

ecosystem, are available through primary and secondary markets to all competitors, and their customers, who can put the spectrum into prompt use.

The Commission struck an appropriate, reasoned balance in its Report and Order, and there is no compelling new evidence in the Petitions to warrant reversing course. Accordingly, the Commission should reject Sprint's and T-Mobile's requests to tip the scales in their favor and should decline to adopt different weights for different spectrum bands included in the spectrum screen, decline to decrease the amount of spectrum available to all bidders in the 600 MHz auction, and decline to eliminate the Incentive Auction Final Stage Rule's price per MHz-POP trigger that helps to ensure that the American public and the Treasury recover a fair price for the spectrum being auctioned.

I. The Commission Should Reject Sprint's Request to Assign Weights to Different Spectrum Bands in the Spectrum Screen.

Nothing has changed since the Commission released the Report and Order, and Sprint has failed to present any new evidence demonstrating that the Commission should reverse this decision. Sprint's spectrum weighting proposals are arbitrary,⁵ reflect a skewed picture of the technical and business realities governing mobile service deployment, and do not "advance the goals of competition, innovation, investment and broadband deployment."⁶ The Commission itself already evaluated Sprint's most recent weighting proposal and found that it did not appear to be based on any evidence in the record.⁷ The Commission also correctly recognized that it should not substitute its own judgment for the evolving dynamics of market forces and

⁵ The Commission found that Sprint's most recent May 5 *ex parte* weighting proposal does not explain how the proposed weights are based on Sprint's other proposal or *any evidence*. *MSH Report and Order*, 29 FCC Rcd at 6236 ¶ 274 (2014) ("*MSH Report and Order*") (*emphasis added*). [Don't need emphasis added since this is not a quote]

⁶ Comments of Mobile Future, WT Docket No. 12-269, at 12 (dated Nov. 28, 2012) ("Mobile Future Comments"), quoting *Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11710, 11726 ¶ 35 (2012) ("*NPRM*").

⁷ *MSH Report and Order*, 29 FCC Rcd at 6236 ¶ 274.

technological development by assigning arbitrary across-the-board weights to particular spectrum bands in its spectrum aggregation analysis.⁸

While spectrum bands have differing propagation characteristics and buildout considerations, all have strengths and weaknesses depending on the circumstances and needs of various consumers and markets.⁹ The Commission recognized in its *Sixteenth Wireless Competition Report* that while lower band spectrum's propagation characteristics allow it to provide superior coverage over large geographic areas, "higher-frequency spectrum may be just as effective, or more effective, for providing significant capacity, or increasing capacity, within smaller geographic areas."¹⁰ Further, higher band spectrum "can be ideally suited for providing high capacity where it is needed, such as in high-traffic urban areas" because more spectrum above 1 GHz is available for potential use and can be licensed in larger blocks.¹¹ Larger blocks can enable operators to deploy wider channels and simplify device design.¹² Indeed, former Clearwire CEO Erik Prusch also noted earlier this year that 2.5 GHz spectrum has an advantage over low-band spectrum in dense urban markets because it can carry much more data at higher rates, which is key as carriers cope with increasing data traffic.¹³

No band is always superior or inferior, and carriers have successfully deployed 4G LTE on spectrum above 1 GHz.¹⁴ For example, in 2012, MetroPCS reported it was deploying 4G LTE

⁸ *MSH Report and Order*, 29 FCC Rcd at 6236 ¶ 276.

⁹ *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless*, Sixteenth Report, 28 FCC Rcd 3700, 3789 ¶ 119 (2013) ("*Sixteenth Report*").

¹⁰ *Id.* at 3792 ¶ 125.

¹¹ *Id.*

¹² *Id.*

¹³ Phil Goldstein, *Former Clearwire CEO Prusch: Sprint will have advantage with 2.5 GHz spectrum*, FierceWireless (Jan. 14, 2014), <http://www.fiercewireless.com/story/former-clearwire-ceo-prusch-sprint-will-have-advantage-25-ghz-spectrum/2014-01-14>.

¹⁴ Mobile Future Comments at 13.

on PCS and AWS spectrum¹⁵ and AT&T acquired 2.3 GHz WCS spectrum covering 82 percent of the population in order to facilitate LTE service.¹⁶ Earlier this year, AT&T signed a deal to buy all of Sprint's 2.3 GHz WCS spectrum licenses.¹⁷ And, FierceWireless reported that "Sprint is aiming to deploy LTE on the 2.5 GHz airwaves to 100 million POPs by the end of 2014 to complement planned deployments of 250 million POPs on 1900 MHz LTE by mid-2014 and 150 million POPs covered with 800 MHz LTE by the end of 2014."¹⁸ More recently, Sprint stated it would deploy its 2.5 GHz spectrum to offer "speeds that haven't been deployed in the U.S.," reportedly producing peak downlink speeds over 100 Mbps.¹⁹ Given the relative benefits of different spectrum bands and the inability of the Commission to predict how carriers may deploy different bands in the future, any assigned weightings would fail to account for the ability of a spectrum band to meet consumer demand in light of the service provider's existing holdings, network configuration, technology deployed, and capital constraints. The Commission should therefore reject Sprint's redundant call to introduce weightings to its spectrum screen here.

¹⁵ MetroPCS Communications, Inc., Quarterly Report, at 55 (SEC Form 10-Q) (Oct. 30, 2012), <http://www.sec.gov/Archives/edgar/data/1283699/000128369912000047/mpcs2012-q310xq.htm>.

¹⁶ Phil Goldstein, *AT&T Scores AWS, 2.3 GHz WCS Spectrum for LTE*, FierceWireless (December 19, 2012), <http://www.fiercewireless.com/story/att-scores-aws-23-ghz-wcs-spectrum-lte/2012-12-19>.

¹⁷ Mike Dano, *AT&T Looking to Buy All of Sprint's 2.3 GHz WCS Spectrum Licenses, Possibly for In-Flight Wi-Fi*, FierceWireless (May 13, 2014), <http://www.fiercewireless.com/story/att-looking-buy-all-sprints-23-ghz-wcs-spectrum-licenses-possibly-flight-wi/2014-05-13>.

¹⁸ Phil Goldstein, *Former Clearwire CEO Prusch: Sprint will have advantage with 2.5 GHz spectrum*, FierceWireless (Jan. 14, 2014), <http://www.fiercewireless.com/story/former-clearwire-ceo-prusch-sprint-will-have-advantage-25-ghz-spectrum/2014-01-14>.

¹⁹ Phil Goldstein, *Sprint Tweaks 2.5 GHz LTE Deployment Strategy to Target Congested Parts of Network*, FierceWireless (Sept. 12, 2014), <http://www.fiercewireless.com/story/sprint-tweaks-25-ghz-lte-deployment-strategy-target-congested-parts-network/2014-09-12>.

II. The Commission Should Again Reject T-Mobile’s Efforts to Decrease the Amount of Spectrum Available to All Bidders in the Incentive Auction.

The Commission should deny T-Mobile’s request to further restrict access to 600 MHz spectrum.²⁰ T-Mobile does not present new facts that warrant the Commission reversing the decisions in the *Mobile Spectrum Holdings Report and Order* regarding reserved spectrum. T-Mobile’s claim that neither the Commission nor the Chairman had “articulated the importance of having four nationwide carriers” prior to the *Mobile Spectrum Holdings Report and Order*²¹ is clearly not correct. In fact, the FCC’s Wireless Telecommunications Bureau argued it believed it was important to have four nationwide carriers in its review of AT&T’s proposed acquisition of T-Mobile in 2011,²² suggesting that if T-Mobile merged with AT&T, the three remaining nationwide carriers would all have unilateral incentives to raise prices.²³ The Bureau also expressed the view that a wireless market with only three nationwide carriers would be vulnerable to coordination resulting in increased prices.²⁴ FCC Chairman Genachowski and Commissioners Clyburn and Copps each released statements indicating support for the Bureau’s findings.²⁵ The Department of Justice also stated in its Complaint that “. . . the reduction in the number of nationwide providers from four to three, likely will lead to lessened competition due

²⁰ *MSH Report and Order*, 29 FCC Rcd at 6207-12 ¶¶ 182-95.

²¹ T-Mobile Petition at 7.

²² *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Staff Analysis and Findings (rel. Nov. 29, 2011).

²³ *Id.* at ¶¶ 50-51.

²⁴ *Id.* at ¶ 76.

²⁵ Statement of FCC Chairman Julius Genachowski on Proposed AT&T/T-Mobile Transaction (Nov. 29, 2011), https://apps.fcc.gov/edocs_public/attachmatch/DOC-311260A1.pdf; Statement of Commissioner Michael J. Copps, Commissioner, FCC (Nov. 29, 2011), https://apps.fcc.gov/edocs_public/attachmatch/DOC-311259A1.pdf; Statement of Commissioner Mignon L. Clyburn on AT&T/Deutsche Telekom AG License Transfer Proceeding, Commissioner, FCC (Nov. 29, 2011), https://apps.fcc.gov/edocs_public/attachmatch/DOC-311263A1.pdf.

to an enhanced risk of anticompetitive coordination.”²⁶ It is disingenuous for T-Mobile to claim now that these views are new.

Further, the fundamental premise underlying T-Mobile’s challenge is also incorrect. T-Mobile complains that the FCC has provided “only” 30 MHz of spectrum for bidders other than AT&T and Verizon. Contrary to this assertion, *all* bidders (other than AT&T and Verizon) are free to bid on *all* of the spectrum offered at the auction in a given market, whether the spectrum is “reserved” or not. Only AT&T and Verizon would be restricted from bidding on all available spectrum in the 600 MHz auction.²⁷ T-Mobile and other bidders are free to bid on all cleared spectrum within a market, and nothing in the *Mobile Spectrum Holdings Report and Order* limits them to acquiring more than 30 MHz of spectrum.

T-Mobile’s argument implies that its parent, Deutsche Telekom, will refuse to compete on the open market for access to spectrum resources,²⁸ despite T-Mobile’s record of successfully winning spectrum when it does participate in FCC auctions.²⁹ With a combined market capitalization approaching \$95 billion,³⁰ T-Mobile and its parent company Deutsche Telekom cannot reasonably argue that the company lacks the financial wherewithal to compete aggressively and effectively for spectrum. T-Mobile’s reluctance to compete undercuts a fundamental premise of FCC auctions – that competitive, market-based spectrum assignment policies will put spectrum resources in the hands of those who will put it to best use for consumers. Indeed, the first rationale the Commission cited in setting the maximum spectrum

²⁶ Complaint at 16 ¶ 36, *United States v. AT&T*, Case No. 1:11-cv-01560 (D.C. Cir. Aug. 31, 2011).

²⁷ *MSH Report and Order*, 29 FCC Rcd at 6203-07 ¶¶ 172-81.

²⁸ T-Mobile Petition at 3 and n.5.

²⁹ As explained below, in the 2006 AWS auction, the only spectrum auction conducted in the past 10 years in which all four nationwide carriers participated, T-Mobile acquired more spectrum than AT&T and Verizon Wireless combined.

³⁰ TMUS, MarketWatch (last visited Sept. 18, 2014), <http://www.marketwatch.com/investing/stock/tmus>; Deutsche Telekom AG ADS, Marketwatch (last visited Sept. 18, 2014); <http://www.marketwatch.com/investing/stock/dtegy>.

reserve at 30 MHz is that it “provides the opportunity, and creates incentives, for *all* auction participants to bid aggressively to acquire more spectrum licenses as the total amount of spectrum available increases,” which will ultimately facilitate the repurposing of more spectrum in the 600 MHz band.³¹

The principle of open FCC spectrum auctions has consistently worked to get spectrum resources into the hands of all carriers, regardless of size. As Mobile Future has demonstrated, when parties choose to participate in FCC spectrum auctions, they consistently have been successful in securing significant spectrum resources, without the application of a spectrum cap restricting other carriers’ access to the same spectrum resources. For example, in all nine auctions offering spectrum for terrestrial broadband services from 2003 through 2013, non-nationwide operators and small businesses have won nearly half (46%) of the aggregate MHz/POPs.³² In the 2006 AWS auction, the only spectrum auction conducted in the past 10 years in which all four nationwide carriers participated, T-Mobile acquired more spectrum than AT&T and Verizon Wireless combined.³³ Notably, Sprint, which also called for increased levels of reserved spectrum in the 600 MHz auction, has chosen not to participate in several FCC spectrum auctions, including the 700 MHz auction in 2007, the H Block auction conducted earlier this year, and – most recently – the AWS-3 auction scheduled for November 2014.³⁴ The

³¹ *MSH Report and Order*, 29 FCC Rcd at 6211 ¶ 6210.

³² *FCC Spectrum Auctions and Secondary Market Policies: An Assessment of the Distribution of Spectrum Resources Under the Spectrum Screen*, at ii (November 2013), <http://mobilefuture.org/wp-content/uploads/2013/11/Paper-Distribution-of-Spectrum-Resources.pdf>.

³³ T-Mobile acquired 26% of MHz/POPs while AT&T and Verizon Wireless acquired a combined 25%. *Id.*

³⁴ Phil Goldstein, *Sprint Won’t Participate in AWS-3 Spectrum Auction, Ceding Opportunity to Competitors*, FierceWireless (Sept. 12, 2014), <http://www.fiercewireless.com/story/sprint-wont-participate-aws-3-spectrum-auction-ceding-opportunity-competito/2014-09-12>. Likewise, Sprint sat out of last year’s 1900 MHz PCS H Block auction. Phil Goldstein, *Sprint Abandons Pursuit of H Block Spectrum*, FierceWireless (November 13, 2013), <http://www.fiercewireless.com/story/sprint-abandons-pursuit-h-block-spectrum-clearing-way-dish-bid/2013-11-13>.

Commission should not allow Sprint's repeated refusal to participate in our nation's spectrum auctions to be a basis for its restricting Verizon and AT&T's bidding in future auctions.

Carriers have also demonstrated consistent success in obtaining spectrum through secondary market transactions. T-Mobile recently announced a deal to acquire 700 MHz spectrum from a CenturyLink subsidiary covering 6.5 million POPs, in addition to the 700 MHz spectrum covering 158 million POPs the company acquired from Verizon Wireless earlier this year.³⁵ A Sprint executive recently bragged that the company's spectrum position allows it to take a more aggressive stance in offering more data,³⁶ And T-Mobile continues to remind consumers that it has "more network capacity than any of the old carriers"³⁷ and a "remarkable 70 percent more network spectrum per customer than even Verizon."³⁸

Not only are bidding restrictions unnecessary, they actually harm consumers. The Commission can learn from other countries' experiences with preferential auction rules for certain participants, which have led to failed auctions, depressed prices, and lower auction revenues. For example, Canada's 2008 AWS spectrum auction employed set-asides with various harmful effects to the public interest. First, the set-aside spectrum sold at an approximately 30% discount compared to the spectrum open to bidding from all parties.³⁹ Of the three new entrants

³⁵ Phil Goldstein, *T-Mobile Scores More 700 MHz A-Block Spectrum from CenturyLink Unit*, FierceWireless (Aug. 12, 2014), <http://www.fiercewireless.com/story/t-mobile-scores-more-700-mhz-block-spectrum-centurylink-unit/2014-08-12>.

³⁶ Phil Goldstein, *Sprint Exec: Our spectrum position supports shared plans with large data buckets*, FierceWireless (Aug. 20, 2014), <http://www.fiercewireless.com/story/sprint-exec-our-spectrum-position-supports-shared-plans-large-data-buckets/2014-08-20>.

³⁷ Mike Sievert, Chief Marketing Officer, T-Mobile, *Fall is Going to be Huge at T-Mobile. Here's Why*. (Sept. 19, 2014), <http://newsroom.t-mobile.com/news/fall-is-going-to-be-huge-at-t-mobile-heres-why.htm>.

³⁸ T-Mobile Press Release, *T-Mobile Quadruples Simple Starter Data With New Option* (Aug. 25, 2014), <http://newsroom.t-mobile.com/news/4x-the-data.htm>.

³⁹ Paul Beaudry and Martin Masse, *Lessons Learned: Canada's Experience with Set-Asides and Caps in Spectrum Auctions*, at 2 (April 2014), <http://mobilefuture.org/wp-content/uploads/2014/04/2014-Spectrum-Lessons-Learned.pdf>.

who secured licenses in that auction, none were successful.⁴⁰ Public Mobile secured spectrum, but was acquired by incumbent TELUS for nearly five times the purchase price of its spectrum licenses, essentially arbitraging its government-subsidized spectrum acquisition to secure a windfall.⁴¹ Mobilicity filed for bankruptcy after the Canadian government rejected its acquisition in a deal similar to TELUS' acquisition of Public Mobile.⁴² And WIND Mobile's European backer ultimately wrote off its investment.⁴³

In addition, when the Netherlands auctioned 2.5 GHz spectrum in 2010, it capped the amount of spectrum certain incumbents could acquire.⁴⁴ The auction concluded with 60 MHz of the 190 MHz offered going unsold and disappointing auction revenues, which the consulting firm who designed the auction concluded were dampened by the bidding caps.⁴⁵ Just one month after the Netherlands' failed auction, Denmark, which has a population about one third the size of the Netherlands' population, declined to impose bidding restrictions in its auction of 2.6 GHz spectrum and generated *fifty times* more revenue than the restricted Dutch auction.⁴⁶ And when Mexico auctioned AWS spectrum in 2010, a set aside limited bidding on a nationwide 30 MHz license and all bidders were restricted in the amount of total spectrum they could win.⁴⁷ One smaller incumbent ultimately acquired the 30 MHz license at the very low reserve price, the

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *The Case for Inclusive Spectrum Auction Rules: How Failed International Experiments with Auction Bidding Restrictions Reveal the Strength of Inclusive Rules that Put Consumers and Innovation First*, at 9 (September 2013), <http://mobilefuture.org/wp-content/uploads/2013/09/Website-The-Case-for-Inclusive-Spectrum-Auction-Rules-Refile.pdf> (“*The Case for Inclusive Rules*”).

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

⁴⁷ *Id.* at 8.

auction resulted in no new entrants, and one 30 MHz nationwide block of spectrum remained unsold.

Other countries' experiences with spectrum set-asides provide additional evidence that the Commission should not increase the amount of 600 MHz spectrum that will be made available only to certain bidders.

III. The Commission Should Retain the Price Per MHz-POP Threshold in the Final Stage Rule to Assure that All Winning Bidders Pay a Fair Price while Protecting against Alleged Foreclosure.

The Commission should reject T-Mobile's call to eliminate the price per MHz-POP component of its spectrum reserve trigger to "assure that prices generally reflect competitive market values for comparable spectrum licenses."⁴⁸ The Final Stage Rule, including the price per MHz-POP trigger, advances the Commission's goal of "allowing market forces to determine the highest and best use of spectrum" and will allow the incentive auction to determine the best balance of spectrum cleared and spectrum license prices attained through competition.⁴⁹ The Commission adopted two alternative approaches to the price per MHz-POP trigger to account for a reality of the incentive auction, in which no one will know how much spectrum will be available in the forward auction before the auction begins.⁵⁰ Adoption of the alternative approaches recognizes that in the event a large quantity of spectrum becomes available, per-unit market prices may decline consistent with the increase in available supply.⁵¹ A price per MHz-

⁴⁸ *MSH Report and Order*, 29 FCC Rcd at 6195 ¶ 151. The T-Mobile Petition is styled as a Petition for Reconsideration of the Commission's *MSH Report and Order*. However, the Commission adopted the Final Stage Rule and price per MHz-POP threshold in a different document, the *Incentive Auction Report and Order Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6712 ¶ 338 (2014) ("*Incentive Auction Report and Order*"). Nevertheless, Mobile Future responds to T-Mobile's request for reconsideration of the price per MHz-POP threshold here.

⁴⁹ *Incentive Auction Report and Order*, 29 F CC Rcd 6713 ¶ 342.

⁵⁰ *Id.*

⁵¹ *Id.*

POP trigger is thus essential to ensuring that the Commission satisfies one of its other long-standing statutory goals – recovering “a portion of the value of the public spectrum resource.”⁵² In addition, the additional potential revenue that will be generated by operation of the price per MHz-POP trigger⁵³ is consistent with the 2012 Spectrum Act, which calls for additional revenues to be deposited to the Treasury for deficit reduction.⁵⁴

Further, the price per MHz/POP trigger of the Final Stage Rule is an essential component based on the stated purpose of the spectrum reservation – *i.e.*, to reduce the potential risk of foreclosure. By T-Mobile’s own reasoning, larger carriers could foreclose others from access to spectrum resources by over-paying for spectrum – by adding a so-called foreclosure value to their bids. It follows that, in order to reduce this risk, the spectrum reservation should be triggered once prices reach a certain amount. The price per MHz-POP component of the Final Stage Rule does just that – it triggers the spectrum reserve when prices arguable reach a point at which certain competitors could be foreclosed from acquiring the spectrum. Triggering the reserve at any lower amount would constitute a subsidy, and would not appear to be justified based on the purpose of the spectrum reserve.

IV. Conclusion

For the reasons set forth above, the Commission should deny Sprint and T-Mobile’s Petitions for Reconsideration of the *Mobile Spectrum Holdings Report and Order*. The Commission should not assign different weights to different spectrum bands included in the spectrum screen, should not further decrease the amount of 600 MHz spectrum that is restricted

⁵² *Incentive Auction Report and Order*, 29 FCC Rcd at 6713-14 ¶ 343, *citing* 47 U.S.C. § 309(j)(3)(c).

⁵³ The price per MHz-POP trigger could cause revenues to exceed those required by the 2012 Spectrum Act for the broadcast incentive auction.

⁵⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(d)(4)(B), 125 Stat. 156 (2012) (Spectrum Act).

in availability to certain bidders in the Incentive Auction, and should not eliminate the Final Stage Rule's price per MHz-POP trigger.

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