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July 9, 2015

Via Electronic Filing

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

Re: ***Written 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 30, 2015, T-Mobile USA, Inc. ("T-Mobile") proposed a modified "trigger" for initiating bidding on reserve spectrum in the forward auction portion of the forthcoming 600 MHz Incentive Auction.[1] T-Mobile proposed that bidding on reserve spectrum begin when forward auction bidding first reaches (1) an average of $2.00 per MHz-POP in the top 40 Partial Economic Areas ("PEAs") or (2) the sum of the revenue needed to purchase the 600 MHz spectrum from broadcasters in the reverse auction, repack non-selling broadcasters, and reimburse the Federal Communications Commission's incentive auction administrative costs, whichever occurs first. This trigger would apply only to the commencement of bidding by reserve-eligible bidders on reserve spectrum; the Commission's proposed Final Stage Rule ("FSR") trigger would remain unchanged.[2] By separating the reserve trigger from the auction rules designed to ensure all statutorily prescribed costs are covered, T-Mobile's proposal will ensure that the spectrum reserve successfully provides competitive carriers a real opportunity to purchase 600 MHz spectrum at market prices.

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1 Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, FCC Secretary, AU Docket No. 14-252 (June 30, 2015) ("T-Mobile June 30 Ex Parte").

2 The two-pronged FSR would be triggered when (1) auction proceeds in the largest 40 PEAs exceed an average price of $1.25 per MHz-POP ***and*** (2) auction proceeds are sufficient to reimburse broadcasters that sell their spectrum to the Commission, repack the remaining broadcasters, and cover the Commission's administrative costs. *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, 29 FCC Rcd 15750, ¶¶ 46-47, 49, 55-56 (2014).

The Commission established the forward auction spectrum reserve in response to the demonstrated fact that the nation's largest mobile broadband providers have both "an incentive and ability . . . to bid for the [600 MHz] spectrum in an attempt to stifle competition that may arise if multiple licensees were to hold low frequency spectrum."[3] The United States Department of Justice ("DOJ") has consistently supported this Commission conclusion, most recently by stating 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."[4] Both the Commission and DOJ agree that the two largest wireless carriers, which together hold more than 80 percent of the available low-band spectrum in the nation's largest markets, have compelling economic incentives to bid above market value in the 600 MHz forward auction to maintain their near-exclusive control of scarce, high utility, competition-enhancing spectrum. Rather than give competitive carriers a discount, the Commission's spectrum reserve should ensure that these carriers have an opportunity to bid for some 600 MHz spectrum at market rates without having to outbid foreclosure pricing.

The Commission's proposed reserve trigger, however, appears to assume bidders will bid in a straightforward manner, only seeking spectrum where they most need it to serve existing customers and support future growth, but will not bid supra-market prices for additional blocks to undercut rivals' ability to compete. Under the staff's proposal, the reserve would be triggered only after satisfaction of *both* a price target ($1.25 per MHz-POP in the 40 largest PEAs) and a cost target that covers all mandated auction costs. The latter figure, of course, is likely to exceed tens of billions of dollars and not be reached until well into the later rounds of the forward auction. As numerous commenters have emphasized, this approach delays the initiation of reserve spectrum bidding until the forward auction is at or near completion; *i.e.*, once bids reach the FSR, the forward auction can close as soon as supply and demand equalize – perhaps very shortly thereafter in many PEAs. In effect, the staff's recommendation defers reserve bidding so much that it *creates new strategic bidding opportunities for the two largest carriers, thereby undercutting the purpose of the reserve.*[5]

This deferral of reserve bidding provides the largest carriers significant "runway" to drive prices to foreclosure levels in key markets. In particular, high clearing costs – increasingly likely given the unprecedented AWS-3 auction prices and resultant broadcaster expectations – give the two low-band rich carriers many rounds to bid up prices in these target markets. Instead of

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3 *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, ¶ 62 (2014).

4 Letter from William J. Baer, United States Department of Justice, to Marlene H. Dortch, FCC Secretary, WT Docket No. 12-269, at 2 (June 24, 2015).

5 *See* Letter from Competitive Carriers Association, to Marlene H. Dortch, FCC Secretary, AU Docket No. 14-252, at 2 (July 6, 2015); Reply to Oppositions of Competitive Carriers Association, WT Docket No. 12-269, at 3-5 (Oct. 6, 2014); T-Mobile June 30 Ex Parte at 2-3; Letter from Regina M. Keeney, Counsel to Sprint Corporation, to Marlene H. Dortch, FCC Secretary, AU Docket No. 14-252, at 2 (June 25, 2015).

expressing demand in a straightforward way – *e.g.*, 20 or 30 MHz in all, or most, PEAs – the two largest carriers will have the incentive and ability to take their bidding eligibility and apply it to a subset of key markets, demanding numbers of blocks that collectively exceed supply in those markets. Round after round these carriers can concentrate their bidding in a subset of the nation's largest PEAs, withholding their demand from the broader array of markets. In this way, these carriers can ensure that prices in those key PEAs steadily rise each round (with their eligibility stored in just these target markets), while prices in the vast majority of markets increase only incrementally, if at all.

Other aspects of the proposed procedures accentuate the problems with this scenario. For example, the clock price only rises in a PEA when demand exceeds supply in that market. Even with straightforward demand expressions by reserve-eligible bidders across all PEAs, *aggregate* reserve-eligible demand could remain at, or below, supply in most other PEAs. Further, by parking on a few strategically important PEAs, the two largest carriers can maintain enough eligibility, even assuming a 100% activity requirement, to acquire the other PEAs once they have shut out other bidders. As a result, clock prices in the vast majority of markets will remain stagnant, postponing triggering the FSR, while prices are driven disproportionately high in the few demand-concentrated markets whose clocks continue to rise. In parallel, the Commission proposes to reduce the size of the reserve in a PEA if reserve-demand is either below the projected size of the reserve or if only a single reserve-eligible bidder remains in a PEA when reserve bidding commences. Taken together, these proposals effectively deny reserve-eligible bidders the bidding flexibility necessary to respond to high prices in key large markets to counter foreclosure price bidding.

Triggering reserve bidding at an average of $2.00 per MHz-POP in the largest 40 PEAs (***or*** when the cost component of the FSR is met, whichever occurs first) is a simple refinement that will safeguard the public policy goals of creating a spectrum reserve in this auction. This proposal effectively eliminates significant strategic bidding while still ensuring that all successful bidders share in funding spectrum reallocation through the incentive auction. This refinement does not diminish the likelihood of achieving the cost component of the FSR. On the contrary, it is likely to encourage more aggressive reserve spectrum bidding by a larger number of bidders, thereby increasing the likelihood of achieving the clearing target and band plan.[6]

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[6] Delaying reserve bidding until late in the auction creates both foreclosure risk and the potential for a smaller reserve or no reserve in many PEAs. As described herein, these risks can be largely ameliorated by minor rule refinements that prevent bidders from concentrating bidding in a small number of key PEAs and raising prices in those PEAs to foreclosure levels without reaching the overall cost prong of the FSR. While T-Mobile's proposal discussed herein achieves that result, Sprint notes that a similar result can be achieved by limiting forward auction bidders to bidding on three 5 x 5 MHz spectrum blocks per PEA (30 MHz per PEA) until the FSR is triggered, at which time the limitation would be removed. This alternative would drive bidders to spread their bids across PEAs, thereby preventing strategic bidding concentration and facilitating satisfaction of the cost prong of the FSA and thus the clearing target for that auction stage.

Without T-Mobile's refinement of the reserve trigger, or some other approach that moves the initiation of spectrum reserve bidding towards the start of the auction, the reserve is likely to be effectively reduced, if not totally eliminated in key PEAs as foreclosure bidding causes reserve-eligible carriers to drop out before the reserve is triggered.[7] Similarly, the reserve can be reduced (if not eliminated) by the time reserve bidding commences, because fewer reserve-eligible bidders are likely to still have eligibility in many PEAs. The Commission can keep the FSR intact while adopting and implementing T-Mobile's proposed reserve bidding trigger – thereby providing a strong counter to non-straightforward or foreclosure-directed bidding by any party. For all of these reasons, Sprint enthusiastically supports T-Mobile's $2.00 MHz-POP reserve trigger plan.

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,

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[7] *See* Letter from Lawrence R. Krevor, Sprint Corporation, to Marlene H. Dortch, FCC Secretary, AU Docket No. 14-252 (May 20, 2015). Sprint supports the most readily implementable change that moves the reserves closer to the start of the auction.