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July 29, 2015

***EX PARTE* VIA ECFS**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* GN Docket No. 12-268*; Policies Regarding Mobile Spectrum Holdings,* WT Docket No. 12-269*; Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002,* AU Docket No. 14-252

Dear Ms. Dortch:

AT&T and Verizon have sought to undo the spectrum reserve since the Commission first adopted this auction-design feature to provide competitors an opportunity to bid on critical low-band spectrum resources without fear of foreclosure by the two dominant providers.[1] AT&T's most recent gambit to dismantle the reserve rests on the false assertion that reserve-eligible bidders can cease bidding in the forward auction as soon as the spectrum reserve is triggered.[2]

They cannot. As AT&T well knows, bidding on all blocks, including the reserve blocks, will continue to increase after the spectrum-reserve trigger is met so long as demand exceeds supply. Indeed, if the spectrum reserve successfully encourages AT&T and Verizon to bid only fair market value as opposed to the foreclosure value they would gain from excluding competitors from acquiring the low-band spectrum necessary for competition, no differential between reserve and non-reserve prices should exist at all.

Meanwhile, AT&T and Verizon will benefit financially if they can delay the spectrum-reserve trigger. As shown in the attached Appendix, the two dominant carriers already account for two out of every three wireless subscribers and control nearly three-quarters of all low-band spectrum resources in the United States. The Commission has found that low-band spectrum licenses are essential to

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[1] *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6156 ¶ 45 (2014) ("*MSH Order*").

[2] *See* Letter from Joan Marsh, Vice President—Federal Regulatory, AT&T to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, AU Docket No. 14-252 (July 27, 2015).

cost-effective, facilities-based competition.[3] If AT&T and Verizon can raise prices to these critical input resources beyond the reach of competitive carriers before the incentive auction's one consumer safeguard – the spectrum reserve – goes into effect, the two dominant carriers will have the ability to reduce investment in wireless broadband deployment and innovation while charging consumers more for service. In other words, they will regain the ability to do exactly what the Commission adopted the spectrum reserve to prevent – the ability to pay more for spectrum now in the reasonable expectation that they can charge consumers a lot more later.

This risk is not speculative. The Department of Justice found that foreclosure poses a serious threat to continued competition in the wireless market and urged the Commission to "ensure that the allocation of spectrum through the auction does not enable carriers with high market shares to foreclose smaller carriers from acquiring the spectrum they need to improve their customers' wireless coverage."[4] The Commission agreed. In adopting the spectrum reserve less than one year ago, the Commission found that the spectrum reserve would "mitigate against the possibility of providers raising rivals' costs or foreclosing competition by denying competitors access to low-band spectrum."[5] But tying creation of the spectrum reserve to broadcast clearing costs promises to defeat the purpose of the spectrum reserve by providing the dominant carriers with an opportunity to drive up auction prices to foreclosure levels before the reserve ever comes into play.

Many solutions exist to avoid an excessively delayed spectrum-trigger, including a "safety valve" trigger of $2.00 per MHz-POP[6] or a straightforward limit on the number of bids a single carrier can place in a single market.[7] The key is for the Commission to find a solution that is fair and balanced for all auction participants, and that will not skew the auction results in favor of either competitors or the dominant providers.

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[3] *See, e.g.*, *MSH Order*, 29 FCC Rcd at 6135 ¶ 3 ("[E]nsuring that multiple providers are able to access a sufficient amount of low-band spectrum is a threshold requirement for extending and improving service in both rural and urban areas.").

[4] Letter from William J. Baer, Assistant Attorney General, U.S. Department of Justice to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-269 at 2 (June 24, 2015); *see also* Letter from William J. Baer, Assistant Attorney General, U.S. Department of Justice to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-269 (May 14, 2014); *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 (Apr. 11, 2013) ("*April 2013 DOJ Letter*").

[5] *MSH Order*, 29 FCC Rcd at 6156 ¶ 45.

[6] T-Mobile has proposed that the Commission incorporate a safety-valve mechanism as part of the spectrum reserve trigger to avoid an outcome in the incentive auction in which high initial clearing targets in early rounds distort the cost for clearing broadcast stations. *See* Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252 at 2 (June 30, 2015). Under T-Mobile's proposal, the Commission would retain the $1.25 price per MHz-POP trigger in the top 40 PEAs, but would amend the second reserve trigger to be either (1) an average of $2.00 per MHz-POP in the top 40 PEAs; or (2) the price for satisfying all broadcaster reimbursement and repacking costs as well as auction administrative costs, whichever occurs first. *Id.* at 3.

[7] *See* Letter from Lawrence R. Krevor, Vice President, Legal and Government Affairs—Spectrum, Sprint Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268 (July 9, 2015).

Regardless of which mechanism the Commission adopts to trigger the reserve, forward-auction prices in the reserve will continue to increase until supply equals demand. AT&T's claims about some type of magical "exit" from the incentive auction by reserve-eligible bidders – a category that includes AT&T or Verizon in 74% of the nation's geography – are therefore false. Furthermore, no bidder of any kind will receive any spectrum at all if auction revenues cannot pay broadcast costs in full. This fact of life means that reserve-eligible bidders, which by definition do not have alternative access to critical low-band frequencies, have an enormous incentive to bid as much as they can possibly afford to ensure the auction can deliver as much low-band spectrum as possible to the market. Moreover, in the unlikely event that bidding did cease at $2.00 per MHz-POP in the top 40 PEAs, the incentive auction would still raise approximately $50 billion in revenues, making it by far the highest-earning spectrum auction in the history of the United States.[8]

The Commission and the Department of Justice have both said they want four strong competitors in the mobile broadband market, and have acknowledged the incentive and ability of AT&T and Verizon to foreclose other bidders.[9] Even if the probability that the spectrum reserve trigger would be delayed were low, which it is not, the risk of anti-competitive harm from a delayed reserve is so high that the Commission must act.

Having done the hard work of adopting a spectrum reserve, the Commission must now ensure the reserve occurs early enough to prevent AT&T and Verizon from preventing actual and potential competitors from securing the spectrum resources they need to challenge the two dominant providers in the wireless broadband market.

Respectfully submitted,

/s/ Trey Hanbury

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Counsel to T-Mobile USA, Inc.

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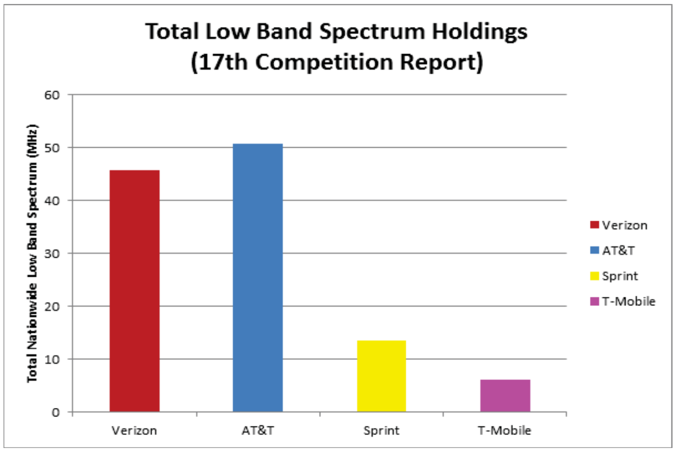
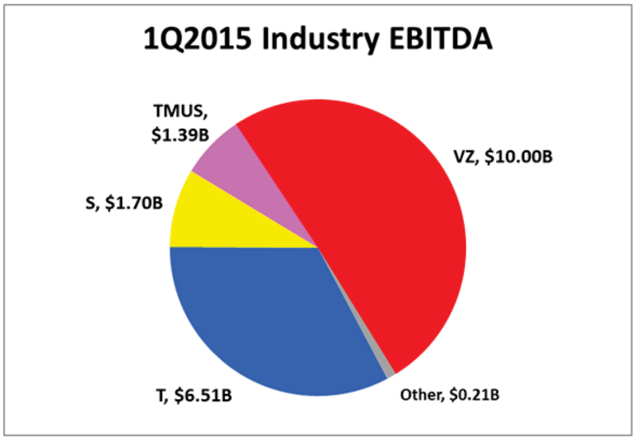
[8] $2.00 per MHz-POP would be roughly equivalent to the $9 billion that AT&T has committed to bidding in the incentive auction. *See* Application of AT&T Inc. and DIRECTV, Description of Transaction, Public Interest Showing, and Related Demonstrations, MB Docket No. 14-90 at 51 (filed June 11, 2014).

[9] *See April 2013 DOJ Letter* at 6-7; *MSH Order*, 29 FCC Rcd at 6203 ¶ 171.

APPENDIX



Verizon and AT&T control 73% of all low-band resources.[1]



Verizon and AT&T account for two out of every three wireless subscribers[2] and account for about 87% of all free cash[3] and 70% of all revenue in the wireless sector.

[1] *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133 ¶ 153 (2014).

[2] *Seventeenth Mobile Wireless Competition Report*, 29 FCC Rcd 15311, 15321, 15326 ¶¶ 22, 30, Table II.B.1, Table II.C (2014).

[3] Based on combined 2014 EBITDA data for nationwide wireless providers.