC conducts its spectrum inventory, it should be mindful that spectrum below 1 GHz is significantly more valuable for providing mobile wireless broadband services than spectrum above 1 GHz. Because of technology evolution, however, there are many services authorized to use spectrum below 1 GHz that may be more appropriately provided in spectrum above 1 GHz. The Commission should not permit historical allocation patterns to determine in which spectrum bands services should reside in the future. Services that are inherently mobile in nature should be located in the bands below 1 GHz. The Commission should consider the relocation elsewhere of services for which mobility, propagation

^{24/} Press Release, Office of Senator Olympia Snowe of the State of Maine, *Snowe, Kerry Call for Inventory of Airwaves* (March 19, 2009).

^{25/} See, e.g., Tina Nguyen, *Senate Commerce Committee Passes Radio Spectrum Inventory Act*, BROADBANDCENSUS.COM, July 8, 2009.

^{26/} See, e.g., *Improving Public Safety Communications in the 800 MHz Band, et al.*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004) (relocating licenses in the 800 MHz band); *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Services, et al.*, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, 18 FCC Rcd 2223 (2003) (relocating spectrum for the provision of Advanced Wireless Services (“AWS”)).

characteristics, or international allocation requirements do not mandate their location below 1 GHz.

2. Spectrum Below 1 GHz is More Valuable for Mobile Wireless Broadband

The Commission asks how the allocation of different spectrum bands would affect an operator's business case to deploy mobile broadband.^{27/} As noted above, there are important differences in spectrum bands that would affect an operator's business case to deploy mobile broadband. Spectrum below 1 GHz is inherently more valuable for providing mobile wireless broadband than spectrum above 1 GHz. Propagation characteristics of spectrum below 1 GHz means that fewer transmitters are required to cover a geographic area than would be required to provide service to the same geographic area using higher spectrum bands.^{28/} The use of fewer transmitters means fewer antenna siting challenges, the need to deploy fewer base station transmitters, and an overall lower cost structure for system build-out, meaning potentially lower service costs to consumers. In contrast, for other services where short or directionalized transmission paths are desirable, spectrum above 1 GHz can be employed.

Moreover, consumers are likely to deploy mobile wireless broadband devices inside their homes and businesses. Accordingly, it is important that spectrum used to provide mobile wireless broadband services be able to penetrate buildings so that consumers can receive service. Spectrum below 1 GHz provides building penetration more reliably than does spectrum above 1

^{27/} Notice at 5 (Question 2(c)).

^{28/} See, e.g., *Unlicensed Operation in the TV Broadcast Bands, et al.*, Second Report and Order and Memorandum Opinion and Order, 23 FCC Rcd 16807, ¶ 2 (2008) (opening for use a significant amount of spectrum below 900 MHz and noting its "very desirable propagation characteristics").

GHz.^{29/} Spectrum above 1 GHz should be used for other services where building penetration is not critical.

C. Key Issues in Moving Spectrum Allocations Toward their Highest and Best Use in the Public Interest

1. The Commission Should Impose Spectrum Aggregation Limitations

The Commission asks about the specific steps in overall spectrum management practices it should consider to ensure spectrum is fully utilized to maximize its total value.^{30/} The most fundamental spectrum management practice is one that the Commission has not fully utilized in the recent past. That is, the Commission should limit the amount of spectrum that competitors may hold. As noted above, dominant wireless carriers have aggregated spectrum, with the effect of reducing competition and innovation. BHN is mindful that the FCC has announced its use of a spectrum “screen” for evaluating the acquisition of additional spectrum.^{31/} However, those actions do not go far enough for at least two reasons. First, the screens do not recognize the fundamental differences among spectrum bands. As noted above, spectrum in the bands below 1 GHz are fundamentally more valuable than those above 1 GHz for providing mobile wireless broadband services. New entrants require access to these critical bands in order to meaningfully compete with incumbent wireless providers. Therefore, while the FCC has announced that it will evaluate, among others, Broadband Radio Service (“BRS”) and Advanced Wireless Service

^{29/} *Id.* ¶ 45 (noting that spectrum in lower frequencies has “improved in-building penetration properties”).

^{30/} Notice at 6 (Question 4(e)).

^{31/} *See, e.g., AT&T Mobility Spectrum, LLC Application for 700 MHz Band Licenses, Auction No. 73, Order, 23 FCC Rcd 18409 (2008); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements, et al., Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008); Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, Memorandum Opinion and Order, 23 FCC Rcd 17570 (2008).*

(“AWS”) spectrum in a spectrum screen along with 700 MHz and cellular spectrum (in the 800/900 MHz bands), it must conduct an evaluation of those bands separately. Even above 1 GHz, the amount of spectrum that should trigger further analysis need not be the same across different services. Accordingly, the FCC should revisit the spectrum screen test it announced in the Clearwire/Sprint and Verizon/Alltel decisions to make its spectrum screen analysis more reflective of spectrum valuation and utility.

Second, the FCC should change its auction rules so that those entities, which would otherwise be unable to acquire spectrum based on the Commission’s spectrum screen, are unable to participate in auctions for spectrum that would trigger a spectrum screen evaluation. It is not sufficient for the FCC to provide that auction winners are subject to the spectrum screen and that they may be required to divest spectrum post-auction in order to satisfy spectrum screen criteria. The mere presence of those who may trigger a spectrum screen will skew auction results regardless of whether they are successful bidders. If those entities that have already aggregated spectrum are allowed to participate in FCC auctions, the Commission’s auction regulations should be modified so that they may only register to bid for geographic areas where they have not accumulated sufficient spectrum to trigger a spectrum screen analysis, and such information should be available to all bidders.

2. The Commission Should License New Spectrum for Smaller Geographic Areas

The second spectrum management tool that the FCC should use is to license newly available spectrum in smaller geographic areas such as, for example, economic areas (“EAs”). Licensing spectrum by EAs will have several positive effects. First, it will enable providers focused on serving limited geographic areas, with more limited resources, to participate in spectrum auctions because they will not be required to compete against applicants seeking

regional or nationwide coverage. The introduction of locally-focused competitors will create additional competition and spur innovation. Conversely, if a licensee of a larger geographic area fails, it will affect more consumers than if a licensee of a smaller geographic area is unsuccessful.

Creating smaller geographic areas for licensing purposes will also likely result in more intensive spectrum utilization. A licensee of a large geographic area may wish to focus its service and marketing efforts on (and satisfy its build-out obligations by providing service to) a limited number of population centers, leaving segments of the large licensing area unserved. If a licensee has the same build-out obligation for a smaller geographic area, more of the smaller geographic area is likely to be served by the licensee.

Licensing spectrum in smaller geographic areas will also result in greater revenues for the Treasury. Past auctions have demonstrated that spectrum is worth more when sold on a regional basis than when sold as a nationwide block. For example, in the recent 700 MHz auction (Auction 73), the average sale price (on a per MHz-pop basis) for the A-block, licensed as BEAs, was 1.53 times greater than the C-block, which sold as a (largely) nationwide license. The B-block, made available in even smaller CMAs, sold for 3.53 times the price of the C-block.

III. CONCLUSION

The FCC should not allow the few large wireless carriers that already hold massive amounts of spectrum to dominate the marketplace. Instead, the FCC should conduct an inventory of current spectrum resources, reallocate services to make more spectrum available below 1 GHz for mobile wireless broadband use through smaller geographic area licenses, and encourage competition and innovation in the wireless industry by limiting the amount of spectrum competitors may hold.

Respectfully submitted,

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