

**Before the  
Federal Communications Commission  
Washington, DC 20554**

**In the Matter of**

**Policies Regarding Mobile Spectrum Holdings ) WT Docket No. 12-269**

**Comments of United States Cellular Corporation**

United States Cellular Corporation ("USCC") hereby files its Comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup>

**Introduction and Summary**

USCC, though it has supported "bright line" spectrum limits in the past, now believes that such limits may be impractical, given the vagaries of both the amount and timing of when more spectrum will be made available to wireless carriers as a result of the implementation of the Middle Class Tax Relief and Jobs Creation Act. However, USCC does support other measures designed to protect and enhance competition, including a vigorous employment of the spectrum "screen" in evaluating wireless transactions. The FCC should also ensure that virtually all spectrum in a given frequency band made available at auction does not wind up in the hands of one or two carriers, as that type of spectrum concentration tends to undermine interoperability, roaming, and competition.

Lastly, USCC believes that the FCC should act to speed up the process of approving unopposed transactions by small and mid-sized wireless carriers which comply with the relevant spectrum screen and other FCC requirements.

---

<sup>1</sup> Policies Regarding Spectrum Holdings, WT Docket No. 12-269, Notice of Proposed Rulemaking FCC 12-119 (rel. September 28, 2012) ("NPRM").

**I. The Amount of Spectrum Available To Carriers Will Be Expanding Shortly and the FCC Should Refrain From Imposing a Spectrum Cap Until After It Can Assess the Impact of These New Spectrum Allocations on the Competitive Marketplace**

As is discussed in the NPRM, the amount of spectrum which wireless carriers may hold has expanded with the amount of spectrum which has become available for use by wireless carriers. The NPRM succinctly describes the evolution of wireless spectrum limitations from the cellular "cross-ownership" rule of the early eighties to today's case by case examination of the competitive effects of wireless transactions and auction awards using "screen" review procedures. NPRM, ¶¶ 4-8.

As noted above, since 2004, the FCC has used a two-part "screen" to help identify markets where the acquisition of spectrum would provide a reason for further competitive analysis. The first part of the screen considers changes in market concentration which would result from a proposed transaction, employing the Herfindahl-Hirschman Index ("HHI"), which involves adding up the squares of each licensee's market share. The second part of the screen examines the amount of spectrum to be acquired as a percentage of the spectrum that is "suitable and available" for the provision of mobile telephony/broadband service in a given market. Under current procedures, proposed acquisitions which would allow an acquiring entity to control more than one-third of the available spectrum are considered to raise competitive concerns. In a market which is highlighted by one or both components of the "screen" analysis, the FCC conducts a review to determine whether the transaction will result in an increased likelihood that the combined entity will behave in an anti-competitive manner. At the present time, the following wireless services are always included in this analysis: cellular, PCS, SMR and 700 megahertz. AWS-1 and BRS spectrum are also included if they are considered "available." If both AWS-1 and BRS are considered "available," the applicable screen "numerator" is 145 MHz.

The FCC's screen review process has been employed seriously and responsibly in various transaction reviews, such as the review of the proposed 2011 AT&T/T-Mobile merger.

However, the NPRM also notes the indisputable consolidation of the wireless industry in recent years. Since 2003, the number of nationwide wireless carriers has shrunk from 6 to 4. In 2003, the top 6 facilities-based nationwide wireless providers served approximately 78% of the total mobile wireless subscribers. However, by the end of 2009, the top 4 facilities-based nationwide providers had increased their combined market share to 88%, and that percentage has likely increased since then. Moreover, since 2003, many regional and rural facilities based wireless carriers have ceased to exist, including Dobson Communications, SunCom Wireless, Rural Cellular Corporation, ALLTEL, Midwest Wireless and Centennial Communications. And it has been recently proposed to add MetroPCS to this list, through its proposed acquisition by T-Mobile. Finally, the largest wireless carriers have bolstered their positions through significant spectrum only transactions, such as the AT&T-QUALCOMM and Verizon Wireless-SpectrumCo spectrum acquisitions.<sup>2</sup>

In light of these developments, it has been suggested that the only way of preserving competition in the wireless industry is to re-impose some form of spectrum cap, that is, an absolute limit on spectrum holdings, and USCC has supported that approach in the past. However, as a practical matter, it seems unwise for the FCC to adopt a spectrum cap, at least in the immediate future. It is probable that that BRS and AWS-1 spectrum will soon be considered fully "available" in all markets. Also AWS-4 spectrum (2000-2020 MHz/2180-2020 MHz), the H Block (1915-1920 MHz, 1995-200 MHz) and the G Block (1910-1915, 1990-1995 MHz), as well as "repurposed" 600 MHz television spectrum (609-698 MHz) and 3550-3650 MHz

---

<sup>2</sup> NPRM, ¶14.

spectrum will all be made available for wireless use in the next year or two, albeit under differing circumstances in each of those frequency bands.<sup>3</sup>

Given this backdrop it seems prudent for the FCC to wait to assess the impact of these spectrum allocations on wireless competition before imposing any new absolute limitation on spectrum acquired in the secondary market. Given the different circumstances under which the newly allocated spectrum will enter the wireless marketplace, the "flexibility" justification for a "screen" rather than a "cap" approach seems particularly strong at the present time. As discussed below, we would suggest certain modifications to the spectrum "screen" transaction review process to make it fairer and more effective.

## **II. The FCC's Transaction Review Process Should Be Made More Effective**

The FCC devised its "screens" in an adjudicatory context<sup>4</sup> and they have never been codified or ratified in a rulemaking proceeding. If the FCC wishes to maintain screens as its primary evaluative technique they should be regularly updated, at least every two years, in a proceeding of general applicability, perhaps as part of the annual competition proceeding. That would enable interested parties to bring to the FCC's attention matters bearing on the wireless industry's evolution and alert the FCC to current threats to competition, with opportunity for all sides to be heard.

We believe that spectrum should certainly be regularly added to the "denominator" of the wireless spectrum screen when it becomes available to carriers for commercial use. Conversely,

---

<sup>3</sup> See, e.g., TR Daily, November 20, 2012; Stifel Nicolaus, Internet, Media, R Telecom Services Industry Update, "FCC Chairman Proposes Dish Spectrum Wireless Use, with Protection for H Block."; Expanding the Economic and Innovation Opportunity of Spectrum Through Incentive Auctions, Docket No. 12-268, Notice of Proposed Rulemaking, FCC 12-118 (rel. October 2, 2012), ¶¶ 123-184; Press Release, FCC Announces Tentative Agenda For Open Meeting, released November 21, 2012.

<sup>4</sup> See, e.g., Applications of AT&T Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations, Memorandum Opinion and Order, 19 FCC Rcd ¶109 (2004); Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless, Applications For 700 MHz Band Licenses, Memorandum Opinion and Order, 23 FCC Rcd. 16791 ¶9 (2008) ("Union Order").

when spectrum ceases to be available for commercial and/or broadband use, as in the case of the 700 MHz "D" Block, it should be removed from the screen denominator.

Assuming that some form of market by market screen analysis will be maintained by the FCC, the NPRM asks whether the Commission should: (a) broaden its analysis to modify its current product market definition to reflect differentiated service offerings, devices and contract features; (b) define smaller product markets within the current "mobile telephony/broadband services" market; (c) modify its definition of the relevant geographic market to include the nation as a whole as well as local Cellular Market Areas; (d) reconsider whether one third of "available and suitable" spectrum should remain the approximate limit on spectrum holdings; (e) determine whether and how spectrum holdings might be calculated on a national basis; and (f) modify its procedures to give different "weights" to different spectrum bands in evaluating a licensee or applicant's mobile spectrum holdings.<sup>5</sup>

USCC takes no position at this time on any of these proposals and will want to review the comments filed concerning them, perhaps discussing those issues in reply comments. We would, however, note one practical concern which applies to each of these proposed changes. Namely, each of them individually and all of them together would add materially to the length of time it takes the FCC Wireless Bureau to evaluate proposed transactions, especially if they were applied to all transactions of whatever size. USCC is a mid-sized carrier. When it has been a buyer of licenses or spectrum, its transactions have generally complied with the relevant spectrum screens and have seldom been opposed. In 2011 and 2012, USCC, as a buyer, was involved in eighteen transactions requiring substantive FCC approval. None of its assignment or transfer applications was opposed. On average, it still took approximately 95 days, or 3 months, for each of those transactions to be approved. It would not serve the public interest for USCC and similarly

---

<sup>5</sup> NPRM, ¶¶22-40.

situated carriers to be subjected to additional "layers" of evaluation, causing further months of delay, when they seek to buy the spectrum they need to compete with the national carriers. Whatever the FCC decides to do about these additional proposed methods of evaluation, it should find some means of exempting small and mid-sized carriers from their full rigor. We would suggest that if a Tier I or Tier II carrier seeks to acquire wireless authorizations or spectrum and if the acquisition complies with the relevant local market spectrum screens, the transaction would be presumptively lawful and should be approved expeditiously, absent any other disqualifying factors.

### **III. The FCC Should Impose Appropriate Limitations on Spectrum Acquired At Auction**

USCC, as noted above, is now skeptical concerning "spectrum cap" type limitations on spectrum acquired in the secondary market. We agree that the circumstances involved in such acquisitions can be various and complex and that the public interest is probably best served by a careful, case by case analysis of such transactions.

However, where auctions are concerned, USCC believes that other considerations apply. In theory, of course, auctions are subject to "screen" analysis.<sup>6</sup> However, in practice no meaningful limitations have been placed on the amount or type of spectrum which carriers have been allowed to acquire in recent auctions. "Greenfield" spectrum has essentially been wide open, with diversity concerns only being served by different sized markets. The effects of this laissez faire policy have, however, sometimes been contrary to the public interest.

Perhaps the leading example is Auction 73, held from January-March 2008, which auctioned 700 MHz licenses. The consequences of Auction 73 for Lower 700 MHz spectrum licensees have been profound and long lasting. AT&T Mobility was the largest buyer of licenses

---

<sup>6</sup> See Union Order, Footnote 4, supra.

in the Lower B Block, acquiring 227 CMA licenses in that block (704-710 MHz, 734-740 MHz). It also acquired a dominant position in the Lower C Block by virtue of its acquisition of Aloha Communications. Verizon Wireless bought the 10 REAG licenses in the Upper C Block (746-757 MHz, 776-787 MHz) which cover the contiguous United States and Hawaii. Both carriers have used those blocks for critical LTE deployments. One consequence of AT&T's dominance of the Lower B and C Blocks, and its decision not to acquire Lower A Block licenses, was the development of Band 17, a subset of the Lower 700 MHz A, B and C Block frequencies comprising 3GPP Band 12. Band 17 only covers the Lower 700 B and C Blocks and is not interoperable with Band 12.<sup>7</sup> The lack of interoperability between devices designed to operate only on the B and C Block (Band 17) and devices designed to utilize all three paired Lower 700 MHz blocks (Band 12) has greatly hampered the development of networks using the A Block and has left this spectrum underutilized at a time of great spectrum scarcity. Further, such A Block authorizations are frequently held by USCC, King Street Wireless and other smaller carriers who are focused on serving rural markets where 700 MHz spectrum is particularly useful due to its superior propagation characteristics.

This stranding of A Block spectrum has generated repeated requests by A Block licensees to the FCC to restore interoperability across the Lower 700 MHz Band. USCC continues to support such a rulemaking. However, the delay in device development caused by the lack of interoperability has been damaging to carriers planning to utilize A Block licenses in their 4G deployments..

Even though USCC still firmly believes and has demonstrated that an interoperability mandate would be in the public interest, we would also note that the issue would not have arisen

---

<sup>7</sup> See, e.g., Comments of United States Cellular Corporation in Docket No. 12-69, filed June 1, 2012; Reply Comments of United States Cellular Corporation, in Docket No. 12-69, filed July 6, 2012.

if there had been a greater diversity of license winners in the A, B and C Blocks from the outset. Interoperability would have been a practical necessity if carriers held spectrum in each of the blocks and all of those carriers would have been working together to develop technology and drive a robust ecosystem of devices. Ensuring that all Lower 700 MHz licensees become vibrant competitors will still serve the public interest. But now the task is more complex than it need have been.

The lesson to be drawn from this experience, we submit, is that the FCC's public interest objectives in any spectrum auction auctions should include the fostering of a competitive wireless industry which will serve the long term economic interests of the U.S.A. Such a policy would also be responsive to the often cited but usually ignored mandate of Section 309(j)(3)(B) of the Communications Act<sup>8</sup> to "avoid excessive concentration of licenses" and to disseminate licenses among "a wide variety of applicants," a responsibility current auction policies fail to meet.

USCC would propose that as a general matter no auction applicant be allowed to acquire more than 25 percent of the wireless spectrum available for auction in any licensed area. Such a principle, if adopted as a rule by the FCC, would promote competition and a diversity of licensees, and would provide structural encouragement for interoperability and roaming. There is precedent for such auction limitations. Prior to 2000, former Section 24.710 of the FCC's Rules "prohibited PCS auction applicants from winning (but not from acquiring in the secondary

---

<sup>8</sup> 47 U.S.C. §309(j)(3)(B).

market) more than 98 C and F Block licenses."<sup>9</sup> That rule was repealed only because of the then applicable wireless spectrum "cap," for which there is no equivalent today.<sup>10</sup>

However, whether or not USCC's specific proposal is adopted, a principle should be adopted in this proceeding to the effect that results similar to those which occurred in Auction 73 should never be permitted to occur again.

### Conclusion

For the foregoing reasons, the FCC should adopt the secondary market and auction policies discussed above.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By: Grant B. Spellmeyer pc  
Grant B. Spellmeyer, Executive Director  
Federal Affairs and Public Policy  
United States Cellular Corporation  
555-13<sup>th</sup> Street, NW, #304  
Washington, DC 20004  
Phone: 202-290-0233  
Fax: 646-390-4280  
Email: grant.spellmeyer@uscellular.com

By: Peter M. Connolly  
Peter M. Connolly  
Holland & Knight LLP  
800 17<sup>th</sup> St, N.W., Suite 1100  
Washington, DC 20006-6801  
Phone: 202-955-3000  
Fax: 202-955-5564  
Email: peter.connolly@hklaw.com

November 28, 2012

---

<sup>9</sup> In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, Sixth Report and Order on Reconsideration, 15 FCC Rcd 16266 (2000),

¶54.

<sup>10</sup> Ibid, ¶¶56-60