

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
700 MHz Block A Good Faith Purchaser Alliance ) RM-11592  
 )  
Petition for Rulemaking Regarding )  
the Need for 700 MHz Mobile Equipment )  
to be Capable of Operating on All Paired )  
Commercial 700 MHz Frequency Blocks )  
700 MHz Mobile Equipment Capability )

To: The Commission

REPLY COMMENTS  
OF UNITED STATES CELLULAR CORPORATION

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## Summary

We agree with the numerous commercial providers who filed supporting commencement of rulemaking proceedings to examine the unchecked "business" decisions of AT&T Wireless, Inc. ("AT&T") and Celco Partnership d/b/a Verizon Wireless ("VZW") to deploy 700 MHz commercial paired spectrum holdings using only Band Class 17 and 13 devices, respectively. We also support comments filed by the Public Safety Spectrum Trust ("PSST") and the National Fraternal Order of Police describing the advantages for public safety if the Commission would consider facilitating development and deployment of 700 MHz devices that can access multiple band classes to spur the device ecosystem for the public safety community.

We respond to the arguments raised by AT&T and VZW who requested dismissal or denial of the Alliance Petition as follows:

(1) Contrary to VZW's claims, the proposal to create Band Class 17 involved controversial technical tradeoffs when it was first considered in 3GPP proceedings and has had controversial consequences in terms of market fragmentation and increased roaming complexity which now threaten to block 4G deployments by many Band Class 12 licensees.

(2) We do not believe that the Commission's "flexibility" policies were ever intended to legitimize implementation of business decisions by VZW or AT&T which might block the competitive roll out of 4G broadband systems by other 700 MHz commercial licensees.

(3) VZW and AT&T cannot legitimately argue that the device impasse for other 700 MHz licensees is not their responsibility. We agree with other commenters that other 700 MHz licensees are simply not on an equal footing with VZW and AT&T and that without Commission

intervention these other licensees will remain effectively foreclosed from obtaining the devices they need.

(4) We strongly disagree with VZW's arguments that Commission denial of the Alliance Petition would promote device innovation. The surest way to benefit consumers and public safety users alike in terms of consumer choice and device innovation is for the Commission to commence rulemaking proceedings to consider ways to enhance competition in the 700 MHz band.

(5) We believe that the development of Full Spectrum devices, incorporating VZW's Upper C Block as a fully interoperable part of the 700 MHz broadband commercial ecosystem, is essential to promote the Commission's Open Platform goals of encouraging consumer choice and enhancing opportunities for device innovation.

(6) AT&T's vague claims that the adoption of Full Spectrum device requirements would unlawfully devalue its 700 MHz spectrum holdings appear to be contradicted in the record and in any event do not bar the Commission from commencing rulemaking proceedings to examine the establishment of requirements for the development of Full Spectrum devices.

The Commission's examination of Full Spectrum device requirements is amply justified on the basis of the principle that consumer welfare is enhanced by vigorous competition. The development of Full Spectrum devices promoting and preserving competition is the surest way to benefit consumers and public safety users alike by providing timely and cost effective access to devices and capabilities provided over a vigorously competitive 700 MHz broadband ecosystem.

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REPLY COMMENTS  
OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("USCC") hereby submits the following reply comments in response to the Commission's Public Notice (DA 10-287, February 18, 2010) ("Public Notice") with respect to the Petition for Rulemaking ("Petition"), filed by the 700 MHz Block A Good Faith Purchaser Alliance ("Alliance").

**INTRODUCTION**

The initial comments filed in this proceeding broadly support the commencement of rulemaking proceedings to establish requirements for the development of 700 MHz devices capable of operating across the spectrum blocks comprising Band Classes 12, 13, 14 and 17 ("Full Spectrum" devices) so that consumers and public safety can benefit from timely and cost effective access to devices and capabilities provided over a vigorously competitive 700 MHz broadband ecosystem. We agree with the numerous commenters including MetroPCS

Communications, Inc. ("MetroPCS"), Cellular South, Inc., Cox Wireless, Triad 700, LLC, Rural Cellular Association ("RCA"), Rural Telecommunications Group, Inc., and Blooston Rural Carriers that AT&T and VZW should not be given unchecked "business" discretion to deploy 700 MHz commercial paired spectrum holdings using only Band Class 17 and 13 devices, respectively. These decisions have had consequences which are blocking near term deployment of commercial 700 MHz networks on spectrum in Band Class 12 and, potentially, deployment of the national interoperable broadband network for public safety in Band Class 14. Absent Commission intervention as proposed here, they will also diminish the prospects for expanded rural broadband coverage and data roaming, delay availability of 700 MHz devices for other licensees, increase device costs for other licensees, and take away regulatory incentives promoting consumer choice and device innovation.

We also agree with comments filed by the Public Safety Spectrum Trust ("PSST") and the National Fraternal Order of Police describing the advantages for public safety of "facilitating development and deployment of 700 MHz devices that can access multiple band classes"<sup>1</sup> to spur the device ecosystem for public safety, to expand public private partnership opportunities, to reduce device costs and to enhance roaming benefits for public safety. We join with PSST and the National Fraternal Order of Police in requesting that the Commission consider how these advantages can be obtained for public safety in rulemaking proceedings examining the development of Full-Spectrum devices in the 700 MHz band to support a nationwide interoperable broadband network for public safety users.

The principal opposition to the commencement of rulemaking proceedings comes from AT&T Wireless, Inc. ("AT&T") and Cellco Partnership d/b/a Verizon Wireless ("VZW") both of whom argue that their 700 MHz device procurement and deployment decisions were based on

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<sup>1</sup> PSST Comments, p. 8.

established industry practices, technical constraints and other business considerations and that their actions were taken in support of Commission goals promoting advanced broadband services. They also argue that the other 700 MHz licensees who complain that they are unfairly disadvantaged can resolve their problems collectively or individually by working with device vendors to meet their needs rather than seek Commission intervention. We strongly disagree.

We believe that MetroPCS fairly describes the origins of the problems sought to be addressed in the Alliance Petition:

"[I]n some circumstances the market becomes so imbalanced that unfair and unreasonable conduct by a very few market participants can completely undermine the beneficial competition that has served American consumers well during the evolution of wireless technology. This proceeding presents just such a situation."<sup>2</sup>

Contrary to suggestions in VZW's comments, we do not believe that the Commission needs to find that AT&T or VZW have engaged in any misconduct to justify commencement of these rulemaking proceedings. The Commission's examination of Full Spectrum device requirements is amply justified on the basis of the principle that consumer welfare is enhanced by vigorous competition. The development of Full Spectrum devices promoting and preserving competition is the surest way to benefit consumers and public safety users alike by providing timely and cost effective access to devices and capabilities provided over a vigorously competitive 700 MHz broadband ecosystem.

In the following sections of our reply comments we discuss specific arguments raised by AT&T and VZW describing why we believe they are invalid, irrelevant or unpersuasive.

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<sup>2</sup> MetroPCS Comments, p. 2.

## DISCUSSION

1. **VZW's Claims That the Approval of the Band Class 17 adopted in the 3GPP Specifications for Release 8 of Long Term Evolution Was "Non-controversial" Disregards Clear Evidence to the Contrary**

VZW's claims that the proposals to create the band classes adopted in the 3GPP specifications for Release 8 of Long Term Evolution ("LTE") were "non-controversial"<sup>3</sup> disregard clear evidence in the record to the contrary. The creation of Band Class 17 was supported by AT&T because it included only the Lower B and C Blocks thereby avoiding the stringent requirements needed to support Lower A Block device operations.<sup>4</sup> Ericsson argued that there would be a downside if this approach were adopted. "There would be two duplexers covering part of the lower 700 MHz ..., which goes against economies of scales [sic] and may lead to market fragmentation."<sup>5</sup> Also Motorola pointed out in an earlier 3GPP Discussion Draft that " ... [with] the addition of a new operating [band], the number of operating bands a UE terminal would need to support would increase and some practical limitations may be necessary to reduce implementation complexity. In this scenario roaming between band 12, 13, 14 and [17] could be impacted depending on the number of E-UTRA support bands a UE could support."<sup>6</sup> It is now clear that market fragmentation and increased roaming complexity resulting from AT&T's decision to deploy only Band Class 17 devices threatens to increase the cost and delay the availability of Band Class 12 devices needed to support expanded access to wireless

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<sup>3</sup> VZW Comments, p. 4.

<sup>4</sup> See Discussion Document, AT&T, "Performance and coexistence issues in the Lower 700 MHz band" (Agenda Item: 6.1.2.1), 3GPP TSG RAN WG4 (Radio) Meeting #47bis, June 16-21, 2008.

<sup>5</sup> See Discussion Draft, Ericsson, "On the introduction of Band 15," (Agenda Item: 6.1.2.2), 3GPP TSG RAN WG4 (Radio) Meeting #47bis, June 16-21, 2008.

<sup>6</sup> See Discussion Draft, Motorola, "TS36.101: Lower 700 MHz Band 15" (Agenda Item: 6.1.2), 3GPP TSG RAN WG4 (Radio) Meeting #47, 5<sup>th</sup> April to 9<sup>th</sup> April 2008.

broadband services contemplated in the FCC's National Broadband Plan.<sup>7</sup> In sum, the creation of Band Class 17 involved controversial technical tradeoffs when it was conceived and has had controversial consequences blocking deployments by Band Class 12 licensees which should be addressed in rulemaking proceedings.

2. **VZW and AT&T Should Not be Permitted to Exercise Expansive Rights to Deploy Classes or Combinations of Classes of Devices Without Regard to the Unique Market Imbalance in the 700 MHz Band**

While we support the Commission's typical reliance on market forces within the wireless industry to promote consumer welfare, we disagree with VZW that it should have the unfettered right to deploy the classes or combinations of classes "best suited to meet the authorized spectrum requirements and its business plans."<sup>8</sup> AT&T makes a comparable argument that its separate "business" decision not to support development of a device ecosystem for Band Class 12 and instead to establish a separate Band Class 17 for its Lower B and C Block spectrum is a legitimate exercise of licensee "flexibility" accorded under current Commission policies.<sup>9</sup> We disagree with AT&T on this point as well.

We discussed in our comments how the device deployment decisions of AT&T and VZW will diminish the prospects for expanded rural broadband coverage and data roaming, delay availability of 700 MHz devices for other licensees, increase device costs for other licensees, and take away regulatory incentives promoting consumer choice and device innovation. As described in the RCA Comments, the Commission has strongly supported spectrum policies promoting consumer welfare through expansion of

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<sup>7</sup> Federal Communications Commission, National Broadband Plan, Titled "Connecting America: The National Broadband Plan (2010) ("NBP")

<sup>8</sup> VZW Comments, p. 4

<sup>9</sup> AT&T Comments, pp. 7-9.

wireless broadband service in unserved and underserved areas, enhancing wireless competition and supporting market entry.<sup>10</sup> We do not believe that "flexibility" was ever intended to legitimize implementation of business decisions which might impede the competitive roll out of 4G broadband coverage by other 700 MHz commercial licensees, for example, by foreclosing access to devices, by erecting costly technical barriers to block roaming options on Band Class 13 and 17 spectrum or by denying public safety options for partnerships and priority roaming on Band Class 12 spectrum.

We agree with MetroPCS that the dominant market share and massive spectrum holdings in the 700 MHz band "creates a risk that these carriers [VZW and AT&T] will be able to dictate 700 MHz equipment standards and drive the development of the equipment in a manner that advantages themselves and their own customers, but disadvantages the customers of every other small, rural, mid-tier and nationwide carrier."<sup>11</sup>

VZW acknowledges that it would be possible to build 700 MHz devices with multiple duplexers.<sup>12</sup> VZW also indicates that the technical challenges of deploying Band Class 12 devices are not "insurmountable."<sup>13</sup> We believe that there is a way forward for the development of Full Spectrum devices if the Commission is prepared to create incentives for vendors and Band Class 12, 13, 14 and 17 licensees to procure devices supporting Full Spectrum commercial and public safety interoperability.

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<sup>10</sup> RCA Comments, pp. 5-7.

<sup>11</sup> MetroPCS Comments, pp. 2-3; See also RCA Comments, pp. 7-8.

<sup>12</sup> VZW Comments, p. 7.

<sup>13</sup> Id. at p. 9.

3. **Other 700 MHz Licensees Who are Unfairly Disadvantaged by the Device Decisions of AT&T and VZW Are Not Able to Generate Purchases in Sufficient Quantities to Make Mobile Devices Affordable to Their Customers.**

VZW and AT&T argue the device impasse resulting from their decisions not to support development of Band Class 12 devices is not their responsibility. They suggest that members of the Alliance and other Lower A Block licensees have the option to work with manufacturers to build devices to operate on Band Class 12 spectrum and in other bands.<sup>14</sup> We agree with RCA that " ... [s]mall rural and regional Lower A Block licensees cannot generate purchases for mobile devices that are operable in all the paired commercial frequency blocks in sufficient quantity to make the mobile devices affordable to their customers."<sup>15</sup> The reality is that other 700 MHz licensees are simply not on an equal footing with AT&T and VZW in terms of resources, subscriber base or risk profiles. Unless the Commission intervenes, we join with other commenters in predicting that the lack of mobile devices among small rural and regional licensees will cripple, if not forestall, the achievement of the Commission's spectrum efficiency and broadband deployment objectives for the 700 MHz band.<sup>16</sup>

4. **Development of Full Spectrum LTE Devices for Band Classes 12, 13, 14 and 17 Does Not Require Any Change in the Technology Choices of AT&T, VZW and the Public Safety Community**

VZW argues that the Commission should reject the Alliance Petition to preserve for consumers opportunities for innovation in wireless devices and products.<sup>17</sup> We disagree. The surest way to benefit consumers and public safety users alike is for the Commission to take the

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<sup>14</sup> VZW Comments, p. 9; AT&T Comments, p. 13.

<sup>15</sup> RCA Comments, p. 13.

<sup>16</sup> See also RCA Comments, pp. 13-14 and 19-20.

<sup>17</sup> VZW Comments, p. 15.

steps necessary to preserve opportunities for a vigorously competitive 700 MHz broadband ecosystem.

Whatever merits this argument might have in other bands, the development of Full Spectrum 700 MHz devices is essential to offset the effective control which AT&T and VZW exert in the market for 700 MHz devices reflecting their dominant market share and massive spectrum holdings in this band. A Full Spectrum device requirement is also needed to meet the unique needs of public safety in the 700 MHz band for device interoperability and access to commercial capacity in emergencies.

The Alliance proposal assumes an LTE technology choice across Band Classes 12, 13, 14 and 17 reflecting broad support for LTE deployment in the 700 MHz band. AT&T and VZW which already have dominant spectrum holdings in three of these band classes have selected the LTE air interface technology. At this point LTE is the de facto air interface standard among the licensees of paired spectrum in this band. Also the NBP supports the proposed use of the LTE air interface for Band Class 14 consisting of the Upper D Block and PSBL spectrum, to adopt public safety roaming and priority access requirements in 700 MHz commercial paired spectrum and to explore the development of full spectrum public safety devices.<sup>18</sup>

Adoption of a Full Spectrum LTE device requirement is a measured but necessary step to prevent the selective device procurements by AT&T and VZW from limiting consumer choice and innovation which would otherwise be possible if other 700 MHz commercial licensees are given a fair chance to compete.

5. **"Rebalancing" Provider-Device Vendor Relationships Under Commission Open Platform Requirements to Spur Development of Innovative Products Would be Enhanced if Procurement of Band Class 13 Devices Were Subject to a Full Spectrum Device Requirement**

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<sup>18</sup> The record in ET Dkt No 06-229 confirms that AT&T and VZW strongly supported the adoption of an LTE air interface standard for public safety broadband operations on this PSBL spectrum.

VZW cites the Commission's "open platform" initiatives for the Upper C Block as a reason to maintain the *status quo* deployment of Band Class 13-only devices.<sup>19</sup> It argues that the adoption of a Full Spectrum device requirement would create disincentives for the design and development of devices to operate on Band Class 13 spectrum by "third parties." As discussed in our Comments,<sup>20</sup> the Commission's attempt to foster greater balance between device manufacturers and Upper C Block licensees under its "open platform" requirements for devices has already been frustrated because VZW holds virtually all of the Upper C Block (Band Class 13) spectrum. We strongly urge the Commission to rethink how best to encourage innovation and consumer choice taking account of the near-total concentration of spectrum holdings of Upper C Block spectrum in the hands of a single licensee. We believe that the development of Full Spectrum devices as proposed in the Alliance Petition, incorporating the Upper C Block as a fully interoperable part of the 700 MHz broadband commercial ecosystem, is essential to promote the goals of encouraging consumer choice and enhancing opportunities for device innovation as originally proposed in the Commission's Second Report and Order.<sup>21</sup>

6. **AT&T Should be Accountable for the Consequences of its Decision to Deploy Under Band Class 17 Parameters and Should Not be Entitled to Any Exemption from Compliance with Full Spectrum Device Requirements**

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<sup>19</sup> VZW Comments, pp. 15-16.

<sup>20</sup> USCC Comments, pp. 10-13.

<sup>21</sup> See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15289, 15362 (Para. 198)(2007) (*Second Report and Order*).

AT&T also argues that the adoption of Full Spectrum device requirements would devalue its 700 MHz spectrum holdings by subjecting that spectrum to "the same interference risks" as those faced by Lower A Block spectrum licensees and that any change in the Commission's rules altering these interference risks would be "unlawful."<sup>22</sup> On the other hand VZW which has significant Lower A and B Block spectrum holdings states in its Comments that the technical challenges of deploying Band Class 12 devices are not "insurmountable"<sup>23</sup> suggesting that the interference risks claimed by AT&T can be managed. As discussed here, AT&T's vague claims are far from dispositive, appear to be contradicted in the record and should not preclude Commission from commencing rulemaking proceedings to examine the establishment of requirements for the development of Full Spectrum devices.

Based on our review of portions of the 3GPP working group discussions leading up to the adoption of Release 8.3 of the 3GPP standards for the 700 MHz band (September 2008), it appears that AT&T elected to deploy under Band Class 17 parameters even though it was not foreclosed from deploying under Band Class 12 parameters. For example, Ericsson's discussion draft presentation in 3GPP proceedings in 2008 suggested deployment under Band Class 12 was a viable option. It argued that there would be drawbacks as a consequence of introducing the new Band Class 17. Specifically "[t]here would be two duplexers covering part of the lower 700 MHz ..., which goes against economies of scales [sic] and may lead to market fragmentation."<sup>24</sup> Also Motorola pointed out in an earlier 3GPP Discussion Draft that " ... [with] the addition of a new operating [band], the number of operating bands a UE terminal would need to support would increase and some practical limitations may be necessary to reduce implementation

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<sup>22</sup> AT&T Comments, pp. 9-10.

<sup>23</sup> Id. at p. 9.

<sup>24</sup> See Discussion Draft, Ericsson, " On the introduction of Band 15," (Agenda Item: 6.1.2.2), 3GPP TSG RAN WG4 (Radio) Meeting #47bis, June 16-21, 2008.

complexity. In this scenario roaming between band 12, 13, 14 and [17] could be impacted depending on the number of E-UTRA support bands a UE could support."<sup>25</sup>

The foregoing record suggests that AT&T chose to deploy under Band Class 17 parameters to meet its unique business needs and not because it was compelled to do so by any Commission technical requirement. AT&T knew or should have known that there were possible market fragmentation and increased roaming complexity risks caused by its Band Class 17 decision. Having voluntarily committed to Band Class 17 parameters, AT&T should be solely accountable for these and other consequences of its decision and should not be entitled to any exemption from compliance with Full Spectrum Device requirements in the event such requirements are adopted.

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<sup>25</sup> See Discussion Draft, Motorola, "TS36.101: Lower 700 MHz Band 15" (Agenda Item: 6.1.2), 3GPP TSG RAN WG4 (Radio) Meeting #47, 5<sup>th</sup> April to 9<sup>th</sup> April 2008.

## CONCLUSION

As discussed above, the "business" decisions of AT&T and VZW to deploy single 700 MHz band class devices rather than support the parallel development of a 700 MHz broadband device ecosystem including Band Classes 12 and 14 raise troubling issues about the consequences of those decisions which the Commission should scrutinize in rulemaking proceedings. Numerous 700 MHz commercial licensees have provided examples of how the dominant market share of AT&T and VZW and now the massive 700 MHz spectrum holdings of these same two companies have undermined opportunities for beneficial competition in the deployment of 4G broadband services in this band. They argue, correctly we believe, that Commission intervention is needed because the decisions of AT&T and VZW will diminish the prospects for data roaming, delay availability of 700 MHz devices for other licensees in the band, diminish opportunities for expansion of broadband in rural and underserved areas, increase device costs for other licensees, and take away regulatory incentives promoting consumer choice and device innovation. Commencement of rulemaking proceedings is urgently needed as an essential first step to provide incentives for the development of a device ecosystem to restore opportunities for robust competition among commercial 700 MHz broadband networks on paired spectrum on 700 MHz band and deployment of the nationwide interoperable broadband capabilities for public safety.

Respectfully submitted,

UNITED STATES CELLULAR  
CORPORATION

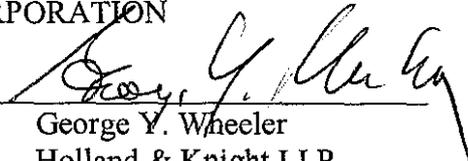
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