



April 14, 2014

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268

Dear Ms. Dortch:

On April 11, 2014, Harold Feld, Senior Vice President, Public Knowledge (PK) spoke with Renee Gregory with regard to the above captioned proceedings.

PK stressed the need to have an actual rule on spectrum aggregation, rather than a spectrum screen. As an initial matter, the screen fails to provide certainty and has been used in the past by carriers as a “one way ratchet” to relax protections against undue spectrum aggregation. Carriers are quick to note that the screen is merely a guide in transactions that exceed the screen, but insist it is a safe harbor where transactions do not exceed the screen but raise other public interest concerns. The Commission should therefore adopt a genuine rule.

To the extent the Commission maintains a screen, it should at least adopt a tighter screen for low-band spectrum below 1 GHz. In its review of the ATT/Qualcomm transaction, the Commission established a precedent with regard to concentration of low-band spectrum over and above the overall concentration of spectrum. In the absence of a formal rule, or even a formal and separate sub-1 GHz screen, this is a useless and confusing distinction. What, exactly, does it mean to say that low-band spectrum is an “enhancing factor” that requires particularly close scrutiny for some unknown level of low-band spectrum in combination with some unspecified amount of higher band spectrum? Rather than bringing clarity, the approach in *ATT/Qualcomm* brings a greater level of uncertainty and confusion with regard to what transactions the Commission will “scrutinize” (above and beyond the statutory requirement to scrutinize all transactions and ensure they are in the public interest) and what remedies it might impose to mitigate these “concerns.”

This would be further aggravated by the inclusion of new spectrum in the screen without any distinction between the varying quality of spectrum. As PK noted in its initial comments and replies in Docket No. 12-268, the Commission should weight spectrum based on its real world utility. It should weight spectrum below 1 GHz as more valuable than spectrum between 1 GHz and 2 GHz, and weight spectrum above 2 GHz as less valuable than either.

The failure to adopt *any* differentiation among spectrum, other than to add a vague additional level of “concern” for unspecified concentration in the 1 GHz band, therefore

aggravates rather than alleviates the problem of spectrum concentration by treating concentrations of above 1 GHz spectrum (such as Sprint's 2.5 GHz spectrum or DISH's AWS-4 spectrum) as if it were essentially interchangeable with lowerband spectrum – an absurd result. One has merely to look at the pricing in the marketplace to see the premium placed on lowerband spectrum is replicated as between AWS-1 and PCS spectrum v. AWS-4 and 2.5 GHz spectrum. A dramatic expansion of the spectrum to reflect the new 1755 MHz/AWS-3 spectrum, and inclusion of BRS spectrum, will simply greenlight further concentration to the detriment of competition.

Under such a restatement of the spectrum screen, the Commission would potentially permit the sale by DISH of valuable E Block 700 MHz licenses to AT&T or Verizon, but require divestiture if DISH sold AWS-4 spectrum to Sprint. It is difficult to imagine a more absurd result from a competitive standpoint.

PK noted that under a revision of the spectrum screen that failed to differentiate low-band spectrum, it is difficult to sustain any ownership limit on 600 MHz spectrum as distinct from 700 MHz spectrum or other low-band spectrum. Such a limit could be imposed as a one time auction restriction to advance competition (just as the Commission imposed restrictions on bidding for C Block in the 1994 PCS auction), with anti-trafficking rules to prevent resale to carriers with substantial low-band holdings. Trying to fit this approach into the overall approach of refusing to adopt a rule, and refusing to formally distinguish between 1 GHz and other spectrum generally, raises serious problems. It is not even coherent. To restate such a policy, “all spectrum is alike and is weighted the same. Below 1 GHz is kinda sorta different enough to make us sit up and take notice, but – contrary to the opinion of the Department of Justice and all evidence in the record – apparently not *so* different as to warrant an actual separate screen. Except for some special rules relating to 600 MHz spectrum, which we adopt not as an auction or service specific limit but under our general approach, except that our general approach isn't actually a rule. But it is for 600 MHz.”

Accordingly, to the extent the FCC wishes to actually provide opportunities to companies other than Verizon or AT&T to acquire lowband spectrum, it should either (a) adopt a spectrum aggregation approach that recognizes the differences in spectrum below 1 GHz (and above 2 GHz) and weight it accordingly; or (b) adopt an auction specific rule to address 600 MHz spectrum.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Harold Feld
Senior Vice President
PUBLIC KNOWLEDGE

CC: RENEE GREGORY