

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

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

**Reply Comments of United States Cellular Corporation**

United States Cellular Corporation ("USCC") hereby files its Reply Comments in the above-captioned proceeding.<sup>1</sup>

**Introduction**

In our Comments, USCC stated that while it had supported "bright line" spectrum limits in the past, it now believes that such limits may be impractical, given the amount of new spectrum likely to be made available to wireless carriers pursuant to last year's "Middle Class Tax Relief and Jobs Creation Act." USCC also noted the uncertainty of timing concerning when that spectrum will be made available. USCC, however, did endorse vigorous FCC scrutiny of the competitive impact of proposed wireless transactions through the use of the spectrum "screen," while also supporting the screen's regular updating in rulemaking proceedings.

USCC took no position on various proposals to add factors to "screen" analysis, such as giving different weight to different spectrum bands in evaluating a licensee's qualification to acquire additional mobile spectrum. However, it did note that adoption of such proposals could add materially to the length of time it takes the Wireless Bureau to evaluate wireless transactions,

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

particularly unopposed applications filed by Tier II and Tier III wireless carriers.<sup>2</sup> The time taken now by the FCC in reviewing such uncontroversial transactions is already excessive.

And, lastly, while USCC seeks no new wireless spectrum limits in evaluating secondary market transactions, it does consider it appropriate to impose limitations on new spectrum to be acquired at auction, proposing 25 percent of the spectrum available at auction in a given market as a possible limitation. USCC called attention to the example of Auction 73 in 2008, which allocated 700 MHz licenses. That auction and related transactions resulted in an excessive concentration of Lower B and C Band 700 MHz licenses in the hands of AT&T, which has harmed device interoperability and thus network development across the 700 MHz band. The comments filed in this proceeding and other recent FCC actions provide support for each of those positions.

**I. The Amount of Spectrum Available to Wireless Carriers Will Soon Be Expanding, Supporting A Cautious Approach To Spectrum Limits**

Since comments were filed in this proceeding in November, the FCC has taken three actions which will increase the amount of spectrum to be considered in competitive analyses of wireless transactions. First, the FCC recently added 20 megahertz of presently available A and B Block Wireless Communications Service (WCS) spectrum (2305-2310 MHz, 2350-2355 MHz, 2310-2315 MHz, 2355-2360 MHz) to the evaluation of competition under the existing spectrum screen.<sup>3</sup> Second, the FCC adopted flexible use rules for 40 megahertz of spectrum in the 2 GHz band (2000-2020 MHz, 2180-2200 MHz), now termed the "AWS-4" band.<sup>4</sup> Third, the FCC

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<sup>2</sup> In USCC's Comments, at page 6, we mistakenly retained to "Tier I" and "Tier II" wireless carriers, instead of Tier II and Tier III carriers.

<sup>3</sup> *In the Matter 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 For Consent To Assign and Transfer Licenses*, Memorandum Opinion and Order, FCC 12-156, released December 18, 2012, ¶33 n. 94.

<sup>4</sup> *In the Matter of Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands: Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1625-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz; Service Rules for Advanced*

proposed service rules for AWS "H" Block that will make available 10 megahertz of spectrum (1915-1920 MHz, 1995-2000 MHz) for flexible use.<sup>5</sup> Both AWS-4 and H Block spectrum will likely be added to the spectrum screen. Verizon Wireless proposes that the FCC also find that 19.275 MHz of MSS/ATC spectrum be considered available for mobile telephone/broadband services in the near term and thus be included in the spectrum screen. It also argues that an additional 132.625 MHz of BRS and EBS spectrum be added to the 55.5 MHz of Upper Band BRS spectrum already included in the screen calculation.<sup>6</sup>

The AWS-4 and BRS/EBS spectrum bands still operate under legal and interference constraints and perhaps should not be granted immediate "screen" status.<sup>7</sup> However, there is little doubt that they will be included in screen analysis the next few years, along with "repurposed" 600 MHz broadcast and other spectrum. The creation of this amount of newly "available" spectrum, in USCC's view, furnishes support for not now adopting bright line limits in the FCC's evaluation of "competition" issues in wireless secondary market transactions.

Perhaps recognizing that a "bright line" numerical limit on spectrum is not likely to prevail in these circumstances, the Rural Telecommunications Group ("RTG") now proposes a bright line percentage limit on spectrum aggregation. Specifically, RTG proposes the adoption of a limit which would prohibit an entity from holding more than 25 percent of "suitable and available" mobile telephony/broadband services spectrum at the county level.<sup>8</sup> RTG also

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*Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, Report and Order and Order of Proposed Modification, FCC 12-151, released December 17, 2012.

<sup>5</sup> *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, FCC 12-152, released December 17, 2012.

<sup>6</sup> Comments of Verizon Wireless in WT Docket No. 12-219, filed November 28, 2012, ("Verizon Wireless Comments"), pp. 19-27.

<sup>7</sup> See e.g. Comments of Clearwire Corporation in WT Docket No. 12-269 ("Clearwire Comments"), pp. 5-8.

<sup>8</sup> Comments of Rural Telecommunications Group ("RTG"), in Docket No. 12-269, filed November 28, 2012, ("RTG Comments") p. 9.

recognizes that considerably more spectrum is likely to be made available to wireless carriers shortly and will be properly included in screen calculation.<sup>9</sup>

USCC, however, remains unpersuaded that the FCC should replace the current spectrum screen, which applies a "one third" benchmark, and only triggers additional inquiry into market competition, with a hard and fast 25 percent spectrum cap. We believe the FCC, applying the techniques of searching inquiry demonstrated in the AT&T/T-Mobile proceeding, and working in conjunction with the Department of Justice, can protect competition using its present standards of evaluating wireless secondary market transactions.

## **II. The FCC Should However, Adopt Regular Procedures For Including Spectrum In or Excluding Spectrum From the Spectrum Screen.**

One crucial reform of current screen procedures which does need to be adopted is a regular process for adding or subtracting spectrum from spectrum screen calculations. As in the past, when the FCC recently added 20 MHz of WCS spectrum to the spectrum screen calculation, it was done in the context of its ruling on pending assignment applications.<sup>10</sup>

Diverse commenters have agreed that that approach is inadequate and should be replaced by notice and comment rulemakings in which the issue of spectrum inclusion or exclusion can be adequately considered and fairly decided. This can be done efficiently in the context of deciding whether to allocate a given spectrum band to mobile use.<sup>11</sup> USCC agrees entirely with these comments and urges that this proposal be adopted.

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<sup>9</sup> Ibid, p. 5

<sup>10</sup> See Footnote 3, supra.

<sup>11</sup> See, e.g. Comments of CTIA in Docket No. 12-269, filed November 28, 2012 ("CTIA Comments"), p. 6; Comments of MetroPCS Communications, Inc. in Docket No. 12-269, filed November 25, 2012 ("MetroPCS Comments"), pp. 8-10; Comments of Mobile Future in Docket No. 12-269, filed November 28, 2012 ("Mobile Future Comments"), pp. 11-12.

### **III. The FCC Should Reject Proposals Which Will Elongate The Transaction Review Process**

In its Comments, USCC noted that the NPRM had asked whether the FCC should: (a) broaden its market "screen" 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 procedure to give different "weights" to different spectrum bands in evaluating a licensee's or applicant's mobile spectrum holdings.<sup>12</sup> USCC noted in its Comments that adoption of any or all of those proposals could materially add to the already excessive time the FCC Wireless Bureau takes to evaluate non-controversial transactions involving the acquisition of spectrum by Tier II and Tier III carriers.

Many commenters have responded to the FCC's invitation to suggest modifications to the FCC's competition analysis with suggestions concerning how the "screen" should be modified. Some of those suggestions are simple, i.e. hard and fast spectrum "caps," and others are more complex. But, taken together, they indicate that USCC's apprehensions regarding additional layers of regulatory complexity and resulting delay may be justified. RTG, as noted previously, proposes a 25 percent spectrum cap, and an additional "below 1 GHz" cap. The Competitive Carrier Association ("CCA") would

"establish a separate threshold for spectrum holdings below 1 GHz in local markets, in addition to a screen that evaluates an entity's

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<sup>12</sup> NPRM, ¶¶ 22-40.

overall spectrum holdings in local markets and to establish an additional threshold for assessing nationwide spectrum holdings." <sup>13</sup>

CCA would also have the Commission "acknowledge the disparate technical and economic characteristics of different spectrum bands" by assigning "weight" to different types of spectrum, based on spectrum valuation, "engineering-based calculations, benchmarks to auction results, and secondary market transactions, or some combination thereof."<sup>14</sup>

The Free Press proposes a "three stage" analysis of considerable complexity, even for transactions which would not exceed its proposed 35 percent spectrum cap, the first "stage" of the analysis. The second and third stages would involve evaluation of market by market Herfindahl-Hirschman Index numerical changes as a consequence of the proposed transaction, and evaluation of six other factors, including the potential for future competitive entry, "non-acquisition capacity alternatives," and "other factors impacting competition" balanced against "offsetting factors."<sup>15</sup> Public Knowledge proposes a spectrum screen based on factors "weighted" by either frequency or population factors. Its discussion features technical formulae requiring advanced training in mathematics to comprehend.<sup>16</sup>

USCC urges the FCC to reject any screen "reform" proposals which will elongate the review process to intolerable lengths. USCC also agrees with Verizon Wireless and AT&T that the screen, wherever it is set, ought to be a "safe harbor" for transactions which do not exceed it, at least with respect to spectrum issues.<sup>17</sup> USCC further submits that this safe harbor should certainly be applicable when a proposed transaction involves Tier II or Tier III carriers

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<sup>13</sup> Comments of Competitive Carrier Association ("CCA") in Docket No. 12-269, filed November 28, 2012 ("CCA Comments"), p. 10.

<sup>14</sup> *Ibid*, pp 10-11, n. 33

<sup>15</sup> Comments of Free Press in Docket No. 12-269, filed November 28, 2012 ("Free Press Comments"), *passim*, and Appendix.

<sup>16</sup> Comments of Public Knowledge in W.T. Docket No. 12-269, filed by November 28, 2012 ("Public Knowledge Comments").

<sup>17</sup> Verizon Wireless Comments, pp. 5-11; Comments of AT&T Inc. in Docket No. 12-269, filed November 28, 2012 ("AT&T Comments"), pp. 54-56.

attempting to acquire spectrum to enable them to compete with the national carriers. If the FCC wishes to adopt an additional screen for spectrum below 1 GHz, it should be clear, and also applied on a safe harbor basis.

USCC also sees no need for standards in addition to those the FCC now applies in considering acquisitions of spectrum above the spectrum screen. We oppose the imposition of "burdens of proof" and inquiries into such issues as "existing spectrum usage" proposed by some commenters.<sup>18</sup> Again, USCC views these issues from the perspective of a smaller carrier seeking to compete and requiring prompt FCC review of transactions critical to its future.

#### **IV. The FCC Should, However, Impose Some Restrictions on Spectrum Acquired at Auction.**

As noted above, USCC does not see a need for extensive revisions of the FCC's spectrum screen process with respect to secondary market transactions, except as described above. However, in our Comments, USCC endorsed and now reiterates its support for reasonable restrictions on spectrum acquired at auction.

There is no conceivable reason why it would serve the public interest to allow any one entity to be able to acquire more than twenty-five percent of the spectrum made available in a wireless auction for any given market. We understand that the FCC seeks to protect competition and not individual competitors. But competition does require competitors and permitting monopolization or duopolization of newly available spectrum is not the way to preserve it.

T-Mobile filed strong comments endorsing auction spectrum caps and distinguishing auctions from secondary market transactions from the standpoint of protecting access to spectrum by smaller and midsized carriers.<sup>19</sup> Its comments underscore how critical it is to

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<sup>18</sup> See, e.g., MetroPCS Comments, pp. 11-16.

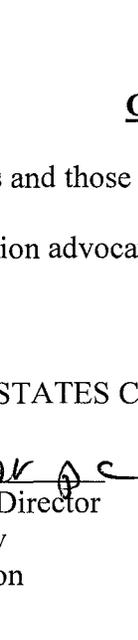
<sup>19</sup> Comments of T-Mobile USA, Inc. in Docket No. 12-269, filed November 28, 2012 ("T-Mobile Comments"), pp. 7-14.

protect access by smaller carriers to greenfield spectrum made available at auctions, in contrast to the multiple competing factors which properly inform evaluation of secondary market transactions.

**Conclusion**

For the foregoing reasons and those given previously, the FCC should adopt the policies with respect to spectrum acquisition advocated by USCC in its Comments and these Reply Comments.

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