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November 18, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WT Docket No. 11-18
File No. 0004566825
WT Docket No. 09-66

Dear Madam Secretary:

Yesterday, Allison Cryor DiNardo and the undersigned, all representing King Street Wireless, L.P., met with Rick Kaplan, Jim Schlichting and Nicole McGinnis of the Wireless Telecommunications Bureau and discussed matters addressed in the enclosed.

We urged that the Commission grant the subject application subject to the conditions requested in the enclosed Petition to Condition Grant of Application, for the reasons set forth in the petition and the enclosed single-page handout for the reasons set forth in the enclosed. (We also discussed other issues not involved in the referenced proceedings, for which no ex parte is being submitted.)

Very truly yours,

/s/ Thomas Gutierrez
Counsel for 700 MHz, LLC

Enclosure

cc: Richard Kaplan
James Schlichting
Nicole McGinnis

WIRELESS TELECOMMUNICATIONS BUREAU MEETING

I. INTEROPERABILITY

- A. Without it, there will not be competitive 700 MHz broadband offerings -- period.
- B. Without it, the FCC's data roaming rules have no relevance to 700 MHz. It would be as if the Commission determined not to have data roaming for 700 MHz.
- C. Without it, King Street's 700 MHz buildouts will be of limited utility.
- D. KSW is building in two ways: (1) LTE and (2) fixed service.
- E. LTE – will not be 4G outside of KSW markets. This will put KSW at a marketing and competitive disadvantage to AT&T and VZ.
- F. Fixed service builds: Have some, but limited, commercial utility.
- G. Yes, A Block licensees knew of Channel 51 interference, but no, they did not know, and cannot have reasonably been expected to know of, the Band 17 issue.

II. THE NEED FOR AT&T TO USE THE QUALCOMM SPECTRUM AS IT OFFICIALLY REQUESTED

- A. Low power usage serves to avoid interference, from D Block to Block A.
- B. All that is being requested is that AT&T does what they have already told the Commission, under penalty of perjury, that they would do.
- C. The Commission can grant an application only if grant would serve the public interest. The only even-arguable public interest showing in the AT&T/Qualcomm transaction involves use of the spectrum in a low power manner.

III. POSSIBLE SANCTIONS FOR FAILURE TO MEET THE FOUR YEAR EXTENSION BUILD OBLIGATION

- A. KSW does not expect to need to file for any extensions. Of KSW's 152 licensed areas, KSW anticipates that fully one-half to two-thirds will be built to four-year standards by the end of this year, which is the two year anniversary for KSW's license grants.
- B. Yet, both as a matter of sound practice and of fiscal responsibility, KSW is appreciative that a PN clarifying this matter may soon be released.
- C. KSW is building its markets on a market-by-market basis. Generally, KSW builds each one to comply with the Commission's benchmarks. This way KSW can, and almost assuredly will, construct far more, and far more quickly, than any other 700 MHz licensee. Yet, there could be some large or marginal markets where KSW will have done nothing at the four year date, only because it has focused on completing construction in multiple other markets.
- D. To the extent the Commission grants any guidance regarding when discretionary sanctions are to be applied, it likely will seek a demonstration of effort applied towards construction. KSW urges the Commission to consider the totality of the circumstances when gauging such effort. And the gauge should reflect all that the licensee has done with respect to all of its 700 MHz licenses not just what it has done in a particular market.

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

In re Application of)	
)	
QUALCOMM, INC.)	
)	
And)	WT Docket No. 11-18
)	
AT&T MOBILITY SPECTRUM, LLC)	File No. 0004566825
)	
to Assign for Consent Eleven 700 MHz Band)	
Licenses)	

PETITION TO CONDITION GRANT OF APPLICATION

King Street Wireless, L.P. (“King Street”) by counsel and pursuant to the Commission’s Public Notice of February 9, 2011, DA 11-252 (the “Public Notice”) hereby submits its Petition to Condition Grant of Application (“Petition”) in the captioned proceeding.¹

I. DISCUSSION

AT&T Mobility Spectrum LLC (“AT&T”) and Qualcomm Incorporated (“Qualcomm”) (collectively, AT&T & Qualcomm are the “Parties”) have submitted an application (the “Application”) seeking consent to the assignment of six 700 MHz D Block and five 700 MHz E Block licenses (the “Spectrum”), from Qualcomm to AT&T. By its Public Notice, the Commission invited comment on the Application.

The Public Notice provides that:

¹ This Petition is also submitted pursuant to 47 U.S.C. § 309(d)(1) and 47 C.F.R. § 1.939(a)(2). King Street holds 700 MHz licenses in 152 markets, all of which overlap part of the nationwide D Block license here at issue. Of those licenses, 25 are A Block licenses that are particularly impacted by the transaction included in the Application. King Street’s ability to compete through use of those licenses, and thereby serve the public, will be impacted by Commission action on the subject application. Accordingly, it is beyond question that King Street has standing to file this Petition. See, e.g. Sanders Brothers Radio Station, 309 U.S. 470 (1940); WLVA, Inc. v. FCC, 459 2F.2d 1286 (D.C. Cir. 1972) and their progeny.

The Applicants state that this transaction will enable AT&T to repurpose Qualcomm's underutilized Lower 700 MHz D and E Block spectrum for the implementation of cutting-edge broadband services that are most demanded by customers. The Applicants state that AT&T plans to use supplemental downlink technology (also referred to as carrier aggregation technology) to couple this unpaired spectrum with paired spectrum that AT&T already holds. Once compatible handsets and network equipment are developed, this will, according to the Applicants, allow AT&T to provide a more robust wireless broadband service over its new LTE network.

Public Notice, at 1.

King Street's reading of the Application is consistent with the Commission's reading. See, e.g., Application, Exhibit 1, at ii, where the Parties commit that AT&T will employ what they characterize as "an innovative new technology entitled supplemental downlink to integrate this spectrum into its LTE network", and that "[s]upplemental downlink will make it possible to bond the unpaired Qualcomm spectrum with the paired spectrum AT&T uses in its LTE network". *Id.* Significantly, the Parties committed that the pairing will not involve 700 MHz B Block or C Block spectrum. *Id.*, at 16. The Parties also committed to establish guard bands of either 2 MHz or 1 MHz, depending on the amount of spectrum being assigned in any given market.

The Parties presented in their Application at least two very different types of information. On the one hand, they submitted the fact-based information such as the above, where they committed to the Commission that, if the Application is granted, the Spectrum will be used in a particular way. They also provided information that is more advocate-oriented by which argument was made regarding why grant of the Application would not be contrary to the Act² or to the Commission's rules. These arguments addressed whether the assignment would enhance competition; whether the assignment would bring into issue the Commission's spectrum

² The Communications Act of 1934, as amended, 47 U.S.C. §1 et. al.

aggregation screen, either in total or for spectrum below 1 GHz; and generally whether the public interest would be served by grant of the application.

II. RELIEF REQUESTED

King Street does not agree with many of the Parties' assertions regarding compliance with Commission rules and screens, or with the claimed public interest benefits. Moreover, King Street reminds the Commission that one and one-half years ago the 700 MHz Block A Good Faith Purchasers Alliance (of which King Street is a member) pointed out the inappropriateness of certain of AT&T's actions involving the 700 MHz band generally. Yet, King Street does not urge denial of the Application. Rather, it here only urges that the Commission protect and advance the public interest by including the following conditions on any grant that it may render in this proceeding.

A. The Commission Must Expressly Condition Any Grant of the Subject Application on AT&T's Absolute Compliance with the Statements and Commitments that the Parties Themselves Affirmatively Included in the Application

First, King Street simply urges the Commission to condition any action on the subject Application to require that, if the requested consent is provided, AT&T must do what the Parties have already told the Commission (under penalty of perjury)³ that AT&T would do – i.e., use any spectrum that is assigned pursuant to the subject proceeding as a supplement to its LTE operations that are being conducted in other, non-700 MHz bands. This is hardly a radical request. The Parties' assertions regarding public interest benefits associated with grant of the Application depend entirely on the assertions that the Parties provided in their Application. In other words, the Parties' entire argument regarding public interest benefits of Application grant is reliant on AT&T doing what the Parties have already promised, and unless they live up to their

³ See FCC Form 603, page 7 (February 2008 ed) explaining that “[w]illful false statements made on this form or any attachments are punishable by fine or imprisonment”, citing 18 USC Sec. 1001.

word there is no public interest benefit that permits grant of the Application. Moreover, by signing the Application the Parties have already sworn to the accuracy of their statements regarding what AT&T will do. Significantly, the Commission has frequently conditioned numerous other consents on compliance by applicants with pledges included in their Applications.⁴ In each instance, as is the case here, the conditions were narrowly tailored to prevent a transaction-specific harm.

That AT&T be made to comply with the commitments that it set forth voluntarily in its application is critical to other 700 MHz licensees, such as King Street. This is because the use to which the spectrum at issue will be put will impact significantly on interference, competition and coordination issues involving other 700 MHz spectrum, including that licensed to King Street. While the acquisition here at issue generally raises issues that concern King Street, the use to which AT&T has committed to use the spectrum serves to off-set, albeit only in part, those concerns. Thus, the public interest would be (further) disserved were AT&T to be permitted to tell the Commission one thing in its Application, and then use the Spectrum in a different way.

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). With respect to pairing the Spectrum with other wireless spectrum, an absolute prohibition on pairing the Spectrum with other 700 MHz spectrum would be appropriate.

⁴ See, e.g. ALLTEL Corp. and Atlantis Holdings, LLC, 22 FCC Rcd 19517, 19520–21 and n. 33 (2007); AT&T, Inc. and Dobson Communications Corp., 22 FCC Rcd 20295, 20329-30 (2007); Sprint Nextel Corp. and Clearwire Corp., 23 FCC Rcd 17570 (2008); and LightSquared Subsidiary LLC, 2011 WL 246224 (January 26, 2011).

B. AT&T Should Be Required to Support Band Class 12 Handset Devices and Not Band 17 Devices

As noted above, King Street is a member of the 700 MHz Block A Good Faith Purchasers Alliance (the “Alliance”). The Alliance submitted a Petition for Rulemaking, in what became RM-11592, on September 29, 2009. By that petition, the Alliance explained that AT&T and one other carrier dominate 700 MHz spectrum holdings. They acquired 85% of the nearly \$20 Billion of spectrum acquired through Auction No. 73. Prior to that auction, AT&T acquired another \$2.5 Billion of 700 MHz spectrum (i.e. 12.5% of total Auction No. 73 spectrum value) in the secondary market. And now AT&T seeks to acquire yet another \$2 Billion of 700 MHz spectrum (i.e., another 10% of total Auction No. 73 spectrum value). Thus, an already excess in concentration would be increased substantively.

To be clear, this is not an instance of a carrier seeking to fill its spectrum needs in a single market, or in a handful of markets. Those transactions generally both serve the public interest and the reasonable needs of a nationwide carrier. Here, in contrast, a single carrier is acquiring a nationwide license (and more) and, in a single transaction, acquiring spectrum valued by the parties at more than 10% of total Auction No. 73 revenues. As such, it single handedly increases concentration in the 700 MHz band in a meaningful way. It implicates the concerns raised by the Alliance regarding competition in the band. Simply put, without addressing and resolving those considerations, the Commission cannot find that grant would serve the public interest. Absent such a finding, the Application cannot be granted.

In view of the above, any grant of consent in this proceeding should be expressly conditioned upon AT&T committing to use only handset equipment capable of operating over all frequencies in the 700 MHz Band. The international standards group, 3 GPP, has already

established a band class, Band 12, that permits such service. Any grant included in this proceeding should require that AT&T utilize only Band 12 authorized equipment.

III. CONCLUSION

The transaction here at issue presents serious competitive, interference and other concerns. Unless resolved, their existence precludes grant of the Application. The imposition of the reasonable conditions set forth herein alleviate (not eliminate) those concerns. Thus, any grant of the instant Application must incorporate those conditions.

Respectfully submitted,

KING STREET WIRELESS, L.P.

By: /s/ Thomas Gutierrez

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March 11, 2011