

Questions for the Record for Verizon-Spectrum Co. Hearing
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1. In your filing before the FCC, you assert that the current spectrum screen is outdated and should be changed to take account of the monetary value of spectrum. When AT&T sought to merge with T-Mobile and argued that the spectrum screens should be changed, you opposed making any changes to the screens and asserted that seeking a change to the screens in the middle of a transaction was “self-serving.”
 - Do you now think it proper for the FCC to change its spectrum screens during the middle of a transaction, and if so, how do you account for your changed position?

In our *Reply to Opposition* in the FCC’s proceeding on the AT&T-T-Mobile transaction, we stated:

Applicants assert that “the combined company’s spectrum holdings will fall far short of levels that could support any reasonable concern about spectrum aggregation,” *but bases this statement on its belief that the Commission should greatly expand the contours of its current spectrum screen, in part by adding spectrum bands that have not yet been made available for mobile broadband use.* With respect to the current spectrum screen, Applicants allege that on average the combined company would hold 134 MHz of spectrum, which is less than one third of the 424.5 MHz that AT&T calculates to be the total available for mobile broadband. But that estimate explicitly excludes in the numerator the Qualcomm spectrum as well as other 700 MHz licenses that AT&T also has sought permission to acquire. Together, if all of these transactions were to be approved, the combined company would hold on average well over one third of all spectrum currently considered by the Commission to be suitable for mobile broadband deployment. [...] Applicants attempt to defuse these arguments by insisting that the Commission should not care how much spectrum a company has, but instead should ask “whether the amount of spectrum a provider holds in a particular area is sufficient to handle bandwidth demands generated by its subscribers in that area.” This is incorrect, and such a *self-serving formula* would sound the death knell for wireless competition policy (*internal citations omitted and emphasis added*).

Essentially, we were making the point that AT&T’s request that the spectrum screen be expanded to include Lightsquared’s MSS spectrum was unwise, self-serving and poor policy given the doubts about that spectrum’s future viability as a resource for the provision of terrestrial mobile services. It’s clear now that including Lightsquared’s holdings in a spectrum screen would have been a premature move, since the interference issues with that spectrum will likely keep it from any terrestrial use for the foreseeable future.

Our point then and now is that the spectrum screen is flawed not because it is too low to account for regional competition, as AT&T argued in their failed transaction, but because it does not take into account the value of different kinds of spectrum. We argued this point in numerous filings at the FCC during both the AT&T-T-Mobile and AT&T-Qualcomm proceedings.

In both of those cases, as well as in this proposed deal, we believe that if the FCC follows its long-standing practice of altering the spectrum screen during transactions the Commission's screen should reflect the actual changes in market power that further concentration of spectrum holdings will produce. This means in addition to accounting for the *amount* of usable spectrum held by any given carrier, the screen should also account for the *value* of these holdings.

Each band of spectrum in each local market has unique characteristics that result in no two identically sized blocks holding identical value. These differences are due in part to the propagation characteristics of the spectrum — how far they can carry a signal and how well that signal can penetrate buildings and terrain.

As with property, the location of broadband spectrum is the main driving force of its value. Unfortunately, the screens that the FCC uses to measure spectrum holdings don't measure this dynamic. These antiquated screens are out of date — they measure only for the square footage of holdings (the amount of Mega-Hertz, or MHz) and fail to acknowledge whether the spectrum holdings are beachfront, beach adjacent, or have only a beach view.

Without access to a sufficient amount of high-quality spectrum, a wireless company cannot offer first-class wireless services. It cannot scale its business in a cost-efficient way, or keep up with growing consumer demand for wireless data. Spectrum, particularly highly valuable spectrum, is the input market on which the entire wireless industry is built.

As in the AT&T / T-Mobile transaction, when policymakers weigh whether or not this transaction will harm competition or benefit the public interest, they must look across the wireless marketplace and ask questions about the future prospects for competition given the consolidation this deal represents over the essential input market of spectrum access. In this regard our position is consistent.

Any analysis of this transaction must take into account the value of the spectrum being sold in order to adequately examine the concentration of market power that results from this deal. Simply counting the total MHz of available spectrum held by any one carrier provides an inaccurate and distorted portrait of market power.

2. I have concerns about potential error costs involved in government intervention. For example, if the FCC were to mandate an approach for Verizon Wireless such as cell-splitting and it turns out that the agency is mistaken and cell-splitting is more costly than spectrum to accomplish the same objective, that the government will have imposed unnecessary costs.

- What is your view of such potential error costs and the role they should play in our analysis?

The FCC ought not to mandate any particular approach for how companies choose to manage their spectrum holdings. However, it is also not the agency's duty to help a carrier meet their forecasted data demands if it means sacrificing competition, and if there are pro-investment, pro-consumer alternatives that carrier can pursue. So, while it shouldn't mandate cell-splitting, spectrum swaps, or wi-fi offloading, it should recognize that there are other strategies to meeting data demand apart from allowing two companies to monopolize control over the finite spectrum market.

As the FCC reviews license transfers it shouldn't pick winners and losers by dictating which companies control which bands of spectrum, but it also must avoid anointing kings.

In this transaction, Verizon Wireless has agreed to weaken its competitive position in the markets where it offers at-home fiber broadband service in exchange for the opportunity to buy the last nationwide block of highly valuable wireless spectrum that will be available for the foreseeable future. The result will put Verizon in control of close to a third of all mobile broadband spectrum measured by value, and it will give Verizon and AT&T a combined 60 percent value share of this critical input market.

Excessive control over the essential spectrum-input market will raise barriers to new entrants, inhibit the provisioning of new competitive services to consumers, and ultimately foreclose the ability of smaller competitors to mount serious challenges to the incumbent twin Bell wireless companies.

3. Smart phones, tablets, and similar products have drastically increased the demand for spectrum in the past few years. Some estimate that global mobile traffic will increase 26-fold between 2010 and 2015, and that this year alone over 500 million smartphones and 100 million tablets could be sold worldwide.
 - In light of this clear trend towards exponential use of data, do you dispute that Verizon Wireless does not need additional spectrum, would not put it to use, or at the very least would not be exercising proper business judgment to obtain as much spectrum as possible?

No one is disputing that this proposed transaction is a savvy business move by the companies involved, or that Verizon would put the licenses in question to use. However,

it is our position that the deal as currently proposed triggers several anti-trust concerns and does not meet the FCC's public interest standard.

Given the growing data demand, the FCC's role of bringing more spectrum to market is increasingly important. But, freeing up additional airwaves isn't the question on the table in these deals. The question before policy makers considering the transaction should be, if we put control of the last piece of valuable nationwide spectrum into the hands of Verizon, how will that impact the competitive environment going forward? Policymakers must also examine the validity of any claims about future capacity concerns, given that carriers have strong reason to overstate future demand and understate their ability to meet such demand using methods that do not harm competition.

We believe it's important for the FCC to pay attention to how much spectrum one company is permitted to own and how that impacts competition and consumers.

In the meantime, if Verizon faces spectrum constraints, it can follow the same strategies that other carriers with much less spectrum depth have been employing – wifi offloading, spectrum swaps, cell-splitting, and more efficient use of existing spectrum (e.g. refarming 2G spectrum for more efficient 4G services).

If the FCC does decide to enable a duopoly marketplace for mobile service by granting two companies control over the spectrum market, it is then the responsibility of the federal government to ensure consumers are protected from supra-competitive rates through industry-wide rules and regulations.

4. At the hearing, you stated that “the cable companies . . . have shown that they really want to be involved in the wireless market . . . [however] there are lots of ways for them to do that which isn't harmful to consumers.” I understand that the mobile virtual network operator (“MVNO”) provisions of the agreements between the cable companies and Verizon Wireless will allow the cable companies to potentially create their own wireless offerings in the near future.
 - What is your view of the MVNO and how does its inclusion in the agreements affect your analysis of those agreements?

While the Joint Marketing Agreements (as described publicly by the parties) do contain provisions that could result in the cable companies becoming MVNOs on the Verizon Wireless network in the future, for now these companies will simply act as agents, selling Verizon Wireless-branded services. In other words, at the outset of the arrangements the cable companies are merely signing their own customers into Verizon Wireless' two-year

contracts in exchange for an assurance they won't face competition from Verizon FiOS in the monthly video and broadband at-home market.

The companies have stated the MVNO agreement could allow the cable companies to offer competitive service at some point in the future, but without knowing the terms of the agreements, it is impossible to say whether or not any of the cable companies will actually move from acting as agents for Verizon Wireless to acting as virtual network operators. For example, the agreements could be structured in such a way that a cable operator could derive enough of a marginal benefit from selling an agent-based quadruple play service, that the additional risks and costs of acting as an MVNO may not be worth it in the short-run, even though an MVNO strategy might be more beneficial to the cable company and consumers in the long-run.

Although, the precise terms of the MVNO agreements are not public, it is our position that as long cable companies have access to a *nation-wide* wireless service component through Verizon Wireless, they will not jeopardize the market division scheme they have created with Verizon in the residential broadband market, which insulates them from competition from the telephone company's FiOS service.