

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
T-Mobile License LLC Spectrum Manager Lease Arrangements)	ULS File Nos. 0009021213 & 0009021220
)	
)	

OPPOSITION OF T-MOBILE LICENSE LLC

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Dated: August 17, 2020

SUMMARY

Verizon’s petition simply recites facts that the Wireless Telecommunications Bureau (the “Bureau”) previously considered in accepting T-Mobile’s spectrum lease notifications and Verizon’s proposed remedy seeks a spectrum screen review that has already occurred. Accordingly, its filing fails to meet the Commission’s standards for reconsideration and must be dismissed with prejudice. As Verizon knows, “the initial screen is not . . . a spectrum cap or a presumption that aggregation beyond a certain level is anti-competitive.”¹ Here, the lease notifications contained extensive county-level data on spectrum aggregation resulting from the transaction, as well as discussions of where, and by how much, T-Mobile would exceed the spectrum screen.² The Bureau reviewed and analyzed this information and appropriately accepted the lease filings. Merely alleging then, that the transaction exacerbates some screen overages does not state a cause for relief.

Further, Verizon does not attempt to show *any* harms to competition resulting from T-Mobile’s lease of 600 MHz spectrum. Nor could it make such a showing, as the additional use and deployment of this 600 MHz spectrum plainly provides benefits for consumers and competition, like those the Commission found in approving the merger of T-Mobile and Sprint last year. Those benefits are magnified now as the country faces the COVID-19 pandemic; indeed, the increased, more geographically dispersed demands for ubiquitous, high speed wireless services (*e.g.*, as work location patterns shift) are certain to endure over the post-pandemic long term as well. The 600 MHz spectrum deployed by T-Mobile is particularly well-suited to serve these geographically broader and different needs. For its part, T-Mobile is

¹ *Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Joint Opposition to Petitions to Deny and Comments at 19-20 (filed Aug. 19, 2008) (citations omitted) (“*Verizon/Atlantis Opposition*”).

² *See, generally*, ULS File Nos. 0009021213 & 0009021220.

responding by promptly putting to use available spectrum—like that in these leases—to deliver essential wireless broadband connectivity across the country, particularly in rural areas.

Finally, Verizon does not even try to demonstrate any harm to itself from the 600 MHz spectrum leases—a requirement for petitioners who did not participate in an earlier stage of the proceeding.³ As a company that elected not to participate in the Commission’s 600 MHz auction and currently touts its massive millimeter wave spectrum holdings as support for 5G superiority,⁴ it is simply disingenuous for Verizon to now complain that T-Mobile’s addition of 600 MHz spectrum to its portfolio is somehow anticompetitive.

³ 47 C.F.R. §1.106(b)(1).

⁴ Hans Vestberg, Verizon’s Chief Technology Officer, has stated that “[w]e first of all have all the assets to deploy our 5G strategy.” Monica Allevan, Fierce Wireless, “Verizon CEO defends mmWave strategy for 5G” (dated Jan. 30, 2020), available at: <https://www.fiercewireless.com/tech/verizon-ceo-defends-mmwave-strategy-for-5g>. “In our case, I think we’re building a unique 5G experience with our millimeter wave [and an experience] that *nobody else is building’ and has the capability to do*, Vestberg said. ‘I think that’s really where the difference will come.’”

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T-Mobile USA, Inc. and T-Mobile License LLC (collectively, “T-Mobile”) submit this Opposition to the Verizon Petition for Reconsideration.¹ The *Verizon Petition* seeks review of the acceptance by the Wireless Telecommunications Bureau (the “Bureau”) of the above-captioned spectrum manager lease notifications on the unremarkable grounds that the resulting amounts of spectrum exceed the screen used by the Bureau as a processing tool. In so doing, Verizon ignores the plain fact that the Applicants presented complete and fulsome disclosures regarding the spectrum aggregation involved in the leases and that the Bureau has already “subject[ed] the arrangements to a searching competitive analysis.”² Verizon also fails to provide the required demonstration that it is adversely affected by the acceptance of the spectrum leases and the “good reason why” it was not possible for it to participate earlier in the proceeding.³ The *Verizon Petition* should thus be summarily dismissed with prejudice for failing to state any factual or legal basis for reconsideration of the Bureau’s acceptance.

¹ Verizon Petition for Reconsideration, T-Mobile License LLC Spectrum Manager Lease Arrangements, ULS File Nos. 0009021213 & 0009021220 (dated Aug. 7, 2020) (“*Verizon Petition*”).

² *Id.* at 1-2.

³ 47 C.F.R. §1.106(b)(1).

I. VERIZON HAS FAILED TO STATE ANY COGNIZABLE CASE FOR RECONSIDERATION.

The sole factual basis for reconsideration alleged in the *Verizon Petition* is that the leases will incrementally increase the extent to which T-Mobile exceeds the Commission’s spectrum screen. Although Verizon emphasizes this point with a series of spectrum holdings charts presented in a variety of ways, the fundamental factual allegation of the *Verizon Petition* is not in contention. The lease applications contained extensive data on spectrum aggregation resulting from the transaction at the county level, as well as discussions of where, and by how much, T-Mobile would exceed the spectrum screen.⁴ But, as Verizon is well aware, “the initial screen is not . . . a spectrum cap or a presumption that aggregation beyond a certain level is anti-competitive, but rather ‘only the beginning of [the FCC’s] competitive analysis.’”⁵

The notifications filed by the Applicants contained extensive disclosures on spectrum aggregation and discussions of competition in relevant markets. The notification form itself required the Applicants to indicate if the “filing involve[s] a . . . Spectrum Lease/Sublease that may be used to provide interconnected mobile voice and/or data services that would create a geographic overlap with another license authorization(s) or spectrum leasing arrangement(s), that also could be used to provide interconnected mobile voice and/or data services, in which the Applicant already holds attributable interests, as defined in Section 20.22(b) of the Commission’s Rule.” The Applicants responded “yes,” which “offlined” the notification filing

⁴ See ULS File Nos. 0009021213 & 0009021220, “Description & Public Interest Statement” at 6-8 (“Public Interest Statement”); “Spectrum Aggregation” (detailing aggregation on a county-by-county basis); “Competition” (detailing competition on a block-by-block and county-by-county basis); “Spectrum Aggregation Analysis” (detailing local competitive issues in markets where the low-band spectrum screen is triggered).

⁵ *Verizon/Atlantis Opposition* at 19-20 (citations omitted).

from immediate grant and triggered staff review of competitive overlap issues raised by the notification. The Public Interest Statement attached to the notifications also discussed in detail the aggregation of spectrum involved in the proposed leases, and the notifications included a spectrum aggregation table disclosing overages, a competitor chart and an exhibit on low-band aggregation.⁶

As Verizon has explained in the past, however, “[t]he spectrum screen, as described by the FCC, is a processing tool ‘to eliminate from further review those markets in which there is *clearly no competitive harm* relative to today’s generally competitive marketplace.’”⁷ Verizon has underscored that “[t]he Commission has repeatedly explained that the screen is ‘designed *to be conservative* and ensure that any markets in which there is potential competitive harm based on spectrum aggregation is identified and subjected to more in-depth analysis.’”⁸ Verizon knows, therefore, that the mere fact that the screen is exceeded is not, in and of itself, an indication that the leases underlying the notifications are not pro-competitive.

Verizon also appears to have mistaken the absence of written findings on competition with the absence of any analysis of competitive issues. By requesting that, upon reconsideration, the Commission engage in a searching competitive review, Verizon is suggesting that the Bureau simply ignored its responsibilities under Commission policies. The evidence demonstrates, however, that a competitive review was, in fact, conducted and—as discussed in Section II—the

⁶ *See, supra*, n.4.

⁷ *Verizon/Atlantis Opposition* at 19 (emphasis in original).

⁸ *Id.* (emphasis in original); *see also Cellco Partnership d/b/a Verizon Wireless and Spectrum Co LLC*, WT Docket No. 12-4, Joint Opposition to Petitions to Deny and Comments at 43 (filed Mar. 2, 2012) (emphasizing that the spectrum screen is “designed to identify markets where the spectrum amounts held by a transferee post-transaction provide reason for further competitive analysis of spectrum concentration”).

Bureau could easily conclude acceptance of the notifications was in the public interest. Specifically, the ULS history indicates the notifications were “Offlined for Geographic Overlap Review” on no less than three different occasions.⁹ The ULS history also indicates “Geographic Overlap Review Completed” on July 8, 2020—meaning that the Bureau’s analysis took 75 days to complete. The relief sought by Verizon on reconsideration—a “searching review” of competition—has, in fact, already been conducted, thus rendering the *Verizon Petition* moot.

Further, Verizon has made no attempt to establish that it should be permitted to file a petition for reconsideration. Section 1.106(b)(1) provides, in pertinent part, that a petition for reconsideration may be filed by “any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority.”¹⁰ Verizon was not a party below because it did not file in response to the 14-day notice period specified by the Bureau.¹¹ In circumstances where a “petition is filed by a person who is not a party to the proceeding,” the Commission requires that the petition “state with particularity . . . why it was not possible for him to participate in the earlier stages of the proceeding.”¹² Yet, Verizon has not made any attempt to explain why it was not possible to participate following the June 17th public notice. On that basis alone the *Verizon Petition* warrants summary dismissal.

⁹ See, e.g., ULS File No. 0009021213 at Admin/History, noting “Offlined for Geographic Overlap Review” on March 25, 2020, March 26, 2020, and June 24, 2020.

¹⁰ 47 C.F.R. § 1.106(b)(1).

¹¹ See Public Notice, Report No. 15074 (June 17, 2020).

¹² 47 C.F.R. § 1.106(b)(1).

II. ACCEPTANCE OF THE LEASE NOTIFICATIONS IS IN THE PUBLIC INTEREST AND T-MOBILE'S USE OF THE LEASED SPECTRUM WILL NOT HARM COMPETITION.

The *Verizon Petition* does not allege any actual harm to competition, nor could it. As stated in the Public Interest Statement to the notifications, “immediate access to between 10 and 30 MHz of additional 600 MHz spectrum for up to three years under the leasing arrangements will promote the objective of T-Mobile US’s rapid buildout of its 5G network.”¹³ These public benefits were recognized by the Commission in approving T-Mobile’s merger with Sprint. There, the Commission concluded that “[o]verall, given current spectrum holdings of rival service providers, including [millimeter wave] spectrum, as well as spectrum coming online in the near future, we find it unlikely that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market” as a result of T-Mobile acquiring significant 600 MHz and mid-band spectrum.¹⁴ Indeed, the Department of Justice went further and imposed an affirmative merger consent decree obligation on T-Mobile to negotiate in good faith to acquire additional 600 MHz spectrum, generally in excess of the screen, to promote competition.¹⁵ As the Applicants noted in their filings, neither LB License Co, LLC or Channel 51 License Company LLC were

¹³ Public Interest Statement at 4.

¹⁴ *Applications of T-Mobile US, Inc., and, Sprint Corporation*, Memorandum Opinion and Order, Declaratory Ruling, Order Proposing Modification, 31 FCC Rcd 10578, 10620 (2019) (“*T-Mobile/Sprint Order*”).

¹⁵ See *United States et al. v. Deutsche Telekom AG et al.*, Proposed Final Judgment, Case No. 1:19-cv-02232-TJK, (D.D.C.) at 18 (filed July 26, 2019) (“Proposed Final Judgment”), available at: <https://www.justice.gov/opa/press-release/file/1187706/download> (last visited Feb. 25, 2020) (“Acquiring Defendant and Divesting Defendants agree to negotiate in good faith to reach an agreement for Divesting Defendants to lease some or all of Acquiring Defendant’s 600 MHz Spectrum Licenses for deployment to retail consumers by Divesting Defendants.”).

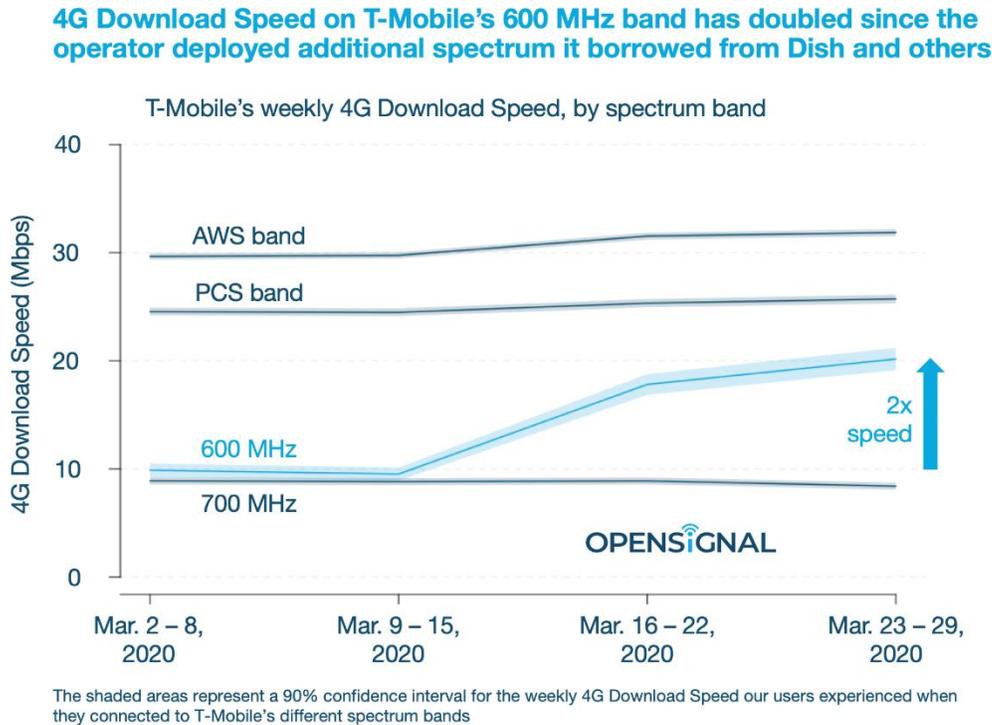
providing service using the spectrum, so no competitors were eliminated as a result of the transaction.

Under these circumstances, it is not surprising that the Bureau concluded that the aggregation of spectrum involved in this transaction is pro-competitive. Indeed, T-Mobile’s ability to rapidly use 600 MHz assets for the benefit of the public is both in line with the Commission’s public policy goals and has also been recently demonstrated as T-Mobile deployed 600 MHz spectrum—doubling customer data speeds in certain locations—in response to the COVID-19 pandemic.¹⁶ As noted by OpenSignal, “[l]ess than 24 hours [after Chairman Pai launched the Keep Americans Connected Pledge], T-Mobile announced it was partnering with companies including Dish, Bluewater Wireless, LB Holdings and others to light up an additional 600 MHz spectrum and expand network capacity to respond to the impact of COVID-19 on daily life.”¹⁷ OpenSignal analyzed use of the 600 MHz spectrum by T-Mobile in the top 100 U.S. Cellular Market Areas during four weeks in March and “found that T-Mobile took less than three days to start deploying the additional spectrum it received from Dish and other

¹⁶ See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2383 (2020) (“3.7 GHz Report and Order”) (“[b]ecause our ‘balancing of objectives’ has ‘shift[ed] towards facilitating rapid 5G deployment in the United States,’ and because commenters have not pointed to ‘a clear indication’ that in-band limits ‘are necessary to address a specific competitive concern,’ we find it unnecessary to impose an in-band limit on the 3.7-3.98 GHz band.” See also Bevin Fletcher, “T-Mobile doubled capacity, speeds in days with spectrum loaned from Dish, others,” Fierce Wireless (dated Apr. 8, 2020), available at: <https://www.fiercewireless.com/operators/t-mobile-doubled-capacity-speeds-days-spectrum-boost-during-covid-19> (“T-Mobile deployed additional 600 MHz spectrum in two days after getting it on loan from Dish Network and others amid the COVID-19 crisis, according to analysis by Opensignal. This doubled capacity and 4G LTE speeds in major markets”)

¹⁷ Francesco Rizzoto, OpenSignal, “T-Mobile boosts mobile speeds thanks to spectrum support from FCC, Dish, others” (dated Apr. 9, 2020).

companies.”¹⁸ OpenSignal also published the following chart depicting measured download speeds from its report:



Given the extraordinary communication needs of the day—which are likely to continue for the foreseeable future as a long term trend—the public interest is plainly better served by T-Mobile’s putting spectrum to use for Americans for both 4G LTE and 5G services than having it sit unused.

And, while Verizon has focused its “analysis” of spectrum concentration on large metropolitan areas, the public benefit of these leases extends to rural Americans as well. Indeed, the leased spectrum will be deployed on over 900 sites in rural areas, and the 600 MHz spectrum at issue is particularly good for the macro cell coverage needed in such low-density areas. Thus, the evidence on the record demonstrates plainly that not only was a competitive review

¹⁸ *Id.*

conducted, but also that it was not difficult for the Bureau to conclude that the deal was in the public interest and did not involve an anticompetitive aggregation of spectrum.

Unable to substantiate any actual competitive harms, Verizon instead presents repetitive charts on spectrum aggregation in a variety of local markets and recites out of context T-Mobile statements from eight years ago—a lifetime in today’s very different industry. In contrast, Verizon’s present day statements tout its own massive spectrum holdings as the basis for its 5G superiority:

- “There’s 5G. Then there’s Verizon 5G. With ultra-fast speeds, ultra-low latency and massive capacity, Verizon 5G Ultra-Wideband is built right with the power to change more than your phone. It will change everything. Not all 5G is the same. Take your phone to the next level with the fastest 5G in the world. 5G Ultra Wideband is more than 25x faster than today's 4G networks in the US.”¹⁹
- “Only a network built on millimeter wave spectrum, like Verizon’s, will be able to fully take advantage of all of 5G’s currencies. Thanks to our investment of capital and effort over the last several years, Verizon is positioned to bring together all of the components that a transformational 5G network requires—the fiber, the real estate, the millimeter-wave spectrum, the small-cell infrastructure, and other key ingredients of a 5G network built right.”²⁰
- Hans Vestberg, Verizon’s Chief Technology Officer, has stated that “[w]e first of all have all the assets to deploy our 5G strategy.” “In our case, I think we’re building a unique 5G experience with our millimeter wave [and an experience] that *nobody else is building*’ and *has the capability to do*, Vestberg said. ‘I think that’s really where the difference will come.’”²¹

¹⁹ “Why Verizon—5G Overview,” Verizon.com, available at: https://www.verizon.com/5g/?adobe_mc=MCMID%3D21252459620174690203227487091387341700%7CMCAID%3D2F0BA7D5050789E4-40000115000048D9%7CMCORGID%3D843F02BE53271A1A0A490D4C%2540AdobeOrg%7CTS%3D1597537203&mboxSession=e42fad1b12184e668eec73dd7cd6be57.

²⁰ Annual Report 2019, Verizon Communications Inc. and Subsidiaries, available at: <https://www.verizon.com/about/sites/default/files/2019-Verizon-Annual-Report.pdf> (last visited Aug. 14, 2020).

²¹ Monica Allevan, Fierce Wireless, “Verizon CEO defends mmWave strategy for 5G” (dated Jan. 30, 2020), available at: <https://www.fiercewireless.com/tech/verizon-ceo-defends-mmwave-strategy-for-5g>.

- Former Verizon CTO Kyle Malady also stated that “[t]o deliver the full potential of 5G, a company must possess three fundamental assets,” which, relative to spectrum, include “[m]assive spectrum holdings, particularly in the millimeter wave bands,” which, he stated, “is the only spectrum available today with the bandwidth available to realize the maximum potential for capacity, throughput and latency.”²²
- Similarly, Nicki Palmer, Verizon’s Chief Network Officer, stated that Verizon “believe[s] that our initial 5G offering will be called 5G Ultra Wideband” and that “Ultra Wideband to us means it's on millimeter wave, whether it's 28GHz or 39GHz, and we have a lot of that across the United States.” Emphasizing that millimeter wave spectrum “provides a path to the real promise of 5G,” Palmer went on to state “if you don't have 800, 900 almost 1GHz of capacity in those wavelengths . . . then you're not really getting the speed and throughput.”²³

In addition, Verizon is a company that for years held a dominant position in low-band spectrum at a time when those assets were crucial,²⁴ and declined to participate in the 600 MHz spectrum auction.²⁵ As such, it is disingenuous for Verizon to now complain that T-Mobile’s addition of 600 MHz spectrum to its portfolio is somehow anticompetitive. This is particularly the case as T-Mobile plans to use the leased spectrum to offer sorely needed in-home wireless broadband in competition with Verizon—particularly in rural areas.

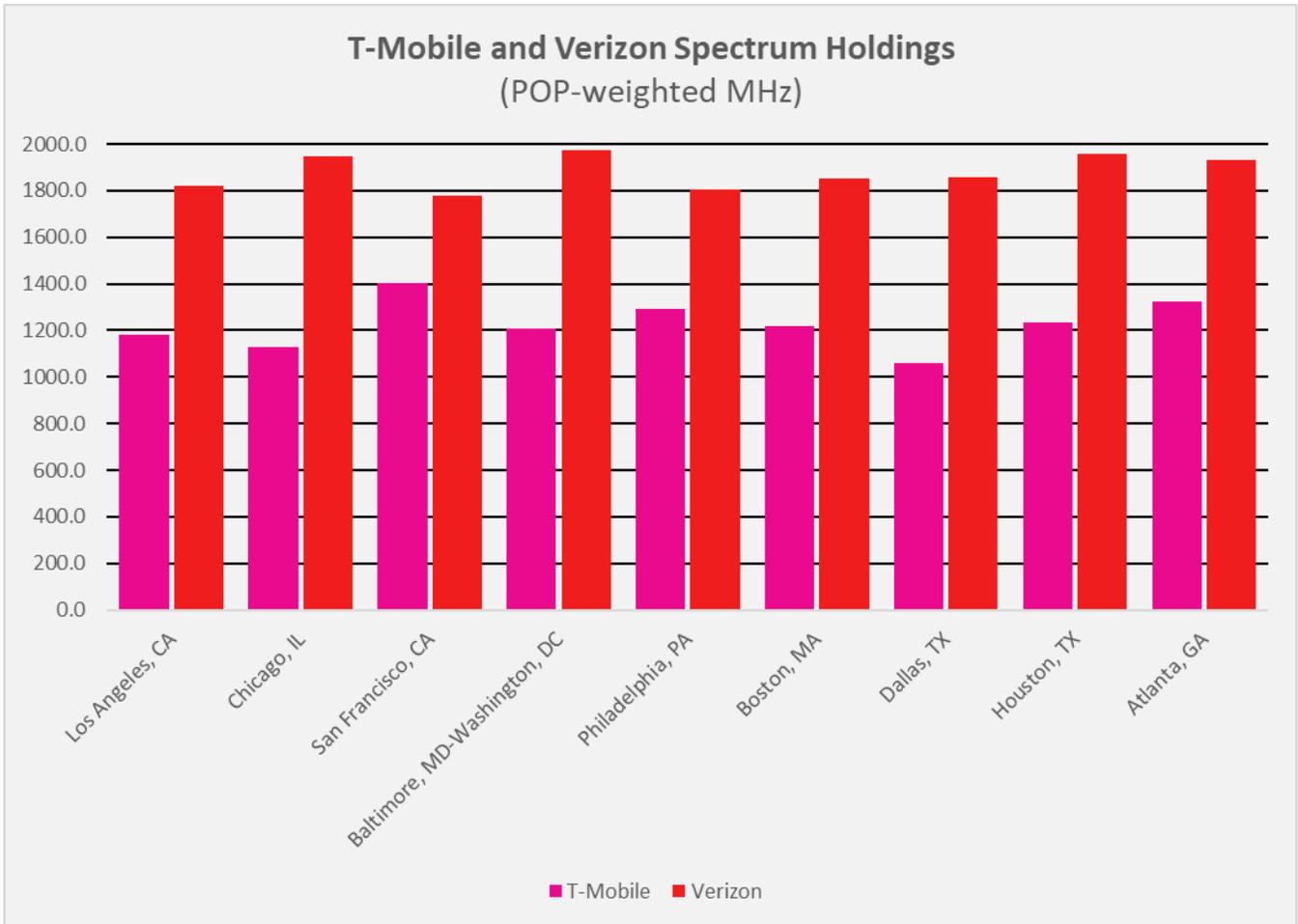
²² Kyle Malady, “There’s 5G, then there’s Verizon 5G Ultra Wideband” (dated Sept. 11, 2018), available at: <https://www.verizon.com/about/news/theres-5g-then-theres-verizon-5g-ultra-wideband>.

²³ Mike Dano, Light Reading, “Verizon Doubles Down on Mobile 5G in Millimeter Wave Spectrum” (dated Feb. 7, 2019), available at: <https://www.lightreading.com/mobile/5g/verizon-doubles-down-on-mobile-5g-in-millimeter-wave-spectrum/d/d-id/749320>.

²⁴ See *Policies Regarding Mobile Spectrum Holdings*, 29 FCC Rcd 6133, 6157 (2014) (“[c]oncentration in spectrum holdings by service providers of low-band spectrum has become particularly pronounced, with Verizon Wireless and AT&T together having aggregated more than 90 percent of all cellular spectrum.”) (citing *16th Mobile Wireless Competition Report*, 28 FCC Rcd at 3793).

²⁵ When the 600 MHz spectrum was available for competitive bidding, Verizon made an upfront payment equal to a single dollar more than the absolute minimum, and then submitted no bids whatsoever. See *Incentive Auction Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2786, Appendix C (rel. Apr. 13, 2017) (“*Auction 1000 Closing Notice*”). Nor has Verizon made any effort to acquire more than incidental 600 MHz spectrum in the aftermarket.

A more realistic view of spectrum holdings in light of how the mobile marketplace has evolved demonstrates that Verizon is still positioned as a competitor with disproportionate spectrum advantages over T-Mobile. Remixing the charts in Verizon’s filing to restore millimeter wave spectrum to competitive significance demonstrates that Verizon is still a dominant force in the mobile market:



Verizon’s catalog of T-Mobile’s prior statements is also misleading, given that they are eight years old and were made when the mobile industry was quite different. Since that time, for example, the Commission has auctioned nearly 5 GHz of terrestrial mobile spectrum, is in the midst of auctioning 70 MHz of CBRS spectrum, will auction 280 MHz of 3.7 GHz Service

spectrum starting before the year end, and has a mid-2021 plan to auction EBS spectrum.²⁶ In addition, the White House and US Department of Defense recently revealed that the 3.45-3.55 GHz band will be made available for commercial 5G services, a move that has been welcomed by Chairman Pai.²⁷ And companies today—including cable operators—are making great use of unlicensed spectrum such as wi-fi to vigorously (and successfully) compete for wireless customers. The competitive relevance of imbalances in spectrum holdings is far less relevant today than it was in an era where Verizon held a massive percentage of all available mobile spectrum as well as a decades-long advantage as an incumbent provider.²⁸

By using these dated statements, Verizon is also ignoring other fundamental changes in the mobile industry resulting from convergence—changes that mean spectrum is no longer the singular determinant of competitive strength that it once was. Over the past few years, AT&T and Verizon have engaged in a series of horizontal transactions that have resulted in integrated operations that span mobile, residential broadband, multichannel video delivery and content generation and distribution.²⁹ At the same time, video distribution giants, like Comcast, Charter, and DISH, have expanded outside their traditional residential multichannel video and broadband

²⁶ Since 2012, the FCC has auctioned 10 MHz of H Block spectrum (Auction 96), 65 MHz of AWS-3 spectrum (Auction 97), 84 MHz of 600 MHz spectrum (Auction 1000), 850 MHz of 28 GHz UMFUS spectrum (Auction 101), 700 MHz of 24 GHz UMFUS spectrum (Auction 102), and 3,400 MHz of Upper 37 GHz, 39 GHz, and 47 GHz UMFUS spectrum (Auction 103).

²⁷ See *Chairman Pai Statement on the Administration Announcement Freeing Up 3.45-3.55 GHz Band for 5G*, FCC Statement (dated Aug. 10, 2020), available at: <https://docs.fcc.gov/public/attachments/DOC-366068A1.pdf>.

²⁸ See, *supra*, n.24.

²⁹ See, e.g., *Applications of AT&T Inc. and DIRECTV*, Memorandum Opinion and Order, 30 FCC Rcd 9131 (2015); *Applications of XO Holdings and Verizon Communications Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 12501 (2016).

markets to deploy major wireless networks.³⁰ All of these companies are massively capitalized, possess large embedded customer bases, have the ability to advantage their wireless business through content and multi-play relationships, and now successfully compete in the mobile broadband market without spectrum constraining their expansion.

III. CONCLUSION

The *Verizon Petition* fails to state any cognizable basis for reconsideration of the Bureau's acceptance of the notifications for the leases at issue in this transaction. Verizon has completely failed to meet its obligations under Section 1.106 of the rules—it has failed to state with particularity any basis for harm, it has failed to state good cause for not participating at an earlier stage, it has not contested any factual statements of the Applicants (who have fully disclosed the spectrum screen overages), and the relief it requests has already been undertaken. Acquisition of the leased spectrum by T-Mobile is plainly in the public interest for reasons

³⁰ See, e.g., *Communications Marketplace Report*, 33 FCC Rcd 12558, 12562 (2018) (“In 2016, both Comcast, and Charter Communications, the nation’s two largest cable providers, activated MVNO options they held with Verizon Wireless. Comcast launched its wireless service in the spring of 2017 as Xfinity Mobile and had approximately 380,000 subscribers at year-end 2017. Charter began offering its service in the summer of 2018.”); *T-Mobile/Sprint Order* at 10594 (noting DISH intentions to build a new 5G network that will provide a facilities-based entrant into the mobile wireless market and promote U.S. leadership in 5G).

explicitly stated in the original application. The *Verizon Petition* is, therefore, defective and should be summarily dismissed with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nancy Victory, certify that on this 17th day of August, 2020, I caused copies of the foregoing “Opposition” to be served by electronic mail¹ on the following:

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¹ Each of the parties has agreed to service by electronic mail of this Opposition.