



***advocate for rural wireless telecommunications providers
Washington, DC***

January 21, 2011

Via Electronic Filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition for Rulemaking to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz (RM No. 11498)

Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers (RM No. 11497)

Petition for Rulemaking Regarding 700 MHz Band Mobile Equipment Design and Procurement Practices (RM No. 11592)

In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services (WT Docket No. 05-265)

Dear Ms. Dortch:

The Rural Telecommunications Group, Inc. ("RTG") submits these comments to remind the Federal Communications Commission ("FCC" or "Commission") of the need for action in the above-referenced proceedings to ensure a competitive environment for consumers of commercial mobile radio services in rural areas of this country.

Respectfully submitted,

Rural Telecommunications Group, Inc.

/s/ Daryl A. Zakov

By:

Daryl A. Zakov
Regulatory Counsel

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
New Cingular Wireless PCS, LLC and)
D&E Investments, Inc. Seek FCC Consent) ULS File No. 0004448347
to the Assignment of Lower 700 MHz)
Band Licenses)

To: The Commission

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys, hereby submits comments on the proposed transfer of 700 MHz licenses from D&E Investments, Inc. (“D&E”), a wholly-owned subsidiary of Windstream Corporation (“Windstream”), to New Cingular Wireless PCS, LLC (“New Cingular”), a wholly-owned subsidiary of AT&T Inc.¹ The proposed transaction does not serve the public interest and, absent AT&T relinquishment of additional 700 MHz licenses as discussed below, should be denied.

I. INTRODUCTION

AT&T seeks the Federal Communications Commission’s (“FCC” or “Commission”) consent to purchase from Windstream all of its Lower 700 MHz Band C Block licenses in six rural Pennsylvania markets.² Specifically, each of these six Cellular Market Areas (CMAs) consists of one county each: Berks, Blair, Centre, Lancaster, Lebanon and Lycoming Counties. In its description of the proposed transaction, AT&T argues that not only will the deal culminate

¹ “New Cingular Wireless PCS, LLC and D&E Investments, Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Band Licenses,” Public Notice, DA 11-10 (released January 5, 2011) (“*Public Notice*”).

² CMA 105 (Lancaster, PA), CMA 118 (Reading, PA), CMA 225 (Altoona, PA), CMA 251 (Williamsport, PA), CMA 259 (State College, PA) and CMA Pennsylvania-12 (Lebanon, PA).

in “several public interest benefits,” including “greater operational efficiencies” for AT&T³, but perhaps more surprisingly that the deal “will have no adverse competitive effects” nor will it cause “an aggregation of spectrum that would pose an anticompetitive risk nor reduce actual competition in any meaningful way.”

RTG strenuously disagrees with AT&T’s blanket assertion that competition will “enhance” after the deal closes and that the public interest will be served. On the contrary, were AT&T to add to its Lower 700 MHz Band spectrum holdings, it would severely impact the potential for industrywide LTE device interoperability, drastically reduce the number of potential roaming partners for rural carriers and the rural consumers they serve, and further consolidate the already scarce amount of spectrum below 2.3 GHz into the hands of the nation’s second largest mobile operator while simultaneously removing yet another potential competitor in rural markets that are already heavily-consolidated. If the Commission approves this transaction, AT&T and Verizon Wireless will hold all of the paired spectrum in half of the markets being acquired in the highly-sought “beachfront” Cellular and 700 MHz bands. This transaction is further proof of a mobile wireless marketplace slowly devolving into a duopoly at the expense of rural mobile consumers.⁴

³ While RTG concedes that any company (not just AT&T) adding more bandwidth to its coffers will always improve operational efficiencies, those benefits are enjoyed solely by the acquiring company, and do not by themselves serve the public interest.

⁴ See, e.g., *In re Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seeking FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT 09-104; *In re Applications of AT&T Inc. and Centennial Communications Corp. Seeking FCC Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations*, WT 08-246; *In re Applications of Atlantis Holdings LLC, Transferor, and Cellco Partnership D/B/A Verizon Wireless, Transferee*, WT 08-95; *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling that the Transaction Is Consistent with Section 310 (b)(4)*, File Nos. 0003155487, et al., WT Docket No. 07-208; *In re Applications of AT&T Inc. and Dobson Communications Corporation Seeking FCC Consent to Transfer Control of Licenses and Authorizations*, WT 07-153; *In re Applications of Western Wireless Corporation. and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 05-50; *In re Applications of Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the Assignment of Sixty-Two Broadband Personal Communications Services Licenses*, WT Docket No.

RTG requests that the Commission deny approval of this transaction unless and until the FCC grants approval of another proposed transaction, the one between AT&T and Qualcomm Inc., which includes Lower 700 MHz Band C and D Block licenses in all six of the target markets.⁵ However, should the Commission approve the proposed AT&T-Windstream transaction, it should do so only in those markets where, post-transaction, AT&T will control less than 110 megahertz of total spectrum below 2.3 GHz while also imposing specific conditions on AT&T that allow for data roaming, device interoperability and a prohibition on exclusivity agreements between carriers and device manufacturers.

II. THE PROPOSED TRANSACTION IS ANTICOMPETITIVE AND AGAINST THE PUBLIC INTEREST.

Earlier this month, FCC Chairman Julius Genachowski astutely remarked that “the future success of [the wireless] industry *and* our innovation future depends on whether our government acts quickly to unleash more spectrum – the oxygen that sustains our mobile devices.” He went on to add that the U.S. “must empower consumers and entrepreneurs by driving widespread adoption of mobile broadband, and promoting competition” if we as a country are to succeed.⁶ While the FCC has outlined a general plan to re-appropriate and subsequently auction at least 500 megahertz of additional spectrum over the next decade to meet the needs of mobile broadband, no actual spectrum targeted for mobile wireless carries has been “unleashed” since the release of the *National Broadband Plan*.⁷ Until Americans see any appreciable increase in

04-264; *In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70.

⁵ <http://www.qualcomm.com/news/releases/2010/12/20/att-agrees-acquire-wireless-spectrum-qualcomm>.

⁶ Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, 2011 International Consumer Electronics Show, Las Vegas, NV (January 7, 2011).

⁷ *In the Matter of A National Broadband Plan for Our Future*, Connecting America: The National Broadband Plan, GN Docket No. 09-51 (released March 16, 2010) at 75.

the overall amount of usable spectrum available for mobile broadband, that spectrum which has already been licensed should not be further aggregated into the hands of fewer and fewer mobile wireless operators and simultaneously eroding *actual* marketplace competition. Furthermore, the grant of these specific licenses to AT&T, which already controls approximately 30% of the mobile wireless marketplace⁸, should be postponed unless and until the proposed AT&T- Qualcomm transaction involving Lower 700 MHz Band Block D and E licenses across vast portions of the United States is approved.⁹

The issue of excessive spectrum aggregation is not new to the Commission. In 2008, RTG filed, and the FCC opened up for comment, a petition for rulemaking seeking to impose a spectrum aggregation limit on all commercial terrestrial wireless spectrum below 2.3 GHz.¹⁰ Since that time, the Commission has taken no further action toward reinstating a hard “cap” on the amount of spectrum a single operator can control in a given market. While RTG, its carrier members, and most importantly all mobile consumers in the U.S. wait anxiously for additional spectrum to be unleashed for mobile broadband, the imposition of a per-market spectrum cap of 110 megahertz per carrier below 2.3 GHz will provide a practical and reasonable means to prevent hyper-aggregation of valuable spectrum, especially those “beachfront” Cellular and 700 MHz bands most suitable for 3G and 4G mobile broadband.

If the Commission approves this transaction, it should, in addition to limiting the markets where AT&T may hold the subject licenses as discussed above, impose three specific conditions

⁸ http://www.rcrwireless.com/ARTICLE/20100810/WIRELESS_FACTS_AND_FIGURES/100819993/report-att-mobility-to-surpass-verizon-wireless-as-top-carrier-in.

⁹ See generally License Application 0004566825 (filed January 13, 2011).

¹⁰ *In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, Petition for Rulemaking, RM 11498 (filed July 16, 2008).

to ensure consumer choice and marketplace competition. First, any grant of licenses must include a requirement that all devices technologically compatible with the Lower 700 MHz Band work on all frequencies within that band. Second, all device manufacturers and carriers must be prohibited from entering into exclusivity agreements which effectively deny consumers the ability to purchase highly sought after mobile broadband devices and smartphones and use them on the mobile carrier of their choice. Third, in exchange for AT&T and Verizon Wireless gaining control of all, or nearly all, of the spectrum in the Cellular and Lower 700 MHz Bands in these markets, the Commission must extend existing automatic roaming obligations to data services so that mobile consumers have the ability to roam outside of their carrier's native network and enjoy 3G and 4G services without purchasing a second device or being forced to initiate service on a nationwide mobile operator such as AT&T or Verizon Wireless.

Numerous small carriers and the associations that represent them have backed a petition for rulemaking requesting that all technologically-compatible devices intended for use on the Lower 700 MHz Band be able to function on each frequency block within that band.¹¹ Were AT&T to acquire both the Qualcomm licenses and the Windstream licenses in the C, D and E Blocks, it would undermine AT&T's current position in that proceeding that Lower 700 MHz Band device interoperability is somehow harmful to the industry and consumers. In all six of the affected markets, AT&T will be forced to use LTE mobile devices that work outside of the Band Class 17 it sponsored and pushed so heavily. Rather than allow AT&T and Verizon Wireless to custom create 3GPP band classes that cherry-pick the Lower 700 MHz blocks of their choosing for the sole benefit of AT&T and Verizon Wireless customers, it would be more reasonable and efficient to require that all technologically-compatible devices designed for use on the Lower

¹¹ See generally *In the Matter of Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, Petition for Rulemaking, RM 11592.

700 MHz Band work on all frequency blocks within that band. This condition seems all the more necessary when one considers that in at least three of the proposed markets under consideration in this transaction AT&T and Verizon Wireless will control *all* of the paired spectrum in the Lower 700 MHz band!

The Commission should also reexamine the matter of exclusivity agreements between device manufacturers and mobile wireless operators. Many American consumers, even to this day, are denied the ability to purchase the mobile device of their choosing and pair it with the service provider of their choosing -- solely because a consumer's mobile carrier of choice is contractually prohibited from purchasing specific mobile devices subject to exclusivity agreements. This scenario does nothing but impinge upon consumer free will and choice. When this predicament is compounded at the macro level with the methodical removal of potential retail competitors to those large mobile carriers already entering into exclusivity agreements with device manufacturers, what we see is a more rapid erosion of marketplace competition. Should the FCC approve the grant of licenses requested in this application it should condition that grant with a requirement that prohibits mobile operators and mobile device manufactures from entering into exclusivity agreements. This is a position supported by dozens of small, rural and regional mobile carriers and the millions of customers they serve.¹²

In order for the public to reap the full benefits of AT&T's proposed acquisition of yet even more spectrum in rural Pennsylvania, it is not enough that mobile consumers have the unfettered ability to purchase LTE devices of their choosing which are capable of working throughout the Lower 700 MHz Band. Also required is the extension of automatic roaming obligations to data services so that AT&T's roaming partners, and more specifically the tens of

¹² See generally *In the Matter of the Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements between Commercial Wireless Carriers and Handset Manufacturers*, RM 11497.

millions of customers they serve, can access 4G (LTE) services when outside of their home carrier's network footprint. For years RTG has reminded the Commission that most mobile carriers do not have a nationwide network let alone the licenses to construct such a network. Yet American consumers over the last two decades have come to expect that their mobile devices (regardless of whether they are using voice and data services) will work anywhere there is mobile coverage. This represents a huge disconnect.

For companies like AT&T and Verizon Wireless, which were fortunate enough to start with initially large native networks and then grow those even further into truly nationwide networks, today there is little if any need for domestic roaming partners. Both of those companies grew into what they are today on the backs of small and rural carriers. With their vast marketing capital they advertised nationwide coverage, utilized rural roaming coverage offered by RTG members and other similarly situated small and rural carriers, and then selectively over-built that rural roaming coverage. Unfortunately, in the year 2011, small and rural carriers do not have the same luxury. Not only is there a dearth of new spectrum preventing more carriers from becoming "nationwide," but those carriers like AT&T which have already achieved nationwide status are doing everything in their power to prevent carriers without access to spectrum outside their licensed markets from establishing fair 3G and 4G data roaming agreements so that these carriers can offer consumers a competitive choice.¹³ Should this transaction be approved by the Commission, AT&T and Verizon Wireless will control 100% of the paired spectrum in the prized Cellular and 700 MHz bands for three CMAs. Without data roaming obligations placed on carriers, transactions such as this will effectively shut out those carriers without licenses from offering nationwide 3G and 4G services, which will further

¹³ See generally *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265.

enhance the service offering of nationwide network owners and licensees over those of smaller companies in the eyes of consumers.

III. CONCLUSION

The threat of excessive market concentration and the corresponding removal of yet another potential competitor to AT&T is antithetical to the public interest. Before the Commission takes any action on the proposed transaction between AT&T and Windstream it must first do a comprehensive review of the much larger AT&T-Qualcomm proposed transaction. Should the Commission grant the licenses, it should only do so where no licensee, post-transaction, controls more than 110 megahertz below 2.3 GHz. Additionally, any grant of licenses should be accompanied with conditions that (1) prohibit the continued use of exclusivity agreements between carriers and device manufacturers, (2) require all devices in the Lower 700 MHz Band to be fully interoperable on all blocks within that band, and (3) extend automatic roaming obligations to data services.

Respectfully submitted,

RURAL TELECOMMUNICATIONS GROUP, INC.

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January 19, 2011

CERTIFICATE OF SERVICE

I, Robert A. Silverman, of Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814, hereby certify that a copy of the foregoing Comments of the Rural Telecommunications Group, Inc. was served on this 19th day of January 2011 on those listed below as follows:

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/s/ Robert A. Silverman

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