

**DISSENTING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *In the Matter of Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations, WT Docket No. 11-18.*

Even assuming that what we've been told about the Qualcomm spectrum is correct - that its unpaired spectrum might go unused but for this transaction - there is no dispute that it will concentrate even more highly-valuable 700MHz spectrum in the hands of one of the two dominant wireless carriers. I could be persuaded, with the right set of pro-consumer conditions, to concur in the transaction. While much of the competitive analysis in today's order is strong, the conditions the Commission does attach strike me as falling short of advancing the public interest demand.

I am pleased with the rigor of the spectrum analysis. As we have noted in recent wireless competition reports, lower band spectrum can provide superior coverage over larger geographic areas and is less costly to deploy. It is a step in the right direction that this order recognizes the unique, positive attributes of spectrum below 1GHz, but the analysis actually leads me to some worrying conclusions: AT&T's acquisition of the Qualcomm spectrum would give the company more than one-third of below-1GHz spectrum nationwide measured on a MHz\*POPs basis. Using that same metric, AT&T and Verizon Wireless combined would nationwide hold approximately 73 percent of below 1GHz spectrum. By any reasonable spectrum screen or other spectrum holdings analysis, this level of concentration should give us pause. So today's action highlights the significance of concentrating additional 700MHz spectrum in the hands of AT&T as a result of the transfer of Qualcomm's licenses. Yet it falls short in identifying and imposing conditions that would tip the deal in favor of the public interest, and it moves us farther down the road toward a wireless duopoly. As a result, I must respectfully dissent.

The Commission imposes two conditions here - one related to data roaming and one to interference. These conditions will benefit competition, to be sure, but they fall short of what I believe the Act requires. Our charge under the Act is to ask not just whether the transaction would reduce competition; we must also ask whether the transaction will *enhance* competition. The instant conditions do not address the critical competitive concern expressed by commenters in this proceeding.

A meaningful condition requiring AT&T to make its devices interoperable could allow other Lower 700MHz providers a better opportunity to compete for customers and to bring greater price and service competition to consumers. On top of that, interoperability would help consumers more fully realize the benefits of the data roaming requirements the Commission adopted earlier this year. As was said at the Commission's interoperability workshop earlier this year, "interoperability can play an important role by helping lower costs through economies of scale . . . which increases competition and allows consumers to stay connected. Demand for mobile broadband continues to increase sharply and continuing the most productive use of the 700MHz band will be critical to reaching that demand." I would also emphasize that this spectrum, using what we are told is soon-to-be developed technology, will be able to supplement other spectrum, leading to improved performance for AT&T. So the claim that this spectrum would go unused but for this proposed transaction is not entirely convincing.

Despite evidence of, and support for, the need for an interoperability condition in the record—and efforts to develop such a condition—today's 100 paragraph item devotes just two

sentences to justifying why such a condition is inappropriate. That justification is not consistent with conditions the Commission has imposed on previous acquisitions. The Commission declines to adopt an interoperability condition because “Even if we assume that the lack of Lower 700MHz interoperability causes significant competitive harm, such harm already existed independent of the license transfer applications before us.” Such a standard would drastically limit the Commission’s ability to impose conditions, as many of the conditions we have attached to past transactions necessarily address issues that cut across the industry, such as the inefficient growth of the High Cost program and broadband deployment. Those conditions addressed harms that clearly existed whether or not we approved the mergers at issue. The inefficient growth of the High Cost program was an issue irrespective of the Verizon-AllTel merger. Broadband deployment was (and still is) an issue irrespective of the Comcast-NBCU merger. The Commission adopted conditions to address these industry-wide problems over objections that they were not “merger specific” and when there were ongoing rulemakings on the same issues. How can we then say that interoperability is somehow less merger specific?

The real issue in this and other acquisitions is not whether the harm we seek to address is limited to the immediate transaction, but whether the acquisition would make the problem worse. The answer here is yes, it would. By controlling more 700MHz spectrum, AT&T no doubt will have even more device buying power and with that power comes increased ability to prevent interoperability in this critical spectrum. This license transfer takes a pre-existing competitive problem—the lack of interoperability in the Lower 700MHz—and aggravates it by giving one of the two dominant carriers enhanced ability to ensure that interoperability doesn't happen without a regulatory requirement. I am encouraged there will be a rulemaking on interoperability, but such proceedings take precious time. Even assuming the Commission can propose rules early next year, we would be unlikely to see the benefits of such rules for quite a while after that.

Our ability to impose pro-consumer conditions on transaction is one of the most powerful tools in our regulatory toolbox. We should not abuse that power, but neither should we shy away from using it when the public interest demands it.

I thank the Chairman and my fellow Commissioners for their engagement on this transaction.