

April 26, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To Assign Licenses; In re Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC, For Consent to Assign Licenses, WT Docket No. 12-4*

Dear Ms. Dortch:

SpectrumCo, LLC, on behalf of Comcast Corporation, Time Warner Cable, Inc., Bright House Networks LLC, and Cellco Partnership d/b/a Verizon Wireless, hereby responds to recent filings by T-Mobile in the above-referenced docket. In its April 5, 2012 ex parte letter and other filings, T-Mobile asserts that SpectrumCo's proposed sale of spectrum to Verizon Wireless would cause competitive harm and that the Commission should adjust its current spectrum screen in certain detailed and specific ways to favor T-Mobile.¹

T-Mobile's recent arguments to the Commission contradict statements it made only months ago during its own proposed transaction with AT&T and should be given no credence. T-Mobile's advocacy in this proceeding cannot be reconciled with the positions it advanced in support of its own transaction, as Applicants explain below.

Wireless Competition

- During the AT&T/T-Mobile proceeding, T-Mobile testified before Congress that “[t]he U.S. wireless marketplace is very competitive”² and that “plenty of other regional or large facility-based carriers such as Sprint and the regional ones”

¹ See Letter from Jean L. Kiddoo, Bingham McCutchen, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (Apr. 5, 2012).

² Philipp Humm, T-Mobile President & CEO, Testimony, Senate Antitrust Subcommittee Hearing, May 11, 2011, at 3.

produce “extensive competition in this market.”³ T-Mobile also contended that, even after an acquisition of a top-four carrier by the second-largest carrier, the “U.S. wireless industry [would] remain fiercely competitive post-transaction.”⁴

- During the SpectrumCo/Verizon Wireless proceeding, T-Mobile now claims that there will be “serious harm to competition and to consumer welfare in the wireless market by permitting a dominant carrier to foreclose acquisition of spectrum by smaller rivals,”⁵ even though the transaction will *not* eliminate any competitors, will *not* combine businesses, and will *not* transfer any customers. In other words, despite its earlier claims that the combination of two top-four facilities-based providers would have no impact on competition in a fiercely competitive marketplace, T-Mobile now argues that the acquisition of a discrete block of spectrum – and only spectrum – by a carrier that needs it to meet its customers’ escalating demand for mobile services will “serious[ly] harm” competition.

Spectrum Planning

- During the AT&T/T-Mobile proceeding, T-Mobile noted that wireless carriers must plan ahead when considering their spectrum needs and described its efforts to secure spectrum that would be needed over the “longer term.”⁶ T-Mobile previously stated that “you can’t ever buy spectrum when you need it, right. You always have to be out ahead of it.”⁷
- During the SpectrumCo/Verizon Wireless proceeding, T-Mobile now takes issue with Verizon Wireless’ efforts to plan ahead to meet surging consumer demand that is forecast to outstrip capacity in the relatively near future, arguing that

³ René Obermann, CEO, Deutsche Telekom, Senate Judiciary Cte. Hearing, Transcript at 192 (May 26, 2011).

⁴ Phillipp Humm, President & CEO, T-Mobile USA, Response to Questions for the Record from Senator Mike Lee (R-UT), available at <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg68170/pdf/CHRG-112shrg68170.pdf>.

⁵ T-Mobile Petition to Deny, WT Docket No. 12-4, at 16 (Feb. 21, 2012).

⁶ See Joint Opposition of AT&T, Deutsche Telekom, and T-Mobile USA to Petitions to Deny and Reply to Comments, WT Docket No. 11-65, Decl. of Dr. Kim Larsen, SVP, Deutsche Telekom AG, ¶ 18 (June 10, 2011) (explaining T-Mobile’s spectrum constraints and its exploration of “longer term . . . options (such as access to additional spectrum) to meet the demands on its network”). See also AT&T/T-Mobile Public Interest Statement, WT Docket No. 11-65, Decl. of Thorsten Langheim, SVP Mergers & Acquisitions, Deutsche Telekom AG, ¶¶ 3, 12-13 (Apr. 21, 2011) (discussing T-Mobile’s “long term challenges, including . . . the need for substantial amounts of new radio spectrum”).

⁷ See Robert Dotson, CEO, T-Mobile USA, Transcript, Deutsche Telekom Investor Day, Mar. 18, 2010 (explaining the necessity to engage in spectrum planning three years or more into the future).

“Verizon Wireless has no pressing need for this spectrum.”⁸ And it ignores the extensive showing by Verizon Wireless that, absent the addition of the AWS spectrum at issue here, customers will begin to experience congestion in a number of major markets by 2013 and in many others by 2015.

Spectrum Aggregation

- During the AT&T/T-Mobile proceeding, T-Mobile asserted that the merger would cause no competitive harm because “the combined company will hold on average 134 MHz out of 424.5 MHz, which is still less than a third of the total” included in the Commission’s spectrum screen.⁹ T-Mobile also argued that the screen was itself far too low, contending that it “substantially *overstates* potential threats to competition because it excludes much of the spectrum currently available for mobile telephony and broadband services”¹⁰ and that “the Commission should now include the 90 MHz of MSS/ATC spectrum and all 194 MHz of BRS/EBS spectrum” for a total of 653 MHz.¹¹
- During the SpectrumCo/Verizon Wireless proceeding, T-Mobile now argues that Verizon Wireless’ aggregate spectrum position would somehow cause competitive harm,¹² even though Verizon Wireless would hold 109 MHz of spectrum on a nationwide basis post-transaction, considerably *less* than the 134 MHz average spectrum depth AT&T/T-Mobile would have held – which, it argued at the time, was far below the level that could raise competitive concerns. T-Mobile also now reverses its advocacy on the spectrum screen, asserting that

⁸ See T-Mobile Petition to Deny, WT Docket No. 12-4, at 13-14. While questioning Verizon Wireless’ need for spectrum in this proceeding, T-Mobile once again contradicts itself. On April 4, 2012, Steve Sharkey, T-Mobile’s Director of Government Affairs for Technology and Engineering Policy, argued that Verizon Wireless is not an efficient user of its spectrum and suggested that Verizon Wireless could handle increased consumer demand without additional spectrum. Steve Sharkey, “Verizon Wireless Has Lots More Room for Efficiency – Without More Spectrum,” T-Mobile Issues & Insights Blog, Apr. 4, 2012, at <http://blog.t-mobile.com/2012/04/04/verizon-wireless-has-lots-more-room-for-efficiency-%e2%80%93-without-more-spectrum/>. But just two weeks after Mr. Sharkey’s blog post, T-Mobile explained publicly that technological solutions and efficiency gains are not sufficient for addressing wireless carriers’ impending demands and that carriers need additional spectrum. Kathleen Ham, T-Mobile’s Vice President for Federal Regulatory Affairs, stated that technological solutions are “all Band-Aids, and you have to provide additional spectrum to deal with the wound to deal with the large capacity of bandwidth demands.” Brian X. Chen, “Carriers Warn of Crisis in Mobile Spectrum,” The New York Times, Apr. 17, 2012, available at <http://www.nytimes.com/2012/04/18/technology/mobile-carriers-warn-of-spectrum-crisis-others-see-hyperbole.html> (quoting Ms. Ham).

⁹ AT&T/T-Mobile Joint Opposition, WT Docket No. 11-65, at 188 (June 10, 2011).

¹⁰ AT&T/T-Mobile Public Interest Statement, WT Docket No. 11-65, at 77 (Apr. 21, 2011) (emphasis added).

¹¹ AT&T/T-Mobile Joint Opposition, WT Docket No. 11-65, at 186 (June 10, 2011).

¹² See, e.g., T-Mobile Petition to Deny, WT Docket NO. 12-4, at 9-15.

the BRS, EBS, and MSS/ATC spectrum it had previously advocated be included should now be *excluded*.¹³

Weighting of Spectrum

- During the AT&T/T-Mobile proceeding, T-Mobile criticized parties who argued that the spectrum screen should be modified to “weight” spectrum below 1 GHz more heavily because of that spectrum’s technical characteristics or its market value, telling the Commission that “opponents’ ‘low band spectrum’ arguments are both irrelevant and false.”¹⁴
- During the SpectrumCo/Verizon Wireless proceeding, T-Mobile now asserts competitive harm because Verizon Wireless would “accumulate a large preponderance of available spectrum.”¹⁵ It bases this claim on its argument that spectrum below 1 GHz should be weighted more heavily than spectrum above 1 GHz – counting twice as much – because of allegedly superior technical characteristics and higher market value for below 1 GHz spectrum.¹⁶ Despite its explicit rejection of spectrum weighting for purposes of competitive analysis mere months ago, T-Mobile now reverses course, asking the Commission to adopt that very type of analysis.

Potential Alternate Buyers

- During the AT&T/T-Mobile proceeding, T-Mobile correctly pointed out that Section 310(d) of the Communications Act prohibits the Commission from “consider[ing] the relative merits of alternative, hypothetical transactions.”¹⁷
- During the SpectrumCo/Verizon Wireless proceeding, T-Mobile now asks the Commission to consider those alternative hypothetical transactions it previously ruled off limits. T-Mobile specifically invites the Commission to consider

¹³ T-Mobile Petition to Deny, WT Docket No. 12-4, at 22.

¹⁴ See AT&T/T-Mobile Joint Opposition, WT Docket No. 11-65, at 189-190.

¹⁵ See Letter from Jean L. Kiddoo, Bingham McCutchen, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 2 (Apr. 2, 2012).

¹⁶ See T-Mobile Petition to Deny, WT Docket No. 12-4, at 30-34 (“T-Mobile . . . urges that the Commission adopt a spectrum screen that weights spectrum based on estimated market values.”).

¹⁷ Deutsche Telekom and T-Mobile Letter to Rick Kaplan, Chief, Wireless Bureau, WT Docket No. 11-65, at 2 (Oct. 31, 2011).

transactions that are not before the Commission, arguing that “unlike Verizon, T-Mobile and other carriers would put the spectrum to immediate use.”¹⁸

Spectrum Warehousing

- During the AT&T/T-Mobile proceeding, T-Mobile agreed with Chairman Genachowski’s statement that wireless licensees were not “hoarding” unused spectrum. T-Mobile summarily dismissed the notion that providers with a “greater absolute volume of spectrum than many other providers” were “letting much of it lie fallow.”¹⁹
- During the SpectrumCo/Verizon Wireless proceeding, T-Mobile now parrots the very claims it dismissed mere months ago, arguing that “[c]onsolidation of spectrum by large providers may reduce the motivation for efficient use of the spectrum” and that firms have “economic incentives to acquire and hoard a scarce asset, in order to disadvantage rival firms.”²⁰

Motives of Transaction Critics

- During the AT&T/T-Mobile proceeding, T-Mobile dismissed Sprint’s concerns by asserting that “the fact that a major wireless competitor is making these arguments should give regulators pause [Sprint] has chosen the ‘run-to-the-regulator’ tack. Frankly, this leads to the inescapable conclusion that [Sprint’s] complaints about AT&T’s post-merger activities are shall we say ‘over-stated’ (‘disingenuous’ also springs to mind).”²¹
- During the SpectrumCo/Verizon Wireless proceeding, T-Mobile, a major wireless competitor, now replicates the very tactics it criticized when its own transaction was at issue.²²

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¹⁸ Letter from Jean L. Kiddoo, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 2 (Apr. 20, 2012).

¹⁹ AT&T/T-Mobile Joint Opposition, WT Docket No. 11-65, at 25 (June 10, 2011).

²⁰ T-Mobile Petition to Deny, WT Docket No. 12-4, at 11; *id.*, Decl. of Judith Chevalier ¶¶ 4(c), 39.

²¹ Tom Sugrue, T-Mobile USA Senior Vice President of Government Affairs, “Life (and Merger Review) Imitates Baseball,” Aug. 8, 2011, at <http://blog.t-mobile.com/2011/08/08/life-and-merger-review-imitates-baseball/>.

²² *See, e.g.*, T-Mobile Petition to Deny, WT Docket No. 12-4, Summary (“The Commission should deny the Applications of Verizon Wireless to acquire the AWS spectrum currently held by SpectrumCo and Cox to prevent an excessive concentration of mobile service spectrum holdings that is contrary to the public interest.”).

T-Mobile's inconsistent positions are not limited to statements it made in the AT&T/T-Mobile proceeding. For example, T-Mobile has suggested here that it would have been a willing and more worthy buyer of SpectrumCo's AWS spectrum.²³ But T-Mobile has acknowledged that it previously had discussions about acquisition of that very spectrum²⁴ but chose instead to pursue its failed sale to AT&T rather than invest in its business. T-Mobile's remorse over its past business decisions must be given no consideration in an examination of the merits of the pending applications.

Most recently, T-Mobile shifted positions once again when it criticized Verizon Wireless' decision to sell 700 MHz spectrum. Just two months ago, T-Mobile stated that, "[o]n a MHz-POP basis, Verizon Wireless holds approximately 43 percent of all 700 MHz in the nation, and 48 percent of cellular spectrum; these are the two most suitable (and valuable) bands for mobile broadband services."²⁵ In fact, T-Mobile has argued that the 700 MHz spectrum is so valuable it should be given extra weight in the Commission's spectrum screen analysis.²⁶ But after Verizon Wireless announced its plan to sell 700 MHz spectrum – some of the very spectrum T-Mobile just recently described as being so valuable – T-Mobile summarily dismissed the significance of the impending availability of this spectrum, contending that AWS, not 700 MHz, is the "last swath of immediately usable mobile broadband spectrum"²⁷ and lamenting (for the first time) the "problems" associated with the 700 MHz spectrum.²⁸

T-Mobile cannot continue to have it both ways, and its attempts to extract competitive advantages during the transaction review process should be disregarded.

²³ See, e.g., T-Mobile Petition to Deny, WT Docket No. 12-4, at 14-15 ("It is likely no coincidence that Verizon Wireless signed this deal while the AT&T/T-Mobile transaction was still pending, so that T-Mobile was unable to compete to purchase this spectrum.").

²⁴ See Robert Dotson, CEO, T-Mobile USA, Transcript, Deutsche Telekom Investor Day, at 41 (Mar. 18, 2010) ("Are there opportunities to go out and take spectrum which already exists in the secondary market? Absolutely and I would tell you those are discussions – we've had ongoing discussions whether it's with cable providers or whether that's the Clearwire there is a number of different options that we look at[.]").

²⁵ T-Mobile Petition to Deny, WT Docket No. 12-4, at 3. See *id.* at 12 (describing 700 MHz spectrum as one of the "higher-quality bands").

²⁶ See, e.g., T-Mobile Petition to Deny, WT Docket No. 12-4, at 30-34.

²⁷ See Brendan Sasso and Andrew Feinberg, "Overnight Tech," Hillicon Valley Blog, Apr. 18, 2012, at <http://thehill.com/blogs/hillicon-valley/technology/222395-overnight-tech-homeland-security-panel-approves-overhauled-cybersecurity-bill> (quoting Tom Sugrue, T-Mobile's Vice President of Government Affairs, as saying: "Verizon's announced plan to sell lower 700 MHz spectrum contingent on approval of its spectrum transaction with the cable companies is a tactical ploy designed to divert attention from its attempt to foreclose competitors from being able to acquire [Advanced Wireless Services] spectrum — the last swath of immediately usable mobile broadband spectrum likely to be available in the near term.").

²⁸ See Letter from Jean L. Kiddoo, Counsel to T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 2 (Apr. 20, 2012) (claiming that there are "problems with that [700 MHz] spectrum").

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