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December 13, 2018

VIA ELECTRONIC FILING

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

Re: *Ex Parte Notification*

GN Docket No. 18-122, *Expanding Flexible Use of the 3.7 GHz to 4.2 GHz Band*

Dear Ms. Dortch:

On December 11, 2018, John Hunter of T-Mobile USA, Inc. (“T-Mobile”),^{1/} Gregory Rosston, the Gordon Cain Senior Fellow at the Stanford Institute for Economic Policy Research and Director of the Public Policy Program at Stanford University, Andrzej Skrzypacz, the Theodore J. Kreps Professor of Economics, Stanford Graduate School of Business, Russell Fox of Mintz, and I met separately with the following: Rachael Bender, Wireless Advisor to Chairman Pai; Commissioner O’Rielly and his Legal Advisor Erin McGrath; Commissioner Carr and his Legal Advisor Will Adams; and Umair Javed, Legal Advisor to Commissioner Rosenworcel.

We conducted a separate meeting with the following members of the Commission’s staff (except as noted, from the Wireless Telecommunications Bureau):^{2/}

Donald Stockdale
Giulia McHenry (Office of Economics and Analytics)
Dana Shaffer*
Blaise Scinto
Margaret Wiener (Office of Economics and Analytics)
Peter Daronco
Anna Gentry*
William Huber (Office of Economics and Analytics)

Joyce Jones*
Evan Kwerel (Office of Economics and Analytics)
Paul Lafontaine (Office of Economics and Analytics)
Eliot Maenner*
Gary Michaels (Office of Economics and Analytics)
Martha Stancill (Office of Economics and Analytics)
Paul Powell*

^{1/} T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly-traded company.

^{2/} Christen B’anca Glenn of Mintz joined us for this meeting.

Rebecca Schwartz
Jeffrey Tignor

Brian Wondrack*

* By telephone

At the meeting with the staff of the Wireless Telecommunications Bureau and Office of Economics and Analytics, we distributed the attached presentation. In each meeting, we reviewed T-Mobile's proposed incentive auction structure for licensing the 3.7-4.2 GHz band for wireless mobile broadband services and summarized the Reply Comments in this proceeding that we submitted later that day.

We noted that the approach T-Mobile proposes would have, among others, a number of significant benefits: it would maximize the amount of spectrum that would be made available for terrestrial services, including by allowing variable amounts of spectrum to be licensed in different areas, depending on the needs of satellite users; it would ensure the continued delivery of programming and other valuable content; it would assure a minimum level of spectrum being designated for terrestrial services – an amount sufficient to support multiple carriers; spectrum would be made available through an open, public, and transparent process accessible by all interested providers; and at least some portion of the auction proceeds would be returned to taxpayers, while some of the auction proceeds could be distributed to satellite operators and satellite earth station users.

We explained how decisions of the Commission and the U.S. Court of Appeals support a broad reading of the operative provisions of the Communications Act that govern incentive auctions – provisions that require that “competing licensees” “participate” in the auction. We noted that past interpretations of those requirements provide the Commission with ample authority to conduct the incentive auction that T-Mobile proposes and that the incentive auction provisions of the Communications Act provide clear indication of congressional intent that the Commission use incentive auctions when licensing spectrum relinquished by incumbent licensees. We stated that the Communications Act dictates that the Commission must conduct auctions when there are – or would be – competing applications for the same spectrum in the same geographic area. We asserted that the Commission cannot avoid this outcome by impermissibly out-sourcing the licensing process.

Finally, we pointed out the many flaws in the private sale proposal offered by the C-Band Alliance. Its claims of speed to license spectrum are overstated and whatever little time difference there may be between its proposal and T-Mobile's is more than outweighed by the benefits (*e.g.*, more spectrum, open process) that T-Mobile's proposal provides. The C-Band Alliance's proposal also provides no portion of the auction proceeds to taxpayers; does not provide economic or other incentives to satellite users to vacate the band, including payments from the auction proceeds to users; and violates multiple provisions of the Communications Act.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced docket and a copy is being provided to the staff with whom we met. Please direct any questions regarding this filing to me.

Respectfully submitted,

/s/ Steve B. Sharkey

Steve B. Sharkey
Vice President, Government Affairs
Technology and Engineering Policy

Attachment

cc: (each by e-mail, with attachment)
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Rachael Bender
Erin McGrath
Will Adams
Umair Javed
Donald Stockdale
Giulia McHenry
Dana Shaffer
Blaise Scinto
Margaret Wiener
Peter Daronco
Anna Gentry
William Huber
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Evan Kwerel
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Eliot Maenner
Gary Michaels
Martha Stancill
Paul Powell
Rebecca Schwartz
Jeffrey Tignor
Brian Wondrack



C-Band Incentive Auction

December 11, 2018

The C-Band Is Critical for US Competition



- The FCC has recognized that there must be low-, high-, and mid-band spectrum for wireless networks.
- International attention to the C-band for 5G means that the U.S. should make *that* spectrum available.
- There is wide agreement that the C-Band Alliance proposal does not provide sufficient spectrum
- An FCC- run incentive auction is the best way to maximize the amount of spectrum converted for wireless mobile broadband.

Benefits of an FCC Incentive Auction



- Open and transparent FCC-run process
- Provides for up to 500 megahertz to be made available for wireless mobile broadband.
- Provides for variable amounts of spectrum in different markets – balancing terrestrial and satellite use based on market forces.
- Provides incentives for both satellite companies and end users.
- Results in efficient, reliable delivery of content based on local requirements (satellite, fiber, other).
- Satellite companies determine areas of highest values for satellite access.

Auction Proposal – How It Works



- Forward Auction first - Wireless providers bid and establish prices in each geographic area for all 500 megahertz.
- Reverse Auction - Satellite operators would accept or reject, on a geographic area basis, the purchase price offered in each area.
- Auction continues - The first two steps would be repeated, reducing at a set interval – 40 megahertz – the amount of spectrum in each market for which a price is established.
- The process would continue for each market until satellite operators accept the price offered for the designated amount of spectrum in a market or the FCC determined limit is reached.
- If a market remains unsold at the 300 megahertz level, the Commission would conduct an auction for that market and the licenses would be sold as long as bids meet a minimum level set by the Commission to cover necessary costs, including relocation of the incumbents.

Auction Proposal – How It Works (cont'd)



Not all markets need have a 300 megahertz floor.

- Satellite companies can designate areas where the floor is 200 megahertz, leaving 300 megahertz of spectrum available for satellite operations – the amount that the C-Band Alliance proposes to retain.
- These areas could be in remote locations, where satellite earth station “farms” can be established – with traffic backhauled to more populated areas if necessary.
- And some very remote areas can potentially be completely excluded from the auction for now.

Treatment of Incumbents – Satellite Operators



- Satellite operators would receive a percentage of the auction revenues.
- The percentage would decline as satellite operators agreed to sell less spectrum. T-Mobile suggested the following in its comments as an example –
 - If the satellite consortium sold 500 megahertz, it would receive 80% of the revenue.
 - If the satellite consortium sold the minimum required, it would receive 10% of the revenue.
 - Intermediate spectrum levels would result in intermediate percentages.
- Even at the 300 megahertz floor, satellite providers would receive funds sufficient to relocate satellite users and any other costs the Commission determines necessary.

Treatment of Incumbents – Satellite Users



- T-Mobile has submitted studies showing that satellite users can relocate to less densely populated areas or use fiber, or both.
- T-Mobile's proposals would cover users' costs to implement those alternatives.
 - Users could also be paid some of the auction proceeds if they relocate, vacate, or otherwise reduce use of the spectrum.
 - For example, the Commission could require that satellite operators establish a pool, based on a particular percentage of the revenue they receive. Out of that pool, satellite users would be paid a specified amount for vacating the spectrum and a lower amount for relocating to a less populated area or reducing their spectrum use.
- Satellite operators would manage relocation, including payment to customers.

T-Mobile's Proposal is Consistent with the Communications Act



- The Act requires use of an auction in cases where competing applications have been received and permits the use of incentive auctions when there are multiple seller entities.
- While those multiple sellers would be required to agree on a single price for an amount of spectrum, the Court of Appeals has provided the FCC with discretion on how to define “competing licensees.”
- The incentive auction provision of the Act is clear Congressional direction that the Commission should explore ways to promote the sale of licensed spectrum – by splitting proceeds with incumbents. T-Mobile’s proposal would do just that.

T-Mobile's Proposal – Public Interest Benefits



- Would make at least 300 megahertz of spectrum available in most markets. Less spectrum would compromise the ability to have multiple competitors use the spectrum.
 - There is wide support for making 100 megahertz per provider
- Would make spectrum available through an open and transparent process. A Commission-conducted auction is the best way to ensure all parties can secure access to the spectrum.
- Would generate revenues for taxpayers.
- Would treat both satellite operators and users fairly.

The C-Band Alliance Plan is Flawed



- There is wide recognition that 180 megahertz is insufficient and the C-Band Alliance will not commit to making even that amount available.
- The process by which the C-Band Alliance will choose winners and losers will be closed.
 - The C-Band Alliance's vague assertion that it will solicit interest is insufficient.
- Despite obtaining the spectrum for free, not a penny will be returned to taxpayers from the sale of the spectrum.

The Purported Benefits of the C-Band Alliance Proposal Are Illusory



- The C-Band Alliance claims that its plan will make spectrum available more quickly.
 - But the details that need to be worked out will take the same amount of time regardless of the process
 - Band plan, technical limits, protection criteria, etc.
 - The 36 month relocation period proposed by CBA would be comparable to the relocation period after an incentive auction.
 - An incentive auction could actually provide faster use of the spectrum if end users are incented to move to fiber – a process that could occur very quickly.
 - The Commission has extensive auction experience, including incentive auction experience and the process need not add undue delay.
 - Even if a Commission-conducted auction takes slightly longer, the results will serve the public interest significantly better.
- Satellite operators not in the C-Band Alliance, such as Asia Global Ltd., Hispasat S.A., Embratel Star One S.A., oppose the proposal.
- Satellite users recognize the inequity of operators receiving payment for spectrum while leaving users behind. As Comcast/NBCUniversal said:
 - “[S]atellite operators stand poised to reap a substantial windfall, and their incentives will be far from aligned with the interests of downstream earth station operators and the consumers they serve when it comes to compensation for transition costs incurred.”

The C-Band Alliance Proposal is Contrary to the Communications Act



- Section 309(j)(1) requires the Commission to use a “system of competitive bidding” when it receives mutually exclusive applications for initial licenses.
 - There would certainly be mutually exclusive applications for this spectrum if the Commission made it available for licensing. Only by conducting a private sale could the Commission avoid receiving mutually exclusive applications.
 - While subsection (j)(6)(E) requires the Commission to use methods to avoid mutually exclusivity, ceding authority to third parties is not one of those methods.
- Section 309(j)(8)(G) gives the Commission authority to conduct incentive auctions. The C-Band Alliance proposal would contravene Congressional intent that the Commission use the tools it has been given.

The C-Band Alliance Proposal is Contrary to the Communications Act (cont'd)



- Section 303(c) of the Act provides the Commission with allocation responsibility, and Section 307(b) requires it to ensure an equitable distribution of frequencies.
 - The Commission makes these determinations on the record after a notice and comment rulemaking.
 - The C-Band Alliance would assume the Commission's role, determining how much spectrum would be made available and where.

There Need Not Be a Set-Aside for Point-to-Multipoint Operations



- Commission policy disfavors designating spectrum for particular technologies or applications.
- But setting aside spectrum for point-to-multipoint use would do exactly that and would frustrate the Commission's intent that this spectrum support mobile wireless broadband.
- Instead, entities that wish to provide point-to-multipoint service can do that under flexible use licenses.