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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: *Notice of Ex Parte Presentation: 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*

Dear Ms. Dortch:

On June 25, 2015, Richard Engelman, Director, Legal and Government Affairs, and the undersigned of Sprint Corporation (“Sprint”) participated in a telephone conference with Louis Peraertz, Senior Legal Advisor to Commissioner Mignon Clyburn. Subsequently, on June 26, 2015, Lawrence J. Krevor, Vice President, Legal and Government Affairs – Spectrum, Richard Engelman, and the undersigned participated in a telephone conference with Louis Peraertz.

On both occasions, Sprint discussed the Commission’s Public Notice soliciting comment on competitive bidding procedures for the auction.¹ Sprint raised concerns about implementation aspects of the Commission’s spectrum reserve that could ultimately subvert the statutory objectives that drove its creation. Sprint noted the ways in which the timing of the reserve’s implementation, as well as conditioning of the reserve on satisfaction of the ‘cost component’ of the Final Stage Rule, reintroduces foreclosure risk from strategic bidding by dominant incumbents.

In particular, the delay in implementing the reserve could enable the nation’s two largest operators to concentrate their bidding in a subset of the nation’s largest PEAs. By concentrating

¹ *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, 29 FCC Rcd 15750 (2014) (“Comment Public Notice”).*

their demand, and withholding their bidding from a broader array of markets, these carriers could ensure that the prices in a number of key markets steadily rise each round, while (with their eligibility stored in just these key markets) the prices in the vast majority of markets – even with consistent bidder demand by reserve-eligible bidders – increase only incrementally.² While this bidding strategy might result in a timely satisfaction of the ‘price component’ of the Final Stage Rule, the considerable ‘cost component’ would significantly extend the number of rounds needed to meet the Final Stage Rule, at which time reserve bidding would finally commence. In other words, the cost component gives the two dominant operators significant ‘runway’ to drive prices to foreclosure levels in key markets prior to the Commission permitting bidding on reserve spectrum.³

Separate staff recommendations preclude reserve-eligible bidders from responding to such tactics by creating excess demand in other large markets (and thus accelerating triggering of the reserve): by proposing to shrink the reserve in any markets in which reserve demand is below the size of the reserve, the Commission has put reserve-eligible bidders in a Catch 22. They must either remain active in all desired markets, stretching their eligibility in ways that (absent demand by AT&T and Verizon in those markets) increase the likelihood that the clock prices in most PEAs remain stagnant while the largest operators drive up the clock prices in key markets. Or they must respond by focusing their eligibility in large markets to spur implementation of the reserve – at the cost of seeing the reserve shrunk in a large number of mid- and small-sized PEAs.⁴

The Staff recommendation to maintain the reserve at a maximum of 30 MHz makes it all the more important to implement the reserve at the beginning of the forward auction – or at the very least, not unduly late into the auction. As a direct consequence of likely foreclosure pricing in key markets, and anticipated strategic bidding by AT&T and Verizon in the myriad PEAs in which they are reserve-eligible, the current implementation proposal will have the effect of

² Specifically, the Staff’s recommended procedures provide for clock prices to rise only when demand exceeds supply in a given PEA. Thus, even with straightforward expressions of demand expressed across all PEAs, aggregate reserve-eligible demand will likely remain at, or below, supply in most PEAs. With non-reserve-eligible bidders concentrating their demand exclusively on a subset of key markets, the overall revenues at the time the Final Stage Rule is triggered will thus be derived, significantly disproportionately, from supra-competitive prices in these markets.

³ The staff recommendation will, however, not ensure that reserve-eligible bidders, overall, pay market prices for desired spectrum. Eligible to bid on reserve spectrum in numerous PEAs, Verizon and AT&T can push reserve prices to supra-competitive *outside* of these key markets after the reserve is triggered.

⁴ Parallel activity and bid-processing rules will make it difficult for reserve-eligible bidders to quickly filter their demand back across their desired PEAs. Particularly if AT&T and Verizon have aggressively concentrated their demand in a subset of key markets, reserve-eligible bidders will often be *unable* to remove demand from other large markets, as the Commission has proposed not to process any reductions in demand that would result in demand in that PEA falling below supply. In other words, even if reserve-eligible bidders endeavor to respond to these foreclosure tactics by bidding in a larger number of big markets to accelerate the FSR trigger, their eligibility will in effect be trapped in these markets, prohibiting them from shifting back to mid- and small-sized markets to protect the size of the reserve.

retarding confidence and activity of reserve-eligible bidders – in turn postponing (or at high-clearing targets, subverting) satisfaction of the revenues needed to close the auction. With a more timely triggering of the reserve, reserve bidding will be more robust and aggressive, in turn contributing towards meeting the cost component of the FSR and a successful reallocation of broadcast spectrum to commercial wireless broadband competitors. To address the problem of reserve implementation, Sprint discussed its previous proposal to implement reserve block bidding at the commencement of forward auction bidding, rather than in potentially much later rounds upon satisfaction of the FSR.⁵

Absent additional procedural safeguards and refinements to the reserve's implementation such as those contained in Sprint's filing, these vulnerabilities in the reserve's implementation threaten to undermine the Commission's objectives of promoting competition and ensuring multiple operators have access to competitively-impactful low-band spectrum. Accordingly, Sprint stated that it would continue to work to develop alternative procedures to ameliorate the reserve foreclosure risk discussed herein.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office. Please let me know if you have any questions regarding this filing.

Respectfully submitted,

/s/ Rafi Martina

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Legal and Government Affairs

Sprint Corporation

cc: (via e-mail)
Louis Peraertz

⁵ *Ex Parte* Letter from Lawrence R. Krevor, Vice President, Legal and Governmental Affairs—Spectrum, Sprint Corporation to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (filed May 20, 2015).