

Rarely do you see companies double-dare federal regulators to back up their brave talk about promoting competition. That is, however, what AT&T has just decided to do – with a little help from Verizon. After gobbling a ton of spectrum [last year](#) in a series of small transactions, AT&T announced earlier this week it would [buy up ATNI](#), which holds the last shreds of the old Alltel Spectrum. To top this off, Verizon just announced it has selected the purchaser for the [700 MHz spectrum it promised to sell off to get permission to buy the SpectrumCo spectrum](#). And guess what? The purchaser of the bulk of Verizon’s 700 MHz licenses, which Verizon promised to divest to promote competition – [is AT&T!](#)

Mind you, this was exactly the anti-competitive scenario [anti-competitive scenario many of us predicted](#) in the media reform and open communications when Verizon made the offer to sell off its 700 MHz licenses in order to [bulk up on its AWS footprint](#). Nevertheless, the FCC refused to impose a condition prohibiting the sale of the licenses to AT&T on the grounds that it could wait to see who purchased the licenses before acting. Well, now we know, and the FCC has the “hypothetical” transaction it did not want to consider last summer squarely before it today.

One would think this alone would constitute a sufficient double-dare to the FCC to see if it still means all that stuff about wireless competition and preventing excessive spectrum competition. But it gets better. AT&T will give Verizon a bunch of AWS licenses, enhancing its spectrum concentration as well. In other words, not only is AT&T further monopolizing all the spectrum below 1 GHz, but the transaction also bulks out Verizon on AWS spectrum to levels the Commission found only last summer were anti-competitive.

But it gets even better. You know that ATNI spectrum AT&T is also acquiring? Not only is it primarily valuable super-yummy below 1 GHz spectrum (with a dash of AWS spectrum for flavor), it has high symbolic value as a giant middle finger to the FCC’s use of divestiture conditions to promote competition. When Verizon bought Alltel in 2008, the FCC and DoJ required a bunch of divestitures. Verizon sold off most of the spectrum to – you guessed it – AT&T. The chunk AT&T didn’t want went to ATNI. The Commission (and the Department of Justice) [allowed AT&T to buy the Alltel spectrum from Verizon](#), with a tacit understanding that it would never try to acquire the rest of the divested Alltel spectrum.

In a world where actual divestiture conditions are considered a joke, is it any surprise that this “understanding” is regarded as beneath contempt by AT&T? Mind you, given that Sprint and T-Mo are tied up with transactions of their own, and ATNI is a member of the Competitive Carrier Association (CCA), the chief potential opponents of an AT&T/ATNI deal were effectively sidelined. So if AT&T were going to make a try for ATNI and its spectrum, this was certainly the time.

But then AT&T and Verizon piled this latest transaction on all of this. We have an open 700 MHz interoperability proceeding, during which AT&T proceeds to monopolize the 700 MHz B licenses. We have an open spectrum aggregation/spectrum screen proceeding, during which the two biggest carriers decide to bulk each other up on their favorite spectrum, magnifying their competitive advantage over their competitors. Furthermore, even with deals pending before the Commission, it is damn hard for Sprint and T-Mo to just let this slide. If nothing else, the CCA is not conflicted on this transaction, and will almost certainly oppose (at least, if its members have

any interest in surviving they will oppose). If AT&T and Verizon were *trying* to rub everyone's face in the spectrum concentration issue, they could not have done a better job.

But what astounds me is just the sheer number of red lines with the FCC that AT&T, with Verizon's help, have managed to cross in a single week. Really? You want to spit on every single pro-competitive spectrum move the FCC has done in the last two years? Why? To see if they are serious? To not just dare them, but double-dare them to follow through on their brave words about promoting competition? To see if now that Gene Kimmelman has left the DoJ, everything will be wine and roses again for the "wireless duopoly"?

In any case, we now have the acid test for the FCC and its apparent new found commitment to wireless competition. We have seen in the last few months how the FCC's willingness to stop excessive spectrum concentration [has brought about \\$25 billion in investment into the wireless marketplace](#), as well as forcing AT&T to invest \$14 million to upgrade its systems. If the FCC wants to keep this flow of capital and deployment going, it needs to take AT&T and Verizon up on its double-dare and show that "when we said we will take steps to prevent excessive concentration of spectrum, we *meant* it."

Or the FCC can do nothing, in which case everyone will know that the FCC was only kidding and would-be competitors will look elsewhere to invest their money.