

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

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SUMMARY

The Rural Telecommunications Group, Inc. (“RTG”) agrees with the many other mobile wireless providers, trade associations, and public interest groups, who filed comments urging the Commission to severely amend (or outright abandon) its existing policy of reviewing instances of spectrum acquisition using a one-third spectrum screen as part of an overall case-by-case analysis. While commenters disagreed as to the most desirable approach, every party filing comments agreed that greater predictability and transparency is long overdue.

While AT&T and Verizon Wireless encourage the Commission to retain its current spectrum screen and case-by-case analysis, such framework merely encourages the entrenchment of just three nationwide mobile wireless service providers – each with approximately one third of all the suitable and available spectrum in a market. Perpetuating a marketplace with just three large service providers flies in the face of the FCC and Department of Justice’s stated preference for having at least four service providers in every market. Utilizing a bright line percentage cap of 25 percent at the county level will ensure a minimum of four competing service providers in each local market.

Notwithstanding the views of AT&T and Verizon Wireless that low-band spectrum offers no greater benefits than high-band spectrum, the majority of parties filing comments correctly believe the Commission should view spectrum lying below 1 GHz as having greater overall value than higher band spectrum. While there is some disagreement among those carriers, associations and public interest groups as to how to precisely limit the over-accumulation of low band spectrum by the country’s largest carriers, a number of commenters have endorsed RTG’s proposal of a parallel spectrum cap of no greater than 40 percent for spectrum below 1 GHz, which has the benefit of eschewing overly complicated “weighting” valuations.

Whether the Commission retains an amended spectrum screen or institutes a bright line percentage spectrum cap, there will forever remain a need to determine at what point in time a particular band of spectrum becomes “suitable” and “available.” While individual commenters have urged the Commission to include or exclude particular bands purely for self-serving reasons, RTG has proposed a solution that plays no favorites among service providers or spectrum bands: if the service rules for a particular spectrum band comport with mobile telephony/broadband services and that spectrum has been auctioned or is already licensed, then it is ripe for inclusion.

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REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys, hereby submits these Reply Comments in response to the comments filed in the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.¹ RTG agrees with the majority of the parties who submitted comments collectively calling for more clarity and predictability when it comes to how the Federal Communications Commission (“FCC” or “Commission”) reviews instances of spectrum aggregation by licensees, whether that spectrum aggregation occurs through secondary marketplace acquisitions, company mergers, or FCC spectrum auctions. In the last decade, the Commission’s use of a case-by-case analysis using a spectrum screen has led to two incontrovertible results: (1) confusion among mobile providers as to *how much* spectrum will trigger a heightened review; and (2) a decrease in competition due to a reduction in the number of license-holding, facilities-based providers and a further widening of the gap between the number of customers served by the country’s two largest mobile wireless service providers – AT&T and Verizon Wireless (the “Twin Bells”) -- and all of their domestic competitors.

¹ *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking (rel. September 28, 2012).

I. BRIGHT LINE SPECTRUM AGGREGATION LIMITS PRESERVE COMPETITION AND TRANSPARENCY BETTER THAN CASE-BY-CASE REVIEWS USING SPECTRUM SCREENS

A bright line spectrum aggregation limit, by its very design, provides all market participants with the most transparent of measuring sticks. In the past, the Commission used numerical spectrum caps (where an individual licensee was limited to holding a specific number of megahertz in a given geographic area). RTG proposes that the Commission instead adopt a percentage cap whereby any given licensee is prohibited from holding an amount of spectrum that exceeds a set percentage of the total “suitable and available” spectrum present in a given geographical area. There will be no ambiguity with such a bright line limit once a fixed percentage cap is put into place. Only one variable remains unsettled: determining which bands of spectrum should be considered “suitable and available” when reviewing spectrum aggregation scenarios.

As RTG discussed in its comments, the Commission and the U.S. Department of Justice have recognized the public interest harms that result from having less than four competitors in a given market.² Yet, were the Commission to adopt the proposals put forth by AT&T and Verizon Wireless which call for a spectrum screen of one-third with a safe harbor provision below that marker, there is absolutely nothing preventing the further consolidation of market players to the point where only three licensed, facilities-based competitors offer services in any given geographical area. It is logically inconsistent on one hand to maintain a one-third spectrum screen (with an absolute safe harbor provision below that percentage) while still holding out hope that the marketplace can support at least four licensed, facilities-based

² *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Comments of the Rural Telecommunications Group, Inc. (filed November 28, 2012) (“RTG Comments”) at p. 7.

competitors with enough spectrum to actually be commercially viable and competitive. If mobile wireless providers face no regulatory barriers barring them from acquiring up to one third of all the suitable and available spectrum in any given local market, then it is only a matter of time before three national carriers divide the full pool of spectrum into three parts with little or no remaining spectrum to be divided up among any remaining competitors, whether national, regional or rural.

Given the inherent limitations of not just the one-third figure, but also the case-by-case spectrum screen analysis itself³, the best solution is to institute a bright line spectrum holding limit of one-quarter (25 percent) of all suitable and available spectrum in a given geographical area.⁴ Going forward, all discussions should revolve solely around which licensed bands qualify as “suitable and available.” Before new frequencies are added to the list of spectrum bands deemed suitable and available, the process the Commission uses to determine that distinction

³ One major limitation of using a case-by-case analysis to review instances of spectrum aggregation is their lack of predictability. Otherwise similarly situated licensees might be treated differently when acquiring the same amount of spectrum in a given local market. Whereas one provider might be allowed to purchase additional spectrum in a county that exceeds a spectrum screen, another provider might be denied additional spectrum if it exceeds the spectrum screen. Therefore, there is no way for any provider to know with certainty whether a potential spectrum acquisition will be approved or denied by the Commission, which prevents a predictable reviewing standard.

⁴ While there should be no specific frequency over which a spectrum band should be automatically deemed “unsuitable” for mobile telephony/broadband services, the Commission (and the industry overall) generally considers anything above the 3 GHz threshold as less than ideal. *See In the Matter of Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Notice of Proposed Rulemaking and Order, GN Docket No. 12-354, FCC 12-148 (released December 12, 2012) at ¶ 19. (“NTIA selected the 3.5 GHz Band as a ‘fast track’ band because: (1) WiMAX equipment has already been developed and deployed in this band; (2) federal operations in the band are geographically limited; and (3) the band has already been allocated for fixed services in other parts of the world. This band is above the 3 GHz threshold often identified as the cutoff for ideal spectrum for mobile cellular uses. Accordingly, the 3.5 GHz Band has not been considered an ideal band for exclusive licensed commercial mobile broadband uses.”)

must be open and transparent so that companies can make critical decisions that preserve their operational integrity while not hindering their customers' experiences.

AT&T and Verizon Wireless both voice their strong desire for keeping some type of safe harbor provision in whatever rules the Commission promulgates.⁵ A safe harbor simply gives assurance to licensees who find themselves acquiring spectrum through auction or a secondary market transaction that if their transaction or purchase does not trigger whatever percentage screen is in place, then by definition and rule they are not prohibited from holding that newly acquired spectrum. What the Twin Bells do not say in their comments – and what bears mentioning - is that bright line limits and safe harbors are not mutually exclusive. The adoption of a 25 percent bright line spectrum cap at the county level for all suitable and available spectrum provides enormous clarity for all market participants, big and small. For example, if the Commission determines that there are *X* megahertz of suitable and available spectrum in any particular county, and either AT&T or Verizon Wireless currently holds less than 25% of *X* megahertz in that county, then absolutely nothing stops either provider from entering into a secondary marketplace license purchase or license lease agreement, or becoming a qualified bidder in an FCC auction, if the contemplated transaction or bid will result in a per-county spectrum holding that falls below 25% of *X* megahertz. RTG's proposal contains the certainty and predictability that AT&T and Verizon Wireless desire while establishing a realistic regulatory paradigm that supports no less than four healthy, competitive mobile telephony/broadband service providers in any given county in the United States. Moreover, as RTG explains in greater detail below, a percentage cap (unlike a hard numerical cap) will actually allow licensees to acquire additional spectrum when it becomes suitable and available.

⁵ Comments of AT&T, Inc. (filed November 28, 2012) at pp. 21-24; Comments of Verizon Wireless (filed November 28, 2012) at pp. 5-11.

As new spectrum becomes suitable and available following a transparent process subject to notice and comment rulemaking proceedings, then the *X* value will gradually increase over time. RTG's proposal thus allows for continued growth in licensee spectrum holdings while at the same time ensuring the continued existence of marketplace competition through preservation of at least four facilities-based, marketplace competitors.

II. SPECTRUM HOLDINGS SHOULD BE REVIEWED AT THE COUNTY LEVEL

While some parties have recommended that any review of a licensee's spectrum holdings incorporate both a "local" review and a "national" review⁶, such an overly cumbersome two-step process would serve no purpose were the Commission to institute a bright line spectrum aggregation limit that incorporates a percentage cap on all of the suitable and available spectrum in a local geographic market. Because any rule preventing a licensee from exceeding a 25 percent cap on the local (county) level would make it mathematically impossible (except in those instances of "grandfathered" spectrum⁷) for any licensee to accumulate spectrum on a national level that would exceed a 25 percent cap, there would be no need under RTG's proposal for any national review. Under RTG's proposal, any grandfathered licensee electing to keep excess spectrum in a given county would be prevented from acquiring additional spectrum in that county until such time that the licensee's existing spectrum holdings plus the newly sought spectrum is less than 25 percent of the suitable and available spectrum in that county at the time

⁶ Comments of CCA – The Competitive Carriers Association (filed November 28, 2012) at p. 10; Comments of CCIA – The Computer and Communication Industry Association (filed November 28, 2012) at pp. 18-20; Comments of Sprint Nextel Corporation (filed November 28, 2012) at p. 13.

⁷ To the extent providers today hold greater than 25 percent of the suitable and available spectrum in a given geographical market, RTG has advocated that the spectrum holdings be "grandfathered" and carriers should be offered the opportunity to elect whether to keep what they currently hold, subject to certain conditions discussed in RTG's Comments (at pp. 11-12) and in greater detail below.

of the acquisition. Accordingly, although a grandfathered licensee may hold more than 25 percent of suitable and available spectrum in a given local market, it may not acquire additional spectrum until its spectrum holdings are reduced below that level. Thus, for the same reasons discussed above, a national review of a grandfathered licensee's proposed spectrum acquisition would serve no purpose.

III. SPECTRUM BELOW 1 GHZ SHOULD BE SUBJECT TO A SEPARATE CAP

Numerous commenters, including nationwide mobile wireless service providers and carrier associations, agree with RTG that when it comes to valuing spectrum, low-band spectrum such as Cellular, 700 Megahertz ("MHz") and the DTV frequencies should be recognized as having greater value to a licensee than high-band spectrum such as Personal Communications Service ("PCS"), Advanced Wireless Services ("AWS"), Wireless Communications Service ("WCS") and Broadband Radio Service ("BRS")/Educational Broadband Service ("EBS") spectrum.⁸ While AT&T and Verizon Wireless perpetuate the myth that low-band spectrum offers no greater benefits than high-band spectrum, this view is not shared by the majority of commenters. The truth is that low-band spectrum allows licensees to build significantly fewer mobile base stations, which decreases both capital expenditure and operational costs, and provides them with a distinct advantage over competitors with only (or mostly) high-band spectrum that creates small coverage footprints per cell. This capital expenditure cost savings allows cellular and 700 MHz licensees like AT&T and Verizon Wireless to extend their coverage footprints beyond what carriers with mostly (or only) high band spectrum can do with the same

⁸ Comments of CCA – The Competitive Carriers Association at pp. 11-12; Comments of CCIA – The Computer and Communication Industry Association at pp. 10-17; Comments of Free Press (filed November 28, 2012) at pp. 16-18; Comments of Public Knowledge (filed November 28, 2012) at pp. 5, 11; Comments of Sprint Nextel Corporation at pp. 6-8; Comments of T-Mobile USA, Inc. (filed November 28, 2012) at pp. 16-18.

capital resources. These larger footprints mean that carriers like AT&T and Verizon Wireless have less of a need to rely on roaming, which in turn saves the carriers higher operating expenses. This additional savings can then be re-applied to even larger footprints or network upgrades.

Differences persist among commenters as to how the Commission should prevent licensees from aggregating a disproportionate amount of spectrum below 1 GHz. Sprint and T-Mobile believe that the appropriate cap should be at one-third (33.33 percent) of all suitable and available spectrum below 1 GHz, while CCA- The Competitive Carriers Association (“CCA”) believes it should be as low as one-quarter (25 percent). RTG, recognizing that the Twin Bells are heavily-invested in the Cellular and 700 MHz Bands, agrees with Free Press that a percentage limit of 40 percent of all suitable and available spectrum below 1 GHz is an appropriate limit for any current market player, rural or urban, large or small, or any future market player looking to participate in the future DTV incentive auctions. A parallel percentage cap (albeit, one that favors current licensees of spectrum below 1 GHz such as AT&T and Verizon Wireless) is the most simple, effective and transparent tool the Commission can use to recognize the inherent advantages of low band spectrum. Not only would a sub-1 GHz cap avoid the pitfalls of attaching “weighted” values⁹ to specific frequency bands, it can be maintained on a long-term basis just like the overall 25 percent cap for all suitable and available spectrum.

⁹ NPRM at ¶ 37; Sprint Nextel Comments at p. 12. A fundamental problem with the overly-complicated proposal of “weighing” individual spectrum bands is that whatever criterion (or criteria) is used, whether it be the market valuation or the POPs of an individual license, can fluctuate over time. What does not change over time is the general acceptance that sub-1 GHz spectrum has greater value than supra-1 GHz spectrum and that this attribute is unlikely to change for the foreseeable future.

IV. A DETERMINATION AS TO WHAT QUALIFIES AS SUITABLE AND AVAILABLE SPECTRUM SHOULD BE MADE ON A REGULAR BASIS FOR PREVIOUSLY-LICENSED SPECTRUM AND IMMEDIATELY UPON THE DEADLINE FOR LONG FORM APPLICATIONS FOR AUCTIONED SPECTRUM.

Regardless of whether the Commission utilizes a case-by-case review with a spectrum screen or a bright line spectrum aggregation limit, there is no avoiding the question of what spectrum bands qualify as suitable and available today, and at what point do non-qualifying bands become designated as suitable and available. With the exception of a possible slight reduction in the number of megahertz attributable from the Specialized Mobile Radio (“SMR”) band (as proposed by the Commission in the NPRM)¹⁰, most commenters agree with the current level of Cellular, SMR, PCS, AWS-1 and 700 MHz Band spectrum currently recognized by the Commission as suitable and available. The most pressing determination facing the FCC is how much of the WCS and BRS/EBS Bands must be included today, and at what point in time should the AWS-2 (H-Block) Band, AWS-4 Band, and other potential mobile telephony/broadband services bands (*e.g.*, AWS-3, DTV) be deemed suitable and available for commercial use.

WCS Band. RTG’s position that the WCS Band is suitable and available for mobile telephony/broadband services¹¹ is more than tenable based on the Commission’s recent reconsideration order¹² and is further supported by various carriers, including Verizon Wireless.¹³ While the service rules appear to limit the functionality potential of 10 of the 30

¹⁰ NPRM at ¶ 29.

¹¹ RTG Comments at p. 5.

¹² See generally *Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, WT Docket No. 07-293, Order on Reconsideration, FCC 12-130 (released October 17, 2012).

¹³ Comments of Verizon Wireless at pp. 19-20.

megahertz in the WCS Band, at least 20 megahertz should be classified as immediately suitable and available. After the comment deadline for this proceeding, the Commission released a Memorandum Opinion and Order approving AT&T's purchase of numerous WCS licenses.¹⁴ In the AT&T WCS Order, the Commission concluded that AT&T can “transition the long-underutilized WCS spectrum towards mobile broadband use.”¹⁵

BRS/EBS Band. For years, the Commission has concluded that only 55.5 megahertz of BRS/EBS spectrum is deemed suitable and available for mobile telephony/broadband services.¹⁶ This determination should remain unchanged for a variety of reasons, but most importantly because nothing of significance has changed in the use of this spectrum since the FCC made the determination. EBS licenses can only be held by certain educational institutions or educational nonprofit organizations.¹⁷ To the extent educational entities can lease excess capacity to

¹⁴ In the Matter of Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company, Memorandum Opinion and Order, WT Docket No. 12-240, FCC 12-156 (released December 18, 2012) (“AT&T WCS Order”).

¹⁵ AT&T WCS Order at ¶ 46.

¹⁶ *In the Matter of Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, File Nos. 0003462540 *et al.*, FCC 08-259 (released November 7, 2008) (“Sprint-Clearwire Order”) at ¶ 70. (“We conclude that 55.5 megahertz of BRS spectrum (*i.e.*, all BRS spectrum except the MBS channels, BRS Channel 1, and the J and K guard bands) should be considered suitable and available.”). MBS refers to the Middle Band Segment channels located between the frequencies of 2572 MHz and 2614 MHz.

¹⁷ Sprint-Clearwire Order at ¶ 71 (“The primary purpose of EBS is to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students through video, data, or voice transmissions.”). *See also* 47 C.F.R. § 27.1201(a) (“[a] license for an Educational Broadband Service station will be issued only to an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations, and which is otherwise qualified under the statutory provisions of the Communications Act of 1934, as amended”).

commercial entities in the EBS Band, there is no assurance that the spectrum will be available for any significant period of time.¹⁸ Furthermore, the licensed service areas can be highly irregular and often do not comport with traditional geographical area-based licensing schemes attributable to the more traditional spectrum bands already recognized. Any service provider operating under EBS leases is doing so with less certainty than a service provider utilizing traditional spectrum bands, and the access to that EBS spectrum can be unpredictable. By all accounts, this means that the EBS Band is neither suitable (due to its complicated licensing structure) nor available (at least on a permanent basis). Accordingly, all EBS spectrum should be excluded from the pool of suitable and available spectrum. Certain portions of the BRS Band not included as suitable and available spectrum today remain under the same regulatory conditions that existed when the Commission first considered them to be unsuitable and unavailable.¹⁹ The excluded portion of the BRS Band should remain excluded because these channels continue to be subject to various regulatory constraints such as exceedingly small bandwidth in the case of the J and K guard bands, shared access with high-powered video operators in the MBS, and shared access with assorted users in BRS Channel 1. For all these reasons, the number of megahertz of suitable and available BRS/EBS Band spectrum should

¹⁸ Sprint-Clearwire Order at ¶ 71 (“While licensees are allowed to lease their excess capacity to commercial operators, leasing is subject to various special requirements designed to maintain the primary educational character of services provided using EBS. In addition, other elements of the EBS licensing regime, such as its solely site-specific character, with the absence of any licensee in various unassigned EBS ‘white spaces,’ complicate use of this spectrum for commercial purposes.”)

¹⁹ Clearwire Comments at p. 6. (“The 42 MHz of MBS at 2572-2614 is still used for high-site, high powered video service in some areas of the country, which can be incompatible with low-powered broadband operations. BRS Channel 1 licensees must share the 2496-2500 MHz band with co-primary mobile satellite service (“MSS”) broadcast auxiliary service and fixed microwave licensees. The J and K guard bands are assigned in small increments and are limited to secondary operations.”)

remain at 55.5 megahertz unless and until the present regulatory conditions applicable to the remaining BRS and EBS spectrum are changed so that lessees and licensees are afforded greater protection.

AWS-2 Band. The Commission recently released a Notice of Proposed Rulemaking (H Block NPRM) seeking comment on how to establish the licenses and service rules for the AWS-2 H Block.²⁰ Specifically, the Commission inquired as to “whether the acquisition of H Block spectrum should be subject to the same general mobile spectrum holding policies applicable to frequency bands that the Commission has determined to be suitable and available for wireless services.”²¹ Spectrum that is not yet licensed and will be put to auction should be designated as suitable and available no earlier than when the long form applications are due following a competitive bidding auction. Doing so any sooner would artificially and arbitrarily increase the total amount of spectrum under consideration, and any delays in an auction proceeding would benefit mobile providers in the secondary marketplace who could use the increased ceiling to acquire spectrum outside of that band.

AWS-4 Band. Similar to the AWS-2/H Block, the Commission has recently released a Report and Order and Order of Proposed Modification concerning the AWS-4 Band.²² However, unlike the AWS-2 Band which is not yet available for licensing, the AWS-4 Band consists of

²⁰ *In the Matter of Service Rules for the Advanced Wireless Services H Block – Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012, Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, Notice of Proposed Rulemaking, WT Docket No. 12-357, FCC 12-152 (released December 17, 2012) (“H Block NPRM”).

²¹ H Block NPRM at ¶ 77.

²² *In the Matter of Service Rules for Advanced Wireless Services in the 2000-2020 MHz, and 2180-2200 MHz Bands*, Report and Order and Order of Proposed Modification, WT Docket No. 12-70, FCC 12-151 (released December 17, 2012) (“AWS-4 Order”).

spectrum already licensed to DISH Network. RTG agrees with Verizon Wireless that the flexibility afforded by the new service rules “removes any question that this spectrum is fully suitable and will be available in the near term.”²³ Accordingly, this spectrum should be considered suitable and available now that the service rules have been issued.

Other Spectrum Bands. In the future, the Commission must confront the issue of when to include a particular spectrum band for consideration in the proposed percentage cap. Spectrum below 3 GHz which is licensed and whose service rules are already in place (such as the AWS-4 Band) should be deemed suitable and available for mobile telephony/broadband services and included for spectrum cap purposes if, upon an annual review by the Commission as part of its report on mobile competition, it is deemed suitable and available. Other operators, including AT&T and Verizon Wireless, agree with the concept of having the Commission conduct regularly-occurring “suitability” and “availability” reviews.²⁴ All other spectrum below 3 GHz which has not been licensed but where the service rules are finalized (such as the AWS-2 Band) should be deemed suitable and available for mobile telephony/broadband services at the time when long form applications are due to the Commission following a competitive bidding auction for such spectrum.

V. THE COMMISSION SHOULD IMPOSE CONDITIONS ON LICENSEES WHO ELECT TO KEEP THEIR CURRENT HOLDINGS AND “GRANDFATHER” THEIR SPECTRUM EXCEEDING THE COMMISSION’S ESTABLISHED SPECTRUM AGGREGATION LIMITS

By adopting a bright line percentage cap, the Commission will, for all intents and purposes in evaluating future spectrum acquisitions, avoid the need for complicated spectrum

²³ Comments of Verizon Wireless at p. 21. See also Comments of AT&T at p. 42.

²⁴ Comments of AT&T at pp 44-45; Comments of Verizon Wireless at p. 18; and Comments of CCA at p. 15.

divestitures and transaction-specific conditions as possible remedies to maintaining healthy marketplace competition. Once percentage caps are put into place, the “rules of the road” will be crystal clear for all current and future market players, and their secondary market transactions and auction eligibility will be determined according to the specific terms of the Commission’s rules. The only exception to this absence of divestitures and remedies will be upon the initial promulgation of the rules. RTG has proposed that any licensee exceeding the 25 percent cap for all suitable and available spectrum (or 40 percent cap for all spectrum below 1 GHz) will have 18 months to either divest excess spectrum at the county level²⁵, or, elect to be “grandfathered” and keep the excess spectrum but agree to various conditions in those counties where either percentage cap has been triggered. Free Press also points out the merits of allowing grandfathered licensees to keep existing spectrum holdings so long as the Commission adopts a new allocation policy for the long run.²⁶

Carriers seeking to be grandfathered, in exchange for keeping a disproportionate amount of suitable and available spectrum in a county, must agree to provide data roaming to any requesting carrier at commercially reasonable rates, terms and conditions, and offer to their own customers mobile devices that are fully interoperable. In addition, Tier I carriers seeking to be grandfathered must agree to take proactive steps to ensure that the mobile devices they sell to their own customers are available on a non-exclusive basis to Tier II and Tier III carriers who utilize the same technology as the Tier I carrier. Licensed service providers such as NTCH have

²⁵ RTG concurs with AT&T, Verizon Wireless and other commenters that in the case of any spectrum divestiture when the proposed rules are put into place, it should be up to the individual licensees and not the Commission which particular licenses (either whole or disaggregated) are sold, subject to the Communications Act and the well-established FCC Rules on the transfer of control and assignment of licenses.

²⁶ Comments of Free Press at p. 20.

proposed a solution similar to RTG's whereby carriers exceeding the cap, even after the initial promulgation of the aggregation rules, could keep that excess spectrum so long as they "made roaming on its network realistically available."²⁷

For the foregoing reasons, RTG respectfully requests that the Commission adopt a bright line spectrum aggregation limit along with the divestiture and grandfathering provisions discussed above.

Respectfully submitted,

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²⁷ Comments of NTCH, Inc. (filed November 28, 2012) at p. 3.