

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Applications of AT&T Mobility Spectrum LLC,
Triad 700, LLC, CenturyTel Broadband Wireless,
LLC, 700 MHz, LLC, Cavalier Wireless, LLC,
Ponderosa Telephone Co., David L. Miller,
ComSouth Tellular, Inc., Farmers Telephone
Company, Inc., and McBride Spectrum Partners,
LLC for Consent to Assign Licenses
ULS File Nos. 0005286787, 0005337520,
0005262760, 0005295740, 0005295055,
0005296026, 0005304258, 0005293645, and
0005323094

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2012

Released: December 19, 2012

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we deny the petitions for consolidation and conditions filed by the Competitive Carriers Association (CCA) regarding applications by AT&T Mobility Spectrum LLC ("AT&T Mobility") to acquire various Lower 700 MHz and Advanced Wireless Service (AWS-1) licenses. As discussed below, we decline CCA's request to formally consolidate these applications for agency review, and we decline CCA's request that we impose conditions related to interoperability and roaming.

II. BACKGROUND

2. On July 3, 2012, AT&T Mobility, an indirect wholly-owned subsidiary of AT&T Inc. ("AT&T"), and Triad 700, LLC ("Triad") filed an application pursuant to Section 310(d) of the Communications Act of 1934, as amended, seeking to assign 27 Lower 700 MHz Band B Block licenses from Triad to AT&T Mobility. On August 6, 2012, AT&T and CenturyTel Broadband Wireless, LLC ("CenturyTel"), a wholly-owned subsidiary of CenturyLink, Inc. ("CenturyLink"), requested that the Commission consent to the assignment from CenturyTel to AT&T Mobility of 55 Lower 700 MHz Band B and C Block licenses and six AWS-1 licenses.

3. On August 15, 2012, CCA petitioned the Commission to consolidate AT&T's proposed acquisition from Triad of Lower 700 MHz spectrum with other pending applications in which AT&T is

1 47 U.S.C. § 310(d).

2 AT&T Mobility Spectrum LLC and Triad 700 LLC Seek FCC Consent to the Assignment of 27 Lower 700 MHz Band B Block Licenses, Public Notice, 27 FCC Rcd 8988 (WTB 2012).

3 AT&T Mobility Spectrum LLC and CenturyTel Broadband Wireless LLC Seek FCC Consent to the Assignment of Lower 700 MHz Band and AWS-1 Licenses, Public Notice, 27 FCC Rcd 11026 (WTB 2012).

4 CCA was formerly known as RCA – The Competitive Carriers Association (RCA). CCA filed as RCA in the AT&T-Triad proceeding, but subsequently filed as CCA in the other proposed transactions that are noted above.

seeking to acquire spectrum licenses in the Lower 700 MHz B and C Blocks and the AWS-1 band.⁵ CCA further requests that the Commission adopt conditions relating to interoperability in the Lower 700 MHz band and data roaming.⁶ In addition, CCA requests that, prior to acting on the pending applications, the Commission initiate a Notice of Proposed Rulemaking to review its framework for evaluating mobile spectrum holdings.⁷

4. In support of CCA's request for consolidation, CCA states that these transactions – analyzed in the aggregate – raise concerns regarding spectrum concentration, and argues that instead of analyzing each application's potential harm to competition, the Commission must take a “holistic look” at the impact of ongoing spectrum concentration on competition and consumers.⁸ In addition, CCA states that the Commission should impose two conditions. First, CCA contends that the Commission should impose an interoperability requirement that CCA states would ensure seamless interoperability across the Lower 700 MHz band. Second, CCA states that the Commission should adopt a condition to ensure the availability of data roaming on reasonable terms and conditions.⁹ CCA also reiterates its spectrum aggregation concerns in its petition for conditions and consolidated treatment in the proposed transaction where AT&T seeks to acquire spectrum from CenturyTel.¹⁰

⁵ CCA Petition for Conditions and Consolidated Treatment, ULS File No. 0005286787, at 3, 10-11 (Aug. 15, 2012) (“CCA Triad Petition”). In the CCA Triad Petition, in addition to AT&T's application involving Triad, CCA notes other proposed transactions involving AT&T as the acquirer of spectrum licenses. *Id.* at 2 n. 3. *See also* AT&T Mobility Spectrum LLC and 700 MHz, LLC Seek FCC Consent to the Assignment of Two Lower 700 MHz Band C Block Licenses, *Public Notice*, 27 FCC Rcd 7656 (WTB 2012); AT&T Mobility Spectrum LLC and Cavalier Wireless, LLC Seek FCC Consent to the Assignment of Ten Lower 700 MHz Band B Block Licenses and 41 Advanced Wireless Services License, *Public Notice*, 27 FCC Rcd 8999 (WTB 2012); AT&T Mobility Spectrum LLC and Ponderosa Telephone Co. Seek FCC Consent to the Assignment of a Lower 700 MHz Band C Block License, *Public Notice*, 27 FCC Rcd 8970 (WTB 2012); AT&T Mobility Spectrum LLC and David L. Miller Seek FCC Consent to the Assignment of 13 Lower 700 MHz Band B Block Licenses, *Public Notice*, 27 FCC Rcd 9002 (WTB 2012); AT&T Mobility Spectrum LLC and ComSouth Tellular, Inc. Seek FCC Consent to the Assignment of Two Lower 700 MHz Band C Block Licenses, *Public Notice*, 27 FCC Rcd 9005 (WTB 2012); AT&T Mobility Spectrum LLC and Farmers Telephone Company, Inc. Seek FCC Consent to the Assignment of a Lower 700 MHz Band C Block License, *Public Notice*, 27 FCC Rcd 9008 (WTB 2012); AT&T Mobility Spectrum LLC and McBride Spectrum Partners LLC Seek FCC Consent to the Assignment of a Lower 700 MHz Band B Block License, *Public Notice*, 27 FCC Rcd 9013 (WTB 2012). CCA also petitioned the Commission to consolidate the above applications with AT&T's applications to acquire WCS and AWS-1 spectrum from Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric. CCA Petition for Consolidated Treatment, WT Docket No. 12-240, at 2-4 (Oct. 1, 2012). The Commission denied CCA's request to consolidate the above applications into WT Docket No. 12-240. Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company for Consent to Assign and Transfer Licenses WT Docket No. 12-240, *Memorandum Opinion and Order*, FCC No. 12-156, ¶ 14 n. 95 (rel. Dec. 18, 2012).

⁶ CCA Triad Petition at 3-4, 6-7, 12-13.

⁷ *Id.* at 3, 8-10.

⁸ *Id.* at 7-8.

⁹ *Id.* at 12-13. *See also* CCA Reply, ULS File No. 0005286787, at 3-5, 8-9 (Sept. 4, 2012).

¹⁰ *See generally* CCA Petition for Conditions and Consolidated Treatment, ULS File No. 0005337520 (Sept. 25, 2012). *See also* CCA Reply, ULS File No. 0005337520 (Oct. 15, 2012).

5. Applicants urge the Commission to reject CCA's proposals to consolidate the proceeding and impose conditions. In their Joint Opposition to the AT&T-Triad transaction, AT&T and Triad state that each of the proceedings that CCA notes actually involves a different party, different spectrum, different geographic areas, and different business terms. The Applicants also contend that each transaction is independent and not contingent on the consummation of the other transactions.¹¹ Further, the Applicants argue that consolidation would harm the public interest by potentially delaying approval of a number of transactions that no party disputes will result in significant benefits for consumers and competition.¹² Regarding CCA's request to impose the conditions described above, the Applicants state that both conditions fail on the grounds that they are not transaction-specific. The Applicants contend that the Commission has stated that it will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transactions.¹³ In the Joint Opposition regarding the AT&T-CenturyTel transaction, AT&T and CenturyTel provide similar arguments regarding consolidation and the imposition of conditions.¹⁴

III. DISCUSSION

6. As an initial matter, we note that, subsequent to the filing of CCA's petitions, the Commission adopted a Notice of Proposed Rulemaking to review its policies governing mobile spectrum holdings to ensure that they fulfill the Commission's statutory objectives given changes in technology, spectrum availability, and the marketplace.¹⁵ Therefore, CCA's request that the Commission initiate a rulemaking regarding its concerns about the broad implications of spectrum aggregation has already been addressed by the Commission.

7. Regarding CCA's request for formal consolidation of the above applications, we note that the Commission is given broad discretion as to how to conduct its proceedings.¹⁶ Our review process generally accounts for the effects of multiple pending applications,¹⁷ and we have carefully applied that process here. CCA has not persuaded us that there would be a benefit to formally consolidating the above applications with each other. We therefore deny the CCA Petition.

8. Turning to CCA's request for interoperability and data roaming conditions, we note that while CCA states generally that spectrum concentration resulting from the above applications warrants conditions on interoperability and data roaming, it does not provide any details regarding why such conditions would be needed in the instant transactions and how such conditions should be structured. We find that any issues of interoperability in the Lower 700 MHz band raised by CCA are not transaction-

¹¹ Joint Opposition to Petition for Conditions and Consolidated Treatment, ULS File No. 0005286787, at 12-14 (Aug. 27, 2012) ("Triad Joint Opposition").

¹² *Id.* at 14-15.

¹³ *Id.* at 15.

¹⁴ *See generally* Joint Opposition and Motion to Dismiss, ULS File No. 0005337520 (Oct. 5, 2012).

¹⁵ *See* Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710 (2012).

¹⁶ *See* Section 4(j) of the Communications Act, 47 U.S.C. § 154(j). *See also* Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 43 (1983); Telecommunications Resellers Ass'n v. FCC, 141 F.3d 1193, 1196 (D.C. Cir. 1998); GTE Service Corp. v. FCC, 782 F.2d 263, 273-74 (D.C. Cir. 1986).

¹⁷ *See, e.g.*, Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17622 ¶ 80 (2011).

related. Further, the Commission has already initiated a rulemaking proceeding earlier this year to address these issues on an industry-wide basis.¹⁸

9. We also do not find any potential roaming-related harm that might arise out of the instant transactions. We note that facilities-based providers of commercial mobile data services, including AT&T, are subject to the Commission's data roaming rule that requires them to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations.¹⁹

IV. ORDERING CLAUSES

10. IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, the staff of the Mobility Division of the Wireless Telecommunications Bureau SHALL PROCESS the following applications consistent with this *Order* and the Commission's rules: 0005286787, 0005337520, 0005262760, 0005295740, 0005295055, 0005296026, 0005304258, 0005293645, and 0005323094.

11. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the petitions for conditions and consolidated treatment filed by the Competitive Carriers Association are DENIED for the reasons stated herein.

12. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief, Wireless Telecommunications Bureau

¹⁸ See generally Promoting Interoperability in the 700 MHz Commercial Spectrum, WT Docket No. 12-69, *Notice of Proposed Rulemaking*, 27 FCC Rcd 3521 (2012).

¹⁹ See 47 C.F.R. § 20.12(e)(1); see also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411, 5432-33 ¶¶ 42-43 (2011), *affirmed*, *Cellco P'ship d/b/a Verizon v. FCC*, Nos. 11-1135 & 11-1136 (D.C. Cir. Dec. 4, 2012).