

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

In the Matter of:)

Fixed and Mobile Services in the Mobile) ET Docket No. 10-142
Satellite Service Bands at 1525-1559 MHz)
and 1626.5-1660.5 MHz, 1610-1626.5 MHz)
and 2483.5-2500 MHz, and 2000-2020 MHz)
and 2180-2200 MHz)

REPLY COMMENTS OF AT&T INC.

Paul K. Mancini
Gary L. Phillips
Michael P. Goggin
AT&T Inc.
1120 20th Street, N.W.
Washington, DC 20036
202-457-2055
Counsel for AT&T Inc.

September 30, 2010

EXECUTIVE SUMMARY

The initial comments received in this proceeding demonstrated support across the communications industry for the Commission's proposals to promote widespread and efficient use of the MSS spectrum for terrestrial mobile broadband services. Commenters representing diverse industries and interests declared that the proposals to add primary Fixed and Mobile allocations to the 2 GHz MSS band and to apply the Commission's secondary markets rules to leases of terrestrial rights to MSS spectrum advance important Commission objectives. In particular, introducing regulatory flexibility to the MSS bands advances the National Broadband Plan goal of identifying 500 megahertz of additional spectrum to meet the exploding demand for mobile broadband. The Commission should promptly move forward to enact these proposals.

The proposal to expand terrestrial use of the 2 GHz MSS band received widespread support. The Commenters agreed that the technical characteristics of the 2 GHz band are well-suited to the provision of mobile broadband service. Moreover, the band is spectrally adjacent to other key bands creating possibilities for advantageous pairing and other synergies. By making the allocation and service rules more flexible, the Commission can take an important first step toward promoting robust mobile broadband development in the band. The record also supports the Commission's conclusion that any 2 GHz band spectrum to become available in the future should be reserved for terrestrial use.

Promoting unfettered secondary markets for terrestrial rights to the MSS bands was uniformly supported. Commenters recognized that leasing would promote efficiency by allowing underused spectrum resources to move to a higher-valued use. In introducing this flexibility, the Commission should apply the secondary market rules in the same manner as in the terrestrial wireless context, as this will best promote regulatory predictability and parity among

the bands. The record also makes clear that the Commission should avoid adopting any restrictions that might limit participation in secondary markets transactions or otherwise detrimentally affect the value of this spectrum for the public.

The record also supports AT&T's call for the Commission to pursue the NPRM's goals only in the context of a comprehensive and strategic band plan, which would promote quick deployment, robust services, and innovative devices. To this end, the Commission should ensure that any mechanisms for making additional spectrum available for mobile broadband use are designed to provide the large contiguous spectrum blocks necessary to enjoy the full benefits of next generation mobile platforms. Moreover, the Commission's band planning should carefully consider the beneficial synergies to be gained through coordination of the MSS bands with adjacent and nearby bands already designated for mobile broadband.

Finally, the Commission should reject calls from a minority of commenters who seek anticompetitive restrictions on the ability of certain carriers to participate in any auctions, leasing, or other secondary market activities that might result from the Commission's identification of additional mobile broadband spectrum. These self-serving requests are disconnected from the realities of the hyper-competitive wireless broadband market. Instead of singling out certain competitors for punitive treatment and effectively choosing winners and losers in the marketplace, the Commission should adhere to its policy of promoting free-markets and engaging in consistent competitive analysis based on relevant factors. Consistent with this longstanding preference for market-based regulatory mechanisms, and case by case analysis of competitive effects in the context of a proposed transaction, the Commission should immediately grant AT&T's Petition for Reconsideration of the anticompetitive conditions adopted in the *Harbinger Order*.

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	i
I. INTRODUCTION	1
II. THE PROPOSAL TO EXPAND TERRESTRIAL USE OF THE 2 GHZ MSS BAND RECEIVED WIDESPREAD SUPPORT	2
A. A Broad Cross-Section of Commenters Support the Commission’s Proposal to Add Primary Fixed and Mobile Allocations to the 2 GHz Band.....	2
B. The Commission Should Ensure That Any Reclaimed 2 GHz Spectrum is Reserved for Terrestrial Uses.....	4
III. PROMOTING UNFETTERED SECONDARY MARKETS FOR TERRESTRIAL RIGHTS TO THE MSS BANDS WAS UNIFORMLY SUPPORTED.....	6
IV. THE RECORD SUPPORTS AT&T’S CALL FOR COMPREHENSIVE AND HOLISTIC BAND PLANNING.....	9
A. Any Spectrum Repurposing Must Produce Large Contiguous Blocks of Spectrum to be Useful for Mobile Broadband.....	9
B. Any Repurposing of MSS Spectrum Should Take Into Account Synergies with Other Bands Suitable for Mobile Broadband	11
V. THE COMMISSION SHOULD REJECT CALLS FOR ANTICOMPETITIVE MARKET RESTRICTIONS	12
VI. CONCLUSION.....	16

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

In the Matter of:)

Fixed and Mobile Services in the Mobile) ET Docket No. 10-142
Satellite Service Bands at 1525-1559 MHz)
and 1626.5-1660.5 MHz, 1610-1626.5 MHz)
and 2483.5-2500 MHz, and 2000-2020 MHz)
and 2180-2200 MHz)

REPLY COMMENTS OF AT&T INC.

I. INTRODUCTION

AT&T Inc. (“AT&T”) hereby submits these Reply Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking and Notice of Inquiry on expanding terrestrial use in the Mobile Satellite Services (“MSS”) spectrum bands.¹ As discussed below, the record reflects widespread support for the Commission’s proposals across a number of industries and interests. Specifically, the overwhelming majority of commenters strongly supported the Commission’s proposals for expanding terrestrial use in the 2 GHz MSS band and for applying the Commission’s secondary markets rules to leases of MSS spectrum. The record also supports AT&T’s call for the Commission to engage in a careful and deliberative process in resolving its various planned and pending spectrum proceedings, with the goal of developing a comprehensive band plan for mobile broadband. Finally, the

¹ See Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1662.5-1660.5 MHz and 24.85-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, ET Docket No. 10-142, *Notice of Proposed Rulemaking and Notice of Inquiry*, 25 FCC Rcd 9481 (2010) (“*MSS NPRM and NOP*”).

Commission should reaffirm its commitment to open markets and reject the isolated calls by a minority of commenters to adopt anticompetitive restrictions designed to bar their competitors' access to spectrum.

II. THE PROPOSAL TO EXPAND TERRESTRIAL USE OF THE 2 GHZ MSS BAND RECEIVED WIDESPREAD SUPPORT.

The Commission's proposal to expand terrestrial use in the 2 GHz MSS band received strong support from commenters representing diverse industry segments. Priming the MSS bands for terrestrial wireless use is a good first step toward implementing the National Broadband Plan's goal of identifying additional wireless broadband spectrum. In light of this pressing need for additional mobile broadband capacity and the currently underdeveloped state of the 2 GHz MSS band, AT&T and many other commenters agreed with the Commission that in the event a 2 GHz MSS license is returned or cancelled, it should then be used for terrestrial mobile broadband.

A. A Broad Cross-Section of Commenters Support the Commission's Proposal to Add Primary Fixed and Mobile Allocations to the 2 GHz Band.

Commenters across industries agreed with the Commission's proposal to add co-primary fixed and mobile allocations to the 2 GHz MSS band. For example, Echostar noted that creating a co-primary fixed and mobile allocation is "an appropriate preliminary step for additional Commission action to promote terrestrial use of the 2 GHz band."² Wireless industry commenters AT&T, Cricket, CTIA, T-Mobile, U.S. Cellular and Verizon Wireless all strongly

² Comments of Echostar Satellite Services L.L.C., ET Docket No. 10-142 at 4 (filed Sept. 15, 2010) ("Echostar Comments"). *See also* Comments of Iridium Satellite LLC, ET Docket No. 10-142 at 9 (filed Sept. 15, 2010) ("Iridium Comments") ("The Commission is right to focus on the 2 GHz band as the best opportunity to identify spectrum for terrestrial wireless." (internal cites omitted); Comments of TerreStar Networks Inc., ET Docket No. 10-142 at 4-5 (filed Sept. 15, 2010) ("TerreStar Comments").

supported the proposed addition of co-primary fixed and mobile allocations in the 2 GHz band.³ Cricket explained its support, noting that “[f]lexible spectrum use is perhaps the most central component of a system that will be able to meet consumers’ burgeoning demand for bandwidth across a broad swath of wireless applications.”⁴

Numerous commenters noted that the 2 GHz MSS band has many of the technical characteristics that are essential for effective mobile broadband spectrum, including its availability in large contiguous spectrum blocks, its sufficient uplink/downlink separation and its location between the 450 and 4000 MHz frequencies with appropriate propagation characteristics.⁵ The 2 GHz MSS spectrum is also adjacent to spectrum licensed to the Personal Communications Services (“PCS”) and Advanced Wireless Services (“AWS”), which could result in beneficial synergies among the services if a comprehensive and holistic band plan approach is taken.⁶ As the Commission recognized, the 2 GHz band already has primary fixed

³ Comments of AT&T Inc., ET Docket No. 10-142 at 5-6 (filed Sept. 15, 2010) (“AT&T Comments”); Comments of Cricket Communications, Inc., ET Docket No. 10-142 at 4-5 (filed Sept. 15, 2010) (“Cricket Comments”); Comments of CTIA—The Wireless Association, ET Docket No. 10-142 at 10-11 (filed Sept. 15, 2010) (“CTIA Comments”); Comments of T-Mobile USA, Inc., ET Docket No. 10-142 at 2-3 (filed Sept. 15, 2010) (“T-Mobile Comments”); Comments of United States Cellular Corporation, ET Docket No. 10-142 at 3-4 (filed Sept. 15, 2010) (“U.S. Cellular Comments”); Comments of Verizon Wireless, ET Docket No. 10-142 at 4 (filed Sept. 15, 2010) (“Verizon Wireless Comments”).

⁴ Cricket Comments at 4.

⁵ See AT&T Comments at 4-5; CTIA Comments at 4, 8-9; Verizon Wireless Comments at 2-3; T-Mobile Comments at 2-4.

⁶ See CTIA Comments at 9; T-Mobile Comments at 3 (stating “As a result, the spectrum could be used easily by new or existing service providers to provide innovative terrestrial mobile broadband services, whether on a stand-alone basis or in conjunction with other AWS, PCS or MSS ATC operations.”); see also *infra* Section IV.

and mobile allocations in the International Table of Allocations, and many commenters found this characteristic beneficial for development of mobile broadband services.⁷

B. The Commission Should Ensure That Any Reclaimed 2 GHz Spectrum is Reserved for Terrestrial Uses.

In light of the recognized need for additional mobile broadband spectrum and the established Commission policy in favor of moving spectrum to its highest and best uses, the Commission should move forward with proposals to transition 2 GHz MSS spectrum to terrestrial broadband uses. The NPRM proposes that in the event a 2 GHz MSS license is returned or cancelled, the spectrum covered by the license would not be made available for MSS, but would instead be used for terrestrial mobile broadband.⁸ AT&T and T-Mobile agreed with the NPRM's proposal "in light of the pressing need for additional mobile broadband capacity and the currently underdeveloped state of the 2 GHz MSS band"⁹ To be sure, TerreStar has used its S band spectrum to develop a very compelling MSS service. It recently launched its mobile satellite service in conjunction with the innovative GENUS device, a dual-mode satellite-enabled smartphone to be distributed in partnership with AT&T.¹⁰ This unique service allows customers to switch back and forth between AT&T's terrestrial cellular network and TerreStar's satellite communications network as needed, using a single dual-mode smartphone device. This new

⁷ *MSS NPRM & NOI*, ¶ 6. AT&T Comments at 6 (noting that any mobile broadband services eventually introduced in the band would be entitled to international interference protection and the other benefits of a primary allocation); Comments of the CDMA Development Group, ET Docket No. 10-142 at 4 (filed Sept. 15, 2010) ("CDMA Development Group Comments"); T-Mobile Comments at 3.

⁸ *MSS NPRM & NOI*, ¶¶ 14-15.

⁹ AT&T Comments at 6-7; T-Mobile Comments at 4.

¹⁰ See Press Release: *TerreStar GENUS™ Dual-Mode Cellular/Satellite Smartphone Now Available From AT&T*, AT&T Inc. (Sept. 21, 2010) available at <http://www.att.com/gen/press-room?pid=18505&cdvn=news&newsarticleid=31218>.

device offers a smaller form factor, greater functionality, and significantly lower cost than traditional satellite services previously offered. However, the other 2 GHz MSS band licensee does not yet offer any commercial services, and overall use of this band has been slow to develop as compared with other MSS bands..

Reserving any returned or canceled 2 GHz spectrum licenses for terrestrial use is also in line with established Commission policy as expressed in the National Broadband Plan, which identified MSS spectrum as a major source of new wireless spectrum to support broadband expansion,¹¹ and elsewhere. The Commission previously has indicated that it may choose to direct reclaimed 2 GHz spectrum to other uses, such as terrestrial wireless.¹² Indeed, the Commission did exactly that in the past when it reallocated the 1990-2000/2020-2025 MHz bands for Fixed and Mobile Advanced Wireless Services in the *Third AWS Order*.¹³ This spectrum had been a portion of the larger 2 GHz MSS allocation that was reclaimed for terrestrial use upon cancellation of certain MSS authorizations due to failure to meet implementation milestones. The Commission determined that if any additional MSS spectrum became available in the future, it would at that time “evaluate whether to redistribute such spectrum or make it available to new entrants.” Accordingly, redirecting forfeited 2 GHz spectrum to terrestrial use would be consistent with the Commission’s previously announced

¹¹ Connecting America: The National Broadband Plan, Recommendation 5.8.4, pp. 87-88 (2010) (“NBP”).

¹² See 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 Systems, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Order and Opinion*, ET Docket No. 00-258, 18 FCC Rcd 2223, 2239 ¶ 32 (2003) (“*Third AWS Order*”) (citing The Establishment of Policies and Service Rules in for the Mobile Satellite Service in the 2 GHz Band, *Report and Order*, IB Docket No. 99-81, 15 FCC Rcd 16127, 16138, ¶ 18).

¹³ *Id.*

policy. In light of the strong support across industries for expanding terrestrial use in the 2 GHz MSS band and the growing need for mobile broadband spectrum, the Commission should move forward with the NPRM's proposals for handling of reclaimed 2 GHz MSS spectrum.

III. PROMOTING UNFETTERED SECONDARY MARKETS FOR TERRESTRIAL RIGHTS TO THE MSS BANDS WAS UNIFORMLY SUPPORTED.

The NPRM's proposal to extend the Commission's secondary market rules to leases of terrestrial rights to the MSS spectrum was supported by every commenter that addressed the issue—both from within the satellite industry and outside it.¹⁴ The commenters generally agreed that facilitating these leases will promote broadband deployment and help to move spectrum to its highest and best use in the public interest. For example T-Mobile indicated that “[e]xtending the secondary markets regime would facilitate more intensive, efficient and innovative use of the currently underutilized MSS bands (especially the 2 GHz MSS band) by facilitating access to the bands by spectrum-constrained providers of mobile broadband services.”¹⁵ Many commenters also agreed with the Commission's rationale that applying these rules to the MSS bands will “provide greater regulatory predictability and parity” between spectrum bands.¹⁶ Indeed, as

¹⁴ See AT&T Comments at 7-8; Comments of the CDMA Development Group, ET Docket No. 10-142 at 5-6 (filed Sept. 15, 2010) (“CDG Comments”); Cricket Comments at 5-9; CTIA Comments at 11-12; EchoStar Comments at 5; Comments of Granite Telecommunications, LLC, ET Docket No. 10-142 at 9-10 (filed Sept. 15, 2010) (“Granite Comments”); Comments of Globalstar Inc., ET Docket No. 10-142 at 19-20 (filed Sept. 15, 2010) (“Globalstar Comments”); Inmarsat Comments at 8-10; Comments of LightSquared Subsidiary LLC, ET Docket No. 10-142 at 8-9 (filed Sept. 15, 2010) (“LightSquared Comments”); Comments of the Mobile Satellite Users Association, ET Docket No. 10-142 at 4 (filed Sept. 15, 2010) (“MSUA Comments”); Comments of the MSS ATC Coalition, ET Docket No. 10-142 at 13-14 (filed Sept. 15, 2010) (“MSS ATC Coalition Comments”); Comments of New DBSD Satellite Services G.P., ET Docket No. 10-142 at 8-12 (filed Sept. 15, 2010); Comments of T-Mobile at 4-5; Comments of the Telecommunications Industry Association, ET Docket No. 10-142 at 6 (filed Sept. 15, 2010) (“TIA Comments”); TerreStar Comments at 6-7; U.S. Cellular Comments at 4-5; Verizon Wireless Comments at 5-6.

¹⁵ T-Mobile Comments at 4; *see also, e.g.*, CTIA Comments at 11-12; New DBSD Comments at 8-9; Verizon Wireless Comments at 4-7.

¹⁶ *MSS NPRM & NOI* at ¶ 17

CTIA points out, MSS is already included under the definition of Commercial Mobile Radio Service (“CMRS”) under Part 20,¹⁷ and as such, it is logical for the Commission to treat this spectrum equally to the other CMRS bands for purposes of secondary markets.¹⁸ Moreover, various commenters pointed out that the proposal is consistent with the original purpose of the secondary markets rules of “eliminat[ing] regulatory barriers that hinder[] access to spectrum” and “promot[ing] more efficient use of spectrum.”¹⁹

Of course, as the Commission recognized in the NPRM,²⁰ under the secondary market rules in place today for other bands, MSS lessees would remain subject to the same conditions that apply to MSS license holders (e.g., lessees must offer an integrated MSS/ATC service²¹).

¹⁷ 47 C.F.R. § 20.9(a)(10).

¹⁸ See CTIA Comments at 12; see also CDG Comments at 5-6; Echostar Comments at 5; Verizon Wireless Comments at 6-7.

¹⁹ Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order*, 18 FCC Rcd. 20604 at ¶ 1 (2003); see also T-Mobile Comments at 5; see also Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 17503, 17506 ¶ 3 (2004) (secondary market transactions promote “the Commission’s major policy initiatives and public interest objectives, including [the Commission’s] efforts to encourage the development of broadband services for all Americans, promote increased facilities-based competition among service providers, enhance economic opportunities and access for the provision of communications services, and enable development of additional and innovative services in rural areas”); Cricket Comments at 8-9; New DBSD Comments at 9; T-Mobile Comments at 5.

²⁰ See *MSS NPRM & NOI* at n.56 (“Under these secondary market policies and rules, the service rules and policies applicable to the licensee under its license authorization—including all technical, interference, and operational rules—apply to the spectrum lessee as well.”) (*citing* Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604, ¶¶ 91-92 (2003)).

²¹ See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket Nos. 01-185, 02-364, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962, 1965 n.5 (2003) (“For example, even if an MSS licensee were to enter an agreement to lease some or all of the access to its authorized MSS spectrum to a terrestrial licensee, such spectrum could only be used if its usage met the requirements to ensure it remained ancillary to MSS and were used in conjunction with MSS operations, i.e., that it met all of our gating requirements. The purpose of our grant of

Indeed, the Commission already has applied this principle in the MSS context. In the recent order revoking the ATC authority of Globalstar—and consequently terminating the terrestrial operations of its lessee Open Range Communications over Globalstar’s S-Band spectrum—the Commission made clear that a lessee’s right to use MSS spectrum extends no further than the licensee’s rights. When Globalstar failed to meet the “gating criteria,” its ATC authority (and its lessee Open Range’s right to operate under that authority) was revoked.²²

The record also makes clear that the Commission should otherwise avoid adopting any restrictions that might limit participation in these secondary markets or otherwise detrimentally affect the value of this spectrum for the public. As numerous commenters explained, flexibility in crafting and executing secondary market transactions will be essential to promoting innovation and rapid deployment of terrestrial wireless broadband services.²³ As such, proposals to restrict the ability of MSS licensees to execute *de facto* transfer leases should be rejected.

ATC authority is to provide satellite licensees flexibility in providing satellite services that will benefit consumers, not to allow licensees to profit by selling access to their spectrum for a terrestrial-only service.”); *see also id.* at 1965 ¶ 1 (“We do not intend, nor will we permit, the terrestrial component to become a stand-alone service.”); Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185, *Memorandum Opinion and Order and Second Order on Reconsideration*, 20 FCC Rcd 4616, 4628 ¶ 33 (2005) (“We will not permit MSS/ATC operators to offer ATC-only subscriptions, because ATC systems would then be terrestrial mobile systems separate from their MSS systems. We therefore clarify that “integrated service” as used in this proceeding and required by 47 C.F.R. § 25.147(b)(4) forbids MSS/ATC operators from offering ATC only subscriptions.”).

²² *See* Globalstar Licensee LLC, IBFS File No. SAT-MOD-20091214-00152, *Order*, DA 10-1740 at 18-19 ¶¶ 46-47 (rel. Sept. 14, 2010) (noting that a lessee’s terrestrial use of MSS spectrum is “contingent upon [the MSS licensee] complying with all of the Commission’s requirements associated with the deployment of ATC,” and that “[the lessee] does not have any greater rights to use the spectrum than [the licensee] would have.”); *see also MSS NPRM & NOI* at 9 n.56 (“Under these secondary market policies and rules, the service rules and policies applicable to the licensee under its license authorization—including all technical, interference, and operational rules—apply to the spectrum lessee as well”); CDG Comments at 5; CTIA Comments at 12 n.42.

²³ *See, e.g.,* LightSquared Comments at 8-9; New DBSD Comments at 9-10.

IV. THE RECORD SUPPORTS AT&T'S CALL FOR COMPREHENSIVE AND HOLISTIC BAND PLANNING.

In its initial comments, AT&T called for the Commission to take a comprehensive and coordinated approach in identifying, allocating, and licensing new mobile broadband spectrum.²⁴ The record in this proceeding supports this recommendation as numerous commenters urged the Commission to consider its efforts to promote terrestrial use of the MSS spectrum in light of pending and potential broadband spectrum opportunities and to remain mindful of the synergies that may exist.²⁵

A. Any Spectrum Repurposing Must Produce Large Contiguous Blocks of Spectrum to be Useful for Mobile Broadband.

The Commission should take heed of commenters who warned against allowing the development of a fragmented reallocation process, which is unlikely to provide sufficient contiguous spectrum for effective deployment of mobile broadband.²⁶ CTIA warns that the Commission's proposal to allow 2 GHz licensees to enjoy increased operational flexibility on a portion of their spectrum if they voluntarily relinquish the rest "appears unlikely to lead to sufficient spectrum being reallocated and does not appear to be an effective means of promoting broadband deployment."²⁷ Verizon Wireless raises similar concerns regarding the Commission's incentive auction proposal. Verizon Wireless recommends that the Commission not allow 2 GHz MSS licensees to put only a portion of their spectrum up for bidding in an incentive

²⁴ See AT&T Comments at 15-17.

²⁵ See, e.g., CTIA Comments at 14 (calling for a comprehensive spectrum plan); T-Mobile Comments at 3 (noting proximity of 2 GHz MSS spectrum to PCS and AWS and noting potential for international harmonization).

²⁶ See CTIA Comments at 13-14; Verizon Wireless Comments at 8.

²⁷ CTIA Comments at 14.

auction,²⁸ cautioning that “[t]o allow otherwise could result in a piecemeal approach through which only small amounts of spectrum would be returned at any one time.”²⁹ Although AT&T supports further inquiry into both of these proposed mechanisms for transitioning the 2 GHz spectrum to terrestrial use, it concurs with CTIA and Verizon Wireless that the Commission must ensure that any repurposing results in sufficiently large blocks of contiguous spectrum to be useful for mobile broadband.

Fragmented spectrum allocations are not suitable to support advanced mobile broadband technologies. The Commission has repeatedly recognized that to achieve the higher speeds and capacities expected by mobile broadband consumers, larger spectrum allocations—of at least 20 MHz wide—are required.³⁰ This is particularly true, as CTIA explains, with respect to next generation air interfaces such as WiMAX, LTE, and LTE Advanced, which operate optimally in 10 MHz, 20 MHz, and 40 MHz channels respectively.³¹ For this reason, AT&T has consistently urged the Commission to make any new mobile broadband spectrum available in contiguous spectrum blocks of at least 20 MHz of paired spectrum.³² The Commission should not proceed

²⁸ Verizon Wireless Comments at 8.

²⁹ *Id.*

³⁰ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, 22 FCC Rcd 15289, ¶ 69 (2007) (“20-megahertz (or larger) spectrum blocks enable a broader range of broadband services (including Internet access at faster speeds), accommodate future higher data rates, and provide operators with additional capacity and, importantly, flexibility”); see also Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Order on Reconsideration*, 20 FCC Rcd 14058, 14066-67 ¶ 15 (same).

³¹ See CTIA Comments at 7 (*citing Mobile Broadband Spectrum Demand*, Rysavy Research, at 20 (Dec. 2008) available at http://www.rysavy.com/Articles/2008_12_Rysavy_Spectrum_Demand_.pdf).

³² See, e.g., AT&T Comments at 13-14; Comments of AT&T Inc., GN Docket Nos. 09-47, 09-51, 09-137 at 13 (filed Oct. 23, 2009).

with any incentive auction or other mechanism of repurposing MSS spectrum for mobile broadband unless in doing so it can make available sufficient spectrum to meet these demands.

B. Any Repurposing of MSS Spectrum Should Take Into Account Synergies with Other Bands Suitable for Mobile Broadband.

The Commission should attempt to identify and take advantage of beneficial synergies that might be possible through combining repurposed MSS spectrum with other available spectrum bands. Numerous commenters echoed AT&T's observation in its initial comments that the proximity of the 2 GHz MSS band to existing commercial mobile spectrum bands offers synergies that increase the spectrum's potential for mobile broadband use.³³ As T-Mobile explains, the 2 GHz MSS Band is directly adjacent to the AWS H and J Blocks and it is proximate to the broadband PCS bands, meaning that "the spectrum could be used easily by new or existing service providers to provide innovative terrestrial mobile broadband services, whether on a stand-alone basis or in conjunction with other AWS, PCS, or MSS ATC operations."³⁴ New DBSD urges the Commission to retain the AWS-2 J Block (2020-2025 MHz/2175-2180 MHz) as a paired band adjacent to the 2 GHz MSS band in order to take advantage of potential economies of scale and rapid deployments that could result from an integration of the two.³⁵ For its part, U.S. Cellular supports a pairing of the upper portion of the J Block with spectrum currently used by the Federal government in the 1700 MHz band, however it recommends that the Commission initiate a proceeding to identify the spectrum bands most suitable for pairing with repurposed 2 GHz MSS spectrum.³⁶

³³ See, e.g., CTIA Comments at 3; New DBSD Comments at 16-17; T-Mobile Comments at 3; U.S. Cellular Comments at 5-6.

³⁴ T-Mobile Comments at 3.

³⁵ New DBSD Comments at 16.

³⁶ U.S. Cellular Comments at 5-6.

AT&T agrees with the commenters that the Commission should consider how best to address the AWS H and J Blocks as it pursues any potential reallocation of 2 GHz MSS spectrum. Any comprehensive band plan must attempt to incorporate MSS spectrum, the unresolved AWS bands, and any spectrum repurposed from Federal or other users in a rational manner that maximizes the value of this scarce resource for the public interest and promotes efficiencies and economies of scale.

V. THE COMMISSION SHOULD REJECT CALLS FOR ANTICOMPETITIVE MARKET RESTRICTIONS

The Commission should reject the baseless and self-serving calls of a minority of commenters for anticompetitive intervention into newly-established spectrum markets. A few commenters seek to insulate themselves from competition through regulatory bars on participation by certain carriers in any new spectrum opportunities to arise from repurposed MSS spectrum.³⁷ These proposals are not supported by any legal foundation or record evidence of competitive harm. Moreover, these requests are inconsistent with the National Broadband Plan's goals of accommodating the explosive demand for mobile broadband services.

As AT&T previously has demonstrated, the market for mobile broadband is intensely competitive.³⁸ The Commission documented in its *Fourteenth Report* on mobile competition that over 98 percent of U.S. consumers have access to wireless broadband, and almost 75 percent can choose among at least three competitors.³⁹ Furthermore, the record reflects that the wireless

³⁷ See Cricket Comments at 9; Granite Comments at 9-10; U.S. Cellular Comments at 4-5.

³⁸ See, e.g., Comments of AT&T Inc., WT Docket No. 10-133 (filed July 30, 2010); Reply Comments of AT&T Inc., WT Docket No. 10-133 (filed Sept. 20, 2010).

³⁹ Fourteenth Report, 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, WT Docket No. 09-66, FCC 10-81 at Table 7 (rel. May 20, 2010).

market is open to new entry and expansion, with several regional providers adding new territories and entirely new providers emerging in recent years.⁴⁰ Robust competition is also fueling the transition to advanced wireless broadband networks, with 4G and other advanced technologies being adopted by carriers of all sizes.⁴¹ In this environment, the facts simply do not support regulatory intervention on competitive grounds.

Nevertheless, invoking the restrictions placed on AT&T and Verizon Wireless in the *Harbinger Order*,⁴² some commenters suggested that the Commission should restrict the ability of certain carriers to participate in incentive auctions or secondary market transactions related to terrestrial use of the MSS frequencies. For example, U.S. Cellular and Cricket called for Commission review and approval of secondary market transactions involving the two largest carriers.⁴³ Granite Telecommunications focuses exclusively on AT&T, calling for prior approval of any MSS leases the company might execute, as well as urging the Commission “to limit the eligibility of AT&T or any affiliate to acquire by lease or purchase any spectrum that may

⁴⁰ For example, Clearwire, which only began offering mobile wireless service two years ago, has now expanded in 54 markets coast-to-coast, serves approximately 62 million people, and has announced plans to expand to at least nine additional major metropolitan areas by the end of the year. See Press Release: *Clearwire Brings the Magic of CLEAR4G to Orlando*, Clearwire Corporation, Sept. 20, 2010 available at <http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=irol-newsArticle&ID=1472664>. In addition, as a result of the recent Harbinger/SkyTerra transaction, LightSquared plans to soon begin constructing an integrated satellite and 4G terrestrial network with the stated objective of providing nationwide service.

⁴¹ AT&T notes that Clearwire already has launched 4G WiMAX service, T-Mobile has deployed high-speed HSPA+ in many markets, and MetroPCS is the first carrier launch 4G service with an LTE-capable handset.

⁴² See Applications for Consent to Transfer Control of SkyTerra Subsidiary LLC, IB Docket No. 08-184, *Memorandum Opinion and order and Declaratory Ruling*, 25 FCC Rcd 3059, ¶ 72, and Attachment 2 (2010) (“*Harbinger Order*”).

⁴³ U.S. Cellular Comments at 4; Cricket Comments at 9.

become available for terrestrial broadband use as a result of the cancellation, surrender or other disposition of MSS licenses.”⁴⁴

These arguments, none of which address the realities of the wireless marketplace, are transparently self-serving attempts to game the regulatory process to protect individual carriers from competition, at the expense of consumers. The Commission long ago rejected the sort of arbitrary and inflexible spectrum caps commenters propose to reinstitute in favor of a transaction-specific, fact-based, market-by-market approach.⁴⁵ But in this case, no transaction has been proposed and there is no evidence of competitive harm in the records of the Harbinger proceeding or here that would support such competition-killing regulatory interventions. If competitive harm were to arise in the context of an actual transaction, the Commission has tools to address it and impose appropriate remedies, including denying the application or conditioning approval on one or more divestitures designed to remedy the potential harm. The Commission has established processes for analyzing potential competitive harm, which it utilizes in auction long form review, secondary market transactions and transfers of control.⁴⁶ These analyses

⁴⁴ Granite Comments at 10.

⁴⁵ See 2000 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, FCC 01-328, *Report and Order* (2001).

⁴⁶ See, e.g., Union Telephone Company and Celco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction No. 73, ULS File Nos. 0003371176, 0003382435, 0003383444 (rel. Nov. 13, 2008) at ¶ 9; AT&T Mobility Spectrum, LLC Application for 700 MHz Band Licenses, Auction No. 73, ULS File No. 0003382436 (rel. Dec. 31, 2008) (noting the Commission “intends to apply its standard competitive analysis prospectively to spectrum acquired via auction as well as via transactions”); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503 (2004) (adopting rules providing for streamlined review of many secondary market transactions based upon a specific set of generally applicable criteria); Applications of AT&T and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13931 ¶ 34 (2009) (explaining the Commission’s general competitive analysis for transfers of wireless licenses).

properly consider factors relevant to competition, such as market share (determined with respect to relevant geographic and product markets) and spectrum holdings, in the context of the facts of the transaction. Uniform application of these standards to proposed leases and transfers (and to all market participants) is the appropriate way for the Commission to handle secondary market transactions, rather than through arbitrary, company-specific exclusions or restrictions lacking any factual, legal, or economic basis. Indeed, when, in the *Harbinger* order, the Commission departed from its practice of even-handed transaction-specific analysis, in favor of arbitrarily restricting some competitors' access to spectrum (without any competitive analysis whatsoever), it was, not surprisingly, roundly criticized by several members of Congress, including the House Committee on Oversight and Governmental Reform.⁴⁷

Finally, these requests to limit access to spectrum are directly contrary to the goals of this proceeding and the National Broadband Plan. The National Broadband Plan set a goal of identifying 500 MHz of additional spectrum to accommodate the anticipated surge in demand for mobile broadband services. The Commission's secondary markets and auction policies are based upon a policy judgment that competitive forces will drive spectrum to its highest and best use. To arbitrarily limit the potential growth of some mobile broadband providers, particularly those who serve the most customers, by preventing them from obtaining access to sufficient spectrum to meet burgeoning consumer demand, would be antithetical to these purposes. Rather, the Commission should continue to pursue its National Broadband Plan goals of making

⁴⁷ See Letter from Senators Kay Bailey Hutchison, Jim DeMint, David Vitter, and Sam Brownback to the Honorable Julius Genachowski, Chairman, Federal Communications Commission (April 21, 2010) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298311A2.pdf; Letter from Representative Edolphus Towns, Chairman, House of Representatives Committee on Oversight and Government Reform, to the Honorable Julius Genachowski, Chairman, Federal Communications Commission (May 20, 2010) *available at* <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020912125>.

sufficient spectrum available to accommodate demand, and use open auctions and secondary market transactions to ensure that spectrum is put to its best and highest use. For these reasons, the Commission should reject these calls to place anticompetitive barriers in the way of certain carriers, and, moreover, should promptly grant AT&T's Petition for Reconsideration of the *Harbinger Order*.⁴⁸

⁴⁸ See Petition for Reconsideration of AT&T Inc., IB Docket No. 08-184 (filed Mar. 31, 2010). As explained in the Petition for Reconsideration, the Commission's decision was not supported by any record evidence of competitive harm and thus was unjustified. Moreover, the Commission acted in violation of the Administrative Procedure Act and fundamental notions of Due Process when it singled out two carriers who were not parties to the transaction for punitive treatment without proper notice or opportunity to respond.

VI. CONCLUSION

The record in the this proceeding demonstrates that there is widespread support across industries for the Commission's proposals to take steps to expand terrestrial use of the 2 GHz MSS band and to apply its secondary markets rules to leases of terrestrial rights to the MSS bands. Moreover, commenters also make clear that the Commission should continue to take additional steps to promote efficient use of the MSS frequency bands. In doing so the Commission should take steps to address all of its pending and planned spectrum proceedings in the context of a comprehensive and strategic band plan. Moreover, in pursuing its spectrum agenda, the Commission must ensure that the emerging market for terrestrial use of the MSS spectrum remains open, fair, and free of unnecessary anticompetitive regulatory restrictions.

Respectfully submitted,

AT&T Inc.

By: /s/ Michael P. Goggin

Paul K. Mancini
Gary L. Phillips
Michael P. Goggin
AT&T Inc.
1120 20th Street, N.W.
Washington, DC 20036
202-457-2055
Counsel for AT&T Inc.

September 30, 2010