



February 24, 2015

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street S.W.  
Washington, DC 20554

**Subject:** *Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269  
Expanding the Economic and Innovation Opportunities of Spectrum through  
Incentive Auctions, Docket No. 12-268*

Dear Chairman Wheeler:

The undersigned nonprofit groups, most members of the Public Interest Spectrum Coalition (PISC), are concerned that the Commission and Congress may draw the wrong lessons from the recently-completed AWS-3 auction. The auction made headlines by generating \$41.3 billion in net revenue for the government but, we fear, will shortchange consumers who want more affordable and more innovative mobile broadband services. The two dominant wireless carriers with the deepest pockets—AT&T and Verizon—walked away with 20 megahertz of the paired AWS-3 spectrum in most major markets and left the rest of the industry with only a smattering of paired blocks and 15 megahertz of low-value, unpaired, uplink spectrum.<sup>1</sup> DISH, the one

---

<sup>1</sup> AT&T or Verizon acquired almost all the valuable, paired 20-megahertz J Block spectrum. When one of the two dominant carriers did not purchase the 20-megahertz J Block, the “losing” dominant carrier generally acquired both the H and I blocks which, when combined, also provide 20 megahertz of spectrum. AT&T, for example, acquired at least 20 megahertz of paired spectrum in every one of the 40 largest markets, while Verizon acquired at least 20 megahertz of paired spectrum in more than half of those top markets. Only roughly 20% of the time in the top 40 markets did one of two DISH-affiliated designated entities acquire the H and I Blocks or the J Block. The majority of DISH’s spectrum acquisitions occurred in the low-value, unpaired, uplink blocks, A1 and B1. DISH’s

other bidder to acquire substantial new spectrum, is not a mobile broadband provider. Excluding DISH, the two dominant carriers acquired more than 90 percent of the AWS-3 spectrum, virtually shutting out competitive carriers.

These results provide three valuable lessons for spectrum policy:

***Lesson 1: The Commission Should Move Quickly to Provide More Broadband Spectrum – Both Licensed and Unlicensed.*** High prices in the AWS-3 auction indicate that any unnecessary delays in making spectrum available will exacerbate supply shortages while imperiling competition and economic growth. Accordingly, the FCC should re-double its efforts to ensure the upcoming 600 MHz incentive auction occurs in early 2016 as planned.<sup>2</sup> Record-high prices for AWS-3 spectrum also highlight the reality that there is very little additional low- and mid-band spectrum that can be reallocated for auction any time soon. This makes the Commission’s immediate adoption of its proposed three-tier, small-cell approach to shared use of the federal 3.5 GHz band as important as any auction. Extending this approach to dynamic spectrum sharing and more open, unlicensed access to other underutilized bands is the best long-term path to promote spectrum abundance and thereby ubiquitous connectivity at affordable prices.

***Lesson 2: Auctions Should Maximize Consumer Benefits, Not Government Revenues.*** While some have characterized the \$45 billion in bids and the \$41.3 billion in net AWS-3 auction revenue as a victory, it will likely harm consumers twice over. Revenues from the AWS-3 auction ultimately get passed along as higher prices to wireless broadband consumers. It also sucks investment capital out of the highly-productive telecom sector. And to the extent that bids based on motivations of foreclosure and speculation add to the steadily increasing consolidation of spectrum holdings by AT&T and Verizon, the auction undermines mobile market competition as well.

The FCC should focus on competition policy, rather than arbitrary revenue goals. A less competitive wireless market risks irreversible damage to the “virtuous circle” of declining prices, increasing consumption, expanded services, and increased investment in wireless broadband that competition has generated. When it comes to spectrum policy, the FCC should focus first and

---

acquisitions of paired spectrum largely focused on the single, 10-megahertz G Block. DISH acquired 100% of the G Block spectrum in the top 10 markets and 85% of the G Block spectrum in the top 40 markets. With a few notable exceptions, therefore, Verizon and AT&T split the paired spectrum evenly at 20 megahertz, continuing a pattern of parallel accommodating conduct seen in prior spectrum auctions and secondary-market transactions. The continued parity in spectrum holdings between Verizon and AT&T in the nation’s top markets promises to empower the two dominant providers to raise prices while weakening their incentive to offer consumers better terms. See, e.g., U.S. Dep’t of Justice & Fed. Trade Comm’n, Horizontal Merger Guidelines (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>.

<sup>2</sup> See Kagan Media Appraisals, “Can the FCC Attract a Full House for the 2016 Broadcast Incentive Auction?” (Feb. 19, 2015) (“[t]he dominant carriers might welcome a delay in the Incentive Auction to the degree it would perpetuate a longer dry spell without low-band spectrum for the third- and fourth-ranked carriers and allow the leaders to further exploit their overweighting in low-band spectrum”).

foremost on the public interest, not the public fisc – just as the Communications Act requires it to do.<sup>3</sup>

***Lesson 3: Competitive Safeguards in Auctions Are Essential to Protect Consumer Choice.***

The AWS-3 auction incorporated no competitive safeguards and, as a result, helped entrench AT&T's and Verizon's dominance of the wireless broadband industry.<sup>4</sup> Without more meaningful protections against spectrum concentration than the FCC has adopted so far, AT&T and Verizon can use future auctions to prevent other carriers from gaining access to the spectrum necessary to compete.<sup>5</sup> The upcoming 600 MHz incentive auction provides what may be the FCC's final opportunity to prevent the two dominant carriers from monopolizing the low-band spectrum needed to compete in a broadband data world. Because AT&T and Verizon already control nearly three-quarters of the nation's uniquely valuable low-band spectrum, ***only a spectrum reserve of 40 megahertz or more*** can prevent the two dominant carriers from using the 600 MHz auction to extinguish the handful of wireless broadband competitors that continue to offer consumers an alternative for wireless voice and data services.<sup>6</sup> It is difficult to see how the non-dominant carriers can effectively compete in a 4G marketplace without sufficient access to low-band spectrum that enables in-building penetration and economic wide-area coverage. The Commission has more than satisfied its obligation to finance FirstNet and should now focus on its obligation to design its auction policy to promote competition and the public interest, irrespective of total auction revenue.

\* \* \* \*

The supply of wireless broadband spectrum has wholly failed to keep pace with explosive consumer demand for new wireless broadband applications. This is primarily the result of a fixation on auctions and an overly cautious approach to embracing the potential of unlicensed

---

<sup>3</sup> See 47 U.S.C. § 309(j)(3) (requiring the FCC to adopt competitive bidding rules that, among other things, “avoid[] excessive concentration of licenses” and “disseminat[e] licenses among a wide variety of Applicants”).

<sup>4</sup> Although DISH won substantial spectrum, it did so primarily by exploiting DE bidding credits. As consumer advocate Harold Feld observed: “For DISH to make even a quasi-decent showing in the auction, it needed to use a [\$3 billion] bidding credit *AND still spend more than \$10 billion*. . . . [T]he fact that DISH could “save” \$3 billion is not so much a scandal as a flashing red-light indicator that without regulatory intervention we can forget about any kind of competition in the wireless industry.” Harold Feld, “DISH, the Spectrum Auction, and the Wrath of Commissioner Pai,” Public Knowledge Blog (Feb. 3, 2015), available at <https://www.publicknowledge.org/news-blog/blogs/dish-the-spectrum-auction-and-the-wrath-of-commissioner-pai>.

<sup>5</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT 13-135, Seventeenth Report, DA 14-1862, ¶ 62 (WTB Dec. 18, 2014) (“17<sup>th</sup> Mobile Competition Report”) (“We agree with the Antitrust Division of the DOJ, one of our nation’s expert antitrust agencies: there is a risk of foreclosure in downstream wireless markets”); *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 (Apr. 11, 2013).

<sup>6</sup> See 17<sup>th</sup> *Mobile Competition Report* ¶ 92 (“For robust competition to exist and persist, multiple competing service providers must have access to a sufficient mix of low-and high-band spectrum to be able to enter a marketplace or expand output rapidly in response to any price increase or reduction in quality, or other change that would harm consumer welfare.”).

and other dynamic spectrum sharing technologies. Nonetheless, auctioning the 600 MHz spectrum as scheduled in early 2016 can help mobile providers satisfy consumer demand. And adopting competitive safeguards that avoid the continued foreclosure of low-band spectrum by the two dominant carriers will help arrest the damaging trend toward consolidation while promoting consumer choice, encouraging investment, and accelerating innovation for all Americans.

We look forward to discussing further, with you and your colleagues, options to increase mobile market competition and consumer welfare.

Respectfully submitted,

**Open Technology Institute at New America**  
**Public Knowledge**  
**National Hispanic Media Coalition**  
**Engine**  
**Center for Media Justice**  
**Common Cause**  
**Writers Guild of America – West**  
**Institute for Local Self Reliance**  
**Benton Foundation**

cc: Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O’Rielly