

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
AT&T Petition for Rulemaking Regarding) RM-11731
Revision of WCS Rules)
)

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) submits these comments in response to the August 21, 2014, Public Notice issued by the Federal Communications Commission’s (“Commission” or “FCC”) Wireless Telecommunications Bureau (“Bureau”),¹ soliciting comment on the above-referenced Petition for Rulemaking (“Petition”) filed by AT&T Mobility Spectrum LLC, BellSouth Mobile Data, Inc., New Cingular Wireless PCS, LLC, and SBC Telecom Inc. (collectively “AT&T”). The Petition urges the FCC to initiate a proceeding to amend Part 27 governing the C and D Blocks (2315-2320 MHz and 2345-2350 MHz, respectively) of the 2.3 GHz Wireless Communications Service (“WCS”) band to allow AT&T to use those blocks for the air-ground component of its planned LTE-based in-flight connectivity services.² CCA appreciates efforts to increase access to wireless services, including onboard aircraft, and to put the WCS spectrum to productive use. However, in addition to any technical issues that must be addressed if the Commission moves forward, the Petition raises broader competitive issues that must be considered as part of any rulemaking proceeding.

¹ See *Wireless Telecommunications Bureau Seeks Comment on AT&T Petition for Rulemaking Regarding Revision of WCS Rules*, Public Notice, RM-11731, DA 14-1210 (rel. Aug. 21, 2014).

² See *Petition for Rulemaking of AT&T Mobility Spectrum LLC, et al.*, RM-11731 (filed Aug. 8, 2014) (“Petition”).

I. BACKGROUND

CCA is the nation's leading association for competitive wireless providers and stakeholders across the United States. CCA's membership includes more than 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members consisting of small businesses, vendors, and suppliers that service carriers of all sizes. Together, CCA's members represent a broad range of entities with a shared goal of a competitive wireless market as a critical driver of the U.S. economy.

CCA's members support the Commission's efforts to make broadband available to all Americans. However, in expanding broadband access, the Commission must ensure that it does not create or extend excessive market power.

AT&T's Petition requests that the FCC allow it to use a portion of the 2.3 GHz band for the air-ground component of its planned LTE-based in-flight connectivity services.³ AT&T describes this service as a "high-speed 4G LTE-based in-flight connectivity service for airlines and passengers in commercial, business, and general aviation."⁴ According to AT&T, "planes with this service will be flying hotspots, connecting to end-user devices via Wi-Fi."⁵ AT&T notes that it hopes to offer this service late next year. As commenters demonstrated in the FCC's proceeding proposing mobile wireless services onboard aircraft through an Airborne Access System ("AAS"),⁶ mobile communications onboard aircraft raise complex regulatory issues –

³ See Petition at 1.

⁴ Petition at 2-3.

⁵ Petition at 3.

⁶ See *Expanding Access to Mobile Wireless Services Onboard Aircraft*, Notice of Proposed Rulemaking, 28 FCC Rcd. 17132 (2013).

beyond the social issues of allowing passengers to use wireless devices for voice calling – that require resolution before in-flight communications are permitted.⁷

Similar issues are presented by the Petition. To be clear, CCA does not oppose the initiation of a rulemaking proceeding to evaluate AT&T's more complete use of the WCS band. However, that rulemaking proceeding must also ensure that AT&T will not restrict in-flight communications offerings to only AT&T customers.

II. DISCUSSION

AT&T characterizes its Petition as a request for technical amendments to the FCC's rules governing the 2.3 GHz band, proposing amendments to the FCC's rules related to transmitter power levels, limits on out-of-band emissions, and coordination requirements.⁸ However, the Petition also raises important competitive issues, in many cases related to those that have been raised in the FCC's AAS proceeding.

For example, grant of AT&T's Petition may allow it to become the exclusive means to backhaul wireless traffic from aircraft and provide Wi-Fi services aboard the aircraft. For safety or other reasons, airlines may be reluctant to allow multiple entities to install equipment onboard aircraft. Unlike other aero-communications service providers such as Gogo, AT&T also has a large base of terrestrial service customers. AT&T must not be permitted to unfairly favor its terrestrial customers by blocking or limiting non-AT&T customers' access to its in-flight Wi-Fi services. While it may be reasonable to have differentiated business models for service, it would

⁷ See *e.g.*, Reply Comments of T-Mobile USA, Inc., WT Docket No. 13-301 (filed May 16, 2014) at 3-10 (proposing that because AAS service providers will offer a service similar to their terrestrial counterparts – and consumers will perceive in-flight services as an extension of their terrestrial services – AAS providers should be subject to the same regulatory obligations as those providers).

⁸ See Petition at 1.

not be reasonable to wholly block access to service on aircraft or to limit access to unreasonable commercial terms. The Commission must consider the competitive concerns that AT&T's likely exclusive arrangement plus its status as a dominant provider of terrestrial services will create both with respect to its provision of access to Wi-Fi and carrier-provided services.⁹

These issues should be addressed as part of any rulemaking proceeding regarding use of the WCS spectrum as AT&T proposes. FCC Chairman Wheeler recently reiterated the importance of competition, emphasizing that “where competition exists, the Commission will protect it” and “where greater competition can exist, we will encourage it.”¹⁰ Granting AT&T's Petition without addressing the competitive concerns raised here may permit AT&T to establish an effective monopoly for in-flight services. The Bureau must, therefore, provide adequate protections for consumers and other carriers against this possibility.

III. CONCLUSION

While CCA supports efforts to increase wireless communications services, the Bureau must not act prematurely. AT&T's Petition presents more than merely technical issues. These important concerns must be addressed as part of the rulemaking proceeding regarding the use of

⁹ Various parties have expressed concerns about the roaming practices of the two dominant wireless providers in general, which should heighten the Commission's concern about AT&T's proposal in this matter. *See*, Comments of Limitless Mobile, LLC, WT Docket No. 05-265, at 3-4 (filed July 10, 2014) (asserting that it was forced to severely restrict its customers' access to the AT&T network “for the sole reason that AT&T's data roaming rates are too high and by continuing roaming access, Limitless could not maintain a commercially competitive retail wireless data offering to the general public”); *see also* Comments of Competitive Carriers Association, WT Docket No. 05-265, at 5 (filed July 10, 2014) (stating that a CCA member was offered a data roaming rate as much as 33 times the retail rates generally charged by national carriers to their retail customers for data access); Comments of NTELOS Holdings Corp., WT Docket No. 05-265, at 12-13 (filed July 10, 2014) (stating that a roaming rate NTELOS was recently offered was approximately 10 to 25 times higher than what is being charged to retail customers).

¹⁰ Prepared Remarks of FCC Chairman Tom Wheeler, 2014 CTIA Show, Las Vegas, Nevada at 2 (Sept. 9, 2014), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0909/DOC-329271A1.pdf.

the WCS spectrum that AT&T proposes so that AT&T is not permitted to exert its market power to exclude access by others to any form of in-flight communications.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

Steven K. Berry

Rebecca Murphy Thompson

C. Sean Spivey

COMPETITIVE CARRIERS ASSOCIATION

815 15th Street, NW, Suite 401

Washington, DC 20005

(202) 449-9866

September 22, 2014