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EX PARTE VIA ECFS

Ms. Marlene H. Dortch
Secretary
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, AU Docket No. 14-252; Applications of AT&T Inc. and DIRECTV for Consent To Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-90

Dear Ms. Dortch:

On July 2, 2015, Bob Quinn and the undersigned, representing AT&T, met with Commissioner O’Rielly and Erin McGrath, Legal Advisor to Commissioner O’Rielly, to discuss Staff recommendations on the 600 MHz auction. AT&T noted the following.

Impairments to the 600 MHz Band. There is widespread agreement among stakeholders that the Commission should minimize the intentional placement of U.S.-based television stations in the 600 MHz band. As the record confirms, repacking U.S.-based television stations into the 600 MHz band will significantly degrade the quality of the adjacent licenses for mobile wireless use, both within the same market and in geographically adjacent markets. This degradation harms the forward auction in two ways: (1) the interfering uses directly reduce the value of the mobile wireless licenses, which in turn will reduce forward auction revenues; and (2) the impairments will force the Commission to offer non-generic licenses under circumstances in which bidders cannot know during the forward auction which licenses they will ultimately receive, and that uncertainty will cause bidders to further reduce their bids.

AT&T believes that Commission Staff took a step in the right direction when it modified its proposal to allow up to 20 percent nationwide impairments in the 600 MHz band. Unfortunately, Staff’s modified proposal – to accommodate impairments at levels up to the equivalent of one license block nationwide, on a weighted POP basis – is also worrisome. Because we do not at this time know the level of border impairments, the modified approach leaves enormous uncertainty as to the degree of new impairments the Commission will create by placing U.S.-based television stations into the 600 MHz band.

Moreover, if the United States is able to negotiate truly dramatic reductions in border impairments through cooperation with Canada and Mexico, there is no reason why that success should give greater leeway to the Commission to increase impairments from U.S.-based television stations. Finally, the impairments from U.S. broadcasters are particularly troubling as there is no meaningful path for those impairments to clear over time.

For these reasons, AT&T proposed that the Commission set total permissible nationwide impairments equal to whatever levels are calculated for cross-border interference, plus an additional *fixed* amount (AT&T proposed 3 percent) to allow for placing a limited number TV stations in the 600 MHz band to facilitate reasonable national clearing targets while restraining incremental impairments.

As noted above, cross-border interference is significant, but likely to be temporary as the United States works to eliminate that problem through international cooperation. But repacking U.S.-based television stations into the 600 MHz band represents a Commission decision to introduce new interference into numerous licenses in what is intended to be a *permanent* solution, creating long-term implementation and interoperability issues. AT&T's proposal would allow for the limited placement of TV stations in the 600 MHz band to facilitate a successful auction, while restraining the potential for excessive impairments and providing greater certainty needed to facilitate robust auction participation.

During the course of this discussion, I referred to the Clearing Target Optimization Simulations released by the FCC on June 3, 2015,¹ the Cross-Border Study filed by AT&T on April 14, 2015,² and the Repacking Study conducted by Michael Kearns, filed by AT&T on February 20, 2015.³

The Proposed Preference to Reserve Bidders For Category 1 Spectrum.

Category 1 spectrum will be the most valuable spectrum in this auction because it will, on average, be subject to much lower impairments than Category 2 spectrum. Staff proposes placing Category 1 spectrum first in the reserve auction, where bidding will be limited to reserve-eligible bidders, allowing such bidders access to that spectrum free from full competition and at potentially lower prices than paid in the non-reserve. An auction

¹ Public Notice, *Incentive Auction Task Force Releases Initial Clearing Target Optimization Simulations*, AU Docket No. 14-252, GN Docket No. 12-268 (June 3, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-15-606A1.pdf.

² Letter from Michael P. Goggin (AT&T) to Marlene H. Dortch (FCC), *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 (April 14, 2015), available at <http://apps.fcc.gov/ecfs/document/view?id=60001043518>.

³ Philip A. Haile, Michael Kearns, Lili Dworkin, *Comments on the FCC's Current Incentive Auction Design Proposals*, at 21-44 (Feb. 20, 2015), attached to Comments of AT&T, *Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, AU Docket No. 14-252 & GN Docket No. 12-268, (Feb. 20, 2015), available at <http://apps.fcc.gov/ecfs/document/view?id=60001040448>.

where the highest valued licenses are obtained for the lowest prices could easily result in lower clearing targets or a failed auction.

AT&T also noted its concerns about the impact of Category 2 licenses on the non-reserve bidders. We have long argued that the auction should permit AT&T a fair path to obtaining a 10x10 MHz footprint of clear, deployable spectrum. Category 2 blocks of spectrum – which will be significantly impaired – will deplete the number of cleaner blocks available to non-reserve bidders and significantly undermine their efforts to obtain an economically rational footprint at auction in all markets with Category 2 spectrum.

Moreover, the Commission has released very little data on which markets will be potentially impacted by Category 2 licenses. We have the aggregate results of some Commission simulations, but those results do not include specific information on the markets so impaired.

Commission Staff has noted that more than 90 percent of available spectrum is expected to be Category 1, and that prioritizing that spectrum in the reserve will have only a small impact on the non-reserve. But the Category 2 blocks will fall predominantly in highly-congested urban markets, likely the Top PEAs by population, and therefore will have a significant impact on the non-reserve for those top markets and thus on the how restricted bidders view auction opportunities.

This concern is confirmed by the Staff simulation Scenario 1 Approach, which shows that it is possible in an 84 MHz band plan that both the NY and LA PEAs will have at least one Category 2 license. That means that in both of those PEAs, which collectively cover more than 45 million POPs, AT&T and Verizon will have access to only three Category 1 licenses in the non-reserve. The same is true for the Baltimore-DC PEA, covering 8.2 million POPs. In Philadelphia, the sixth most populous PEA with over 7.5 million POPs, the same simulation shows that non-reserve eligible bidders will have access to only two Category 1 licenses.

Thus, looking at these four markets alone, if the Scenario 1 simulation is an accurate portrayal of an 84 MHz auction, non-reserve eligible bidders will have access to a limited non-reserve supply in the top six PEAs covering 61.4 million POPs. And that does not take into consideration the 41 other Category 2 licenses that the simulation predicts in Scenario 1 and that the non-reserve eligible bidders will need to face in the auction. Moreover, Scenario 1 indicates significant potential for dramatically reduced auction revenues, given that the top 40 PEAs are expected to account for a substantial portion of overall auction revenues. For example, in the recent AWS-3 auction the average per MHz-POP price for the top 40 PEAs was about one-third higher than the average for all PEAs.

Accordingly, AT&T has proposed that the Commission place *Category 2* spectrum in the first instance in the reserve, prioritizing Category 1 licenses for the non-reserve. Under this approach *every* bidder in the auction would have a chance to obtain the relatively unimpaired Category 1 spectrum, because reserve-eligible bidders that want Category 1 spectrum can always bid in the non-reserved part of the auction.

In addition to the above, we discussed the status of the pending AT&T/DIRECTV transaction, and we encouraged expeditious resolution of the matter.

In accordance with the Commission's rules, this letter is being filed electronically with the Secretary for inclusion in the public record.

Sincerely,

A handwritten signature in black ink, appearing to be 'JM', with a long horizontal line extending to the right.

Joan Marsh

cc: Commissioner O'Rielly
Erin McGrath