

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

In the Matter of)
)
AT&T Mobility Spectrum LLC and) WT Docket No. 11-18
Qualcomm Incorporated Seek FCC) DA 11-252
Consent to the Assignment of) ULS No. 0004566825 (lead)

REPLY OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation (“USCC”) hereby replies to the *Joint Opposition* filed by AT&T Mobility Spectrum LLC (“AT&T”) and Qualcomm Incorporated (collectively, the “Applicants”) on March 21, 2011 in the above-captioned proceeding. On March 11, 2011, USCC filed a *Petition for Conditional Grant* requesting that the Commission impose a condition subjecting AT&T’s operations under these licenses to the power and antenna height limits set forth in Section 27.50(c), excluding 27.50(c)(7), of the Commission’s rules. This narrowly-tailored condition would create a significant public interest benefit by reducing the interference impact to operations in the Lower 700 MHz A, B and C blocks, and thereby provide for the orderly and efficient deployment of advanced broadband services in this spectrum.¹ In its application, AT&T stated that it would operate only with low power and antenna height.²

¹ Other petitioners requested an identical condition. See King Street Wireless, L.P., *Petition to Condition Grant of Application*, p. 4 (Mar. 11, 2011) (“It is not complex, or even difficult, to fashion a remedy that requires AT&T to adhere to its word. With respect to permissible height and power, the Commission need only mandate compliance with existing Section 27.50(c), excluding Subsection 27.50(c)(7).”); Rural Cellular Ass’n, *Petition to Deny*, p. 12 (Mar. 11, 2011) (“[T]he Commission should harmonize the technical specifications and operating parameters of the assigned spectrum to be consistent with those in the Lower A and B blocks.”).

² See *Application of AT&T Mobility Spectrum, LLC and Qualcomm Inc. for Consent to Assignment of Lower 700 MHz Band Licenses*, WT Docket No. 11-18, Declaration of Kristen S. Rinne, ¶18 (Jan. 13, 2011) (“*Rinne Decl.*”) (“[I]f the Lower 700 MHz D and E block spectrum is integrated into AT&T’s LTE network and used for supplemental downlink, transmitters using the spectrum will be deployed closer to the ground and at power levels much lower than those permitted under the Commission’s rules for broadcast-type services . . .”).

USCC's proposed condition, therefore, would simply provide the necessary detail, and create an enforceable obligation, for AT&T's already-expressed intent.

Before granting an assignment, the Commission must determine whether an applicant has demonstrated that the proposed assignment will serve the public interest, convenience, and necessity.³ In making this determination, the Commission employs a balancing test that weighs the potential public interest harms of the proposed transaction against the potential public interest benefits.⁴ Under this test, an applicant bears the burden of proving, by a preponderance of the evidence, that the proposed assignment, on balance, will serve the public interest.⁵ In attempting to meet this burden, an applicant may only rely upon a claimed benefit that is "verifiable."⁶

In its application, AT&T claimed that its planned low power, low height operations will create a public interest benefit because these operating parameters will mitigate interference into the Lower 700 MHz A block.⁷ However, AT&T has failed to provide any details regarding its intended operations, let alone provide sufficient evidence to support this public benefit claim. AT&T, therefore, has failed to set forth a "verifiable" public benefit upon which it can rely in attempting to meet its burden of proof. Moreover, in the *Joint Opposition*, rather than reconfirm its intent to operate only with low power and height, AT&T rejected USCC's proposed condition outright, contending that the condition is unrelated to the transaction and, contrary to the claim

³ 47 U.S.C. §310(d). In doing so, the Commission considers the application as if the proposed assignee is applying for the license directly under Section 308 of the Communications Act. *Id.*

⁴ See *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent to Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Agreement*, WT Docket No. 08-246, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8716, ¶ 22 (2010) ("AT&T-Cellco Order").

⁵ See *Applications of AT&T Inc. 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, 13927 ¶ 27 (2009) ("AT&T-Centennial Order").

⁶ *AT&T-Cellco Order*, 25 FCC Rcd at 8737, ¶ 75 (Applicants "are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.").

⁷ See *Rinne Decl.* at ¶ 18 ("This substantial reduction in transmission power on the Lower 700 MHz D and E blocks will mitigate interference into the Lower 700 MHz A block receive band, thereby advancing the public interest.").

AT&T made in the application, that it would harm the public interest.⁸ In fact, the *Joint Opposition* makes no mention of this previously-claimed public interest benefit. Accordingly, the Applicants cannot receive any credit for this alleged public interest benefit.

Finally, contrary to the Applicants' claims, the Commission has the authority to impose USCC's proposed condition because the unreasonable interference that AT&T otherwise could cause to Lower A, B and C block licensees is directly related to its acquisition of this spectrum. In addition, because of the potential for significant interference to other licensees, the harmonization of the 700 MHz power and height limits cannot be delayed indefinitely, until the possible completion of a rulemaking proceeding.⁹ Moreover, because of its "broad" public interest authority, "the Commission has generally imposed conditions to remedy specific harms likely to arise from the transaction or to help ensure the realization of potential benefits promised for the transaction."¹⁰ Here, absent the proposed condition, a specific harm likely to arise from the transaction is unreasonable interference to Lower A, B and C block licensees. In addition, USCC's proposed condition would ensure the realization of the public interest benefit promised by AT&T in its application.

By conditioning the grant to make clear that AT&T may not implement high power, high height broadcast-style operations in the Lower 700 MHz D and E blocks, the Commission would be taking a significant step to encourage advanced mobile broadband deployment in the Lower

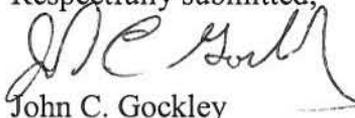
⁸ See *Joint Opposition*, pp. 28-33. Apparently, rather than consider the interference potential to non-AT&T customers, the only potential harms AT&T takes into account are its own. *Id.* at 33; see Rural Telecommunications Group, Inc., *Petition to Deny*, p. 5 (Mar. 11, 2011) ("[T]he 'public interest' that AT&T wishes to improve is primarily its own interest.").

⁹ See Cellular South, Inc., *Petition to Deny*, p. 3 ("[T]he relative urgency of a decision on the anticompetitive effects of an authorization is a 'thoroughly appropriate factor for [the Commission] to consider when crafting its procedures.'") (quoting *U.S. v. FCC*, 652 F.2d 72, 96 (D.C. Cir. 1980)).

¹⁰ *AT&T-Cellco Order*, 25 FCC Rcd at 8718, ¶ 25; see Cellular South, Inc., *Petition to Deny*, pp. 7, 11 ("In §310(d) adjudications, the Commission routinely consents to assignments and transfers of control of licensees subject to conditions, including conditions with little, if any, direct relation to the actual license transfers before it.") (internal citations and quotations omitted).

700 MHz spectrum. In contrast, absent this condition, the proposed assignment poses significant interference issues, and thus cannot be granted as it would harm the public interest in violation of the Communications Act.

Respectfully submitted,



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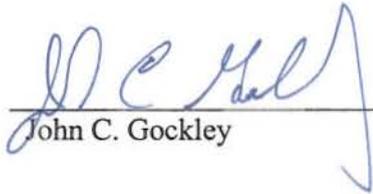
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