



March 19, 2015

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

Re: *Expanding the Economic and Innovation Opportunities of Spectrum  
through Incentive Auctions*, GN Docket No. 12-268;

*Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269

**Ex parte communication**

Dear Chairman Wheeler:

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> supports holding the 600 MHz broadcast incentive auction planned for early 2016 as scheduled. In finalizing its rules for the auction, the Commission should ensure that smaller competitors have a fair opportunity to acquire these critical input resources. The Commission should expand the spectrum reserve. The Commission should encourage competition by multiple facilities-based wireless competitors.

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<sup>1</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

NASUCA has long been a proponent of fair spectrum allocations that encourage competition and innovation in the wireless industry.<sup>2</sup> This auction will be an important opportunity for the Commission to shape the future competitive landscape.

Today, the two largest wireless carriers, AT&T and Verizon, control the majority of low-frequency spectrum.<sup>3</sup> This includes capturing the majority of the most-valuable paired spectrum blocks.<sup>4</sup> AT&T and Verizon have both incentive and ability to cut off competitors' access to critical spectrum resources, harming consumers.

Mindful of that history, the Commission should take action now to ensure that smaller competitive carriers can and do bid successfully. Such action is essential to preventing the further entrenchment of the dominant carriers' market positions and to achieving the meaningful competition that has characteristically brought lower prices and higher quality reliable service, as well as innovation, to markets.<sup>5</sup>

Increasing the size of the spectrum reserve would ensure that smaller carriers have a meaningful opportunity to participate in the auction. The Commission created the spectrum reserve with that very intent. However, as it stands, the reserve is insufficient to meet the objective of ensuring that smaller carriers with non-national footprints or sufficient low-band holdings are able to compete in future mobile broadband markets. Increasing the size of the reserve in each spectrum reserve market will reduce market concentration and enhance consumer welfare.<sup>6</sup>

Another way to combat the threat of anti-competitive behavior and increased concentration is to encourage more facilities-based wireless competition. The editorial board of the *New York Times*, in response to the recent Open Internet Order, stated:

The big gains will come only when governments do more to increase investments in telecommunications directly or by encouraging private companies to build networks. The most certain way to do that is to foster

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<sup>2</sup> See National Association of State Utility Consumer Advocates, Resolution 2013-07, *Fair Spectrum Allocation* (Nov. 19, 2013) available at <http://nasuca.org/2013-07-fair-spectrum-allocation/>.

<sup>3</sup> See WT Docket No. 13-135, *17<sup>th</sup> Mobile Competition Report*, DA 14-1862 (rel. December 18, 2014), ¶¶ 104-106. In fact, AT&T and Verizon or their predecessors received a significant portion of their low-band spectrum in the 1980's as the result of a cost-free grant of 800 MHz cellular licenses made before the FCC obtained auction authority.

<sup>4</sup> *Id.*

<sup>5</sup> See *id.* ¶ 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.").

<sup>6</sup> Increasing the reserve would also be consistent with the Commission's statutory mandate to "avoid[] excessive concentration of licenses" and "disseminat[e] licenses among a wide variety of applicants...." 47 U.S.C. § 309(j)(3).

competition by, for example, selling wireless frequencies to many different companies. This has been happening in places like India.

Other countries, including those in the European Union, have helped to spur Internet adoption by requiring telecom companies to share cables and other equipment with one another. Of course, many dominant state-owned or private phone companies will resist policies intended to encourage competition.<sup>7</sup>

NASUCA agrees.

Allowing a single bidder to win the entire spectrum reserve in a given market would limit the market diversification that the reserve was designed to promote. Allowing additional concentration of spectrum within the reserve would introduce the risk of warehousing or foreclosure and potentially close the window of opportunity on facilities-based wireless competition for good. The incentive auction will be the last opportunity for the foreseeable future for wireless service providers to acquire low-band spectrum at auction.

Ultimately, the preservation of meaningful competition in the wireless market will benefit consumers with lower prices and higher quality, more reliable services. To that end, it is crucial for the Commission to take the steps recommended by NASUCA.

Sincerely,

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Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O'Rielly

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<sup>7</sup> <http://nyti.ms/1BoYYkD>.