

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands)	WT Docket No. 12-70
)	
Fixed and Mobile Services in the Mobile 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)	ET Docket No. 10-142
)	
)	
Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands)	WT Docket No. 04-356
)	

COMMENTS OF COMPTTEL

COMPTTEL respectfully submits these comments,¹ pursuant to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking and Notice of Inquiry released on March 21, 2012 (FCC 12-32)(“*NPRM*”).² In the *NPRM* the Commission seeks to enable the provision of stand-alone terrestrial services in the spectrum assigned to the Mobile Satellite Service (MSS) in the 2 GHz band. COMPTTEL supports this initiative.

As the Commission recognizes, the explosive growth in mobile Internet traffic is “creating an urgent need for more network capacity and, in turn, for suitable spectrum.”³ Given

¹ These Comments reflect the position of a majority of COMPTTEL members. Individual members may file company-specific comments advocating positions on issues that are different from those stated herein.

² Notice of Proposed Rulemaking and Notice of Inquiry, *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands et al*, FCC 12-32, WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142 (rel. Mar. 21, 2012)(“*NPRM*”).

³ *NPRM* at ¶ 10.

the predictions for spectrum exhaust within the next five years,⁴ the Commission must explore all technically feasible means for increasing the amount of spectrum available to meet the accelerating demand for mobile broadband. This proposal has the added benefit of potentially furthering competition in both the wireless and special access markets.

Granting S-Band MSS licensees the ability to deploy devices that use only a ground-based wireless network will give DISH Network the regulatory certainty it needs to build its wireless business. Consequently, the Commission's proposal of removing barriers to flexible use of spectrum assigned for MSS in the 2 GHz band, not only increases the Nation's supply of spectrum for mobile broadband, it also promotes a fifth nationwide provider of wireless services⁵ and, of particular importance, one that is independent of an incumbent local exchange carrier ("ILEC"). A fifth nationwide wireless provider is good for consumers of wireless services and, when independent of an ILEC, for the development of competition in the upstream and downstream markets. COMPTEL's comments focus, in particular, on the benefit of an independent, nationwide wireless provider in the upstream special access market.

As the Commission recognizes in this *NPRM*, removal of unnecessary barriers to flexible use of spectrum assigned to the MSS in the 2 GHz band is consistent with a recommendation in the National Broadband Plan as a means of increasing the Nation's supply of spectrum for mobile broadband.⁶ The National Broadband Plan also emphasized the importance of just and

⁴ *Id.*

⁵ See "Ergen on Dish and Broadband Plans," Posted by Steve Fravel, Feb. 24, 2012 at <https://www.ntca.org/new-edge/wireless/ergen-on-dish-and-broadband-plans> ("According to multiple published accounts, Dish Network Corp. Chairman Charles Ergen is optimistic about the company's planned nationwide 4GLTE network.")

⁶ NPRM at ¶ 1.

reasonable rates, terms and conditions for special access services.⁷ While the National Broadband Plan focused on the existing flaws in the current regulations of special access service, it recognized the significant economic impact that special access plays in the pricing and availability of wireless, among other, services.⁸ The action proposed in this *NPRM* supports two objectives posed in the National Broadband Plan – more spectrum for mobile services and a potential benefit to the critical special access market. Specifically, in conjunction with the much needed regulatory reform of the pricing, terms and conditions of ILEC special access services, the addition of another major purchaser of this service has significant potential to assist in the development of a competitive market for such services.⁹

Another provider of wireless service, unaffiliated with the dominate providers of special access services, would create another major purchaser of special access services. This could increase the ability of competitive providers of special access services to achieve minimum viable scale and encourage investment in special access facilities. While not a replacement for special access reform, in conjunction with such reform, it will enable competition in the special access market to develop, providing additional choice for existing retail and wholesale purchasers of special access services. In other words, another nationwide wireless provider has the potential to diminish, to some extent, AT&T and Verizon’s ability to exercise its market

⁷ The National Broadband Plan, Chapter 4.2, Recommendation 4.8

⁸ *Id.* (“Special access circuits are usually sold by incumbent local exchange carriers [] and...play a significant role in the availability and pricing of broadband service...For many broadband providers, including...wireless broadband providers, the cost of purchasing these high-capacity circuits is a significant expense of offering broadband service...”)

⁹ The extent of success of new entrants will be dependent on the Commission reforming the current pricing of special access services, which force purchasers into “lock-up” discount contracts with the ILEC.

power in the special access market to suppress competition in both the downstream mobile telephony/broadband services market and the upstream backhaul market.

I. Wireless Providers are Major Purchasers of Special Access Services.

Backhaul refers to “the connections linking cell sites to wireline networks and carrying wireless voice and data traffic for routing and onward transmission.”¹⁰ Wireless providers purchase special access services, including DS1s and DS3s, for the most part from ILECs, for backhaul.¹¹ Special access connections to cell towers, mobile switching centers, wireless base stations and to the public switched telephone network are thus critical and integral network inputs for all providers of mobile telephony/broadband services.

As the Commission staff recently concluded, backhaul costs “currently constitute a significant portion of a mobile wireless service provider’s network operating expense, and demands for backhaul are increasing.”¹² The Commission has recognized that wireless data services continue to increase as a percentage of mobile telephony/broadband service providers’ overall traffic, such services consume vast amounts of bandwidth, and access to sufficient backhaul capacity to support increasing use of wireless data services will become more critical over time.¹³ With the growing importance of wireless backhaul and the increased demand for wireless backhaul capacity, mobile

¹⁰ Federal Communications Commission Staff Analysis and Findings, WT Docket No. 11-65, ¶ 112 (rel. Nov. 29, 2012)(“Staff Findings”). *See also, In the Matter of Report and Analysis of Competitive Market Conditions With Respect To Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81 at ¶ 293 (rel. May 20, 2010) (“Fourteenth Report”).

¹¹ Fourteenth Report at ¶ 295.

¹² Staff Findings at ¶ 112.

¹³ Fourteenth Report at ¶¶ 293, 296.

telephony/broadband service providers are now likely the largest purchasers of special access and their importance as buyers of special access is growing rapidly, and will continue to grow.¹⁴

II. Entry of an Unaffiliated Wireless Provider could Enhance Competition in the Special Access Market.

There are four facilities-based providers of mobile telephony/broadband services (AT&T Mobility, Verizon Wireless, Sprint, and T-Mobile) that can be described as “nationwide” providers of retail mobile wireless services.¹⁵ The primary providers of backhaul services are incumbent local exchange carriers, principally AT&T and Verizon.¹⁶ AT&T and Verizon Wireless are affiliated with AT&T and Verizon, the ILECs. In the case of AT&T, the wireless entity is a wholly-owned subsidiary. The two nationwide wireless providers that are unaffiliated with an ILEC, Sprint and T-Mobile, “are substantially smaller” than AT&T and Verizon Wireless.¹⁷ Thus, the two largest wireless providers are affiliated with the dominate providers of a key input to their services. This not only provides these carriers a competitive advantage in providing wireless services, it (among other things)¹⁸ squelches the opportunity for competitive special access services providers to enter into a market already dominated by the incumbents.

The pricing of special access services has a major impact on the competitiveness of the wireless market. The rates mobile telephony/broadband providers pay AT&T, Verizon and other incumbent wireline carriers for the special access backhaul facilities represent a significant expense

¹⁴ *Id.* at ¶ 296 n. 785 citing Verizon Wireless comments that “the size of the backhaul market will grow from \$3 billion annually to \$8 to \$10 billion in the next three to five years, driven in large part by increases in wireless data traffic.”

¹⁵ Staff Finding at ¶ 36.

¹⁶ *Id.* at ¶ 112.

¹⁷ *Id.* at ¶37.

¹⁸ COMPTTEL and others address concerns with the special access market in the Commission’s proceeding where the Commission is considering pricing reform, WC Docket 05-25 and RM-10593.

for their wireless competitors.¹⁹ Sprint testified that it “must pay more than \$2 billion a year in backhaul fees to its competitors” in the wireless market, AT&T and Verizon.²⁰

In evaluating the proposed merger between AT&T and T-Mobile, the Commission Staff concluded that the unaffiliated provider “T-Mobile has been instrumental in promoting competitive entry of alternative backhaul services, for example serving as a critical “anchor tenant” in many local markets and, when combined with other wireless providers seeking alternative backhaul services, helping to achieve the necessary scale to support competitive entry of higher capacity backhaul.”²¹ The Staff was concerned that “the loss of T-Mobile’s demand for services from independent backhaul providers could reduce the market for their services and deter additional competitive entry, leading to higher backhaul prices.”²² The opposite is equally true: the addition of another wireless provider unaffiliated with the major backhaul providers will increase the market for the services of independent backhaul providers, potentially leading to lower rates for such services.

Respectfully submitted,

/s/

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¹⁹ See Government Accountability Office, Enhanced Data Collection Could Help FCC Better Monitor Competition In The Wireless Industry, Report To Congressional Requesters, GAO-10-779 at 41 (July 2010).

²⁰ *Written Testimony of Daniel R. Hesse Chief Executive Officer Sprint Nextel Corporation Re: Proposed AT&T/T-Mobile Merger Before The Senate Judiciary Committee, Subcommittee On Antitrust, Competition Policy and Consumer Rights*, at 6 (May 11, 2011).

²¹ Commission Staff Findings at ¶ 115.

²² *Id.*