



March 10, 2014

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Ex Parte

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

Many parties, including Verizon and Sprint, have argued over the last year and a half that the FCC must update the spectrum screen to reflect current wireless marketplace realities. Verizon has long advocated that the critical update that must be made is the addition of the remaining 2.5 GHz spectrum to the screen, given that it is not only suitable and available for use but is being used today for mobile broadband.¹ Now, on the eve of the FCC adopting rules that will govern two spectrum auctions, Sprint has proposed a new, allegedly “easy to implement,” spectrum screen that continues to ignore the biggest defect in the Commission’s application of the spectrum screen: the exclusion of 138 MHz of 2.5 GHz spectrum.² Instead, Sprint proposes to apply complicated calculations to various spectrum bands on an urban, suburban, and rural basis to create a “weighted” spectrum screen that, unsurprisingly, decreases the weight of Sprint’s 147 MHz of 2.5 GHz spectrum holdings to 11.1 MHz, at most.³ The FCC should reject Sprint’s self-serving and short-sighted proposal and instead fix the spectrum screen by updating it to include all spectrum that is suitable and available for commercial mobile use.

First, Sprint’s “easy to implement” spectrum screen is anything but. As an initial matter, it requires the following calculation:

¹ See, e.g., *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Comments of Verizon Wireless (filed Nov. 28, 2012), at 22-27; Reply Comments of Verizon Wireless (filed Jan. 7, 2013), at 8-14; Ex Parte Letter from Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC (Sept. 24, 2013). Verizon and Sprint agree that the AWS-4 spectrum (2000-2020/2180-2200 MHz) also is “ripe for inclusion” in the spectrum screen as “it can be used to provide competitive broadband services as soon as equipment is available.” Letter from Lawrence R. Krevor, Sprint, to Marlene H. Dortch, Secretary, FCC, at Attachment 1: Sprint’s Competition-Based Framework for a Weighted Wireless Broadband Spectrum Screen, at 26-27 (Feb. 11, 2014) (“Sprint Ex Parte”).

² Sprint Ex Parte at Attachment 1 and Attachment 2.

³ *Id.* at Attachment 1 at 21, Table 2.

$$CV \text{ (Competitive Value)} = \frac{BW \text{ (Bandwidth)} \times P \text{ (Population)}}{C \text{ (Relative Cost)}} = W \text{ (Spectrum Weight)} \times BW \times P$$

The relative cost in this calculation is then estimated using the following calculation for rural, suburban, and urban markets and then averaged:

$$\frac{C_2}{C_1} = \left(\frac{r_1}{r_2}\right)^2 = \left(\frac{f_2}{f_1}\right)^{\frac{2\beta}{n}}$$

To derive the results of these calculations, Sprint then uses *undisclosed* data to provide values for β and n .⁴ Ultimately, these calculations lead to a weighted screen that applies different values to each spectrum band. In short, to get to its “easy to implement” spectrum screen, Sprint created multiple equations, applied undisclosed data to those equations, and then averaged the results to derive the result that Sprint desires. Once past the original equations and looking just at how Sprint’s proposed screen would apply, the Commission (and licensees) still could be required to make more than 8 calculations in each county to determine whether a proposed transaction might exceed the spectrum screen. As a result, this screen will not provide licensees the certainty they need to know whether a proposed transaction will raise spectrum aggregation concerns before the Commission.

Verizon, in turn, has encouraged the FCC to maintain its long-established spectrum screen that has been applied easily through multiple administrations. All that is needed is to add all spectrum that is suitable and available for mobile broadband use to that screen, as the Commission has done repeatedly over the years:

$$\frac{\text{Spectrum currently included in screen} + \text{Spectrum that is available for use}}{3} = \text{New Spectrum Screen}$$

If an applicant’s spectrum holdings exceed this amount in a county, then the competitive impact of the proposed transaction in that county requires further scrutiny. If they do not, then the FCC should approve the proposed transaction.

Second, Sprint’s premise for establishing a weighted spectrum screen is fundamentally flawed. Sprint is correct that each spectrum band has varying advantages and disadvantages, but it ignores the dynamic nature of these variables. While paying lip service to the large number of variables that impact the value a specific carrier will attribute to certain spectrum,⁵ Sprint ultimately chooses to rely on only two spectrum characteristics to justify its weighting proposal:

⁴ *Id.* at Attachment 2 at n. 19.

⁵ *Id.* at Attachment 1 at 11-15.

propagation and deployment costs of a new entrant.⁶ These two characteristics, however, are not the sole indicators of value. To the contrary, the interference environment of a particular spectrum band, the spectrum's capacity potential, the spectrum bands that are already incorporated into a carrier's equipment, and the uses to which a carrier plans to put the spectrum such as small cell or others will all directly affect the value of a spectrum band for a carrier.⁷ In addition, the value of particular spectrum bands will vary greatly over time. Today's "beachfront" spectrum may be different than tomorrow's. Thus, rather than adopt Sprint's backward-looking proposal that looks at the wireless marketplace through a single lens, the Commission would be better served by the use of a simple screen that maintains its flexibility to consider the variety of competitive effects of proposed spectrum acquisitions.

Third, and finally, Sprint continues to downplay the usability of certain portions of the 2.5 GHz band. While Sprint concedes that BRS Channels E4 and F4 (2602-2614 MHz) should be added to the spectrum screen,⁸ it continues to claim that BRS-1 should not be included in the screen because its usability is allegedly limited by Globalstar's MSS operations and that EBS should be excluded because of "regulatory, propagation and legacy licensing realities that significantly complicate its utility for wireless broadband communications."⁹ As detailed in the paper Verizon filed last week, however, these bands are suitable and available for mobile broadband use today.¹⁰ And as Sprint's CEO informed analysts only recently, it already is in the process of deploying LTE in the 2.5 GHz band and will have completed deployment to at least 100 million POPs this year.¹¹ The 2.5 GHz spectrum thus should be included in the spectrum screen.

⁶ *Id.* at Attachment 1 at 18-24.

⁷ *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Reply Comments of Verizon Wireless, at Exhibit 2: Declaration of William H. Stone (filed Jan. 7, 2013).

⁸ *Sprint Ex Parte* at Attachment 1 at 27.

⁹ *Id.* at Attachment 1 at 28.

¹⁰ Letter from Kathleen Grillo, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 12-269, at Attachment: The Evolution of the 2.5 GHz Band and Its Success for Mobile Broadband Demand a Spectrum Screen Refresh (filed Mar. 5, 2014).

¹¹ Sprint's Feb. 11, 2014 Earnings Call Transcript ("Regarding the TD-LTE on our 2.5-gigahertz spectrum, we completed over 5,000 of the former Clearwire sites last year and expect to convert another 2,000 legacy Clearwire sites in the first half of the year. By midyear, we expect to begin overlaying the 2.5 gigahertz on our existing network as the new 8T8R radios are available. We expect to have approximately 100 million 2.5 gigahertz LTE POPs deployed by the end of the year.").

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Despite having no factual basis for continuing to exclude the majority of the 2.5 GHz spectrum, Sprint continues to argue for its exclusion in large part because it controls almost all of it. As a result, Sprint has, on average, nearly twice as much spectrum as Verizon Wireless. And it is using that spectrum to serve fewer customers per MHz of spectrum than AT&T, Verizon Wireless, or T-Mobile. Yet, ironically, it is Sprint that continues to lobby for limits on the ability of other carriers to acquire additional spectrum resources while stating its own spectrum should not count towards the spectrum screen.

If Sprint does not intend to use this spectrum, or to use it fully, the answer is not to exclude the spectrum from the screen. Rather, the FCC should take action to put the 2.5 GHz band in the hands of a licensee that wants to fully utilize it to benefit consumers. There are many approaches the FCC could take and the positives and negatives of each vary. Regardless of the approach the FCC takes, however, it would ensure the value of this spectrum is more fully realized than simply allowing this spectrum to remain in the hands of a lessee that sees its complications rather than its value.

This letter is being filed pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathon Green". The signature is written in a cursive, flowing style.