

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Policies Regarding Mobile Spectrum)	WT Docket No. 12-269
Holdings)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

Michael F. Altschul
Senior Vice President and General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Scott K. Bergmann
Assistant Vice President, Regulatory Affairs

CTIA – The Wireless Association®
Expanding the Wireless Frontier
1400 Sixteenth Street, NW
Suite 600, Washington, DC 20036
(202) 785-0081
www.ctia.org

November 28, 2012

TABLE OF CONTENTS

DISCUSSION	2
I. THE COMMISSION MUST CONTINUE TO FREE UP ADDITIONAL SPECTRUM FOR MOBILE BROADBAND.	2
II. THE COMMISSION SHOULD EMPLOY A SPECTRUM SCREEN CHARACTERIZED BY CLEAR AND PREDICTABLE RULES OF THE ROAD AND SHOULD NOT DELAY REVIEW OF TRANSACTIONS OR AUCTIONS.....	4
A. The Commission Should Employ a Spectrum Screen that Provides Clarity and Predictability, Is Regularly Updated, and Is Consistently Applied.	5
B. The Commission Should Not Delay Review of Transactions or Auctions While It Evaluates the Merits of This Proceeding.	6
III. THE COMMISSION SHOULD NOT RE-IMPOSE A RIGID, INFLEXIBLE LIMIT ON SPECTRUM HOLDINGS.....	8
CONCLUSION.....	10

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Policies Regarding Mobile Spectrum) WT Docket No. 12-269
Holdings)

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”)¹ submits these comments in the above-captioned proceeding regarding Commission policies governing mobile spectrum holdings.²

While the best way to foster a competitive market is to identify new spectrum resources, CTIA supports the Commission’s effort to update the spectrum screen to make it clearer, more predictable, and applicable to evolving marketplace conditions. As the Commission noted, it has been more than a decade since the last comprehensive review of the Commission’s policies governing mobile spectrum holdings, and CTIA agrees these policies should be revised to “keep pace with market changes.”³ The following principles should guide Commission action:

- *More spectrum is the most effective way to promote a competitive market and address the growing demand for wireless services.* More spectrum will achieve far more for U.S. consumers and the Nation’s economy than more spectrum limits. The Commission should strive to bring additional spectrum to market to enable a diverse array of wireless providers to accommodate consumers’ growing demand.

¹ CTIA is the international organization of the wireless communications industry for both carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *Policies Regarding Mobile Spectrum Holdings, Notice of Proposed Rulemaking*, 27 FCC Rcd 11710 (2012) (“Notice”).

³ *Id.* at 11711 ¶¶ 1-2.

- *Existing competition policies, revised to reflect the current marketplace conditions, will best achieve clear rules of the road for spectrum review.* The Commission should apply the spectrum screen in a clear, predictable manner, consistently across all transactions, and should update it regularly. Lack of predictability hinders the functioning of the secondary market, creating impediments for all parties seeking to rationalize their spectrum holdings – including both those who seek to acquire spectrum and those seeking to sell spectrum holdings.
- *Avoid inflexible limits.* As CTIA has noted before, there is no sound basis to reimpose a spectrum cap.⁴ A cap would fail to account for the dynamic nature of the mobile communications marketplace and the introduction of new technologies, and would create unnecessary inefficiencies. In contrast, case-by-case review enables the Commission to exercise its judgment informed by the proposed transaction’s particular circumstances.

Taking these steps will achieve the Notice’s goals of “provid[ing] rules of the road that are clear and predictable” while “promot[ing] the competition needed to ensure a vibrant, world-leading, innovation-based mobile economy.”⁵

DISCUSSION

I. THE COMMISSION MUST CONTINUE TO FREE UP ADDITIONAL SPECTRUM FOR MOBILE BROADBAND.

As a threshold matter, CTIA believes that the most effective means to promote a competitive market is ensuring that sufficient spectrum is made available to meet the needs of the diverse array of U.S. wireless carriers. Indeed, CTIA has been an ardent supporter of efforts by President Obama and the Administration, Congress, and the FCC to identify and allocate more spectrum to accommodate the explosive growth in demand for mobile broadband services. Simply put, the best way to ensure access to spectrum is to make more available.

Thus, while the comments below propose modifications to update the Commission’s spectrum aggregation review framework, the best course of action to maintain U.S. leadership in

⁴ See Comments of CTIA – The Wireless Association®, RM-11498 (Dec. 2, 2008); Comments of the Cellular Telecommunications & Internet Association, WT Docket No. 01-14 (Apr. 13, 2001) (“CTIA Spectrum Cap Repeal Comments”).

⁵ Notice, 27 FCC Rcd at 11711 ¶ 1.

mobile broadband, advance the U.S. mobile economy, and meet consumers' growing demand is to introduce a significant infusion of additional spectrum into the marketplace:

- *Spectrum is needed to maintain U.S. leadership in mobile broadband.* Today, the U.S. leads the world in deployment of 4G/LTE.⁶ U.S. companies also account for roughly three-quarters of tablets sold and for the operating systems used on almost all tablets.⁷ And the U.S. leads in software-driven apps and services, with U.S. companies having developed the operating systems that are run on more than 80% of the world's smartphones.⁸
- *Spectrum is needed to keep the economic and societal benefits of mobile broadband flowing.* Today, the mobile apps economy alone supports nearly 520,000 jobs,⁹ while the wireless industry employs nearly 4 million Americans,¹⁰ contributes about \$150 billion annually to the U.S. GDP,¹¹ and is expected to account for \$1.4 trillion in productivity gains for U.S. businesses in the next 10 years.¹² As CTIA has noted previously, mobile broadband greatly enhances health care, education, and public safety.¹³
- *Spectrum is needed to keep up with consumer demand for mobile broadband.* Americans used more than 1.1 trillion megabytes of data from July 2011-June 2012, which was an increase of 104 percent over the previous 12 months,¹⁴ and

⁶ Julius Genachowski, Chairman, FCC, Prepared Remarks to University of Pennsylvania – Wharton, at 1, 3 (Oct. 4, 2012) (“The sobering fact is that based on today’s projections and today’s technologies, demand threatens to outpace the supply of spectrum available for mobile broadband in the coming years.”), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-316661A1.pdf.

⁷ *Id.* at 1.

⁸ *Id.*

⁹ Michael Mandel and Judith Scherer, South Mountain Economics, LLC, *The Geography of the App Economy*, at 5 (Sept. 20, 2012), <http://ctia.it/QQVDnJ>.

¹⁰ Roger Entner, Recon Analytics LLC, *The Wireless Industry: The Essential Engine of US Economic Growth*, at 1 (2012), <http://reconanalytics.com/wp-content/uploads/2012/04/Wireless-The-Ubiquitous-Engine-by-Recon-Analytics-1.pdf>.

¹¹ Julius Genachowski, Chairman, FCC, Prepared Remarks to International CTIA Wireless 2012, at 3 (May 8, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-313945A1.pdf.

¹² Entner, *supra* note 10, at 4.

¹³ See Comments of CTIA – The Wireless Association®, GN Docket No. 09-157 (Sept. 30, 2009).

¹⁴ CTIA-The Wireless Association®, Press Release, Consumer Data Traffic Increased 104 Percent According to CTIA-The Wireless Association® Semi-Annual Survey (Oct. 11, 2012), <http://www.ctia.org/media/press/body.cfm/prid/2216> (“CTIA Semi-Annual Survey Results”).

this usage is projected to continue to rise.¹⁵ As of June 2012, smartphones and wireless-enabled PDAs made up 131 million (or 41 percent) of the almost 322 million wireless subscriber connections in the United States, representing a 37 percent increase since June 2011.¹⁶ And wireless-enabled tablets, laptops and modems now account for 22 million connections in the U.S., accounting for almost 17 percent of all wireless connections.¹⁷

In sum, as the Notice observes, “[e]nsuring the availability of sufficient spectrum is critical.”¹⁸ Whether through removing regulatory barriers or clearing underutilized spectrum in federal and non-federal bands that can be used for mobile services, additional spectrum for mobile broadband allows the U.S. wireless industry to invest billions of dollars every year and deploy world-leading networks, resulting in significant economic and social benefits for U.S. consumers and businesses.

II. THE COMMISSION SHOULD EMPLOY A SPECTRUM SCREEN CHARACTERIZED BY CLEAR AND PREDICTABLE RULES OF THE ROAD AND SHOULD NOT DELAY REVIEW OF TRANSACTIONS OR AUCTIONS.

While the allocation of additional spectrum for mobile wireless broadband services is crucial, the Commission should also update its policies regarding mobile spectrum holdings to provide interested parties “greater certainty, transparency and predictability to make investment and transactional decisions, while also promoting the competition needed to ensure a vibrant,

¹⁵ Cisco, Cisco Visual Networking Index: Forecast and Methodology, 2009-2014 (Jun. 2, 2010), http://large.stanford.edu/courses/2010/ph240/abdul-kafi1/docs/white_paper_c11-481360.pdf; Cisco, Cisco Visual Networking Index (VNI): Global Mobile Data Traffic Forecast, 2011–2016 (Feb. 14, 2012) (“Cisco 2011-2016 Traffic Forecast”), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf.

¹⁶ CTIA Semi-Annual Survey Results, *supra* note 14.

¹⁷ *Id.* This increase is particularly significant because tablets generate 3.4 times more traffic than the average smartphone, and laptops generate 22 times more traffic. Cisco 2011-2016 Traffic Forecast at 2.

¹⁸ Notice, 27 FCC Rcd at 11712 ¶ 4.

increasingly mobile economy driven by innovation.”¹⁹ The Commission, however, should not delay review of pending transactions or auctions while it evaluates the merits of this proceeding.

A. The Commission Should Employ a Spectrum Screen that Provides Clarity and Predictability, Is Regularly Updated, and Is Consistently Applied.

The Commission should employ a spectrum screen that is clear and predictable.²⁰

Properly crafted, a spectrum screen can provide more certainty regarding which investments will be permitted and which will require further review. A screen thus preserves flexibility for the Commission to assess competitive conditions in markets where the screen is triggered, while reducing administrative costs associated with case-by-case review. This approach – predictability in below-screen markets and flexibility in above-screen markets – is consistent with the Commission’s original goals for the screen. As the Commission has explained, the spectrum screen acts to “eliminate from further review those markets in which there is clearly no competitive harm,” while ensuring that “we did not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists.”²¹

Predictability is important not only for parties that seek to acquire additional spectrum but also for parties seeking to rationalize their spectrum holdings through sales of spectrum. Lack of predictability in the application of the spectrum screen is an impediment to the efficient

¹⁹ *Id.* at 11718 ¶ 15.

²⁰ CTIA notes that its members will individually advocate for the precise parameters and components of the appropriate spectrum screen.

²¹ *AT&T Inc. and Dobson Communications Corp.*, 22 FCC Rcd 20295, 20317 ¶ 39 (2007); *see also Western Wireless Corp. and ALLTEL Corp.*, 20 FCC Rcd 13053, 13073 n.142 (2005) (“[T]he analytical purpose of the initial screen [is] to eliminate from review markets where there is no competitive harm rather than identifying markets where competitive harm may exist.”); *AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21569 ¶ 109 (2004) (“[T]he function of [the spectrum screen] was simply to eliminate from further consideration any market in which there is no potential for competitive harm as result of this transaction”).

functioning of the secondary markets and may also depress auction values if potential bidders do not have confidence that they will later be able to rationalize their spectrum holdings.

The Commission should also update the spectrum included in the spectrum screen denominator at regular benchmarks to take into account changes in the spectrum available for mobile services. These benchmarks could occur when rules are adopted or licenses modified to allow mobile services, in which case the Commission should seek comment on the inclusion of a particular spectrum band when it first proposes rule changes or a license modification to allow mobile services. For example, the Commission recently used this approach in the context of its AWS-4 Notice of Proposed Rulemaking, where it asked if “the current spectrum screen for mobile telephony/broadband services [should] be revised to include AWS-4 spectrum.”²² Alternatively, the Commission could update the spectrum included in the spectrum screen denominator as part of the Commission’s annual mobile wireless competition review.²³

Finally, the Commission should apply the screen consistently across all transactions. Parties should be able to plan and rely on how the screen will be applied. Inconsistent application of the screen and shifting guideposts undermine predictability and certainty (for both buyers and sellers of spectrum, alike) and are antithetical to the goals of this proceeding.

B. The Commission Should Not Delay Review of Transactions or Auctions While It Evaluates the Merits of This Proceeding.

CTIA agrees with the Commission’s determination not to delay its review of pending transactions and auctions during its consideration of the proposals in this docket.²⁴ To that end,

²² *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, 27 FCC Rcd 3561, 3597 ¶ 111 (2012).

²³ *See* 47 U.S.C. § 332(c)(1)(C).

²⁴ *See* Notice, 27 FCC Rcd at 11718 n.59 (noting that “[d]uring the pendency of this proceeding the Commission will continue to apply its current case-by-case approach to evaluate mobile spectrum holdings during [its] consideration of secondary market transactions”).

CTIA opposes the recent proposal by the Competitive Carriers Association (“CCA”) that the Commission should “prioritize completion” of this proceeding over its review of pending transactions or any suggestion that review of spectrum-rationalizing transactions be unnecessarily delayed.²⁵

Rather, as the Commission makes improvements to the spectrum screen, it should be mindful of the need to continue to facilitate the secondary market transfer and assignment process,²⁶ which is already a complex process involving overlapping review by both the FCC and antitrust authorities.²⁷ As the Chairman has explained, in order to meet the National Broadband Plan’s goal of making 500 megahertz of spectrum available for broadband use by 2020, the Commission must “facilitat[e] secondary markets” to “help ensure that spectrum can be put to its highest and best use.”²⁸

By taking steps to update the spectrum screen while ensuring that transactions or auctions continue apace during the pendency of this proceeding, the Commission will encourage the flow of spectrum in the secondary market to its highest and best use so that companies can continue to

²⁵ See Comments of The Competitive Carriers Association, GN Docket No. 12-228, at 6 (Sept. 20, 2012).

²⁶ See Notice, 27 FCC Rcd at 11718 ¶ 15.

²⁷ Indeed, recognizing the duplication inherent in review by the FCC and the Department of Justice or Federal Trade Commission, some have called for Congress to eliminate the overlapping review. Under such an approach, antitrust authorities would continue to assess the competitive impacts of proposed transactions, while the FCC would assess whether an applicant is eligible to hold a license or is otherwise in compliance with existing communications laws and regulations. See Diane Katz, *Rolling Back Red Tape: Twenty Regulations to Eliminate*, Backgrounder, No. 2510, Jan. 27, 2011, http://thf_media.s3.amazonaws.com/2011/pdf/bg2510.pdf; Randolph J. May, *If Communications Policy Were a Campaign Issue*, The Daily Caller, Jun. 18, 2012, <http://dailycaller.com/2012/06/18/if-communications-policy-were-a-campaign-issue/>; see also James Gattuso, *Comcast–NBC: Why is the FCC Involved?*, The Foundry Blog, Dec. 4, 2009, <http://blog.heritage.org/?p=21199>.

²⁸ Letter to Honorable Kay Bailey Hutchison, United States Senate, from Julius Genachowski, Chairman, FCC, 2010 FCC LEXIS 4620 *15 (2010) (responses to post-hearing questions from appearance before the Committee on Commerce, Science, and Transportation on April 14, 2010).

innovate and invest in consumer-enhancing mobile wireless service offerings, while safeguarding competition. Thus, while CTIA supports the Commission's efforts to update its rules, the benefits of a dynamic competitive market warrant that the FCC not delay review of transactions or auctions during the pendency of this proceeding.

III. THE COMMISSION SHOULD NOT RE-IMPOSE A RIGID, INFLEXIBLE LIMIT ON SPECTRUM HOLDINGS.

As discussed above, the best way to foster more access to spectrum is to create additional spectrum opportunities – by continuing to make more spectrum available and by employing a spectrum screen that facilitates secondary market transactions while protecting competition. The Commission should not return to the rigidity of a spectrum cap which, as the Notice recognizes, “would limit the Commission’s flexibility to consider individualized circumstances and to respond swiftly to the changing needs of the mobile wireless industry and consumers.”²⁹

CTIA previously documented the harms resulting from a hard spectrum cap policy in an economic analysis authored by Dr. Marius Schwartz and Dr. John Gale appended to CTIA’s comments urging repeal of the former CMRS spectrum cap back in 2001.³⁰ These concerns are just as relevant today. As catalogued by Drs. Schwartz and Gale, a rigid spectrum cap produces substantial efficiency losses. For example, regulatory constraints on spectrum can produce a misallocation of resources, forcing constrained carriers to employ excessive amounts of non-spectrum inputs in lieu of utilizing additional spectrum. Because input substitution is costly and more inefficient, a binding spectrum constraint will inflate the costs incurred by the constrained

²⁹ Notice, 27 FCC Rcd at 11720 ¶ 20.

³⁰ See Marius Schwartz and John M. Gale, *Are Spectrum Limits Needed to Preserve Competition?* (Apr. 13, 2001) (“Schwartz and Gale”), *appended to CTIA Spectrum Cap Repeal Comments*.

firms.³¹ As a result, firms may curtail the quantity of such services and deter or delay the introduction of new services until technology permits them to be offered within the spectrum constraints of the cap. Consumers, in turn, would face higher prices and reduced service options.³²

On the other hand, since the Commission moved away from the spectrum cap, the wireless industry has produced stunning consumer welfare results in the form of expanded coverage by multiple providers, higher investment, and lower prices. For example, the Commission's most recent report on competition in the mobile wireless sector reports that 99.8 percent of the total U.S. population has mobile wireless coverage, with over 97 percent covered by at least three providers and over 94 percent covered by at least four providers. And, 98.5 percent of the U.S. population has mobile wireless broadband coverage, with nearly 82 percent covered by at least three providers and almost 68 percent covered by at least four providers.³³ Cumulative capital investment in the wireless industry is similarly robust, having doubled from \$174 billion in 2004 when the screen was first introduced to \$348 billion in 2012.³⁴ Meanwhile, prices have fallen from an average local monthly bill of \$49 to \$47 over the same period, even as services and usage have expanded.³⁵ Given these clear consumer welfare benefits, there is no basis to return to artificial regulatory limitations imposed by spectrum caps.

³¹ Schwartz and Gale at 30-31.

³² *Id.* at 31.

³³ *See Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fifteenth Report*, 26 FCC Rcd 9664, 9705-06 (2011).

³⁴ CTIA – The Wireless Association®, Semi-Annual Mid-Year 2012 Top-Line Survey Results, at 2 (June 2012), http://files.ctia.org/pdf/CTIA_Survey_MY_2012_Graphics-final.pdf.

³⁵ *Id.*

CONCLUSION

For the foregoing reasons, the Commission should continue to free up additional spectrum for mobile broadband while setting clear rules of the road for spectrum aggregation review. In particular, the Commission should employ a spectrum screen that is predictable, consistently applied across transactions, and updated regularly, while eschewing inflexible limits. Taking these steps will promote competition and help ensure a vibrant, innovation-based mobile economy.

Respectfully submitted,

/s/ Scott K. Bergmann _____

Scott K. Bergmann
Assistant Vice President, Regulatory Affairs

Michael F. Altschul
Senior Vice President and General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

CTIA – The Wireless Association®
Expanding the Wireless Frontier
1400 Sixteenth Street, NW, Suite 600
Washington, DC 20036
(202) 785-0081
www.ctia.org

Dated: November 28, 2012