

**AT&T SEEKS FCC CONSENT TO THE  
ASSIGNMENT AND TRANSFER OF CONTROL OF  
WCS AND AWS-1 LICENSES**

**WT Docket No. 12-240**

**Petition to Conditionally Approve or Deny**

**Maneesh Pangasa  
Concerned Citizen**

# **Table of Contents**

**I. Introduction p. 3**

**II. AT&T Should Not Get These Licenses Without Divestiture p. 4**

**III. Why Conditional Divestitures Are Needed**

**IV. Wireless Divestiture**

**V. Conclusion**

## Introduction:

AT&T Mobility Spectrum LLC and New Cingular Wireless PCS, LLC, both *indirect wholly-owned subsidiaries of AT&T Inc.* (collectively, “AT&T”), have filed applications pursuant to Section 310(d) of the Communications Act of 1934, as amended,<sup>1</sup> seeking consent to assign or transfer control of a number of Wireless Communications Service (“WCS”) and Advanced Wireless Service (“AWS-1”) licenses to AT&T. The applications are related to three separate transactions involving: (1) wholly-owned subsidiaries of Comcast Corporation (“Comcast”); (2) Horizon Wi-Com, LLC (“Horizon”); and (3) subsidiaries of NextWave Wireless, Inc. (“NextWave” and together with AT&T, Comcast, and Horizon, the “Applicants”). Comcast proposes to assign to AT&T 13 WCS licenses (A, B and C Block),<sup>2</sup> Horizon proposes to assign to AT&T eight WCS licenses (A Block),<sup>3</sup> and NextWave proposes to transfer control of 30 WCS licenses (A, B, C and D Blocks) and 12 AWS-1 licenses.<sup>4</sup> The Applicants state that the proposed license assignments and transfers of control would result in a more efficient use of underutilized spectrum, enable AT&T to expand its wireless broadband capacity, and provide more robust mobile broadband services to the public across the country.

According to the applications, if the proposed transactions are consummated, AT&T would be acquiring 10-25 megahertz of A, B, and C Block WCS spectrum from Comcast in 149 Cellular Market Areas (“CMAs”). In addition, AT&T would be acquiring 10 megahertz of A Block WCS spectrum from Horizon in 132 CMAs. Further, AT&T would be acquiring 5-30 megahertz of A, B, C, and D Block WCS spectrum from NextWave in 476 CMAs. As a result of the proposed transactions, AT&T would hold a maximum of 30 megahertz of WCS spectrum. Finally, AT&T would be acquiring 10-30 megahertz of AWS-1 spectrum from NextWave in 28 CMAs.

Since their attempt to merge T-Mobile USA (11-65) with their company was rightly denied AT&T has been stockpiling excess 700 MHz spectrum from Qualcomm (11-18) and from a firm called 700 MHz LLC. They are in the process of trying to acquire spectrum from NextWave Wireless now and a number of other companies including Farmers Telephone Group and even Cox Communications which sold AWS spectrum already to Verizon Wireless (12-4).

## II. SECTION 310(d) APPLICATIONS

The following applications for consent to the assignment or transfer of control of licenses have been assigned the following file numbers:

<b>File No.</b>	<b>Licensee/Assignor/Transferor</b>	<b>Assignee/Transferee</b>	<b>Lead Call Sign</b>
0005301644	Comcast WCS ME02, Inc.	New Cingular Wireless PCS, LLC	KNLB204
0005301653	Comcast WCS ME04, Inc.	New Cingular Wireless PCS, LLC	KNLB275
0005301658	Comcast WCS ME05, Inc.	New Cingular Wireless PCS, LLC	KNLB276
0005301664	Comcast WCS ME16, Inc.	AT&T Mobility Spectrum LLC	KNLB278
0005301665	Comcast WCS ME19, Inc.	AT&T Mobility Spectrum LLC	KNLB280
0005301673	Comcast WCS ME22, Inc.	New Cingular Wireless PCS, LLC	KNLB282
0005301689	Comcast WCS ME26, Inc.	New Cingular Wireless PCS, LLC	KNLB283
0005301703	Comcast WCS ME28, Inc.	AT&T Mobility Spectrum LLC	KNLB284
0005305382	Horizon Wi-Com, LLC	New Cingular Wireless PCS, LLC	KNLB312
0005305388	Horizon Wi-Com, LLC	AT&T Mobility Spectrum LLC	KNLB210
0005346050	NextWave Wireless Inc.	AT&T Inc.	WQGD515
0005346124	NextWave Wireless Inc.	AT&T Inc.	KNLB200

Considering the fact that not all spectrum is equal, in fact AWS spectrum is more valuable than 700 MHz and given the fact AT&T has been stockpiling 700 MHz spectrum there are real concerns of spectrum concentration that the FCC should and must address. It’s bad enough the amount of 700 MHz spectrum

AT&T Inc., has been stockpiling but to allow them to acquire excess AWS and perhaps WCS spectrum is concerning. Therefore I ask that any excess spectrum AT&T already holds in either the 700 MHz band, WCS band or even AWS band be required to be divested to a smaller carrier than AT&T Mobility or Verizon Wireless.

By the way AT&T is following Big Red in lock step by ending device subsidies for consumers buying tablet computers. Both carriers will still offer 4G LTE compatible Apple iPads and other tablets but now the consumer has to pay full price for the tablet. AT&T is even willfully violating the Commission's Open Internet Order. Their decision to restrict Apple FaceTime use over cellular to customers using their more expensive Mobile Share plans are deeply disturbing. In most markets when consumers buy a product from earmuffs to even a computer we get to decide how we use them after we buy them. However, AT&T wants to dictate how we can and cannot use our iPhones or iPads on their network.

The single best way to protect competition and ensure we have Network Neutrality is by mandating broadband competition in the fixed market and in the wireless market. We need more choices in broadband and mobile broadband providers for accessing the Internet like we have had with dial-up Internet access. So broadband competition is the best way to maintain Net Neutrality.

### **III. Why Conditional Divestitures**

As noted above AT&T has acquired a great deal of excess 700 MHz spectrum and if they could would like to surely stockpile all the AWS and WCS spectrum they can. Remember the lies they told to try and gain merger approval to acquire T-Mobile USA. They said they needed to merge with T-Mobile to be able to expand their 4G services however, the Commission and Department of Justice found that competition from Verizon Wireless would in any case force AT&T to expand its 4G offerings. Also in a document AT&T accidentally leaked to regulators they admitted the merger had nothing to do with improving competition or their network and everything to do with getting rid of a scrappy competitor that provided better service at a lower cost. As a result of the merger all evidence pointed to higher prices and fewer choices for consumers as the U.S. wireless market would become a near duopoly controlled by AT&T and Verizon Wireless.

Despite its merger rightly being denied AT&T has in a way gotten away so far with what it wanted -- to stockpile all the spectrum it can to deprive smaller competitors of getting more spectrum. The good news out of the merger's denial was that according to their merger contract they were contractually bound in the event it failed to file an application to transfer some of their spectrum licenses to T-Mobile USA. That deal (12-21) was rightly approved giving the weakened T-Mobile (that survived due to the merger denial but initially emerged weaker) more spectrum. Also when the Verizon Cable deals were approved which were controversial because of the marketing agreements to resell each other's services T-Mobile USA got to acquire some AWS spectrum from Verizon Wireless further putting T-Mobile in a stronger position.

Nevertheless, AT&T while losing its bid to merge T-Mobile USA with its company and acquire their spectrum for itself has won a lot of spectrum when you put the Qualcomm and 700 MHz LLC deals together AT&T has a great deal of spectrum now. Both of these deals were approved with some conditions. The combination of Qualcomm's spectrum and 700 MHz LLC's spectrum in AT&T's hands should be concerning because of the amount they now have. In its propaganda effort to win merger approval AT&T trumped up the lie of a spectrum crisis that they faced severe spectrum shortages. In reality there is a spectrum crisis but it predominantly affects smaller carriers more who are starved and deprived of spectrum. The spectrum crunch AT&T claims they have used to gain regulatory approvals for anti-competitive mergers. However, the spectrum crunch on smaller carriers like C-Spire (formerly Cellular South) is all too real.

I will file a submission for the record with supporting documents in them instead of providing the usual footnotes in a petition.

#### **IV. Wireless Divestiture**

Instead of allowing Ma Bell which has been put back together during the 2000s to erect a Ma Cell the Federal Communications Commission and U.S. Department of Justice's Antitrust Division wisely blocked the AT&T Mobility T-Mobile USA merger. That being said both AT&T Inc. and Verizon Communications have recently put their interests in shutting down wire-line service to focus entirely on wireless ahead of consumers interests.

I join with Teletruth an Alliance for consumer's telecommunications rights asking that Congress and the FCC issue an order mandating a wireless divestiture of AT&T Inc., and Verizon Communications.

In fact we need a Congressional hearing and investigation in the above proposed matter which is sought to separate AT&T Mobility and Verizon Wireless from their incumbent wire-line broadband lines this also includes both fixed wire-line phone service.

While preventing anti-competitive mergers in the wireless market and expanding wireless competition is important what's more important is requiring wire-line and wireless companies to compete. As such collusion between wire-line and wireless vertically integrated services and networks harms consumers and the economy.

Here are some concerns:

#### **1) AT&T, T-Mobile, Verizon and Other Very Large Wireless Companies Posed as 'Very Small Businesses' to Get an Estimated \$8 Billion Dollars in 'Small Business' Discounted Wireless Spectrum.**

Here is a direct quote from the AT&T (formerly Cingular) 2002 Annual Report.

"The Company has investments in affiliates...The more significant of these investments are GSM Facilities, LLC (Factory), a jointly-controlled infrastructure venture with T-Mobile for networks in the New York City metropolitan area, California and Nevada, and Salmon, formed to bid as a "very small business" on FCC

licenses and build out and operate wireless voice and data communications systems using those licenses."

This blocked real small business wireless competition by out-bidding them and allowed the very large companies to deceive the public. This should be investigated before any merger. We ask: Should the spectrum be given to authentic small business competitors.

Read Teletruth's Small Business Spectrum Complaint: [Read Our Former Small Business Spectrum Complaint](#)

- **2) The FCC's Spectrum and Small Business Competition Market Analysis is from 1997, 1999, and 2001.**

This next quote is in almost every FCC docket from 2010-2011, including all broadband, net neutrality and wireless proceedings. It is about small business spectrum. It is from 1997 and it is the basis for the small business market analysis presented in 2011.

"Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A 'small business' is an entity with average gross revenues of \$40 million for each of the three preceding years, and a 'very small business' is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. [1] The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as 'very small business' entities,

and one that qualified as a 'small business' entity." (Emphasis added)

Any 3rd grader writing a report would ask - What happened since 1997? This is just one of many different market analyses, some from 1999, 2000 or 2001. The FCC is the overseer of spectrum has avoided an investigation to fix this data (we've filed multiple complaints) because they would find that the large companies essentially gamed the regulatory system, costing the government billions and harming America's competitors as well as customers. Before any merger can go through, the FCC needs to examine what happened to the small business spectrum auctions as the first step is to get accurate data.

- **[Read more about the FCC's Data Quality.](#) 3) The Previous SBC-AT&T Merger Commitments and the Enforcement of those Commitments Were Useless. However, the Harms Post-Merger in Every Case Were Severe.**

**AT&T = Southwestern Bell (SBC), Pacific Telesis, SNET, Ameritech, BellSouth & the former-AT&T.**

In every Bell merger the commitments were a joke and the harms included closing down major broadband deployments in almost every state in the US, not to mention higher prices and a lack of actual competition. For example:

- By 2000, now Pacific Bell, now AT&T-California, was to spend \$16 billion dollars and upgrade 5.5 million homes with fiber optics, replacing the old copper wiring. After SBC merged with Pacific Telesis, in 1997 SBC canceled all plans even though customers were charged (and are still being charged) today for these network upgrades.
- By 2007, all of Connecticut should have been completed with I-SNET, a \$4.5 billion dollar fiber optic upgrade of the

entire state. After the merger with SBC in 1998 the networks under construction were closed down.

- By 2002, now-AT&T should have been competing for wireline services in 30 cities outside their region or pay a fine of \$1.2 billion dollars based on the SBC-Ameritech merger. Verizon's merger with GTE made statements that they would be in 24 cities outside their own territories by 2003. No wireline competition ever resulted from the mergers. Worse, in the SBC-Ameritech merger, the FCC required 3 customers per city.
- By 2007, based on the AT&T-BellSouth merger, 100% of AT&T's 22 states should have had at least 200kbps services available to everyone, residential and businesses alike as well as offered \$10 DSL to new customers. Never happened.

It should be clear that the FCC does not have the ability to create enforceable merger commitments so any expectation of change needs to be based on probable harms, not possible benefits.

- **[Read How the Mergers that Formed AT&T Harmed Customers.](#) 4) The Wireless Companies are in Collusion with their Wireline Counterparts - Overcharging Every Customer, including Lifeline, Low Income and Seniors, as well as Harming US Broadband and the Economy.**

## **Conclusion:**

Considering the facts provided above we need a wireless divestiture of AT&T Inc., and Verizon Communications separating their wireless units from their wire-line businesses. Regulators also need to ensure that there is a competitive wireline and wireless market and that spectrum deals approved are in the

public interest. Without conditions and some form of divestiture I do not see how AT&T's new deals serve the public interest.