

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

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

**REPLY TO AT&T SERVICES, INC.**

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**REPLY TO AT&T SERVICES, INC.**

T-Mobile USA, Inc. (“T-Mobile”) hereby replies to comments of AT&T Services, Inc. (“AT&T”) submitted with regard to the above-captioned applications.<sup>1</sup> With the deadline for filing applications to participate in the Commission’s upcoming C-band auction looming large, AT&T now joins Verizon in raising spectrum screen questions concerning T-Mobile’s lease of 600 MHz spectrum from Columbia Capital. However, neither AT&T nor Verizon has any plausible interest in these leases. Verizon sat out the 600 MHz spectrum auction and AT&T sold its 600 MHz licenses to Columbia Capital (the same spectrum that is the subject of its comments). Moreover, their efforts to raise spectrum screen issues concerning T-Mobile’s acquisition of spectrum going forward are not really about the Columbia Capital leases or protecting the mobile wireless marketplace from excessive spectrum aggregation. Rather, they are efforts to slow down T-Mobile as a competitor and to game the upcoming C-band auction to their advantage.

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<sup>1</sup> Comments of AT&T Services, Inc., ULS File Nos. 0009021213 & 0009021220 (Sept. 18, 2020) (“AT&T Comments”).

## **I. SUMMARY**

AT&T's comments clearly have nothing to do with the Columbia Capital spectrum leases and its filing must be dismissed as untimely and irrelevant. Instead, its comments are really a request for the Commission to revisit its spectrum screen policies for the long haul and, more immediately, to contest how the spectrum screen will be applied in the C-band auction. Not surprisingly, AT&T joins Verizon in calling for the spectrum screen to be applied to impede T-Mobile from competing with them and to use the screen to tip the scales against T-Mobile in the C-band auction.

As discussed below, T-Mobile agrees with AT&T's view that the spectrum screen is now anachronistic. The screen was created more than a decade ago at a time when there was limited spectrum supply and it now wrongly omits massive amounts of available spectrum used by wireless competitors today. A reboot of the screen is long overdue and a fresh look is sorely needed. Indeed, a threshold issue this modernization must address is whether the screen should be applied at all to greenfield spectrum, particularly when such spectrum is being acquired by companies committed to building 5G networks and increasing wireless industry capacity for the benefit of American consumers.

Finally, T-Mobile submits that the Commission's goals for the C-band auction would be best served by clarifying the standards that will be applied in the case-by-case review to head off future controversies that can undermine the success of the auction and the pace at which the C-band spectrum is put to use for 5G services. This is particularly important now, because AT&T and Verizon have positioned themselves to aggressively contest almost all potential T-Mobile spectrum acquisitions at the auction as exceeding the screen and requiring review. In such respects, the Commission should take up AT&T's request and clarify that, where an auction

participant does not exceed more than one-third of the spectrum auctioned in any given market (PEA), it can be presumed there is no competitive harm that needs to be addressed. This approach is consistent with the spectrum screen policies that exempt from review those situations where foreclosure could not reasonably occur, thereby enabling bidders to participate fully and freely in the auction without the uncertainty and delay of post-auction investigation.

## **II. AT&T'S FILING SHOULD BE DISMISSED AS PROCEDURALLY DEFICIENT**

As an initial matter, the Commission should dismiss AT&T's comments as procedurally deficient because nothing in the submission bears at all on the merits of the Columbia Capital transaction itself. None of the issues raised by AT&T is appropriate for consideration in the context of the present proceeding and AT&T explicitly states that it is not taking a position on whether the lease transaction at issue should have been approved.<sup>2</sup> Rather than discussing the instant transaction, AT&T centers its arguments around the prior T-Mobile/Sprint merger and the resulting acquisition of spectrum, which it claims necessitates the Commission updating the spectrum screen and issuing an Order clarifying why it allowed T-Mobile to further exceed the spectrum screen.<sup>3</sup>

In brief, AT&T presents no factual or legal basis for its comments to warrant consideration in the instant proceeding. The Commission has previously stipulated that its review of specific transactions are not the proper context to correct perceived imbalances in the industry writ large,<sup>4</sup> and that it will not address arguments raised during its review of specific

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<sup>2</sup> AT&T Comments at 8.

<sup>3</sup> AT&T Comments at Sections II and IV.

<sup>4</sup> See, e.g., *General Motors Corporation and Hughes Electronics Corporation, Transferors and the News Corporation Limited, Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, 534 ¶131 (2004) (Commission review of a transaction "is not an opportunity to correct any and all perceived imbalances in the industry. Those are best left to broader industry-wide proceedings.").

transactions that are better addressed in industry-wide proceedings.<sup>5</sup> Here, AT&T asks the Commission to do just that and, consistent with Commission precedent, its comments should not be considered or addressed in the instant proceeding.

As a final matter, AT&T's comments are procedurally deficient on another ground as they were not timely filed. The public notice under Section 1.9020(e) was issued on July 15, 2020<sup>6</sup> and, under even the most generous calculation of deadlines, the time for seeking reconsideration passed over a month before AT&T filed.<sup>7</sup> For this and all of the foregoing reasons, its comments should be dismissed with prejudice.

### **III. AT&T AND VERIZON ARE SEEKING TO USE THE SPECTRUM SCREEN TO SLOW DOWN COMPETITION FROM T-MOBILE AND GAME THE C-BAND AUCTION IN THEIR FAVOR**

AT&T, like Verizon, seeks to have the spectrum screen serve as a regulatory speed bump in the path of T-Mobile's efforts to build, deploy and deliver the world's leading 5G network faster, sooner and better than anyone else can. Its call for new, enhanced spectrum screen scrutiny that uniquely applies to T-Mobile is nothing more than a call for throwing regulatory sand into the spectrum pipeline essential for increasing capacity, improving quality and lowering costs. This is not about T-Mobile foreclosing AT&T's and Verizon's access to spectrum. There is no suggestion that AT&T or Verizon have been or will be foreclosed from spectrum they need

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<sup>5</sup> See, e.g., *Applications of Craig O. McCaw and Am. Tel. Co. for Consent to the Transfer of Control of McCaw Cellular Comm'ns and Its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd 5846, 5904 ¶123 (1994) (the Commission's policy is to "not consider arguments in [transaction] proceedings[s] that are better addressed in other Commission proceedings.")

<sup>6</sup> See Public Notice, *Wireless Telecommunications Bureau Assignment of Licenses Authorization Applications, Transfer of Control of Licenses Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports*, Report No. 15137 (July 15, 2020).

<sup>7</sup> See 47 C.F.R. § 1.106(f) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules. . . .").

(whether it's the 600 MHz that they don't want or the C-band that appears to be the focus of their immediate attention).

T-Mobile has been on a relentless mission since its merger with Sprint closed. Thanks to the FCC's approval, T-Mobile is now leveraging its unique combination of complementary spectrum and assets to deliver world-leading 5G for all Americans. As promised, an immediate result of the merger has been that, for the first time ever, AT&T and Verizon are facing real competition from a firm that is willing and committed to shaking up the *status quo* and bringing true choice to consumers. After decades of having vastly superior spectrum holdings compared to every other competitor in the industry, Verizon's and AT&T's newfound concerns about T-Mobile's spectrum position are not about being denied critical spectrum inputs or a fear of being outbid by T-Mobile. Indeed, AT&T and Verizon continue to dwarf T-Mobile in terms of capitalization, revenues and assets. Rather, both companies are trying to employ the spectrum screen and associated case-by-case review in a manner that works *against* the goals of promoting competition and putting spectrum in the hands of those who will use that spectrum to deploy 5G services and increase wireless capacity.

#### **IV. THE SPECTRUM SCREEN NEEDS TO BE UPDATED WITH IMPORTANT POLICY CONSIDERATIONS IN MIND**

AT&T argues that the spectrum screen needs to be revised.<sup>8</sup> T-Mobile agrees that the spectrum screen is now anachronistic, omits relevant available spectrum, and sorely needs to be reassessed by the Commission. As presently constituted, the spectrum screen utilizes a myopic approach that does not even consider all available spectrum used for wireless services – including key spectrum used by AT&T and Verizon. As a result, the spectrum screens have not

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<sup>8</sup> See AT&T Comments at Section IV.

managed to keep pace with the wireless industry’s use of different types of spectrum – including the use of different spectrum by different providers to offer competing services. Indeed, some providers’ spectrum is fully counted within the screen, but others are not. For instance, the following spectrum is not included in the main spectrum screen:

- Over 1,700 MHz of unlicensed spectrum available for wireless service uses, especially by cable companies like Comcast and Charter, is currently not included in any spectrum screen.<sup>9</sup>
- The recently auctioned Citizens Broadband Radio Service (CBRS) spectrum – where Verizon acquired an additional 30-40 MHz in major markets and where DISH, Comcast, and Charter were also major winners.<sup>10</sup>
- Millimeter wave spectrum, which Verizon has lauded as the key to 5G and for which it is the dominant spectrum licensee,<sup>11</sup> has its own screen and thus is not counted in the main screen – effectively exempting the spectrum from an overall spectrum holdings assessment.<sup>12</sup>
- 20 MHz of FirstNet spectrum leased exclusively to AT&T.<sup>13</sup>

By omitting spectrum used by major wireless competitors, the spectrum screen as currently applied greatly distorts the competitive landscape of the wireless marketplace.

In approving the merger of T-Mobile and Sprint, the Commission acknowledged this distortion and the appropriateness of considering the availability of other spectrum outside of the

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<sup>9</sup> See, e.g., *Applications of T-Mobile US, Inc. and Sprint Corporation*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10608 (2019) (T-Mobile/Sprint Merger Order) (listing spectrum inputs for spectrum screen).

<sup>10</sup> *Id.*

<sup>11</sup> Verizon, *5G Technology: Why—and how it matters*, <https://www.verizon.com/business/resources/5g/what-is-5g-technology/> (last accessed Sept. 19, 2020) (noting “Verizon has secured a large portfolio of millimeter-wave spectrum through company and license acquisitions to help ensure that customers receive the best 5G network experience.”)

<sup>12</sup> See, e.g., *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services et al.*, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988, 11011 (2017).

<sup>13</sup> See, e.g., T-Mobile/Sprint Merger Order, 34 FCC Rcd at 10608.

screen. Specifically, the Commission found that, despite T-Mobile triggering the screen in numerous markets, “[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.”<sup>14</sup> Moreover, concerns about spectrum aggregation by a single provider are particularly antiquated considering that the Commission has recently made significant amounts of licensed and unlicensed spectrum available for wireless services and more will be made available in the coming years, providing additional opportunities for market participants to acquire and utilize spectrum.<sup>15</sup>

As reflected in the T-Mobile/Sprint Merger Order, spectrum acquired to produce additional 5G capacity increases, rather than decreases, competition.<sup>16</sup> Towards that end, the spectrum screen – now and in any future iteration – must recognize the overarching goal of ensuring that spectrum flows to those providers that will use the spectrum to build advanced, high capacity 5G networks, particularly given the crucial and increasing need for robust connectivity in this country. In a market where the Commission is increasing the supply of

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<sup>14</sup> *Id.* at 10620.

<sup>15</sup> See, e.g., *Chairman Pai Proposes to Make More Critical Mid-Band Spectrum Available for 5G*, Press Release, Federal Communications Commission (Sept. 8, 2020) (proposing to make the 3.45-3.55 GHz band available for commercial wireless use); *Unlicensed Use of the 6 GHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020) (making 1200 megahertz of spectrum available for unlicensed use in the 6 GHz band (5.925-7.125 GHz)); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (making available 280 megahertz of spectrum in the 3.7–3.98 GHz band for licensed use).

<sup>16</sup> T-Mobile/Sprint Merger Order, 34 FCC Rcd at 10582 (finding the merger, by “significantly increasing the network quality available from either T-Mobile or Sprint and expanding overall network capacity” will inject quality and dynamic competitive benefits into the “new 5G wireless world, strengthening incentives for market participants to innovate”).

CMRS spectrum and there are multiple market participants, the spectrum screen serves no meaningful purpose for transactions involving the lease or acquisition of greenfield spectrum where there is no loss of a competitor and the spectrum was not previously used to provide wireless services to consumers. Competitive concerns are highly unlikely to arise in such a scenario, as there would be no reduction in the number of competitors in the market or diminution of existing service.

**V. THE COMMISSION, IN RESPONSE TO AT&T’S REQUEST, SHOULD CLARIFY HOW CASE-BY-CASE REVIEW WILL BE APPLIED IN THE C-BAND AUCTION**

AT&T’s comments really are a request for the Commission to contest how the post-auction case-by-case review will be conducted in the context of the C-band auction. AT&T correctly notes that precedent for the conduct of case-by-case review following a major spectrum auction is lacking.<sup>17</sup> This creates a number of destabilizing unknowns for auction participants and the post-auction implementation. Indeed, these unknowns, if not addressed before the auction to ensure full and fair bidding, stand to undermine the ultimate success of what is a centerpiece and watershed event in advancing 5G services and competition for the country. For that reason, AT&T calls for the Commission to act soon to provide a plan before the C-band auction starts.<sup>18</sup>

As AT&T points out, without further Commission guidance, the auction will have a number of “black box” unknowns as the path currently charted has no clear precedent to guide bidders, the screen does not consider massive amounts of spectrum used for CMRS, the

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<sup>17</sup> AT&T Comments at 10-11 & n.23.

<sup>18</sup> *Id.*

standards for case-by-case review of greenfield spectrum acquisitions are not well-defined, and there is no road map for when and how any remedies might be determined or implemented.<sup>19</sup>

These unknowns raise serious questions for all concerned.

Importantly, AT&T's filing flags that other bidders are also troubled by the uncertainties of the process. Indeed, the success of the auction depends on raising, at a bare minimum, sufficient capital to pay satellite companies the amounts due and to implement the transition in a timely way. These are common goals of the Commission, all bidders/winners, satellite companies and the country. Without guidance before the auction, there is a high risk of these goals not being achieved as planned or being unacceptably delayed.

There is no question that the underlying assumptions and basic methodology of the Commission's spectrum aggregation policies are anachronistic. In order for these policies to promote competition and benefit consumers, they require modernization to reflect the new supply of spectrum, including spectrum not currently counted within the screen, and recognize that spectrum aggregation that produces 5G deployment (as opposed to warehousing) and increases in capacity are overarching and overriding considerations. Indeed, these considerations were recognized by the FCC and DOJ in approving the merger of T-Mobile and Sprint. However, as AT&T implies, a reboot of the spectrum screen cannot be done in time for the C-band auction.

For that reason, T-Mobile urges the Commission to take up AT&T's call for clarification with respect to the trigger for case-by-case review in the C-band auction. Specifically, the Commission should issue a pre-auction notice to C-band bidders clarifying that, under the case-by-case review, that there is a presumption of no competitive harm where the spectrum won by

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<sup>19</sup> *Id.*

any auction participant does not exceed one-third of the auctioned spectrum in a local market. This approach would presume there is no competitive harm that needs to be addressed in situations that could not reasonably foreclose other competitors from acquiring spectrum. Consistent with the spectrum screen policy and its purposes, this statement would address uncertainty that could chill bidding and impair the ultimate success of this critically important Commission auction, and also ensure the auctioned spectrum can promptly be put to use providing 5G services to consumers post-auction.<sup>20</sup>

## **VI. CONCLUSION**

In view of the foregoing, T-Mobile submits that the AT&T Comments should be dismissed as irrelevant and untimely with respect to T-Mobile's lease of spectrum from Columbia Capital. As separate matters, the Commission should modernize its spectrum aggregation policies and issue a clarification for the C-band auction that, under the case-by-case

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<sup>20</sup> The FCC has previously provided guidance prior to an auction to clarify its rules and remove potential ambiguity that could have a chilling effect on auction participation. *See, e.g.,* Public Notice, *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, AU Docket No. 14-252, GN Docket No 12-268, WT Docket No. 12-269 (WTB Oct. 6, 2015) (providing guidance on interpretation and application of the Commission's prohibited communications rules); *see also* *Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 97*, AU Docket No. 14-78, Public Notice, 29 FCC Rcd 8386, 8418, para. 109 (2014) (discussing applicants' obligation to maintain accuracy and completeness of information in pending auction applications).

post-auction review, there is a presumption of no competitive harm where the spectrum won by any auction participant does not exceed more than one-third of the auctioned spectrum in a local market.

Respectfully submitted,

**T-MOBILE USA, INC.**

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CERTIFICATE OF SERVICE

I, Peter Shroyer, certify that on this 22nd day of September, 2020, I have served a copy of the foregoing Reply on the following:

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