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**Via Electronic Filing**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, D.C. 20554

Re: ***Ex Parte: Policies Regarding Mobile Spectrum Holdings***, WT Docket No. 12-269

Dear Ms. Dortch:

Sprint's February 11<sup>th</sup> proposal expressed a view deeply evidenced by the weight of the record: the Commission's current spectrum screen fails to serve its purpose in diagnosing the potential for competitive harm associated with spectrum aggregation. As Sprint explained, the impetus for the Commission's spectrum holdings policies – first its cap and subsequently its screen – was ensuring that in the wake of a particular spectrum acquisition, competing firms retained the ability to swiftly and effectively enter the market or expand output in mobile broadband services in response to another firm's attempt to exercise market power.<sup>1</sup> Because the varying propagation characteristics of specific bands directly and significantly affect the ability, timeliness, and even *feasibility* of operators' deployments – and thus their ability to competitively respond – Sprint proposed a system of assigning weights to spectrum bands within the screen to reflect their varying competitive utility.

In two recent filings, Verizon claims the weighting methodology proposed by Sprint is “complicated” and that the only change needed in the screen is to expand the bands that are included in it. Notably, neither filing contests the axiomatic principle, at the core of the Sprint Spectrum Screen Proposal, that any proposed modifications to the spectrum screen should serve to better effectuate the screen's underlying purpose: to accurately assess the competitive impact of a spectrum acquisition on downstream competition.

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<sup>1</sup> *Sprint's Competition-Based Framework for A Weighted Wireless Broadband Spectrum Screen*, attached to Letter from Lawrence Krevor, Vice President, Sprint Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269, at 16-18 (filed Feb. 11, 2014) (“Sprint Spectrum Screen Proposal”).

***Verizon's Extensive History of the 2.5 GHz Band Proves that This Spectrum Should Be Significantly Discounted, If Included in the Screen***

In the first of its filings, Verizon offers an extensive history of the Commission's attempts to foster commercial opportunities in the 2.5 GHz band.<sup>2</sup> The Commission has tested a wide range of regulatory regimes and policies, on numerous occasions substantially altering course to pursue entirely new reconfigurations of the 2.5 GHz band.<sup>3</sup> Verizon comprehensively describes the numerous – and often inconsistent – ways in which the Commission has sought to promote commercial access to the 2.5 GHz band, thereby effectively cataloging the legacy licensing and regulatory encumbrances that differentiate the band from other commercial mobile broadband spectrum.

Verizon's ostensible purpose in cataloging the various encumbrances still shaping 2.5 GHz band use is to assert that Sprint has found ways to utilize the spectrum for mobile broadband and therefore these deployment "challenges" do not warrant excluding 2.5 GHz from the spectrum screen.<sup>4</sup> Sprint does not, however, contend that these encumbrances are reasons to *exclude* 2.5 GHz from the spectrum screen, as Verizon contends.<sup>5</sup> On the contrary – Verizon's historical narrative effectively catalogues the many encumbrances that affect the utility of the 2.5 GHz spectrum for wireless broadband use and thus must be accounted for if the spectrum is included in the spectrum screen. Verizon's past statements emphasizing the competitive disadvantage of similar spectrum encumbrances on broadband network deployment further reinforces Sprint's proposal to integrate a measure of each band's competitive utility into a revised, more accurate and predictive spectrum screen.

***Commercial Access to Leased Spectrum.*** As Verizon notes, EBS spectrum "is licensed to educational entities[,] and commercial operators may only lease it" to gain access.<sup>6</sup> Verizon describes the various ways in which the Commission has sought to liberalize the leasing rules governing commercial access to this spectrum. In the end, however, Verizon cannot conjure away the fact that leasing EBS spectrum – rather than holding a license for it – presents distinct obstacles to deployment

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<sup>2</sup> Letter from Kathleen Grillo, Senior Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 (filed March 5, 2014) ("Verizon 2.5 GHz History").

<sup>3</sup> Indeed, Verizon hints at the extent to which such reconfigurations effectuated massive re-orderings of the 2.5 GHz band when it describes the 2002 reconfiguration proposal as a "radical re-imagination" of the 2.5 GHz band. *Id.* at 4.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> *Id.* at 8 ("The crux of Sprint's most recent arguments seems to be that access to EBS spectrum involves certain challenges and therefore the spectrum should be excluded from the screen.").

<sup>6</sup> *Id.* at 9.

not encountered with traditional licensed CMRS spectrum. In fact, Verizon previously stated that *no amount* of liberalization or flexibility by the Commission in the 2.5 GHz band can render leased spectrum commensurable with licensed spectrum for broadband deployment, asserting that obstacles associated with leases would impede broadband deployment “[r]egardless of the changes the Commission may make to its own regulations to implement leasing.”<sup>7</sup> Indeed, Verizon has in the past cited the litany of factors that fundamentally distinguish leased spectrum from licensed spectrum – including at 2.5 GHz – such as:

- The difficulty of assembling a nationwide footprint through negotiating leases with thousands of underlying licensees.<sup>8</sup>
- The “huge” transaction costs of such negotiations, which would “hinder the introduction” of broadband services.<sup>9</sup>
- The additional difficulty of “overlying leased spectrum onto an already complex licensing scheme,”<sup>10</sup> as is necessary in assembling broadband channels by combining EBS channels with BRS channels.
- The business risks and lack of equivalent control of the asset associated with leased spectrum as opposed to licensed spectrum, which make “[d]ecisions as to how and to what extent to invest in network infrastructure . . . much more difficult.”<sup>11</sup> As Verizon itself has stated:

“Businesses desire as much control as possible over their assets. Regardless of the changes the Commission may make to its own regulations to implement leasing, by law a lease cannot grant control over spectrum. Spectrum is one of a wireless carrier’s most valuable assets; leasing that spectrum from another licensee is simply more risky than controlling a license. Decisions as to how and to what extent to invest in network infrastructure, for example, are much more difficult if access to the underlying spectrum is vested in another entity. The lessee also must account for the risk that the lessor could violate FCC rules or declare bankruptcy, leaving the lessee with no spectrum and no business. While the risks associated with leasing can be mitigated through contract, they cannot be entirely removed.”

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<sup>7</sup> Comments of Verizon Wireless, ET Docket No. 00-258, at 32-33 (Feb. 22, 2001).

<sup>8</sup> As Verizon stated at the time, “[I]t would be very difficult for a mobile carrier to assemble a nationwide 3G footprint through negotiating agreements with the thousands of ITFS and MDS licensees.” Verizon Comments, *supra* note 7, at 33.

<sup>9</sup> Verizon Comments, *supra* note 7, at 33 (“The transaction costs of such an endeavor are likely to be huge, and as such would hinder the introduction of 3G services.”).

<sup>10</sup> Verizon Comments, *supra* note 7, at 33 (“Overlying leased spectrum onto an already complex licensing scheme advantages businesses that have geographic coverage similar to the existing licensees and, as such, would disadvantage mobile carriers.”).

<sup>11</sup> Verizon Comments, *supra* note 7, at 33-34.

As recently as 2009, Verizon reiterated its view that leasing fundamentally undermines the suitability of spectrum for commercial broadband use, concluding that “While the EBS band may certainly be used to support broadband services, including through spectrum leases to commercial providers, licensing in the band is restricted to educational entities, and thus, *does not meet the requirement for exclusively licensed, flexible use spectrum that Verizon believes is critical to support commercial mobile broadband services.*”<sup>12</sup> Verizon makes no attempt to reconcile its current attempt to portray leased EBS spectrum as equivalent to the licensed spectrum in other CMRS bands with its previous position that “a lease is no substitute for a license.”<sup>13</sup> Sprint certainly agrees with the latter. The extent to which this 2.5 GHz leased spectrum is not an equivalent substitute for licensed, exclusive use spectrum must be reflected in the way EBS spectrum is treated if ultimately included in the Commission’s spectrum screen. Stated another way, one can alternatively conceptualize a weighted screen as a more refined definition of suitability. Rather than the grossly arbitrary treatment of suitability as binary (as in the current screen), weights reflect the varying extent to which bands are suitable for commercial mobile broadband.

***EBS Geographic Service Areas.*** Verizon attempts to argue that “the site-based character of EBS licensing and associated white spaces” is not unique and does not warrant special treatment.<sup>14</sup> As Sprint described, the licensing regime governing underlying EBS licenses significantly complicates deployment, with vast “whites spaces” in which *no* broadband deployment can occur and complicated pairing with BRS channels necessary in order to assemble an LTE channel. In attempting to obscure the competitive implications of 2.5 GHz EBS site-based licensing, Verizon asserts that “Cellular licensing shares the same characteristics of EBS – cellular is described by the FCC as ‘site-based’ with unlicensed ‘unserved areas’ through the country.”<sup>15</sup>

Sprint respectfully points out to the Commission what Verizon, whose predecessors include the nation’s original cellular licensees, no doubt knows well: cellular service markets are almost completely

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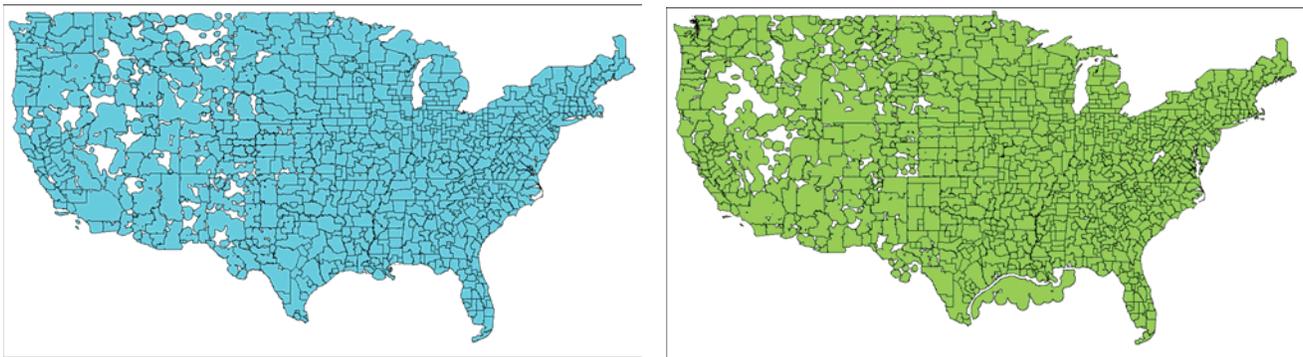
<sup>12</sup> Comments of Verizon Wireless, GN Docket Nos. 09-47, 09-51, 09-137, at 13 (Oct. 23, 2009) (emphasis added) (“Verizon NBP Comments”). (Elsewhere in the filing Verizon similarly denoted EBS as “Spectrum not available for exclusive licensing & flexible use.” *Id.* at 16).

<sup>13</sup> Verizon Comments, *supra* note 7, at 33.

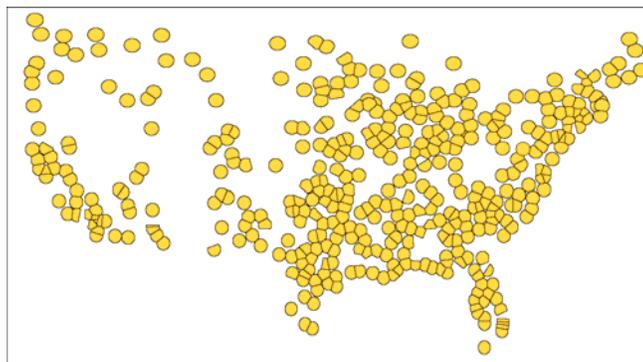
<sup>14</sup> Verizon 2.5 GHz History at 10.

<sup>15</sup> *Id.* at 10.

licensed, with only limited unlicensed area remaining.<sup>16</sup> The resulting license areas bear no remote resemblance to EBS in impacting local, regional, and wide-area (much less nationwide) coverage:



**Figures 1 and 2: Licensing Areas of Cellular A and B Blocks**



**Figure 3: Licensing Area of EBS Channel A1**

As Sprint noted in its filing, an average of approximately 16.5% of the population in the United States and Puerto Rico is located in aggregate EBS white space.<sup>17</sup> By contrast, the percentage of the population residing in the white spaces of the Cellular B Block is slightly more than one-tenth of one percent of the population; for the Cellular A Block it's less than one-tenth of one percent. Thus, Verizon's attempt to equate cellular and EBS white space licensing encumbrances is disingenuous at best. Site-by-site EBS licensing and unlicensed EBS spectrum continue to significantly complicate, delay and add cost to its

<sup>16</sup> As Sprint described in its Reply Comments, circumstances in the fully-developed cellular band are simply not comparable or relevant to the Commission's treatment of encumbered 2.5 GHz spectrum. Cellular incumbents enjoy interference-protected "Cellular Geographic Service Areas" that encompass the vast majority of Cellular Market Areas that were built out within five years of initial licensing; true site-based licensing in the band applies only to sites outside and along the outer contours of licensees' CGSAs. Reply Comments of Sprint Nextel Corp., WT Docket No. 12-269, at n. 66 (Jan. 7, 2013).

<sup>17</sup> Sprint Spectrum Screen Proposal at 34.

use in a commercial broadband network – factors that attenuate the spectrum’s competitive utility relative to other bands in the spectrum screen.<sup>18</sup> Sprint’s proposed weighting simply reflects this fact.<sup>19</sup>

***EBS Channelization.*** Verizon acknowledges that “EBS channels are licensed on a 5.5 or 6 MHz wide channel and need to be aggregated for wider channelization,” but argues that this presents “no basis to exclude EBS from the screen.”<sup>20</sup> Sprint cited the channelization challenges of EBS as yet another characteristic impacting the competitive utility of the band and distinguishing EBS from conventional CMRS bands included in the screen – factors which affect *how* to treat EBS spectrum if it is to be included with conventional CMRS bands. Verizon by no means contests that the 2.5 GHz band’s configuration dictates the necessary combination of these variously-sized EBS and BRS channels to assemble unpaired 20 MHz LTE channels. Rather, Verizon ostensibly disputes the notion that the screen should be attentive to the ways in which channel size, particularly for high-frequency spectrum, affects the extent to which a band can be effectively utilized for mobile broadband. This is especially peculiar in light of Verizon’s insistence on the “importance of 10x10 MHz spectrum blocks for the AWS-3 auction” – the equivalent of one 20 MHz unpaired TD-LTE block – because “smaller channels do not take full advantage of the efficiencies of LTE.”<sup>21</sup> Indeed, Verizon has also noted that “LTE equipment is optimized for 20x20 MHz, and wider channels (10x10 MHz and higher) enable licensees to provide greater throughput to more customers. For this reason, companies deploying LTE on AWS-1 spectrum have generally done so on blocks that are 10x10 MHz or greater.”<sup>22</sup>

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<sup>18</sup> There is currently a proposal in front of the Commission, advanced by the National EBS Association, the Catholic Television Network, and the Wireless Communications Association International, Inc., to license EBS white space. *See* Letter from Todd D. Gray, Counsel for National EBS Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 03-66 (filed June 20, 2013). As described in a June 20, 2013 *Ex Parte*, the parties have proposed a licensing scheme which would first expand existing licensees’ geographic service areas to county boundaries, and would then permit new licenses to be granted on a first-come, first-served basis where white space exists. Making currently unavailable EBS spectrum available for future educational and commercial use could advance the public interest and Sprint would anticipate revisiting the spectrum screen weighting associated with EBS white spaces when and if it becomes available for commercial use.

<sup>19</sup> Interestingly, despite its current attempt to downplay these characteristics as obstacles to deployment, Verizon had previously acknowledged that “this variation in geographic and spectrum location” and licensing on a “site-specific basis” had the effect of “thwarting [a carrier’s] ability to offer 3G services on a regional or nationwide basis” using 2.5 spectrum. Verizon Comments, *supra* note 7, at 33.

<sup>20</sup> Verizon 2.5 GHz History at 9.

<sup>21</sup> Letter from Tamara Preiss, Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185, WT Docket No. 12-269, at 1 (filed March 14, 2014).

<sup>22</sup> Letter from Kathleen Grillo, Senior Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 (filed March 24, 2014). Similarly, Verizon has stated that “The attractiveness of

***Preparing for Further Low-Band Aggregation, Verizon Proposes Relaxing the Screen and Weighting All Bands Equally***

Verizon's second filing generally asserts that the specific weighting approach Sprint formulated is complex; it disputes the premise that the screen should be attentive to the characteristics of specific bands (most notably, their differing propagation) that directly affect the competitive response ability of operators.<sup>23</sup> Verizon's alternative modification, cast as correcting "the biggest defect" in the spectrum screen, is to include in the spectrum screen virtually all 2.5 GHz spectrum, treating it indistinguishably from the significant low-band spectrum Verizon controls.<sup>24</sup> Yet, Verizon's proposed solution flies in the face of not only the extensive record developed in this docket but of a number of Commission decisions concluding that low-band spectrum has particular utility in wireless broadband deployments relative to higher band spectrum.<sup>25</sup> Sprint respectfully submits that the most glaring market reality the screen has not kept up with concerns the disproportionate competitive impact of low-band spectrum. Verizon's approach does nothing to address this problem; it would however, give Verizon a particular benefit, as explained further below.

***Alleged Complexity of Weighting.*** Verizon's most direct criticism of Sprint's proposal pertains to the alleged complexity involved in generating and applying weights for spectrum bands. Verizon, for instance, claims that the weighting methodology relies on "complicated calculations," which the Commission and operators would be required to make "in each county to determine whether a proposed

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10x10 MHz blocks for all providers is even greater now, given the industry's move to LTE as the consensus standard for 4G broadband services. Wider channels (10x10 MHz or higher) allow licensees to provide LTE to consumers more efficiently, resulting in higher data rates, the ability to serve more customers, and/or the ability to transmit larger amounts of data . . . Indeed, carriers that have deployed or are in the process of deploying LTE are doing so using 10 x 10 MHz blocks or larger." Letter from Kathleen Grillo, Senior Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 (filed March 24, 2014).

<sup>23</sup> Letter from Tamara Preiss, Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 (filed March 10, 2014) ("Verizon March 10 Letter").

<sup>24</sup> *Id.* at 1.

<sup>25</sup> See *Applications of AT&T Inc., Cellco Partnership D/B/A Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC For Consent to Assign and Lease AWS-1 and Lower 700 MHz Licenses*, Memorandum Opinion and Order, WT Docket No. 13-26, at ¶ 39 (rel. Sept. 3, 2013); See also *Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent to Transfer Control and Assign Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 13-54, ¶ 30 (rel. Sept. 20, 2013); *Application of AT&T Inc. and Qualcomm Inc.*, Order, 26 FCC Rcd 17589, 17608-11 ¶¶ 46-51 (2011) ("As both the Commission and DOJ have recognized, spectrum resources in different frequency bands can have widely disparate technical characteristics that affect how the bands can be used to deliver mobile services. The more favorable propagation characteristics of lower frequency spectrum, (*i.e.*, spectrum below 1 GHz) allow for better coverage across larger geographic areas and inside buildings. . . We also note that there is significantly less below 1 GHz spectrum available for mobile broadband service than above 1 GHz spectrum.").

transaction might exceed the screen.”<sup>26</sup> Sprint respectfully submits that if the Commission were to adopt a weighting methodology similar to the one contained in Sprint’s proposal, it would involve little more calculation than it does today. Once weights have been established by the Commission, the screen evaluation would simply involve multiplying the amount of spectrum an operator controlled in the relevant market (county or CMA) by the Commission-adopted weighting factor for that spectrum band. As the table below indicates, the weighted total spectrum for each band would already be established by the Commission’s adoption of the weighting factors:

Averaged Weighted Spectrum Screen			
Band	Current Screen	Average Weight	Averaged Screen
Lower 700 MHz	48.0 MHz	1.28	61.4 MHz
Upper 700 MHz	22.0 MHz	1.10	24.2 MHz
800 MHz ESMR	14.0 MHz	1.00	14.0 MHz
800 MHz Cellular	50.0 MHz	1.00	50.0 MHz
AWS-1	90.0 MHz	0.35	31.5 MHz
PCS	130.0 MHz	0.31	40.3 MHz
WCS	20.0 MHz	0.23	4.6 MHz
BRS	55.5 MHz	0.20	11.1 MHz
<b>Total</b>	<b>429.5 MHz</b>		<b>237.1 MHz</b>
<b>Total Low-band</b>	<b>134.0 MHz</b>		<b>149.6 MHz</b>
<b>One-third total</b>	<b>143.2 MHz</b>		<b>79.0 MHz</b>

The parties already undertake virtually the same process, except for the additional step of applying elementary math skills in adjusting the amount of spectrum involved by the weighting factor for each band. Specifically, the only additional step under a weighted screen would be multiplying the raw bandwidth currently included in the screen by its established weight – hardly a complicated or onerous task. To the extent such an approach is even *modestly* more complicated than the current screen, it more than compensates for this by significantly improving the ability of the screen to assess competitive harm. Indeed, as a wide range of commenters in the record have demonstrated, it is precisely the simplistic assumption that all spectrum bands are equal for competitive analysis purposes that has rendered the spectrum screen defective and obsolete in fostering a competitive market structure for commercial wireless broadband services.

**Focus on Propagation.** On the heels of claiming that Sprint’s weighting proposal injects too much “complexity” into the spectrum screen, Verizon attempts to have it both ways by faulting Sprint’s proposal for relying on “only two” simple and straightforward spectrum characteristics to generate

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<sup>26</sup> *Id.* at 1-2. (In an attempted “sleight of hand,” Verizon obscures the fact that the “8 calculations” it refers to reflect the eight different bands contained within the weighted spectrum screen).

weights. At first blush, however, Verizon seems to confuse which two factors Sprint utilized. Its reference to “propagation and deployment costs of a new entrant” as the two factors seems to be derived from a press report rather than Sprint’s actual filing,<sup>27</sup> which clearly explained that the weighting was based on *propagation* and (like the current screen) *bandwidth*. Notwithstanding Verizon’s misinterpretation, Sprint appreciates Verizon’s acknowledgement that “each spectrum band has varying advantages and disadvantages” that determine its competitive utility. As Sprint explained, propagation represents the single most important factor in determining the cost, feasibility, and timeliness of deploying and operating a network using a particular band – and thus critically influences an operator’s ability to competitively respond (the key focus of the spectrum screen).

While a “large number of variables” also can impact the competitive utility and effectiveness of any band – which Sprint explicitly noted – all of these factors pale in comparison to propagation.<sup>28</sup> Moreover, Sprint considers Verizon’s objections to the identification of “only two” key factors (one of which is already contained in the spectrum screen) particularly odd given its praise of the current screen for its simplicity. Verizon in no way demonstrates how propagation represents a materially less relevant characteristic of spectrum than bandwidth, the current screen’s exclusive focus. This is hardly surprising: in advising the Commission on spectrum characteristics relevant to identification of new CMRS bands and in explaining spectrum to shareholders and financial analysts, Verizon has always emphasized the critical impact of propagation on a band’s utility.<sup>29</sup> As Verizon CFO Fran Shammo has

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<sup>27</sup> Andrew Berg, “Sprint Details Spectrum Weighting Proposal, Maintains Caveats for 2.5 GHz,” *Wireless Week* (Feb. 12, 2014), available at <http://www.wirelessweek.com/news/2014/02/sprint-details-spectrum-weighting-proposal-maintains-caveats-25-ghz> (“The carrier suggested the FCC weight spectrum on two factors, including any given frequency’s propagation characteristics, as well [sic] the cost to a carrier to deploy in that spectrum in a given area”).

<sup>28</sup> Sprint Spectrum Screen Proposal at 14-15 (describing the availability of network equipment and consumer devices, the presence of band classes, the degree of international harmonization of a band, interference risk, and unique regulatory obligations).

<sup>29</sup> See, e.g., Comments of Verizon Wireless, GN Docket Nos. 09-47, 09-51, 09-137, at 13 (Oct. 23, 2009) (“In order to serve low-density areas, such as rural communities, spectrum *below 2 GHz (even below 1 GHz) would be highly desirable*, as these lower frequency bands require fewer cell sites, and thus, would be less costly to deploy.”) (emphasis added); Tony Melone, Executive VP and CTO, Verizon Wireless, “Q&A: Verizon’s LTE road map for 2010 and beyond,” *Network World* (Feb. 25, 2010), available at <http://www.networkworld.com/news/2010/022510-verizon-lte-melone.html?hpgl=bn> (“The 700 MHz spectrum gives us tremendous propagation advantages versus the people who are deploying LTE in higher spectrum ranges. 700 MHz spectrum means that there will be fewer sites required and we’ll have better in-building penetration.”); Fran Shammo, Chief Financial Officer and Executive Vice President, Verizon, *Verizon Communications Inc. at Oppenheimer & Co. Technology & Communications Conference*, FD (FAIR DISCLOSURE) WIRE (Aug. 10, 2011) (“All spectrum is not created equal for carriers. So from our holding perspective, with the 700 contiguous megahertz spectrum that we have, that spectrum is extremely efficient. The propagation of that spectrum into buildings is very high, so you don’t need as much . . . cell splitting or build out that you would need from other types of spectrum”).

aptly stated, “All spectrum is not created equal for carriers.”<sup>30</sup> On that proposition, Sprint and the weight of the proceeding’s record are in agreement. A weighted screen would simply revise the spectrum screen to reflect that reality.

***The Screen’s “Biggest Defect.”*** The instant proceeding is not the first time Verizon has attempted to portray the 2.5 GHz band as indistinguishably suitable for mobile broadband use as other commercial spectrum. Verizon periodically targets the 2.5 GHz band, particularly the EBS spectrum component, to inflate the spectrum screen for its own anti-competitive purposes. Verizon’s attempts to inflate the spectrum screen by indiscriminately including the 2.5 GHz band tend to occur during periods when Verizon is preparing to accumulate significant additional spectrum in the face of concerns about its market power. For instance, in responding to proposals from commenters that would restrict the amount of spectrum Verizon could acquire in the 2008 700 MHz auction, Verizon argued for inclusion of a full 194 MHz of 2.5 GHz spectrum.<sup>31</sup> Similarly, in its response to Petitions to Deny its proposed acquisition of ALLTEL (concerned with the spectrum aggregation consequences of the transaction), Verizon argued that 186 MHz of 2.5 GHz spectrum should be included in the screen.<sup>32</sup> Verizon even went so far as advocating consideration of *unlicensed* spectrum within the Commission’s competitive analysis of mobile broadband spectrum availability.<sup>33</sup> Not surprisingly, in response to concerns by parties over its purchase of spectrum from a group of cable operators, Verizon again strenuously argued for inclusion of 160 MHz of 2.5 GHz spectrum.<sup>34</sup> The Commission has rejected each of these attempts.<sup>35</sup>

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<sup>30</sup> Fran Shammo, Chief Financial Officer and Executive Vice President, Verizon, *Verizon Communications Inc. at Oppenheimer & Co. Technology & Communications Conference*, FD (FAIR DISCLOSURE) WIRE (Aug. 10, 2011).

<sup>31</sup> Reply Comments of Verizon Wireless, AU Docket No. 07-157, at 21-22 (Sept. 7, 2007).

<sup>32</sup> Joint Opposition to Petitions to Deny and Comments of Atlantic Holdings LLC and Cellco Partnership d/b/a Verizon Wireless, WT Docket No. 08-95, at 29-31 (Aug. 19, 2008) (“Verizon/ALLTEL Joint Opposition”).

<sup>33</sup> Declaration of Charles Jackson, “The Supply of Spectrum for CMRS,” attached to *Verizon/ALLTEL Joint Opposition*, WT Docket No. 08-95, at 14-17 (Aug. 19, 2008) (concluding that while it might be difficult to include unlicensed spectrum within the screen, it “should be considered in any competitive analysis. There is over 500 MHz of unlicensed spectrum – giving operators of hot-spots and networks covering campuses or industry parks substantial opportunities to build and operate wireless networks.”).

<sup>34</sup> Joint Opposition to Petitions to Deny and Comments of Verizon Wireless, SpectrumCo LLC, and Cox TMI Wireless, LLC, WT Docket No. 12-4, at 55-57 (March 2, 2012).

<sup>35</sup> *Auction of 700 MHz Band Licenses Scheduled for January 16, 2008*, AU Docket No. 07-157 (rel. Oct. 5, 2007); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling*

Though the precise amount of 2.5 GHz spectrum Verizon considers suitable for the spectrum screen appears to vary, Verizon's instant advocacy yet again reflects an interest in facilitating further aggregation for itself. Verizon's advocated revision "perpetuates the screen's methodological flaws" of treating all bands as indistinguishable, thereby giving Verizon (and AT&T) "significantly more 'headroom' to pursue more spectrum concentration."<sup>36</sup> To put it in more stark terms, if the Commission adopted Verizon's proposal and included on an un-weighted basis the full 194 MHz of 2.5 GHz spectrum (in addition to the various changes discussed in the NPRM it is already likely to make) the new screen threshold would be 206 MHz – just under the combined spectrum holdings of AT&T and Verizon (~215 MHz)!<sup>37</sup> The fact is that rather than *fixing* any defect in the current screen, Verizon's proposed modification would *exacerbate* the screen's chief defect – its treatment of all bands as equal in terms of their competitive impact.

Verizon's proposed revision, like its misapprehension of Sprint's proposal, reflects a failure to put the screen in its proper context. In the former case, Verizon's proposed modification ignores the fundamental purpose of the screen: examining how aggregation of spectrum (achieved via auction or secondary market transaction) affects downstream competition – and in particular the ability of rival firms to respond to an attempted exercise of market power. In the latter case, Verizon's fulmination against Sprint's Spectrum Screen Proposal ignores the fact that the spectrum screen functions only as a threshold analytical tool. As Sprint explained in opposing proposals to establish a rebuttable presumption that transactions exceeding the screen be deemed contrary to the public interest, the spectrum screen serves as a flexible tool for identifying transactions that warrant further scrutiny on a case-by-case basis.<sup>38</sup> As the Commission has stated, "This initial screen is only the beginning of our

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*that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, ¶ 69 (2008); *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, WT Docket No. 12-4, Memorandum Opinion and Order and Declaratory Ruling, at ¶ 63 (rel. Aug. 23, 2012).

<sup>36</sup> Reply Comments of Sprint Nextel Corp., WT Docket No. 12-269, at 9 (Jan. 7, 2013).

<sup>37</sup> This assumes the Commission adopts its tentative conclusions to remove the 10 MHz of 700 MHz D Block spectrum and the revision of SMR from 26.5 to 14 MHz, as well as the inclusion of 50 additional megahertz associated with the AWS-2 H Block and AWS-4 spectrum. Verizon's position would in-and-of-itself provide about 45 MHz of incremental headroom under the screen from the unweighted inclusion of about 140 MHz of additional 2.5 GHz spectrum.

<sup>38</sup> Reply Comments of Sprint Nextel Corp., WT Docket No. 12-69, at 18 (Jan. 7, 2013).

competitive analysis.”<sup>39</sup> The flexibility afforded by the spectrum screen makes it diagnostic, not determinative. Where a licensee’s proposed acquisition exceeds the screen, the Commission merely undertakes a more detailed competitive analysis, in which the Commission has the discretion to look at a range of competitive factors in determining whether any divestiture may be warranted.<sup>40</sup> To the extent Verizon believes other factors are relevant to the Commission’s analysis, these can easily be incorporated within the more detailed competitive analysis the Commission undertakes in markets where the screen is exceeded.

### ***Conclusion***

Sprint appreciates the Commission’s efforts to undertake a comprehensive review of its policies governing mobile spectrum holdings. As a wide range of commenters have noted, the most salient component of the Commission’s mobile spectrum holdings policies – the spectrum screen – has not kept up with changes in the market for mobile broadband since the Commission’s last comprehensive review a decade ago. Most notably, the spectrum screen’s singular focus on bandwidth critically fails to reflect the effects of propagation on the ability of competing firms to deploy specific spectrum bands. Sprint respectfully submits that the weight of the record supports adoption of a weighting methodology to improve the diagnostic ability of the screen to identify aggregation of spectrum that threatens the ability of other providers to effectively compete.

Pursuant to Section 1.1206 of the Commission’s rules, this letter is being electronically filed with your office. Please let me know if you have any questions regarding this filing.

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<sup>39</sup> *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, 20318 ¶ 39 (2007).

<sup>40</sup> *See, e.g., Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fifteenth Report, 26 FCC Rcd 9664, ¶ 281 (2011) (*Fifteenth Report*) (“In 2004, the Commission adopted a ‘spectrum screen’ to assist in its analysis of competitive concerns raised by transactions in which providers were aggregating spectrum. This screen identified particular markets in which the spectrum aggregation exceeded a predetermined amount of spectrum, set at approximately one-third of the critical spectrum input. In those markets, the Commission conducted further analysis to determine whether sufficient spectrum capacity would be available to other providers to compete effectively.”); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶76 (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, 20317 ¶ 39 (2007); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13993 ¶ 62-63 (2005).

Respectfully submitted,

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