

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 2175-180 MHz Bands)	WT Docket No. 04-356
)	

To: The Commission

REPLY COMMENTS OF VERIZON WIRELESS

Like many commenters in this proceeding, Verizon Wireless supports the Commission's efforts to promote the further deployment of mobile broadband services in the 2 GHz band.¹ Verizon Wireless, however, submits these reply comments to oppose proposals made by two commenters. The New America Foundation, Public Knowledge, and Consumers Union ("New America *et al.*") and RCA – The Competitive Carriers Association ("RCA") propose various conditions directed at AT&T and Verizon Wireless.² As discussed below, the proposed conditions, lack factual support and are discriminatory, would undermine Commission policy, and would in any event be unworkable. The Commission should reject them.

¹ See Comments of Verizon Wireless, WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356 (filed May 17, 2012)

² See Comments of New America Foundation, Public Knowledge, and Consumers Union, WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356 (filed May 17, 2012) ("New America *et al.* Comments"); Comments of RCA – The Competitive Carriers Association, WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356 (filed May 17, 2012) ("RCA Comments").

The Commission should reject RCA's and New America *et al.*'s request for conditions “essentially the same”³ as those adopted in the SkyTerra-Harbinger transaction that target the two largest wireless providers and limit their ability to deliver consumers' traffic.⁴ These conditions would irrationally discriminate among wireless competitors by restricting the ability of Verizon Wireless and AT&T – but no other competitor – to enter freely into agreements to lease or otherwise use spectrum. New America *et al.* and RCA provide no technical or economic justification for applying such requirements to Verizon Wireless and AT&T alone. They fail to show any specific competitive harm that could result from DISH retaining discretion to provide access to its spectrum or wholesale service to any wireless provider. There is no basis for the Commission to restrict companies' access to available spectrum or third-party wholesale carriage – particularly when such restrictions would be applied only to selected operators.

The conditions also are wholly unnecessary in light of the Commission's spectrum leasing rules, which the Commission proposes to apply to the new AWS-4 service “[f]or the reasons articulated” in the Commission's 2011 *2 GHz Band Co-Allocation Order*.⁵ In that order, the Commission extended its spectrum leasing requirements to MSS licensees, requiring an MSS licensee to notify the FCC when it enters into a spectrum lease and enabling the Commission to

³ New America *et al.* Comments at 12, (citing *SkyTerra Commc'ns, Inc., Transferor, and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer Control of SkyTerra Subsidiary, LLC*, IB Docket No. 08-184, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 3059, 3089 ¶ 72 (2010), *recon. pending*).

⁴ New America *et al.* Comments at 5, 12; RCA Comments at 7-8.

⁵ *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356, FCC 12-32 ¶ 117 (2012).

flag any potential competitive issues.⁶ These rules undermine any possible basis for the Commission to consider the conditions RCA and New America *et al.* seek here – as Chairman Genachowski made clear in a recent a letter to Congressmen Greg Walden, Fred Upton, and Cliff Stearns.⁷ Further, the Commission has credited secondary markets as a valuable means for spectrum to flow to its most productive uses,⁸ and commercial agreements to carry wholesale traffic similarly enhance flexibility to ensure that network capacity can be used to serve consumer needs. The conditions proposed here would interfere with freely operating secondary markets, again with no justification. Additionally, such restrictions on business dealings could limit DISH’s ability successfully to deploy its network and meet any Commission conditions on deployment.⁹

⁶ See *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*, Report and Order, 26 FCC Rcd 5710 (2011).

⁷ See Letters from Julius Genachowski, Chairman, FCC, to Greg Walden, Fred Upton, and Cliff Stearns, U.S. House Reps. (Mar. 23, 2012), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0413/DOC-313579A1.pdf (citing the absence, *at that time*, of any mechanism for Commission review of wholesale transactions involving MSS spectrum, and noting that such a mechanism is now in place).

⁸ FCC, *Connecting America: The National Broadband Plan* at 83 (Mar. 16, 2010) (“Secondary markets provide a way for some network providers to obtain access to needed spectrum for broadband deployment.”).

⁹ *Cf.* Verizon Wireless Petition for Partial Reconsideration, IB Docket No. 08-184, at 16 (filed Apr. 1, 2010) (“Yet, to the extent the conditions restrict potential SkyTerra terrestrial partners and options for revenues, they could limit SkyTerra’s ability to complete that 4G network.”); Petition for Reconsideration of AT&T Inc., IB Docket No. 08-184, at 5 (filed Mar. 31, 2010) (“Artificially limiting SkyTerra’s commercial flexibility and potential customer base can only reduce the likelihood that SkyTerra will be able profitably to deploy and operate terrestrial facilities that have not progressed beyond the drawing board in the six years since SkyTerra’s predecessor obtained MSS Ancillary Terrestrial Authority (‘ATC’).”).

Last, the proposed traffic limit is unworkable – as Verizon Wireless previously explained,¹⁰ and RCA and New America *et al.* ignore. This proposal would put Verizon Wireless and AT&T in the position of guessing the total traffic volumes on DISH’s network in each Economic Area, as well as the proportion of that traffic handled by each other. Not only would this proposal create considerable business uncertainty, it would place DISH at serious risk of unknowingly or unintentionally violating the condition as a result of fluctuating traffic demand. Finally, each party’s already limited ability to enter into business arrangements with DISH would be further restricted by the arrangements of the other.¹¹

The Commission should also reject RCA’s and New America *et al.*’s meritless request that it impose unjust enrichment penalties in the event DISH transfers or assigns the spectrum to AT&T or Verizon Wireless within a specified time period.¹² Although RCA and New America *et al.* couch their arguments in terms of a potential DISH windfall upon sale of the spectrum, this rationale is belied by the scope of the proposed condition, which applies only to sales to Verizon Wireless or AT&T. That is, the “unjust enrichment” condition would apply to a sale to either of these companies, but not to any other – even if the sale to another party would generate even greater profits. Ultimately, this proposal is not grounded in any concern regarding DISH’s profits or any substance whatsoever, but rather reflects these commenters’ views against AT&T or Verizon Wireless acquiring new spectrum. This view is typified by the frivolous claim of New America *et al.* that “the transfer of AWS-4 licenses to the emerging wireless duopoly would

¹⁰ See Opposition of Verizon Wireless, IB Docket No. 11-149, at 8-9 (filed Oct. 27, 2011).

¹¹ For example, Verizon Wireless might be permitted to provide only 1 percent of DISH’s total traffic in an EA if AT&T’s usage equaled 24 percent.

¹² New America *et al.* Comments at 17-18; RCA Comments at 11.

be worse than the status quo for consumers, competitors and innovators”¹³ – even though the status quo is that all of the spectrum included in the AWS-4 licenses lies fallow.

RCA and New America *et al.* appear to have forgotten that the Commission reviews all applications to assign or transfer spectrum licenses, and that Section 310(d) of the Communications Act permits it to approve such transactions only where “the public interest ... will be served thereby.”¹⁴ Accordingly, their proposed unjust enrichment rules are both superfluous and unduly overbroad: They would do nothing to prevent transactions that are contrary to the public interest (which would be denied anyway), but would preclude transactions that the Commission would otherwise find consistent with the public interest.

RCA and New America *et al.* also mistake the purpose of the Commission’s unjust enrichment policies. They correctly note that the Commission has established unjust enrichment rules for the designated entity (“DE”) program.¹⁵ However, the unjust enrichment rules were not established to prevent sale of spectrum licenses to specific providers. Instead, the unjust enrichment rules are in place because a DE is able to use bidding credits to acquire spectrum at auction *for less than the highest bidder would pay*, and the rules prevent DEs from buying spectrum merely to “flip” it to a carrier who values it more. There is no comparable policy concern here. Further, the unjust enrichment rules apply to *all* entities that do not qualify as DEs – the rules are not discriminatorily and arbitrarily imposed on select providers.

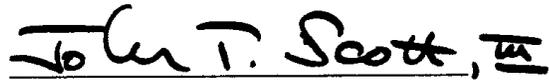
¹³ See, e.g., New America *et al.* Comments at 13.

¹⁴ 47 U.S.C. § 310(d).

¹⁵ See RCA Comments at 11 (citing 47 C.F.R. § 1.2111(d)(2)); New America *et al.* Comments at 18-19 (same).

In sum, while Verizon Wireless supports the Commission's ongoing efforts to promote deployment of mobile broadband services, the Commission should not threaten this goal through unwarranted and discriminatory conditions that could harm consumers.

Respectfully submitted,

Handwritten signature of John T. Scott, III in black ink, with a horizontal line underneath the signature.

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