

Petition to Conditionally Approve or Deny

AT&T MOBILITY SPECTRUM LLC AND 700 MHZ LLC . SEEK FCC CONSENT TO THE ASSIGNMENT OF A LOWER 700 MHZ BAND C BLOCK LICENSE

ULS File No. 0004621016

Introduction:

AT&T Mobility the second largest nationwide cellular phone carrier has sufficient spectrum already in comparison to several smaller carriers including Sprint Nextel, T-Mobile USA, Leap Wireless (Cricket), MetroPCS, Straight Talk Wireless, C-Spire (Cellular South) etc. Furthermore, AT&T Inc., which was rightly, denied its bid to merge AT&T Mobility with T-Mobile USA last year was even then still permitted to acquire new 700 MHz spectrum licenses from Qualcomm. In addition to this license transfer between Farmers Telephone Group and AT&T Ma Bell is attempting to acquire more 700 MHz spectrum from a company called 700 MHz LLC. These small spectrum license transfers individually are fine but put them together and it looks like they are trying to concentrate a lot more spectrum anti-competitively. So yes AT&T is stockpiling 700 MHz spectrum and it threatens any hope of achieving device carrier based 4G LTE interoperability.

As has been pointed out before in ECFS proceedings at the FCC and the ULS proceeding on AT&T's 700 MHz LLC when the corporate gatekeepers who control access to the Internet consolidate they have more incentive to discriminate. Network Neutrality advocates are not imagining some impractical doomsday scenario we are instead taking the executives of major corporations like AT&T Inc., and Verizon Communications at their word about their plans to discriminate online.

Broadband competition helps maintain Network Neutrality so the FCC should do all it can to encourage, protect and promote broadband competition.

Evidence:

The threat to an open internet isn't just speculation -- we've seen what happens when the Internet's gatekeepers get too

much control. These companies have been clear about their plans to discriminate online. According to the *Washington Post*:

William L. Smith, chief technology officer for Atlanta-based BellSouth Corp., told reporters and analysts that an Internet service provider such as his firm should be able, for example, to charge Yahoo Inc. for the opportunity to have its search site load faster than that of Google Inc.

Smith isn't alone. Former AT&T Chief Ed Whitacre told *BusinessWeek*:

Now what they would like to do is use my pipes free, but I ain't going to let them do that because we have spent this capital and we have to have a return on it. So there's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using. Why should they be allowed to use my pipes?

And Verizon's Ivan Seidenberg told the *Wall Street Journal*:
We have to make sure they don't sit on our network and chew up our capacity. We need to pay for the pipe.

Net Neutrality advocates are not imagining a doomsday scenario. We are simply taking the telecom execs at their word.

Competition between rival broadband providers should help safeguard the principle of net neutrality, according to Virgin Media.

Jon James, Executive Director of broadband at Virgin Media, said that with firms fighting to increase their subscriber bases, there is little prospect of service providers throttling broadband connections.

Net neutrality - the principle of treating all broadband traffic as equal - is a long established principle of the internet.

However, as reported by Recombu, some US providers have started charging extra for prioritized treatment.

"There's extremely intense competition in the UK so as long as we make sure the customers know what will and won't happen, the level of competition will determine what can happen," Mr James stated. He said the only traffic shaping on Virgin Media's network is to ensure quality of experience at peak times. Other broadband providers, such as Be Broadband, advertise their broadband deals as being entirely unthrottled, meaning all data is treated equally.

Despite the problems of fragmentation in the US 700MHz band, carriers are still jostling to increase their holdings. AT&T is the latest to move, buying licences from a firm called 700MHz LLC. Subject to FCC approval, AT&T will get two Lower C Block licenses, which cover areas of Missouri. "The additional spectrum will enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services," the carrier said in its FCC filing.

The carrier is also waiting for the green light to acquire eight Lower B Block licences from Cox Communications covering areas on the East Coast, including cities in Florida and Virginia; and four Lower C Block assets from Peoples Telephone Cooperative covering locations mainly in Texas.

AT&T is building its network in B and C Block spectrum, and keeping its A Block licences, controversially, as a guard band against claimed interference from TV signals (which means it cannot roam with A Block roll-outs by smaller operators). However, it may change its stance if it purchases A and B Block assets, which Verizon is promising to sell off, should its spectrum deal with four cablecos be approved. Verizon's own LTE network is in the Upper C Block, the only nationwide 700MHz slice in the US. Although the offer to offload other 700MHz holdings was designed to reassure regulators that its cable deal - to purchase AWS licences from four partners - would not concentrate too much spectrum in Verizon's hands, a more compelling concession came when it agreed to sell some of the AWS assets on to T-Mobile. This has significantly increased the chances of the cableco/Verizon transaction gaining FCC approval, though there are still said to be competition concerns at the Department of

Justice, because the parties are also engaging in cross-marketing agreements.

However, the TMo pact has softened opposition to the plans. In filings with the FCC, MetroPCS and the Rural Cellular Association applauded the suggested spectrum swap in 218 markets across the country. However, MetroPCS said that the swap was not enough, and added claims that Verizon would be likely to warehouse spectrum. It also asked the FCC to conduct a market-by-market analysis of the impact on competition of Verizon's proposed spectrum purchases. Even with the sale to T-Mobile, the carrier will still hold 20MHz of undeveloped spectrum throughout most of the US and up to 40MHz of unused spectrum in major markets, said the smaller carrier.

The RCA said that the TMo deal would only partially solve that cellco's spectrum shortage, and that the plan does nothing to resolve similar spectrum concerns for other rural operators. It wants the FCC to insist that Verizon divests usable spectrum to other operating entities and to mandate interoperability on the divested 700MHz spectrum.

AT&T Mobility ([NYSE:T](#)) hopes to add another two 700 MHz spectrum licenses to its portfolio, buying radio waves from 700 MHz L.L.C. The FCC must still approve the transaction. AT&T hopes to buy two Lower 700 MHz Band C Block licenses from 700 MHz L.L.C., which is associated with the Northeast Missouri Rural Telephone Company. The licenses cover areas of Missouri. Terms of the deal were not disclosed; wireless carriers typically do not offer details on such spectrum transactions.

"The additional spectrum will enable AT&T to increase its system capacity to enhance existing services, better accommodate its overall growth, and facilitate the provision of additional products and services," the carrier said in its FCC filing.

The license purchases are the latest of AT&T's smaller spectrum transactions. For example, AT&T is hoping to buy eight Lower 700 MHz B Block licenses from Cox covering areas on the East Coast, including cities in Florida and Virginia. Cox paid around \$28 million for the licenses during the FCC's 700 MHz spectrum auction in 2008. AT&T is also working to purchase four Lower 700 MHz C Block licenses from Peoples Telephone Cooperative covering locations mainly in Texas. AT&T is using 700 MHz spectrum for its LTE network. The carrier last year attempted to purchase T-Mobile USA for \$39 billion, largely to add capacity to its LTE efforts. But

the transaction was struck down by regulators worried about the size and strength of a combined AT&T and T-Mobile. Thus, AT&T has been focusing on smaller spectrum transactions to boost its 700 MHz holdings.

Conclusion:

I urge the FCC to either condition these license transfers to AT&T or deny them outright. One of the conditions should include possibly requiring AT&T to divest some spectrum they already hold that is not yet being used and is being warehoused. Other conditions include putting build-out requirements on AT&T's acquisition of this spectrum requiring if they get this spectrum to build it out by a certain date and time. The FCC should also require before AT&T acquires anymore spectrum to utilize the spectrum it already owns to build out its network.