

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Policies Regarding Mobile Spectrum Holdings) WT 12-269

To: The Commission

**COMMENTS OF THE TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

The Telecommunications Industry Association (TIA) responds to the Commission's *Notice of Proposed Rulemaking* in the above-referenced proceeding.¹ TIA is the leading trade association for the information and communications technology (ICT) industry, with 600 member companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of public policy issues affecting the ICT industry and forges consensus on industry standards. For over 80 years, TIA has enhanced the business environment for broadband, mobile wireless, information technology, networks, cable, satellite, and unified communications. TIA is accredited by the American National Standards Institute (ANSI).

The Telecommunications Industry Association (TIA) respectfully asks the Commission disregard advocates of a more prescriptive spectrum limitation regime. Reinstating spectrum

¹ Policies Regarding Mobile Spectrum Holdings, *Notice of Proposed Rulemaking*, FCC 12-119, WT Docket No. 12-269 (Sept. 28, 2012) ("NPRM").

limits or caps would constitute a step backward in the Commission's spectrum policies and would negatively affect the mobile and wireless broadband product market. Such action would potentially limit carrier flexibility to respond to technical evolutions and to maximize the utility of existing allocations. TIA urges the Commission to look to the future in setting its policies and ensure that carriers can use existing spectrum to migrate to wireless broadband technologies and deploy ever-advancing services and applications.

Advocates of a more prescriptive policy seek to resurrect a spectrum cap policy that was long ago discarded in favor of a more flexible spectrum screen method, which the Commission uses when reviewing competition in the mobile -- and now wireless broadband -- product market. The Commission stopped using spectrum caps in 2003, based on a 2001 determination that the imposition of spectrum caps was inflexible and failed to address consumer benefits or harms.² Since then the wireless industry has grown dramatically. Cell phones have become much more than a means of communication away from the home or office. With the wide availability of third-generation (commonly referred to as 3G) technology and the introduction of fourth -- generation (commonly referred to as 4G) technology and their faster data transmissions, cell phones are becoming converged devices that can be used to take pictures, download songs, play games, watch television, access the Internet, send emails and get directions to a favorite restaurant. They have become an all-inclusive device that can deal with many of life's daily necessities. As prices have fallen and services have improved, the number of wireless subscribers has more than doubled from 134.6 million in 2002 to 327.6 million in 2011.³ In 2011, the

² See 2000 Biennial Regulatory Review, Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22693-94 ¶¶ 49-50 (2001).

³ See TIA, *TIA 2012 ICT Market Review & Forecast* (2012) at 4-15, available at <http://www.tiaonline.org/resources/market-forecast> ("TIA MR&F").

penetration of wireless devices exceeded 100 percent for the first time, meaning that the average person had more than one wireless phone.⁴

The wireless industry is shifting from being driven by voice to being driven by data. The demand for voice is approaching the saturation level, with wireless penetration over 100 percent. Bandwidth for voice is capped because people can only have one conversation at a time, whereas data growth is dependent on both the number of users and the applications used, with newer applications demanding higher bandwidth.⁵

TIA believes that a spectrum screen approach allows the Commission to implement more dynamic, less arbitrarily static spectrum policy. The current screen enables the Commission to look at the collective spectrum holdings in a given market, which reveals a more complete understanding of its competitiveness. Under the current screen approach, the Commission then undertakes a review of the market to determine if the aggregation of spectrum by a licensee would produce anti-consumer results. If the Commission has concerns regarding consumer benefits, it can compel divestitures on a market-by-market basis.⁶ Divestitures typically arise in the context of mergers and acquisitions but they have recently been extended to Commission

⁴ *Id.*

⁵ *Id.* at 4-16.

⁶ *See, e.g.,* Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17460 ¶¶ 100-113, 159 (2008) (requiring divestiture for five additional markets where the Commission finds upon further review after completing the initial screen that the transaction is “likely to cause significant competitive harm”).

consideration of auction awards.⁷ The Commission also periodically adds blocks of spectrum to the screen to take into account new allocations and auctions.⁸ The spectrum screen approach enables the Commission to analyze each market with a sensitivity to its particular characteristics; an arbitrary spectrum cap would eliminate this valuable flexibility. Moreover, there is no basis for the Commission to conclude that its current approach to protecting the public interest is in some way failing.

Advocates of a more prescriptive policy have not established why a reversal of this policy is either necessary to protect consumers or would be any more effective now than it was prior to its elimination in 2003. Should the Commission nevertheless choose to reevaluate the merit of its spectrum screen policy, TIA recommends that it first examine the effects of its current policy on consumers to determine whether this policy should be affirmed, modified, or discarded in favor of some other policy. The Commission should not conduct a narrow analysis of the marginal benefit of additional entry that might be achieved if the spectrum cap were reinstated. Instead, the Commission should take a broader view and consider that incumbent carriers are in various stages of moving to deployment of wireless broadband networks.

Unlike the voice networks of the past, the new networks will be built on blocks of spectrum ranging from 1.25 MHz to 20 MHz, or more. These building blocks will support the large networks needed to serve densely populated areas. In addition, these new broadband

⁷ See Union Telephone Company, Cellco Partnership d/b/a Verizon Wireless Applications for 700 MHz Band Licenses, Auction 73, *Memorandum Opinion and Order*, 23 FCC Rcd 16787, ¶¶ 8, 26 (2008).

⁸ See Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 2; See also Clearwire Corp., Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, FCC 08-259 at ¶ 74 (rel. Nov. 7, 2008).

networks will require more contiguous spectrum than the voice networks that preceded them. A network that is constantly evolving to maximize the value of scarce spectrum resources and bring enhanced communications tools to consumers should not be managed with antiquated policies, like spectrum caps.

Further, TIA encourages the Commission to implement spectrum policies that are progressive in nature and ensure that wireless carriers can migrate their spectrum to broadband uses. Such a policy will allow carriers to more rapidly and widely provide wireless broadband, again meeting the Commission's aspiration to provide broadband to rural communities and better serve the FCC's goal of improving broadband deployment in rural communities.

As the Commission is well aware, wireless broadband technologies are vital components of the FCC's effort to deploy broadband services to rural and other underserved areas. It is important that the FCC follow the best policy -- one that supports wireless broadband networks in rural areas. Yet it is also important that the policy benefit all consumers, including those in urban areas.

TIA believes the Commission's existing policy best addresses the competition issues on a market-by-market basis and should not be altered. TIA appreciates the Commission's consideration of the need for use of broadband spectrum allocations optimized for broadband service deployment and the need for carriers to utilize existing spectrum for migration to broadband technologies.

Respectfully submitted,

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