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

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

REPLY COMMENTS OF MOBILE FUTURE

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I. INTRODUCTION AND SUMMARY

Mobile Future, a coalition of technology and communications companies and non-profit organizations, respectfully submits these reply comments in response to the Federal Communications Commission’s (“FCC’s” or “Commission’s”) Notice of Proposed Rulemaking in the above-captioned docket.¹ As detailed in its comments, the FCC should update its spectrum screen to reflect all of the spectrum that is suitable and available for the provision of mobile telephony/mobile broadband service, to treat all such spectrum equally, and to employ the spectrum screen as it was originally envisioned – as a mechanism by which to identify markets in which a more in-depth competitive review of proposed spectrum holdings in certain circumstances may be warranted.² In these reply comments, Mobile Future focuses on one issue raised in other comments submitted in the docket – specifically, the appropriate threshold of spectrum holdings that would trigger a more in-depth competitive analysis. The Commission should retain its current threshold of one-third of all spectrum suitable and available for the

¹ *Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 (2012) (“NPRM”).

² Comments of Mobile Future, WT Docket No. 12-269 (filed Nov. 28, 2012) (“Mobile Future Comments”).

provision of mobile telephony/broadband services, and should reject calls for a separate threshold applicable to subcategories of that spectrum. As demonstrated below, the wireless marketplace has experienced sharply increasing consumer adoption of wireless services and exponentially increasing data traffic over broadband wireless networks, and wireless companies continue to compete on several metrics. The FCC's current one-third approach has proven to successfully foster vigorous competition and innovation, and has enabled the FCC to effectively get spectrum into the hands of American wireless consumers and the diverse carriers across the country which support and deliver the new and innovative mobile services and applications these consumers demand.

II. DISCUSSION

A. The Wireless Marketplace Is and Has Remained Competitive, Thriving After the Sunset of the FCC's Spectrum Cap

Competition in the wireless industry continues to thrive following the sunset of the spectrum cap. While the Competitive Carriers Association ("CCA") asserts that the expiration of the spectrum cap has rendered the wireless marketplace not competitive, and argues for a new, separate screen for spectrum below 1 GHz, the facts do not support those claims.

The wireless industry remains competitive, and consumers have enjoyed the benefits of this competition for the decade following expiration of the spectrum cap. Since the sunset of the spectrum cap on January 1, 2003, speed, service, and capabilities have continued to improve, while prices for wireless services have decreased:

- At mid-year 2012, consumers' Average Local Monthly Bills ("ALMB") are \$1.24 less than they were at year-end 2002, despite the increased services and speeds that consumers enjoy.³
- The Cellular Consumer Price Index ("CPI") declined 4.7% from year-end 2002 to year-end 2009, in contrast to a 20% increase in overall CPI in the same period.⁴
- In 2009, Average Revenue Per Voice Minute was \$0.049 – less than half of what it was at the end of 2002.⁵
- In 2009, Average Roaming Revenue Per Minute ("ARRPM") was \$0.025 – a 72% decrease from year-end 2002.⁶

CCA decries the reduction in the number of nationwide competitors since the spectrum cap sunset in 2003,⁷ but the fact is that more American consumers today enjoy on average just as many options for service providers – at lower costs or with more advanced networks – than citizens anywhere else in the world. The Commission's most recent wireless competition report shows that nearly 89.6% of the population has the choice of five or more wireless providers (up from 82.6% in 2003), and 94.3% of the population has the choice of four or more (up from 89.3% in 2003).⁸

³ CTIA, CTIA'S SEMI-ANNUAL MID-YEAR 2012 WIRELESS INDUSTRY SURVEY RESULTS 4 (2012), http://files.ctia.org/pdf/CTIA_Survey_MY_2012_Graphics-final.pdf ("CTIA SURVEY").

⁴ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, *Fifteenth Report*, 26 FCC Rcd 9664, 9782 (2011) ("*Fifteenth Report*").

⁵ *Id.* at 9783.

⁶ *Id.* at 9787.

⁷ Comments of the Competitive Carriers Association, WT Docket No. 12-269, at 4 (filed Nov. 28, 2012) ("CCA Comments").

⁸ See *Fifteenth Report*, 26 FCC Rcd at 9705; see also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect Commercial Mobile Services, *Eighth Report*, 18 FCC Rcd 14783, 14898 (2003) ("*Eighth Report*").

CCA wrongly asserts further that, with the growth in use of data services, “control of the lion’s share of prime broadband spectrum by one or two carriers makes it increasingly difficult for new entrants or other carriers to gain access to spectrum, which in turn prevents access to all other critical inputs, which in turn inhibits effective competition in the industry.”⁹ CCA’s assertion overlooks the substantial mobile broadband deployment by a wide range of providers and the exponential increase in consumer usage that have taken place in recent years. As explained below, numerous carriers have launched 4G networks. In 2010, 81.7% of the population could choose among three or more wireless broadband providers, and 67.8% could choose among four or more.¹⁰ Since then, wireless providers have aggressively deployed additional wireless broadband, including 4G networks, and many have plans to continue to deploy 4G technology, suggesting that consumers can access and will continue to access even more options today than they had in 2010.¹¹ In 2003, the FCC’s wireless competition report did not even refer to wireless broadband, let alone provide deployment figures.

Indeed, America’s numerous wireless providers today aggressively compete on a number of metrics, including pricing, services, and device offerings. The data confirm this flourishing state of competition. For example, with respect to pricing, the ALMB for consumers has dropped in each of the last four years.¹² Monthly Voice Average Revenue Per User (“ARPU”) has declined each year from 2004 to 2009 and overall APRU has declined each year from 2007

⁹ CCA Comments at 6-7.

¹⁰ *Fifteenth Report*, 26 FCC Rcd at 9706.

¹¹ See, e.g., Mike Dano, *LTE coverage targets and subscriber numbers*, FIERCEBROADBANDWIRELESS, Oct. 24, 2012, <http://www.fiercebroadbandwireless.com/special-reports/lte-coverage-targets-and-subscriber-numbers>.

¹² CTIA SURVEY at 2.

to 2009.¹³ Similarly, ARRPM has declined from 2007 to 2009.¹⁴ With respect to data pricing, the effective price per megabit (“MB”) of data declined significantly from \$0.47 in the third quarter of 2008 to \$0.06 in the fourth quarter of 2010, a decline of 87%. These decreases occurred during a period of steady voice use and a massive increase in data use – from 2005 to 2009 voice minutes remained between 692 and 769 per month,¹⁵ and from 2008 to 2009 average monthly data traffic per subscriber increased from 138 MB to 245.4 MB, an increase of 78 percent.¹⁶ More recent data reflect that average smartphone user data use per month grew to 450 MB in the first quarter of 2012.¹⁷

Consumers are also seeing clear benefits as wireless providers continue to compete through differentiated pricing plans and experiment with various types of calling and services options.¹⁸ For example, in 2008, nationwide operators launched unlimited national flat-rate calling plans, which subsequently were offered through prepaid plans and by wireless resellers.¹⁹ In addition, as the Commission has recognized, “the prepaid service segment has evolved in

¹³ *Fifteenth Report*, 26 FCC Rcd at 9790.

¹⁴ *Id.* at 9787.

¹⁵ *Id.* at 9776.

¹⁶ *Id.* at 9780 (citing Craig Moffett, *et al.*, *U.S. Telecommunications and Global Telecom Equipment: The Wireless Data Exaflood*, BERNSTEIN RESEARCH, at 12 (June 14, 2010)). Total wireless data traffic increased from 108B MB at the end of 2009 to 633B MB at the end of the second quarter of 2012. *See* CTIA SURVEY at 8.

¹⁷ *See* Phil Goldstein, *Nielsen: Average U.S. mobile subscriber uses 450 MB per month*, FIERCEWIRELESS, July 19, 2012, <http://www.fiercewireless.com/story/nielsen-average-us-mobile-subscriber-uses-450-mb-month/2012-07-19>.

¹⁸ *Fifteenth Report*, 26 FCC Rcd at 9724.

¹⁹ *Id.* at 9725.

recent years due in part to the introduction and growth of unlimited prepaid service offerings.”²⁰

Prepaid smartphone penetration continues to rise as an alternative for mobile users providing tremendous competition to traditional service plans.²¹

Wireless providers also continue to invest in their networks and innovate to provide new and advanced services to consumers. Several providers compete in the deployment of 4G, as carriers aggressively move to upgrade their networks to LTE.²² At least nine carriers have launched 4G networks.²³ In contrast to their counterparts overseas, U.S. wireless providers are

²⁰ *Id.* at 9730.

²¹ Press Release, The NPD Group, *Lower Prices and Large Selection Boost Pre-Paid Mobile Phone Competition*, Nov. 15, 2012, <https://www.npd.com/wps/portal/npd/us/news/press-releases/the-mpd-group-lower-prices-and-larger-selection-boost-pre-paid-mobile-phone-carriers/>.

²² See, e.g., Mike Dano, *LTE coverage targets and subscriber numbers*, FIERCEBROADBANDWIRELESS, Oct. 24, 2012, <http://www.fiercebroadbandwireless.com/special-reports/lte-coverage-targets-and-subscriber-numbers>.

²³ See, e.g., Press Release, MetroPCS, *MetroPCS Launches 4G LTE Service in the Tampa Metropolitan Area*, Apr. 1, 2011, <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1545068&highlight=>; Press Release, T-Mobile USA, *T-Mobile Expands America’s Largest 4G Network*, Jan. 10, 2012, <http://www.fiercemobilecontent.com/press-releases/t-mobile-expands-americas-largest-4g-network-0>; Press Release, Sprint, *Sprint 4G LTE Lights Up in 11 New Cities and Counties in Indiana, Kansas, Maryland, Massachusetts, Pennsylvania, Virginia and West Virginia*, Nov. 24, 2012, http://newsroom.sprint.com/article_display.cfm?article_id=2468; AT&T, *Network*, <http://www.att.com/network/> (last visited Nov. 30, 2012); Press Release, Verizon Wireless, *Verizon Introduces 4G LTE Faster Than Any New Network Technology In The Company’s History, Now Covering More than 200 Million People*, Dec. 14, 2011, <http://news.verizonwireless.com/news/2011/12/pr2011-12-13a.html>; Maisie Ramsay, *Leap LTE Live in Second Market 10 Months After Tucson Debut*, WIRELESS WEEK, Oct. 17, 2012, <http://www.wirelessweek.com/News/2012/10/networks-Leap-Lights-Up-LTE-In-Las-Vegas/>; Press Release, Clearwire, *Clearwire Reports Record Fourth Quarter and Full Year 2010 Growth*, Feb. 17, 2011, <http://clwr.client.shareholder.com/releasedetail.cfm?ReleaseID=550982>; Maisie Ramsay, *US Cellular Advances LTE With 30 Market Launch*, WIRELESS WEEK, Nov. 1, 2012, <http://www.wirelessweek.com/News/2012/11/us-cellular-advances-lte-with-30-market-launch/>; Press Release, C Spire Wireless, *C Spires Wireless Officially Launches 4G LTE Mobile*
(continued on next page)

not charging premiums for LTE, despite spending billions to acquire spectrum for LTE and build out the next generation network, further evidence of vibrant competition.²⁴

More spectrum-hungry data service offerings also have exploded during this period, putting additional pressure on mobile networks. In 2003, the Commission observed the “convergence of mobile voice and mobile data devices,” but commented that “most of all the mobile phone handsets sold are capable of text messaging, but only a limited number are capable of newer, more advanced services such as interactive games.”²⁵ In sharp contrast, providers now offer a multitude of data-centric devices, including smartphones and tablets, laptop cards, and other data-only devices.²⁶ Indeed, U.S. smartphone penetration passed 50% this year²⁷ and consumers are consistently doing more with their devices. Today, wireless users have numerous choices of devices from multiple carriers at a wide range of price points. For example, a number of manufacturers, including HTC, LG, Motorola, and Samsung, make devices with Google’s Android operating system,²⁸ and such devices are available at almost every price point from

Broadband Services Today on Nation’s Only Personalize Network, Sept. 10, 2012, http://www.cspire.com/company_info/about/news_detail.jsp?entryId=15000015.

²⁴ See Mike Dano, *LTE service pricing*, FIERCEBROADBANDWIRELESS, Oct. 24, 2012, <http://www.fiercebroadbandwireless.com/special-reports/lte-service-pricing>.

²⁵ *Eighth Report*, 18 FCC Rcd at 14860.

²⁶ *Fifteenth Report*, 26 FCC Rcd at 9751.

²⁷ See Steve Smith, *comScore: Smartphone Penetration Hits 51%*, MOBILEMARKETINGDAILY, Nov. 5, 2012, <http://www.mediapost.com/publications/article/186532/comscore-smartphone-penetration-hits-51.html>.

²⁸ See Marcus Startzel, *Mobile Trends in 2012*, MILLENNIAL MEDIA, Dec. 19, 2012, <http://www.millennialmedia.com/blog/2012/12/mobile-trends-in-2012/>.

carriers.²⁹ In addition, in 2013 the Apple iPhone, which now represents more than half the smartphone market,³⁰ will be available from all four nationwide carriers and smaller carriers such as Cricket Communications, C Spire Wireless, Bluegrass Cellular, Appalachian Wireless, and Alaska GCI.³¹

In light of the foregoing, CCA's claim that a new, separate screen should be applied to spectrum below 1 GHz based on changes in the level of competition in the marketplace following sunset of the spectrum cap is unfounded and is not rooted in fact. As demonstrated above, the wireless marketplace is competitive, and has remained competitive following the sunset of the spectrum cap.³²

B. The FCC Should Reject CCA's Request for a New Overly Restrictive Spectrum Screen That Would Harm Competition and Service Quality

CCA's call to adopt a separate spectrum threshold of one-fourth of the suitable and available spectrum below 1 GHz is overly restrictive. CCA's proposed screen fails to acknowledge that carriers with more subscribers need more spectrum to serve those consumers. It also ignores that carriers operating multiple networks need additional spectrum resources to

²⁹ See, e.g., Angus Kidman, *The Genius of Android: Phones At Every Price Point*, LIFEHACKER May 9, 2011, <http://www.lifehacker.com.au/2011/05/the-genius-of-android-phones-at-every-price-point/>.

³⁰ See Lance Whitney, *iPhone snags its highest U.S. market share ever, says report*, CNET, Dec. 21, 2012, http://news.cnet.com/8301-13579_3-57560421-37/iphone-snags-its-highest-u.s.-market-share-ever-says-report/.

³¹ Jason Gilbert, *T-Mobile Will Finally Carry iPhone, iPad and Other Apple Products, Starting in 2013*, THE HUFFINGTON POST, Dec. 6, 2012, http://www.huffingtonpost.com/2012/12/06/t-mobile-iphone-apple-ipad_n_2250966.html; C Spire Wireless, Press Release, *C Spire Wireless to Offer iPhone 4S on November 11*, Nov. 1, 2011, <http://www.businesswire.com/news/home/20111101006626/en/Spire-Wireless-Offer-iPhone-4S-November-11>; Press Release, Cricket Communications, *Cricket to Offer iPhone 5*, Sept. 13, 2012, <http://leapwireless.mediaroom.com/2012-09-13-Cricket-to-Offer-iPhone-5>.

³² See Section II.A, *supra*.

accommodate all consumer use and transition consumers efficiently to more advanced technologies. CCA's proposal should be rejected.

1. The FCC's Existing Threshold of One-Third of All Suitable and Available Spectrum Is Working.

CCA has not provided any evidence of a market failure to justify departure from the FCC's existing spectrum screen threshold. In light of the evidence above that competition within the wireless marketplace continues to thrive, CCA has not demonstrated that the FCC's spectrum threshold of one-third of all spectrum suitable and available for mobile telephony/broadband service has precluded existing competitors from thriving, or providing new entrants the opportunity to enter the market. This is most evident from FCC spectrum auction results. For example, EchoStar successfully participated in Auction 73 as a new entrant in the wireless arena, acquiring a near nationwide footprint of 700 MHz spectrum.³³ Existing and new competitors also enjoyed significant success in Auction 66, with 104 bidders winning licenses – more than half of which certified their eligibility for designated entity small business bidding credits – and the top winning bidders being T-Mobile, Verizon Wireless, SpectrumCo (the consortium of cable company new entrants to the wireless sector), MetroPCS and Cingular Wireless.³⁴

As many commenters demonstrated in the opening comments, the FCC's most important challenge is developing a screen policy that responds to the rapidly evolving technological

³³ See Public Notice, *Auction of 700 MHz Band Licenses Closes*, DA 08-595 (rel. Mar. 20, 2008). DISH recently acquired an additional 40 MHz of spectrum which may be used to provide terrestrial wireless broadband service.

³⁴ See News Release, *FCC's Advanced Wireless Services (AWS) Spectrum Auction Concludes* (rel. Sept. 18, 2006).

landscape.³⁵ The Commission's existing approach, modified as suggested by Mobile Future to accurately and timely reflect all spectrum suitable and available for the provision of mobile telephony/broadband services, appropriately enables the FCC to determine whether a proposed aggregation of spectrum will serve the public interest.³⁶ The Commission should not diverge from that approach.

2. The FCC Should Not Distinguish Between Spectrum Above and Below 1 GHz.

The Commission should not distinguish between, apply a separate screen to, or assign different weights to spectrum based on whether it resides above or below 1 GHz. CCA proffers the incorrect claim that lower band spectrum is more valuable to new entrants because lower band spectrum can provide greater coverage with fewer sites.³⁷ From both business and technical perspectives, this claim is far too simplistic and certainly does not justify the adoption of CCA's arbitrary approach to the screen. The Commission itself has recognized that higher frequency spectrum is advantageous for addressing capacity issues, which is particularly useful

³⁵ See, e.g., Comments of AT&T, WT Docket No. 12-269, at 8 (filed Nov. 28, 2012); Comments of CCIA, WT Docket No. 12-269, at 2 (filed Nov. 28, 2012); Comments of CTIA, WT Docket No. 12-269, at 5-7, 8-9 (filed Nov. 28, 2012); Comments of MetroPCS, WT Docket No. 12-269, at 7-8 (filed Nov. 28, 2012); Comments of TechFreedom, WT Docket No. 12-269, at 6 (filed Nov. 28, 2012); Comments of Telecommunications Industry Association, WT Docket No. 12-269, at 3-4 (filed Nov. 28, 2012); Comments of Verizon Wireless, WT Docket No. 12-269, at 6, 16 (filed Nov. 28, 2012).

³⁶ See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager *De Facto* Transfer Leasing Arrangements, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17473 ¶ 54 (2008); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20312-13 ¶ 30 (2007).

³⁷ CCA Comments at 11.

in urban areas where spectrum is most scarce.³⁸ Recent spectrum transactions further highlight the crucial role that higher band spectrum is playing to introduce additional competition from new entrants in the wireless space and to enhance the competitive position of existing competitive providers. DISH recently acquired 40 MHz of spectrum above 2 GHz which, based on recent FCC rule changes including aggressive build-out deadlines,³⁹ it will use to provide stand-alone terrestrial mobile broadband services. Softbank recently invested \$20.1 billion in Sprint, enabling the company to strengthen its advanced networks, which consist in large part of spectrum in the 2.5 GHz band held by Sprint and Clearwire.⁴⁰

As explained in greater detail in Mobile Future's comments, distinctions among subcategories of spectrum lack marketplace foundation do not reflect the technical or business realities governing mobile service deployment in the United States, and would undercut the goals of promoting wireless competition, innovation, investment, and broadband deployment.⁴¹ Adoption of a separate threshold and a separate screen for spectrum holdings below 1 GHz would hinder carriers' ability to manage their networks and spectrum holdings to best serve consumers and would thus contravene the public interest.

³⁸ See 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 No. 12-148 (rel. Dec. 12, 2012), at ¶ 20 ("Small cell deployments inherently require less range to meet users' needs than macrocell networks. Moreover, limited signal propagation can facilitate dense deployment of small cells with a reduced risk of harmful interference to geographically or spectrally adjacent users, greatly increasing frequency reuse and available network capacity.")

³⁹ See 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 No. 12-151 ¶¶ 196-97, 199 (rel. Dec. 17, 2012) ("*AWS-4 Order*").

⁴⁰ Press Release, Sprint, *SoftBank to Acquire 70% Stake in Sprint*, Oct. 15, 2012, http://newsroom.sprint.com/article_display.cfm?article_id=2420.

⁴¹ Mobile Future Comments at 12-14.

CCA also asserts that a separate one-fourth screen for spectrum below 1 GHz is necessary because that spectrum is “an especially critical input for new entrants” and in order to provide an opportunity for “*all* wireless carriers” to participate in the upcoming incentive auction of broadcast spectrum.⁴² CCA’s effort to have the Commission impose by regulation a market structure requiring the preservation of certain competitors also must fail because it is contrary to the long standing principle that “the antitrust laws were passed for the protection of competition, not competitors.”⁴³ The Commission’s primary function must be to weigh the potential harms and benefits associated with proposed spectrum holdings on a case-by-case basis to determine whether they are consistent with the public interest as provided in the Communications Act of 1934, as amended,⁴⁴ rather than preserving specific competitors or some subclass of new entrants.

3. The DOJ Statement Does Not Mandate Preservation of Four Nationwide Carriers or Use of a One-Fourth Threshold and Screen for Spectrum Below 1 GHz.

CCA erroneously asserts that the United States Department of Justice (“DOJ”) “acknowledged the need to preserve at least four nationwide wireless carriers,” and that this is a basis for establishing a separate spectrum threshold of one-fourth of the available spectrum below 1 GHz (or anywhere, for that matter). This reasoning is flawed in several respects. First, CCA mischaracterized the DOJ’s statement in its complaint filed with respect to the AT&T/T-Mobile merger. The DOJ Complaint says only that the reduction in the number of nationwide

⁴² CCA Comments at 11-12 (emphasis in original).

⁴³ *Covad Communications Co. v. Bell Atlantic Corp.*, 398 F3d 666, 674 (D.C. Cir. 2005), citing *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 US 209, 224 (1993).

⁴⁴ 47 U.S.C. §§ 151 *et seq.*

providers from four to three “likely will lead to lessened competition.”⁴⁵ Contrary to CCA’s suggestion, however, that statement does not equate to a conclusion by the DOJ that the government must preserve at least four nationwide carriers in the wireless marketplace.

Second, even if one construed DOJ’s statement as a conclusion that a four national competitor market was optimal, that conclusion would not warrant or require use of a one-fourth spectrum screen. The ratio associated with the spectrum threshold that triggers further review in connection with the spectrum screen does not govern, or equate to, the number of competitors in the marketplace. By way of example, the FCC’s current one-third spectrum screen was not designed to and does not mean that the FCC believes that there should only be three nationwide wireless competitors or that the FCC in some way is driving the market to that result. Instead, the FCC’s one-third approach encourages a greater number of competitors. Indeed, the FCC has made this explicitly clear – stating back in 2004 that “[a]s an initial matter, although 70 MHz represents a little more than one-third of the total bandwidth available for mobile telephony today, *we emphasize that a market may contain more than three viable competitors even where one entity controls this amount of spectrum, because many carriers are competing successfully with far lower amounts of bandwidth today.*”⁴⁶ This has borne itself out in the marketplace. Using its one-third approach, the FCC has enabled four nationwide competitors and multiple regional and niche carriers to continue to thrive.⁴⁷ Thus, it is not sound spectrum policy and

⁴⁵ Second Amended Complaint, *United States of America v. AT&T, Inc. et al*, Case No. 1:11-01560, ¶ 36 (D.D.C. Sept. 30, 2011) (the “DOJ Complaint”).

⁴⁶ Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21568-69 ¶ 109 (2004) (emphasis added).

⁴⁷ Sprint’s recent actions to acquire control of Clearwire and its 2.5 GHz holdings, and transactions by T-Mobile to acquire 2.1 GHz AWS spectrum from AT&T and Verizon, indicate (continued on next page)

certainly not necessary to adopt a one-fourth spectrum threshold in order to preserve a four competitor model.

Finally, CCA also erroneously suggests the DOJ Complaint implies that the government must preserve at least four nationwide carriers *with respect to spectrum holdings below 1 GHz*, and mandates creation of a new, separate spectrum screen for holdings that would exceed one-fourth of the suitable and available spectrum below 1 GHz. The FCC Complaint, however, does not draw such distinction. There simply is no basis of support for CCA's interpretation of the DOJ Complaint.

III. CONCLUSION

Mobile Future is committed to supporting an increasingly innovative and competitive marketplace for America's wireless consumers. The Commission's focus in this proceeding should be on ensuring that America's hundreds of millions of mobile broadband customers receive the services they demand and increasingly rely on. Mobile Future therefore respectfully asks the Commission to update its spectrum screen to reflect all of the spectrum suitable and available for the provision of mobile telephony/broadband services, treat such spectrum consistently, and employ the screen as originally intended – as a measure to identify markets in

that Sprint and T-Mobile are adding to their positions. Both of these carriers have deployed, and have plans to continue to deploy, 4G networks utilizing this spectrum. *See, e.g.*, Press Release, Sprint, *SoftBank to Acquire 70% Stake in Sprint*, Oct. 15, 2012, http://newsroom.sprint.com/article_display.cfm?article_id=2420; Press Release, T-Mobile, *Statement: Transfer of Spectrum from AT&T to T-Mobile Approved by FCC*, Apr. 25, 2012, <http://newsroom.t-mobile.com/articles/FCCApprovesBreakupSpectrumTransfer>; Press Release, T-Mobile, *T-Mobile Signs Spectrum Agreement With Verizon Wireless*, June 25, 2012, <http://newsroom.t-mobile.com/articles/VerizonSpectrumAgreement>.

which a service provider proposes to hold more than one-third of all such suitable and available spectrum for further competitive review.

Respectfully submitted,

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