Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002	)	AU Docket No. 14-252
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268

REPLY COMMENTS OF MOBILE FUTURE

Mobile Future submits these reply comments in response to the Federal Communications Commission's Public Notice seeking input on the detailed procedures necessary to carry out the 600 MHz broadcast television spectrum incentive auction ("Comment PN").[1] Mobile Future encourages the Commission to take steps to encourage simplicity wherever possible in an already complicated auction. Such steps are necessary to enable the auction to proceed efficiently and to facilitate the repurposing of broadcast spectrum for mobile use by American wireless consumers.

The Commission should reject proposals that would add unnecessary complexity to the auction. For example, the Commission should offer a single category of unimpaired licenses in the forward auction and avoid impairments wherever possible. The Commission also should deny requests to affirmatively discriminate against the consumers of some carriers to subsidize the acquisition of spectrum by other companies that have already demonstrated the ability to

[1] *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, AU Docket No. 14-252, GN Docket No. 12-268, Public Notice, 29 FCC Rcd 15750 (2014).

secure spectrum resources through auctions and secondary market transactions. Specifically, it should reject calls to increase the amount of spectrum set aside for reserve-eligible bidders, should set a meaningful spectrum reserve trigger price, should not utilize a random process to determine specific frequency assignments, and should not restrict some carriers from acquiring highly impaired spectrum if such spectrum is offered in a later auction.

I. The Commission Should Offer a Single Category of Unimpaired Licenses in the Forward Auction Except in Markets Bordering Mexico and Canada

The Commission should establish a truly near-nationwide clearing target and offer a single category of unimpaired spectrum licenses, with the sole exception of markets bordering Canada and Mexico.[2] Mobile Future recognizes that the need to protect broadcast station operations in Mexico and Canada will result in a reduced number of available licenses and higher levels of impairment in the border areas, but the need to accommodate border markets does not necessitate allowing high degrees of market variation or adopting a 20 percent nationwide impairment standard. The Commission's impairment proposal would create a patchwork of licenses with varying impairment levels across the United States, would leave up to 20 percent of American mobile consumers living in impaired areas, and would unnecessarily complicate an already complicated auction. To avoid this negative result, the Commission should adopt a truly near-nationwide clearing target consisting of a single category of unimpaired licenses in all markets except those bordering Mexico and Canada. This simplified band plan will reduce inter-service interference issues throughout the country, will be easier for the Commission to implement, and the certainty it provides to bidders will promote forward auction participation.

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[2] *See* Comments of Mobile Future, *Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, AU Docket No. 14-252 (filed Feb. 20, 2015).

II. The Commission Should Reject Calls to Increase the Amount of Reserved Spectrum in the Incentive Auction Because There Is No Evidence of Foreclosure and Arbitrarily Limiting Carriers' Access to Spectrum is Contrary to the Public Interest

A. When Companies Participate They Have Been Successful in Acquiring Spectrum Resources and There is No Evidence of Foreclosure

The Commission should not increase the amount of reserved spectrum in the incentive auction. No evidence of foreclosure exists and a spectrum reserve therefore is not necessary at all. In fact, as Mobile Future has demonstrated, when parties choose to participate in spectrum auctions they are abundantly successful in securing licenses – even without the application of a spectrum cap or set-aside restricting other carriers' access to the same spectrum resources.[3] Indeed, in all nine auctions offering spectrum for terrestrial mobile broadband services conducted between 2003-2013, non-nationwide operators and small businesses won nearly half (46%) of the aggregate MHz-POPs.[4] The two most recent auctions for H Block and AWS-3 spectrum – both of which were open eligibility auctions – continued this trend. In the H Block auction, DISH Network acquired 100% of the spectrum auctioned. In the AWS-3 auction, 31 entities won licenses and non-nationwide carriers acquired 45.95% of the spectrum auctioned. When you add those results to the results of the previous nine wireless spectrum auctions, non-nationwide operators captured 48.28% of all MHz/POPs of spectrum won.

Parties arguing in favor of an expanded spectrum reserve jump to the illogical conclusion that carriers other than AT&T and Verizon will not be able to able to secure access to low band spectrum without a restrictive spectrum set-aside on which the two largest carriers will not be

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[3] Comments of Mobile Future, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, at 5 (filed Feb. 20, 2015); *FCC Spectrum Auctions and Secondary Market Policies: An Assessment of the Distribution of Spectrum Resources Under the Spectrum Screen*, at ii (Nov. 2013), http://mobilefuture.org/wp-content/uploads/2013/11/Paper-Distribution-of-Spectrum-Resources.pdf

[4] *Id.*

permitted to bid.[5] For example, members of the Public Interest Spectrum Coalition wrote in a letter to the Commission that the open nature of the AWS-3 auction allowed AT&T to "dominate" the auction. That assertion ignores the facts. Two entities in which Dish Network Corporation invested accounted for 27% of all bids in the auction – more bids than Verizon and AT&T combined – and committed more than $10 billion in capital. T-Mobile bid only a relatively low $1.8 billion, and Sprint chose (once again) not to participate at all.

While we know Sprint did not intend to acquire any spectrum in the AWS-3 auction, evidence is mounting that T-Mobile may never have intended to win a large share of licenses in the auction either. In a blog post on the company's website, CEO John Legere noted that the company was "able to be pretty conservative and strategic in this auction."[6] That makes sense given the company's robust spectrum portfolio. In discussing T-Mobile's Fourth Quarter 2014 earnings results, the company said, "[O]ur cost of capacity is predicated on the spectrum that we have per customer, which is the superior position to that of AT&T and Verizon."[7] The statement builds on previous boasts from the company, "T-Mobile has more network capacity per customer – and a remarkable 70 percent more network spectrum per customer than even Verizon."[8]

There is no reason to conclude that T-Mobile could not have won more licenses had it chosen to bid more aggressively in the auction. The CEO of T-Mobile's parent company has

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[5] *See* Comments of T-Mobile USA, Inc., *Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, AU Docket No. 14-252 at 2-4 (filed Feb. 20, 2015), *citing* T-Mobile USA, Inc., *Policies Regarding Mobile Spectrum Holdings*, Petition for Reconsideration, WT Docket No. 12-269 (filed Aug. 11, 2014).

[6] T-Mobile, Speak Up for America's Wireless Future (Feb. 18, 2015), http://newsroom.t-mobile.com/issues-insights-blog/wireless-future.htm.

[7] T-Mobile US (TMUS) Q4 2014 Results – Earnings Call Transcript, Seeking Alpha (Feb. 19, 2015), http://seekingalpha.com/article/2932366-t-mobile-us-tmus-q4-2014-results-earnings-call-transcript?page=4&p=qanda&l=last.

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

long expressed his reluctance to invest in T-Mobile's U.S. network. In January he said, "The question is always the economics in the long term . . . You have to earn your money back at one point in time."[9] With a combined market capitalization of $108 billion, T-Mobile and its German parent company are more than able to compete for spectrum on a level playing field.[10] In fact, last year, T-Mobile engaged in a 700 MHz shopping spree in the secondary market, and now holds 700 MHz spectrum covering nearly two-thirds of our nation's population.[11] Just this week, T-Mobile told analysts that it used the 700 MHz spectrum it purchased from Verizon to expand its footprint and stated that the broadcast incentive auction was a "backup."[12] Clearly, T-Mobile has more than one option for securing the spectrum it needs. Moreover, it was able to buy that spectrum on the secondary market from an entity that, according to T-Mobile, wants to keep spectrum out of its hands. Additionally, Sprint is in a similar financial position; Sprint and its Japanese parent Softbank have a combined market capitalization of more than $90 billion.[13]

Meanwhile, the two designated entities working with Dish – a new entrant that does not currently provide wireless services – won more licenses than any other bidder in the open AWS-3 auction. 44% of the licenses in the auction went to Dish through its joint bidding arrangement, effectively shutting out other companies, including designated entities and non-nationwide, carriers in several markets. Dish's maneuvers cost taxpayers several billion dollars in lost

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[9] Ina Fried, *Deutsche Telekom CEO Holds Out Hope for a T-Mobile U.S. Deal*, Re/Code (Jan. 19, 2015).

[10] T-Mobile US Inc., CNN Money (Mar. 7, 2015), http://money.cnn.com/quote/quote.html?symb=TMUS; Deutsche Telekom AG, CNN Money (Mar. 7, 2015) http://money.cnn.com/quote/quote.html?symb=DTEGY.

[11] Press Release, T-Mobile US Reports Fourth Quarter and Full-Year 2014 Results (Feb. 19, 2015), http://investor.t-mobile.com/Cache/1001195042.PDF?Y=&O=PDF&D=&fid=1001195042&T=&iid=4091145.

[12] Braxton Carter, "T-Mobile US Inc. at Deutsche Bank Media, Internet and Telecom Conference Transcript," Thomson Reuters Streetevents (Mar. 9, 2015).

[13] Sprint Corp, CNN Money (Mar. 7, 2015), http://money.cnn.com/quote/quote.html?symb=S; Softbank Corp, CNN Money (Mar. 7, 2015), http://money.cnn.com/quote/quote.html?symb=SFTBY.

revenue, and the Commission must take steps to make sure this does not happen in the incentive auction. Indeed, increasing the reserve in the incentive auction will not help small companies acquire more spectrum, but will instead give companies with significant resources, like Dish, yet another competitive advantage.

In the wake of the AWS-3 auction, the Commission must be mindful when taking any steps that would create advantages or disadvantages for participants by setting a spectrum reserve in the upcoming incentive auction. In the AWS-3 auction, T-Mobile was largely outbid by the Dish-controlled designated entities – entities which may equally benefit from a spectrum reserve in the upcoming auction. T-Mobile lost to the Dish-controlled companies on 132 licenses, whereas AT&T or Verizon outbid them on just 42 licenses, combined. To foster mobile competition, the FCC does not need to increase the amount of reserved spectrum in the incentive auction. As we saw in the AWS-3 auction, the market is already competitive as even a company with no wireless customers at all is willing to spend billions of dollars to acquire spectrum to bolster its future business opportunities.

In sum, none of the comments demonstrate that foreclosure has occurred in previous spectrum auctions, or that it will occur in the upcoming broadcast incentive auction. Notwithstanding this lack of foreclosure evidence, the spectrum reserve will work to provide spectrum at a discount to carriers that do not lack the ability to acquire spectrum at market rates. Further, there is no reason to believe that providing spectrum at a discount will spur such carriers to deploy in rural areas. Since the assumptions underlying adoption of the reserve are flawed, the Commission, at the very least, should not expand its scope.

B. *Arbitrarily Limiting Certain Carriers' Access to Spectrum is Contrary to the Public Interest*

Supporters of the reserve have failed to demonstrate a need for a reserve. The identification of spectrum holdings of various companies – by itself, without recognition that opportunities exist for all competitors to secure spectrum resources in auctions and secondary market transactions – does not demonstrate any market failure or harm that must be addressed. Consequently, implementation of a spectrum reserve is arbitrary. This arbitrary reserve harms the consumers of those carriers who are precluded by the reserve from bidding on spectrum. Carriers who need additional spectrum resources to serve increasing consumer demands for mobile broadband should not be precluded from competing for available spectrum.

Further, international experiences demonstrate that restrictive auctions lead not only to depressed auction revenues,[14] but also to adverse effects on consumers and competition in the post-auction market for wireless services, including severely delayed deployment of new spectrum resources.[15] For example, spectrum caps imposed during the auctions of 3G spectrum in six European countries failed to produce a sustainable increase in the number of competitors, and two new entrants resulting from a restricted auction in Germany withdrew from the market before deploying the newly acquired spectrum causing the spectrum to lay fallow for a decade.[16]

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[14] Mobile Future, *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* (September 2013), http://mobilefuture.org/wp-content/uploads/2013/09/Website-The-Case-for-Inclusive-Spectrum-Auction-Rules-Refile.pdf (citing depressed auction revenues resulting from bidding restrictions in the 2013 U.K. Multiband Auction, 2010 German Multiband Auction, 2012 Dutch Multiband Auction, 2008 Canadian AWS Auction, 2010 Mexican AWS Auction, 2010 Dutch 2.5 GHz Auction, 2010 Danish 900 MHz and 1800 MHz Auctions, 2012 Indian 1800 MHz Auction, and 2011 Swedish 800 MHz Auction.).

[15] Robert Earle and David Sosa, *Spectrum Auctions Around the World: An Assessment of International Experiences with Auction Restrictions* (July 2013), http://mobilefuture.org/wp-content/uploads/2013/07/Spectrum-Auctions-Around-The-World.pdf.

[16] *Id.* at ii.

III. The Commission Should Maintain the Spectrum Reserve Trigger, Set the Trigger at an FCC-Determined "Foreclosure Price," and Separate the Spectrum Reserve Trigger from the Final Stage Rule Closing Price

The Commission should determine the spectrum reserve trigger price and the Final Stage Rule closing price separately, based on their separate goals. The Commission should also maintain the spectrum reserve trigger and set the trigger price high enough so that the spectrum reserve only becomes operative if prices in the incentive auction reach what the Commission determines are supposed "foreclosure levels."

In order to alleviate any concern that setting a meaningful spectrum reserve trigger price could prevent the auction from closing due to a failure to satisfy the price per MHz-POP component of the Final Stage Rule, the Commission should establish a spectrum reserve trigger price but allow the auction to close once it raises sufficient revenue to make the payments mandated by the Spectrum Act. The Commission could set the spectrum reserve trigger at an appropriate price aimed solely at preventing the potential for larger carriers to attach a foreclosure value to the spectrum, while the Final Stage Rule could be set to ensure the auction covers all statutorily required costs. The Communications Act provides the Commission with discretion in setting the reserve price for the auction, and the Commission should utilize that discretion here to balance the various goals of the auction. [17]

The Commission's stated purpose in adopting the spectrum reserve was to allow smaller carriers to obtain spectrum at market rates, but also to protect smaller carriers from the possibility that AT&T and Verizon might place a value over and above the market value of the spectrum in order to foreclose competition. To accomplish this dual goal, the Commission must set the spectrum reserve trigger at the high market value for the spectrum. The auction should be

[17] 47 U.S.C. § 309(j)(4)(F).

subject to competitive bidding from all parties up to the point at which the supposed "foreclosure price" is reached. Only then would the reserve become effective. Implementing an effective spectrum reserve trigger price is consistent with the authority granted in the Spectrum Act. Reserve-eligible bidders are not entitled to win licenses at below-market prices.[18]

The $1.25 price proposed in the Comment PN is far below the market value of the repurposed spectrum that will be offered in the incentive auction. In setting the spectrum reserve trigger price, the Commission must, at a minimum, look at recent auction results including the recently concluded AWS-3 auction and recent secondary market transactions for comparable spectrum. The average net price paid for paired spectrum in the AWS-3 auction was $2.51,[19] more than double the price proposed in the Comment PN, and on average bidders paid well over $3.00 for licenses in the top 40 PEAs.[20] According to many parties in this proceeding, the low band spectrum offered in the incentive auction is far more valuable than the above 1-GHz spectrum sold in the AWS-3 auction. Therefore, incentive auction spectrum reserve trigger price should be even *higher* than the $2.51 average net price bidders paid in the AWS-3 auction.

The Commission should not, as some commenters suggest, eliminate the price trigger for the spectrum reserve, which would allow the reserve to kick in at the beginning of the forward auction.[21] Setting aside spectrum before prices in the auction reach FCC-determined "foreclosure levels" is inconsistent with the Commission's stated purpose of adopting the spectrum reserve and would simply allow reserve-eligible bidders to acquire spectrum at an even

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[18] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(c), 125 Stat. 156 (2012) (Spectrum Act).

[19] Comments of Verizon, *Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, AU Docket No. 14-252 at 12 (filed Feb. 20, 2015).

[20] *Id.* at 12-13.

[21] Comments of Sprint Corporation, *Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, AU Docket No. 14-252 at 40-46 (filed Feb. 20, 2015).

larger discount. Instead, as adopted in the *Mobile Spectrum Holdings Report and Order*,[22] bidding should proceed undistorted until the point at which the Commission has determined the prices would exceed the market value of the repurposed spectrum.

IV. The Commission Should Not Assign Licenses Won in the Forward Auction Through a Random, Quasi-Random, or Draft Style Approach

The Commission must maintain a mechanism for bidders in the forward auction to select specific frequency assignments, particularly if the Commission adopts the proposal to offer licenses with high levels of impairment and subject to a high degree of market variation, and should not assign winning bidders to specific frequency blocks through a random process. Allowing bidders to select specific frequency assignments will ensure the repurposed spectrum is put to its highest and best use. Different bidders may attach different values to specific frequency assignments based on existing spectrum holdings or other factors. Allowing bidders to select specific frequencies will enable the more efficient and effective use of spectrum and better enable carriers to respond to consumer demand.

V. Any Heavily-Impaired Blocks of Repurposed Spectrum That the Commission Offers in a Separate, Subsequent Auction Should Be Open to All Bidders

Mobile Future continues to urge the Commission to offer a single category of licenses composed of fungible spectrum blocks with low levels of impairment in the forward auction.[23] Any blocks of spectrum with relatively high levels of impairment that the Commission offers in

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[22] *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Report and Order, 29 FCC Rcd 6133, 6208-09 ¶¶ 184-87 (2014).

[23] *See* Comments of Mobile Future, *Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, AU Docket No. 14-252 (filed Feb. 20, 2015).

a later auction should be available for bidding by all potential bidders. The Commission should not further tilt the scales by adding more spectrum to the reserve.[24]

VI. Conclusion

For the foregoing reasons, the Commission should offer a single category of licenses and avoid impairments outside of the border areas, should decline to increase the amount of spectrum set aside for reserve-eligible bidders and set a meaningful spectrum reserve trigger price, should not utilize a random process to determine specific frequency assignments, and should not restrict some carriers from acquiring highly impaired spectrum if the spectrum is designated for a later auction.

Respectfully Submitted,

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[24] *See* Comments of Competitive Carriers Association, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, at 26-27 (filed Feb. 20, 2015).