

August 30, 2013

**Via Electronic Delivery**

Ms. Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, TW-A325  
Washington, DC 20554

**Re: ULS File Nos. 0005597386 and 0005597395;  
WT Docket No. 12-269, Policies Regarding Mobile Spectrum Holdings;  
WT Docket No. 12-69, Promoting Interoperability in the 700 MHz  
Commercial Spectrum;  
GN Docket No. 12-268, Expanding the Economic and Innovation  
Opportunities of Spectrum Through Incentive Auctions;  
WT Docket No. 05-265, Reexamination of Roaming Obligations of  
Commercial Mobile Radio Service Providers**

Dear Ms. Dortch:

On August 20, 2013, the Federal Communications Commission's ("FCC" or "Commission") Wireless Telecommunications Bureau (the "Bureau") released a Memorandum Opinion and Order approving AT&T Inc.'s ("AT&T") purchase of licenses, customers, network equipment and other assets in seventeen Cellular Market Area ("CMAs") in the states of Alabama, Georgia and Tennessee previously held by regional carrier Cellular South, Inc. ("CSpire").<sup>1</sup> In so doing, the Commission rejected the Rural Telecommunications Group, Inc.'s ("RTG") request that the Commission apply stricter standards to the review of the purchase or impose certain conditions on AT&T. RTG remains firm in its belief that competitive harms are the direct byproduct of excessive spectrum concentration, especially when scarce spectrum resources transfer from small, rural and regional carriers to the country's largest mobile carriers like AT&T and Verizon Wireless (the "Twin Bells"). The FCC's failure to take action in its

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<sup>1</sup> *In the Matter of Applications of AT&T Inc. and Cellular South, Inc. for Consent to Assign Licenses Covering Parts of Alabama, Georgia, and Tennessee*, Memorandum Opinion and Order, ULS File Nos. 0005597386 and 0005597395, DA 13-1783 (released August 20, 2013) ("*Order*"). AT&T purchased customers, network equipment and other assets from C Spire's Corr Wireless subsidiary. C Spire generally offers Code Division Multiple Access ("CDMA") service under the "C Spire" brand while Corr Wireless Communications, L.L.C. is operated separately from C Spire and offers Global System for Mobile Communications ("GSM") service in Northeastern Alabama to approximately 21,000 subscribers.

pending spectrum aggregation and interoperability proceedings is harming consumers. The Commission needs to act as soon as possible to address these pending issues in a manner that ensures a competitive wireless telecommunications marketplace.

RTG filed comments on the AT&T/CSpire transaction, urging the Commission to: (1) “change its policies regarding mobile spectrum holdings so that no single carrier can hold more than 25 percent of all the suitable and available commercial mobile radio service (“CMRS”) spectrum available in any given county and no more than 40 percent of all the suitable and available CMRS spectrum below one gigahertz (“GHz”) in any given county” and review the AT&T/CSpire transaction under that standard; and (2) require AT&T to divest or lease any spectrum that exceeds these thresholds if the transaction was approved.<sup>2</sup> RTG also requested that if the Commission ultimately approved the proposed transaction but declined to impose any spectrum divestitures or leases it require AT&T to: “(1) offer data roaming to any requesting carrier at commercially reasonable rates, terms and conditions; (2) offer to its own customers devices that are fully interoperable (*i.e.*, the mobile device must work on all spectrum that is available and usable in that particular spectrum band, as well as any other spectrum band where AT&T offers service); and (3) work to ensure that mobile devices it sells to its own customers are available on a non-exclusive basis to Tier II and Tier III carriers who utilize the same technology as AT&T.”<sup>3</sup>

In its *Order*, the Bureau “declined to require divestitures above RTG’s proposed spectrum thresholds, to impose its associated conditions, or to hold the transaction in abeyance” because “the Commission is reviewing its policies governing mobile spectrum holdings” in a separate rulemaking proceeding.<sup>4</sup> Furthermore, the Commission underscored this decision by reminding the public that it has already determined that “during the pendency of that proceeding, it would continue to apply its current approach to mobile spectrum holdings.”<sup>5</sup> Similarly, the *Order* took no action on RTG’s request that the FCC consider an alternative condition related to device interoperability because the Commission has “initiated a rulemaking proceeding to address such issues on an industry-wide basis.”<sup>6</sup> RTG understands that the FCC does not want to decide larger public policy issues in the context of individual transactions, however, the FCC cannot just sit on its hands and not make decisions that are critical to wireless competition. As long as these two proceedings are in limbo and without any finality, companies like AT&T and Verizon Wireless will continue to aggregate excessive amounts of spectrum and manipulate the mobile device marketplace so that small, rural and regional carriers and their customers have difficulty obtaining handsets and smartphones. Additionally, the continued aggregation of

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<sup>2</sup> *In the Matter of Applications of AT&T Inc. and Cellular South, Inc. for Consent to Assign Licenses Covering Parts of Alabama, Georgia, and Tennessee*, Comments of the Rural Telecommunications Groups, Inc., ULS File Nos. 0005597386 and 0005597395 (filed March 8, 2013) (“*RTG Comments*”) at p. 1.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> *Order* at ¶ 15.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

spectrum by the Twin Bells frustrates the ability of smaller and regional carriers to compete and new entrants to enter the market, thereby thwarting competition and innovation to the detriment of all consumers.

When the Commission released its notice of proposed rulemaking concerning spectrum holdings in September of 2012<sup>7</sup>, Acting Commissioner Mignon L. Clyburn stressed that “[t]here is no question that it is time for the Commission to update its policies on measuring how spectrum aggregation impacts competition in the wireless industry.”<sup>8</sup> Commissioner Ajit Pai went so far as to say that “today’s process for evaluating carriers’ spectrum holdings is flawed.”<sup>9</sup> It has been almost one year since these Commissioners urged action on this pressing matter, yet the existing, anticompetitive rules remain in place still to this day. Meanwhile, during this past year alone, industry consolidation has accelerated unabated with carriers like U.S. Cellular rapidly downsizing<sup>10</sup>, MetroPCS<sup>11</sup> and Clearwire<sup>12</sup> disappearing altogether, and both Allied Wireless<sup>13</sup> and Leap Wireless (Cricket)<sup>14</sup> soon to be swallowed up whole (by none other than AT&T). RTG fears that any revised spectrum holdings policy (and accompanying new rules)

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<sup>7</sup> *In the Matter of Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, WT Docket No. 12-269, FCC 12-119 (released September 28, 2012) (“*Spectrum Holdings NPRM*”).

<sup>8</sup> *In the Matter of Policies Regarding Mobile Spectrum Holdings*, Statement of Commissioner Mignon L. Clyburn, WT Docket No. 12-269 (released September 28, 2012).

<sup>9</sup> *In the Matter of Policies Regarding Mobile Spectrum Holdings*, Concurring Statement of Commissioner Ajit Pai, WT Docket No. 12-269 (released September 28, 2012).

<sup>10</sup> “U.S. Cellular Sells Select Midwest Markets to Sprint,” U.S. Cellular Information Resource Center (“In November 2012, U.S. Cellular announced that it had reached an agreement to sell its Chicago, St. Louis, central Illinois and three other Midwest markets to Sprint Nextel Corp. The Sprint sale closed on May 17.”); <http://www.uscellularinfo.com/> (last viewed August 28, 2013).

<sup>11</sup> “T-Mobile Closes MetroPCS Buyout,” Yahoo Finance (May 2, 2013) (“T-Mobile USA has successfully completed the acquisition of MetroPCS Communications, Inc. MetroPCS has reportedly added 9 million customers to the existing 43 million of T-Mobile USA.”); <http://finance.yahoo.com/news/t-mobile-closes-metropcs-buyout-164001035.html> (last viewed August 28, 2013).

<sup>12</sup> “Sprint Completes Acquisition of Clearwire,” Sprint Newsroom (July 9, 2013) (“Sprint today announced the successful completion of its transaction to acquire 100 percent ownership of Clearwire. The merger agreement was first announced on December 17, 2012 and Clearwire shareholders approved the transaction at a special meeting of stockholders held on July 8, 2013.”); <http://newsroom.sprint.com/news-releases/sprint-completes-acquisition-of-clearwire.htm> (last viewed August 28, 2013).

<sup>13</sup> “AT&T to Buy Atlantic Tele-Network Mobile Unit for \$780 Million,” Forbes Online (January 22, 2013) (“Atlantic Tele-Network this morning said it has agreed to sell its domestic retail wireless business – which operates under the name Alltel by Atlantic’s Allied Wireless Communications unit – to AT&T for \$780 million in cash.”); <http://www.forbes.com/sites/eric savitz/2013/01/22/att-to-buy-atlantic-tele-network-mobile-unit-for-780m/> (last viewed August 28, 2013).

<sup>14</sup> “AT&T to Buy Leap Wireless for \$1.2 Billion,” USA Today (July 17, 2013) (“The nation’s second largest carrier will pay about \$1.2 billion for all of Leap’s stock and wireless properties, including licenses, network assets, retail stores and about 5 million subscribers.”); <http://www.usatoday.com/story/money/business/2013/07/13/att-buys-leap/2514067/> (last viewed August 28, 2013).

will be “too little, too late” if any more small, rural and regional carriers perish on the vine before new rules take effect.

In July 2008, RTG filed a petition for rulemaking calling for spectrum caps.<sup>15</sup> One month later, prior to FCC approval of the sale of Atlantis Holdings LLC (“ALLTEL Wireless”) sale to Verizon Wireless and AT&T, RTG cautioned the FCC that the Twin Bells’ acquisitions of ALLTEL Wireless would be “the final anticompetitive straw [to] break the proverbial camel’s back” due in large part to excessive spectrum concentration.<sup>16</sup> Indeed, the *RTG Petition to Deny* included those same calls for revised spectrum holdings that were present in the petition for rulemaking. For years RTG has been predicting the harm caused by too much consolidation. Yet, until AT&T tried to acquire T-Mobile USA, Inc., neither the FCC nor the Department of Justice took heed of RTG’s warnings. Enough is enough and now is the time for the FCC to act in its spectrum holdings proceeding, not after more consolidation occurs.

Similarly important is a Commission mandate that mobile devices be fully interoperable within a licensed band. The balkanization of mobile device equipment standards and the creation of self-serving LTE band classes by AT&T and Verizon Wireless created the interoperability problem we have today.<sup>17</sup> This fact is indisputable. On this important matter, Acting Commissioner Clyburn called for a Commission solution “as quickly as possible” and acknowledged that a “lack of interoperability means fewer device and service choices for consumers.” But just as with the FCC’s proceeding on spectrum holdings, here too the Commission has taken no formal action since the release of its notice of proposed rulemaking.<sup>18</sup> In the interim seventeen months since the release of the *Interoperability NPRM*, AT&T and Verizon Wireless have continued to demand the production of 4G/LTE mobile devices that work only on their networks, denying their own customers the ability to roam on other carriers and effectively limiting the ability of competitors’ customers to roam on the Twin Bells’ networks. These continued actions are blatantly anticompetitive and can best be stopped by Commission action mandating interoperability in the 700 MHz Band.

The mobile wireless industry is evolving at a lightning-quick pace, and far faster than the glacial pace at which the Commission is acting on these important proceedings. Because the

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<sup>15</sup> *In the Matter of Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz* (filed July 16, 2008) at p. 3. (“RTG proposes the imposition, on a county level, of a 110 Megahertz aggregation limit for all terrestrial wireless spectrum below 2.3 GHz.”).

<sup>16</sup> *In Re Applications of Atlantis Holdings LLC, Transferor, and Cellco Partnership d/b/a Verizon Wireless, Transferee*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95, File Nos. 0003463892 *et. al.*, (filed August 11, 2008) (*RTG Petition to Deny*) at p. 2.

<sup>17</sup> Because AT&T and Verizon Wireless respectively procure mobile devices that only operate on Band Class 17 and Band Class 13 within the 700 MHz Band, not only are their customers unable to roam on each other’s networks or the networks of small, rural or regional competitors, those same competitive carriers continue to experience great difficulty in obtaining the latest and greatest mobile devices that include all of the paired spectrum in the 700 MHz Band so that roaming is even possible. The lack of device interoperability in the 700 MHz Band worsens the problem by making LTE data roaming unavailable.

<sup>18</sup> *In the Matter of Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69, FCC 12-31 (released March 21, 2012) (“*Interoperability NPRM*”).

wireless marketplace is no longer capable of ensuring competition, RTG respectfully calls on the FCC to take action now on both the spectrum aggregation proceeding and the interoperability proceeding.

Please do not hesitate to contact me with any questions.

Respectfully submitted,

By: /s/ Caressa D. Bennet  
Caressa D. Bennet  
General Counsel

cc (via email):

Mignon Clyburn, Acting Chairwoman  
Commissioner Jessica Rosenworcel  
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