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January 25, 2017

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Use of Spectrum Bands Above 24 GHz for Mobile Radio Services  
GN Docket No. 14-177**

Dear Ms. Dortch:

On January 23, 2018, Charla Rath, Philip Junker, and I met with the attendees of the Commission listed in the Appendix to discuss AT&T's proposal to use an auction mechanism to reallocate millimeter wave spectrum licenses to rationalize the band plan.<sup>1</sup> We appreciate AT&T's attempt to conduct a fair and timely reorganization of the 39 GHz band.<sup>2</sup> While we support the objectives, we do not believe AT&T's current proposal would accomplish either goal, and the proposal would instead diminish the value of incumbent licenses and delay putting those spectrum licenses to use for 5G to benefit consumers.

Two key features of the AT&T proposal are that incumbent licensees would be: (i) moved involuntarily if they do not participate in the auction and (ii) forced to win the bidding in each market to retain spectrum they already hold if they do participate in the auction. Both of these features raise serious legal questions regarding incumbent licenses in the 39 GHz band, particularly for a company such as Verizon, which has agreed to invest billions of dollars to acquire this spectrum.

The difficulty of retaining spectrum in each market in an auction would be further complicated by the mismatch between the vouchers and the new licensing scheme. In markets where an incumbent

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<sup>1</sup> Letter from Alex Starr, AT&T Services, Inc., to Marlene H. Dortch, FCC, GN Docket No. 14-177 (filed Dec. 12, 2017) ("AT&T Letter").

<sup>2</sup> The AT&T Letter suggests its approach might also apply to 28 GHz but that band already has wide contiguous blocks of spectrum and need not be reorganized.

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holds an amount of spectrum not divisible by 200 MHz, under the AT&T proposal it would receive a fractional voucher.<sup>3</sup> In such a market, the incumbent would be faced with two equally unattractive outcomes: it could either bid for more spectrum than it currently holds, paying additional monies beyond its original investment, or it could accept less spectrum than it held going into the auction. The Commission should not adopt a proposal that would harm the rights of incumbent licensees in this and other material ways.

Rather than disrupt and diminish incumbent licensee's rights, the Commission should instead encourage companies to voluntarily exchange licenses to rationalize the band. Companies have every incentive to do so to try and move quickly to 5G. The Commission endorsed this approach in the *Spectrum Frontiers Order*,<sup>4</sup> which helped inform subsequent business decisions (including Verizon's decision to acquire Straight Path). The Commission should give this approach an opportunity to work once it clarifies the landscape on the status of many of the rectangular service areas (RSAs) in the 39 GHz band;<sup>5</sup> the continuing uncertainty on the status of these RSAs makes it difficult for companies to assess whether to enter into license swap transactions.

If voluntary exchanges fail to rationalize the band on a timely basis prior to a millimeter wave auction, the Commission could consider a two-sided mechanism to rationalize the grandfathered RSAs in the band. But in no case should the Commission lose sight of the value of existing licenses to incumbents, or do anything to diminish that value.

Sincerely,

/s/

Gregory M. Romano  
Vice President & Associate General Counsel

Enclosure

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<sup>3</sup> See Letter from Stacey Black, AT&T, to Marlene H. Dortch, FCC, GN Docket No. 14-177 (filed Nov. 7, 2017), Presentation by Economists Incorporated at 5.

<sup>4</sup> *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services; et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, ¶¶ 97-100 (2016) ("*Spectrum Frontiers Order*").

<sup>5</sup> See, e.g., *AT&T Mobility Spectrum LLC and FiberTower Corporation Seek FCC Consent to the Transfer of Control of 24 GHz and 39 GHz Licenses*, Public Notice, 32 FCC Rcd 1932 (2017).

## **Appendix**

### **Wireless Telecommunications Bureau**

Simon Banyai

Charles Eberle

Eliot Maenner (via tele-conference)

Matthew Pearl

Martha Stancill

Blaise Scinto (via tele-conference)

Donald Stockdale

Joel Taubenblatt

Margaret Weiner

### **Office of Strategic Planning and Policy Analysis**

Evan Kwerel

Paul LaFontaine