

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
AT&T, Cellco Partnership d/b/a/ Verizon)	WT Docket No. 13-56
Wireless, Grain Spectrum, LLC, and Grain)	
Spectrum II, LLC, for Consent to the)	
Assignment of Advanced Wireless Services)	
and Lower 700 MHz Band B Block Licenses)	
and to Long-Term <i>De Facto</i> Transfer)	
Spectrum Leasing Arrangements)	

PETITION TO DENY OR CONDITION OF DISH NETWORK CORPORATION

I. INTRODUCTION

DISH Network Corporation (“DISH”) petitions the Commission to deny the above-referenced transaction,¹ which would effect a swap of 700 MHz and AWS-1 spectrum between the nation’s top two mobile telephony and broadband providers, Verizon and AT&T.² In the alternative, the Commission should adopt appropriate conditions to mitigate the harm to competition that will result from Verizon and AT&T’s further aggregation of valuable mobile broadband spectrum. Through this swap, each of the two companies would tighten its grip over bands that are critical for deployment of Long Term Evolution (“LTE”) mobile systems.

¹ DISH is an emerging wireless competitor with AT&T and Verizon. Like AT&T and Verizon, DISH holds licenses in the 700 MHz and AWS bands. For these and other reasons described herein, DISH is a party in interest under Section 309(d)(1) of the Communications Act. *See* 47 U.S.C. § 309(d)(1).

² *See* Public Notice, Federal Communications Commission, AT&T Inc., CellCo Partnership D/B/A Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC Seek FCC Consent to the Assignment of Advanced Wireless Services and Lower 700 MHz B Block Licenses and to Long-Term De Facto Transfer Spectrum Leasing Arrangements Involving Advanced Wireless Services and Lower 700 MHz Band B Block Licenses, WT Docket No. 13-56, DA 13-354 (rel. Mar. 5, 2013).

Verizon has failed to fulfill the plan it presented to the Commission to address concerns about the accumulation of spectrum approved by the Commission in the Verizon/SpectrumCo proceeding.³ Verizon voluntarily committed to divest its 700 MHz A and B Block licenses. But Verizon has not taken steps to complete the sale of its A Block holdings. In addition, the proposed transaction is really not a genuine divestiture at all. Verizon, the number one wireless carrier in the nation, stands to acquire new AWS spectrum from AT&T in certain markets in exchange for 700 MHz spectrum in those or other markets. And, besides not mitigating the prior concerns about the Verizon/SpectrumCo transaction, the proposed transaction would cause harm of its own. It would further entrench each carrier's dominant presence in the 700 MHz B Block and AWS spectrum, respectively, facilitating possible anticompetitive behavior in connection with each spectrum neighborhood.

To promote competition in an already concentrated wireless market, the Commission should deny this proposed spectrum swap altogether, and require Verizon to transfer all of its remaining Lower 700 MHz A and B Block licenses to someone other than AT&T, which already has significant Lower 700 MHz holdings. In the alternative, and at a minimum, the Commission should condition its approval of this spectrum swap as follows:

- (i) allow AT&T and Grain I to receive Verizon's 700 MHz B Block licenses, but require Verizon to divest any remaining 700 MHz A Block licenses to a party other than AT&T; *and*
- (ii) for AT&T and Grain I combined, the Commission should adopt a modified spectrum screen for this transaction that gives double weight to spectrum below 1 GHz. To the extent AT&T and Grain I exceed this modified screen as the result of acquiring Verizon's 700 MHz B Block licenses, AT&T should be required to divest itself of other 700 MHz holdings (i.e., AT&T's 700 MHz A, D, and E

³ See Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd. 10698 (2012) (“*Verizon Wireless-SpectrumCo Order*”).

Block licenses) in excess of the screen, before acquiring any additional spectrum below 1 GHz.

II. THE PROPOSED SPECTRUM SWAP FAILS TO ENFORCE VERIZON'S PRIOR COMMITMENTS AND WILL ENABLE THE TOP TWO WIRELESS CARRIERS TO FURTHER ENRICH THEIR SPECTRUM POSITIONS

During the Verizon/SpectrumCo transaction, commenters voiced serious concerns that Verizon's acquisition of additional spectrum would harm competition in the mobile voice and broadband markets for many reasons, including Verizon's ability to foreclose new competitors from entering the market and competing against it.⁴ Specifically, these commenters argued that the transaction would (1) allow Verizon to continue warehousing spectrum in the 700 MHz band,⁵ and (2) allow Verizon to avoid any need to make its devices interoperable with non-Verizon spectrum.⁶

In response to these concerns, Verizon committed to divest *all* of its Lower 700 MHz A and B Block licenses. Specifically, in a presentation made to the Commission during the proceeding, Verizon explained "that it [would] sell its remaining 700 MHz A and B Block spectrum."⁷ The "sale of the Lower 700 MHz licenses," Verizon argued, "undercut[] the . . . 'warehousing' claims by several of [its] competitors,"⁸ making "[i]nteroperability concerns . . . irrelevant."⁹

⁴ See, e.g., NTCH Petition to Deny, WT Docket No. 12-4, at 3-5 (Feb. 21, 2012); RCA Petition to Deny, WT Docket No. 12-4, at 6-15 (Feb. 21, 2012); Public Knowledge, Petition to Deny, WT Docket No. 12-4, at 29-31 (Feb. 21, 2012).

⁵ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd. at 10723 ¶ 68.

⁶ *Id.* at 10730-31 ¶ 85.

⁷ Letter from Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 5 (May 2, 2012) ("Krinsky Ex Parte").

⁸ Letter from Kathleen Grillo, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4, at 4 (May 22, 2012) ("Grillo Ex Parte").

⁹ Krinsky Ex Parte at 13.

While the Commission did not make divestiture an explicit condition in the *SpectrumCo Order*, Verizon’s promise was a significant commitment made in that proceeding. The agreement was not an idle “aside,” but rather one that the Commission relied on in approving the SpectrumCo transaction. Indeed, the Commission specifically inquired about the impact that Verizon’s sale of the spectrum would have on the transaction.¹⁰ Moreover, in response to the Commission’s inquiry, Verizon explicitly linked its divestiture plan to Commission approval of the SpectrumCo transaction—no grant meant no 700 MHz divestiture.¹¹ And (as noted above) Verizon’s defenses against warehousing and interoperability concerns were premised on this divestiture.

But Verizon still has not divested itself of much of the spectrum that it promised to divest. The current transaction involves only Verizon’s 700 MHz B Block holdings, and certain other transactions that Verizon has consummated after SpectrumCo have been almost exclusively confined to the B Block. Thus, in spite of a few small-scale transactions, Verizon’s 700 MHz A Block licenses remain largely intact.¹²

Just as important, the manner in which Verizon is disposing of some of these B Block licenses undercuts Verizon’s promise to mitigate the public harms forecast by Verizon’s competitors and consumers in the SpectrumCo transaction. A swap of spectrum (which

¹⁰ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd. at 10740 ¶ 113; see also Letter from Rick Kaplan, FCC, to John T. Scott, III, Verizon Wireless, WT Docket No. 12-4 (May 15, 2012).

¹¹ See Grillo Ex Parte at 4 (“The fact that Verizon Wireless has announced a public sale process for the Lower 700 MHz spectrum if the AWS transactions are approved conclusively refutes those [warehousing] claims.”).

¹² Of the 25 Lower 700 MHz A Block licenses Verizon acquired at auction, it has closed a sale of one license, partially assigned two, and has one additional transaction pending. See AT&T, Cellco Partnership d/b/a/ Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC, ULS File No. 0005627587, Description of the Transaction and Public Interest Statement at 22 (Feb. 6, 2013) (“Application”).

moreover involves a trade with the nation's other dominant wireless carrier) is not a remedy for the competitive concerns raised. Verizon is acquiring new AWS spectrum in certain markets at the same time that it is gives up 700 MHz spectrum in those or other markets.

Meanwhile, the swap will allow AT&T to further entrench its own position in the 700 MHz band. According to the Commission's recently released *Sixteenth Competition Report*, AT&T holds a nationwide weighted average of 48 MHz of the available spectrum below 1 GHz.¹³ As DISH has explained, the propagation characteristics of this spectrum allow for more efficient use of spectrum and network resources,¹⁴ particularly in rural areas where increased competition is needed.¹⁵ Among other things, the consolidation of so much of this spectrum in the hands of a dominant carrier, such as AT&T, effectively increases buildout costs for smaller carriers attempting to break into new markets.

III. THE SPECTRUM SWAP SHOULD BE DENIED IN ITS ENTIRETY, OR AT LEAST CONDITIONED ON DIVESTITURES BY BOTH PARTIES

As discussed above, this transaction not only fails to resolve the spectrum warehousing and interoperability concerns raised in the SpectrumCo transaction, it exacerbates them. The Commission should therefore deny its authorization for the proposed spectrum swap in its entirety, and impose a requirement that Verizon divest itself of the remainder of its Lower 700 MHz A and B Block licenses in a manner consistent with its promise. Absent such an order, the factual predicate for the *SpectrumCo Order* is placed in doubt.

¹³ See Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 11-186, *Sixteenth Report*, FCC 13-34, ¶ 131 (rel. Mar. 21, 2013) (“*Sixteenth Competition Report*”).

¹⁴ See DISH Reply Comments, GN Docket No. 12-268, at 12 (March 12, 2013).

¹⁵ See *Sixteenth Competition Report* ¶ 401.

If the Commission nevertheless determines that the spectrum efficiencies claimed by AT&T and Verizon are significant enough to warrant approval, the Commission should condition this transaction to ensure that the significant public interest harms mentioned above do not occur. In particular, and at a minimum, the Commission should condition its approval on appropriate divestitures from both Verizon and AT&T to maximize the potential for smaller competitors or new entrants to acquire valuable spectrum below 1 GHz.

Specifically, the Commission should require Verizon to divest its remaining 700 MHz A Block licenses as a condition precedent to approving the sale of Verizon's 700 MHz B Block licenses to AT&T. That condition will unlock that spectrum for competitive use.

For AT&T, given its dominant spectrum position below 1 GHz, the Commission should adopt a modified spectrum screen for this transaction that gives double weight to the combined spectrum holdings of AT&T and Grain I below 1 GHz. Because the combined spectrum holdings would exceed that modified screen in many of the markets at issue here, the Commission should use the tool of divestiture where the screen is exceeded to ensure that AT&T does not keep spectrum that can be put to more productive use by competitive carriers. Thus, in each market where AT&T and Grain I exceed this modified screen as the result of acquiring Verizon's B Block licenses, AT&T should be required to divest itself of other 700 MHz holdings (i.e., AT&T's 700 MHz A, D, and E Block licenses) in excess of the screen, as a condition precedent to acquiring any additional 700 MHz B Block spectrum from Verizon.¹⁶

¹⁶ Based on the data that AT&T submitted (*see* Application, FCC Form 603, at Exhibit 2A), it appears that the test proposed by DISH would require AT&T to divest 700 MHz spectrum in at least one county in the following 30 markets: Los Angeles-Anaheim, CA; Chicago, IL; Miami-Fort Lauderdale, FL; Cincinnati, OH-KY-IN; Rochester, NY; Memphis, TN-AR-MS; Oklahoma City, OK; Youngstown-Warren, OH; West Palm Beach-Boca Raton, FL; Lake Charles, LA; Fort Collins-Loveland, CO; Bradenton, FL; Billings, MT; Rapid City, SD; Great Falls, MT; Colorado 4 – Park; Louisiana 1 – Claiborne; Louisiana 2 – Morehouse; Louisiana 3 – De Soto; Montana 8

IV. CONCLUSION

Because this transaction only further entrenches the spectrum positions of the two dominant carriers at the expense of competition, the Commission should deny the underlying applications. Alternatively, the Commission should impose conditions to ensure that competitive benefits implicated by Verizon's promise in the SpectrumCo transaction come to fruition.

Respectfully submitted,

/s/

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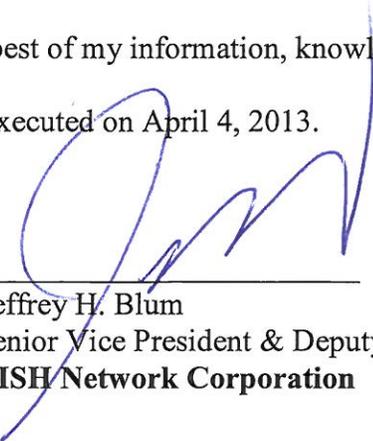
April 4, 2013

– Beaverhead; Montana 9 – Carbon; New Mexico 5 – Grant; South Dakota 1 – Harding; Texas 18 – Edwards; Utah 1 – Box Elder; Utah 4 – Beaver; Utah 5 – Carbon; Utah 6 – Piute; Virginia 10 – Frederick; and Washington 2 – Okanogan.

DECLARATION

I declare under penalty of perjury that the facts contained within the foregoing Petition to Deny or Condition are true and correct to the best of my information, knowledge and belief.

Executed on April 4, 2013.



Jeffrey H. Blum
Senior Vice President & Deputy General Counsel
DISH Network Corporation

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of April 2013, I caused a copy of the foregoing Petition to Deny or Condition of DISH Network Corporation to be filed electronically with the Commission using the ECFS system and caused a copy of the foregoing to be served upon the following individuals by First Class Mail or electronic mail:

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