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June 30, 2015

EX PARTE VIA ECFS

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

Re: *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, AU Docket No. 14-252*

Dear Ms. Dortch:

To help ensure that the Federal Communications Commission realizes its goal of promoting competition in the upcoming incentive auction, T-Mobile proposes a third “trigger” for bringing the spectrum reserve into existence in addition to the two triggers currently contemplated in the auction. The FCC needs to ensure that a game of “keep away” is not played by deep pocketed AT&T and Verizon to undermine and foreclose the benefits of the reserve for smaller competitors.

In 2014, the Commission concluded that the two dominant carriers have the incentive and ability to prevent would-be rivals from accessing low-band spectrum in the upcoming incentive auction.¹ The Department of Justice has raised this concern to the FCC multiple times, most recently last week.² With 73% of all low-band spectrum already under their control, AT&T and Verizon could pay in excess of market prices for spectrum now, in the reasonable expectation of charging consumers substantially more later. The spectrum reserve provides an opportunity for

¹ *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6167 ¶ 66 (2014) (“*Mobile Spectrum Holdings Order*”).

² Letter from William J. Baer, Assistant Attorney General, U.S. Department of Justice to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-269 (June 24, 2015) (“the Department believes that the Commission should ensure that the allocation of spectrum through the auction does not enable carriers with high market shares to foreclose smaller carriers from acquiring the spectrum they need to improve their customers’ wireless coverage”).

challengers to the two dominant incumbents to acquire spectrum outside of this foreclosure-level pricing.³

As currently proposed, the spectrum reserve is contingent on two price “triggers.”⁴ The first trigger occurs when auction proceeds in the top 40 partial economic areas (PEAs) exceed an average price of \$1.25 per MHz-POP.⁵ The second trigger occurs when the forward auction raises enough money to both reimburse all broadcasters that surrender their spectrum and cover other remaining auction expenses, such as repacking.⁶ If the auction fails to satisfy both triggers, the reserve does not exist.⁷

While the first price trigger does not necessarily reintroduce the risk of foreclosure pricing by AT&T and Verizon, the second trigger does. The risk of the second trigger is *not* a function of reserve-eligible bidders being unwilling to pay all broadcast expenses. After all, the auction cannot close – and no licenses of any kind will be awarded – if broadcast expenses are not fully satisfied. The risk of the second trigger is that high clearing costs in the early rounds of bidding under a high clearing target create a “hangover effect” for subsequent stages of the auction. Specifically, if the initial spectrum-clearing target is high, the cost of clearing broadcast stations will be high, too. And if early-round bidding approaches, but does not reach, the reserve-creating trigger, those high bids will still hang over all subsequent stages of the auction even though the amount of spectrum available is less than in the initial stages.⁸ Even though broadcast-clearing expenses would be *lower* per license at the lower clearing target than they were at the initial high-clearing rounds, the prices in the forward auction do not reset and could

³ *Mobile Spectrum Holdings Order*, 29 FCC Rcd. at 6196 ¶ 154. T-Mobile with smaller carriers and other interested groups has advocated for an increase in the reserve to better arm smaller competitors with important low-band spectrum to better compete with AT&T and Verizon on coverage. *See Policies Regarding Mobile Spectrum Holdings*, T-Mobile USA, Inc. Petition for Reconsideration, WT Docket No. 12-269 (Aug. 11, 2014).

⁴ *Id.* at 6209; *see also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6578 ¶ 26 (2014) (“*Incentive Auction Order*”); *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, 29 FCC Rcd 15750, 15769-74 ¶¶46-63 (2014) (“*Incentive Auction Comment PN*”).

⁵ *Incentive Auction Comment PN*, 29 FCC Rcd at 15770 ¶ 49.

⁶ *Id.* at 15771 ¶¶ 55-56. The Spectrum Act requires that the forward auction generate proceeds sufficient to compensate winning bidders in the reverse auction, the Commission’s administrative costs for the auction, and broadcaster repacking costs. *Id.* Additional requirements, including funding for the Public Safety Trust Fund, have already been satisfied.

⁷ *Incentive Auction Order*, 29 FCC Rcd at 6578 ¶ 26.

⁸ *See, e.g.*, Letter from Lawrence R. Krevor, Vice President, Legal and Governmental Affairs—Spectrum, Sprint Corp., *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, AU Docket No. 14-252 at 3-4 (May 20, 2015); Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, AU Docket No. 14-252 at 2 (Apr. 24, 2015).

greatly exceed those expenses and exceed the level at which foreclosure would occur.⁹ This hangover effect undermines the pro-competitive purpose of the reserve by delaying creation of the reserve until foreclosure-level pricing has already happened. The spectrum reserve, in other words, could prove meaningless because no reserve-eligible bidders would remain in the auction at foreclosure-level prices. T-Mobile is not alone in raising this concern.¹⁰

To avoid this negative competitive outcome, T-Mobile proposes a simple fix. T-Mobile asks that the FCC maintain the proposed double trigger of the current reserve, but incorporate a third “safety-valve” mechanism to engage the reserve. Under this proposal, the Commission would retain the \$1.25 price per MHz-POP trigger in the top 40 PEAs, but would amend the spectrum-reserve trigger to be either (1) an average of \$2.00 per MHz-POP in the top 40 PEAs; or (2) the price for satisfying all broadcaster reimbursement and repacking costs as well as auction administrative costs, whichever occurs first. The additional trigger T-Mobile proposes would help protect against the risk of foreclosure while ensuring that all bidders in the forward auction pay their fair share of broadcast-clearing expenses.

The FCC established a spectrum reserve to ensure that competitors with little or no low-band spectrum have a meaningful opportunity to obtain this critical resource without the risk of foreclosure. T-Mobile is concerned that, as structured, the reserve might be gamed by the largest carriers to never come into existence, and T-Mobile therefore respectfully asks that the FCC make the limited modification requested.

Pursuant to Section 1.1206(b)(2) of the Commission’s rules, an electronic copy of this letter is being filed in the above-referenced docket. Please direct any questions regarding this filing to me.

Respectfully submitted,

/s/ Trey Hanbury

Trey Hanbury
Counsel to T-Mobile USA, Inc.

⁹ *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 (Apr. 11, 2013) (“the ‘foreclosure value’ does not reflect consumer value; to the contrary, it represents the private value of foreclosing competition by, for instance, forestalling entry or expansion that threatens to inject additional competition into the market.”).

¹⁰ See *Policies Regarding Mobile Spectrum Holdings*, Reply to Oppositions of Competitive Carriers Association, WT Docket No. 12-269, at 2 (Oct. 6, 2014); *Policies Regarding Mobile Spectrum Holdings*, Reply Comments of Sprint Corporation, WT Docket No. 12-269, at 3 (Oct. 6, 2014); Letter from Public Interest Spectrum Coalition, *et al.*, to Tom Wheeler, Chairman, Federal Communications Commission, WT Docket No. 12-269, GN Docket No. 12-268, at 3 (Feb. 24, 2015).