

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Eighteenth Annual Report on the State of Mobile	)	WT Docket No. 15-125
Wireless Competition	)	
	)	
	)	

**REPLY COMMENTS OF T-MOBILE USA, INC.**

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T-Mobile USA, Inc. (“T-Mobile” or the “Company”)<sup>1</sup> provides these reply comments in response to the Wireless Telecommunications Bureau’s Public Notice concerning the state of mobile competition in the United States.<sup>2</sup>

**I. INTRODUCTION AND EXECUTIVE SUMMARY**

The market for wireless services is not sufficiently competitive. Since the Seventeenth Mobile Competition Report Public Notice,<sup>3</sup> the Commission has held two spectrum auctions;<sup>4</sup> adopted rules in its Mobile Spectrum Holdings proceeding to help address the high concentration

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<sup>1</sup> T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly traded company.

<sup>2</sup> See *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Public Notice, WT-Docket No. 15-125, DA 15-647 (May 29, 2015) (“*Eighteenth Report Public Notice*”).

<sup>3</sup> *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Public Notice, 28 FCC Rcd 7305 (May 17, 2013) (“*Seventeenth Report Public Notice*”).

<sup>4</sup> See *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Closes*, Public Notice, 29 FCC Rcd 2044 (Feb. 28, 2014) (announcing that ten megahertz of spectrum had been successfully auctioned for \$1.564 billion); *Auction of Advanced Wireless Services (AWS-3) Licenses Closes*, Public Notice, 30 FCC Rcd 630 (Jan. 30, 2015) (“*AWS-3 Auction Closing PN*”) (announcing that 65 megahertz had been successfully auctioned for a net total of more than \$41 billion).

of low-band spectrum licenses by the two largest carriers;<sup>5</sup> adopted a declaratory ruling to clarify and guide the negotiation of data roaming agreements in a marketplace dominated by AT&T and Verizon;<sup>6</sup> and begun finalizing rules for what may be the last auction of critically important low-band spectrum for the foreseeable future.<sup>7</sup> These events highlight both the threats to competition from allowing the dominance of the two largest incumbents to go unchecked and the potential opportunity for the Commission to expand access to wireless broadband and innovation to more Americans by creating conditions that allow wireless broadband competition to flourish.

Notwithstanding efforts to check the market power of the two dominant incumbents, there are simply too many markets where too few rivals hold sufficient low-band spectrum to compete on coverage. Low-band spectrum is essential for offering indoor service, where 80 percent of all data consumption occurs, and critical for providing coverage in less populated areas. As a result, the two dominant carriers remain largely unresponsive to relentless price competition by T-Mobile and other competitive carriers. The two dominant incumbents rely instead on their superior spectrum portfolios to distinguish their products and services from the market as a whole. The lack of direct competition, in turn, forces consumers to pay billions of dollars more than they should for mobile broadband Internet access services in the United States and creates a vicious circle of service disparity that rewards the dominant carriers' strategy of starving would-be rivals of the spectrum resources necessary to compete.

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<sup>5</sup> *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133 (2014) (“*Mobile Spectrum Holdings Report and Order*”).

<sup>6</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Declaratory Ruling, 29 FCC Rcd 15483 (2014) (“*Data Roaming Declaratory Ruling*”).

<sup>7</sup> Chairman Tom Wheeler, *Crafting Balanced Incentive Auction Rules in the Public Interest*, OFFICIAL FCC BLOG (June 17, 2015), <https://www.fcc.gov/blog/crafting-balanced-incentive-auction-rules-public-interest>.

T-Mobile is fighting back where it can. Leveraging its strong mid-band spectrum portfolio, T-Mobile has launched a series of Un-carrier initiatives that have propelled subscriber growth by delighting consumers. Many consumers now enjoy more of the benefits of competition as a result, but these gains are tenuous and easily reversed, especially if T-Mobile and other competitive carriers fall prey to the two dominant carriers' attempts to constrain the supply of and access to low-band spectrum so essential to indoor and wide-area coverage. If the Commission wants to solidify and extend the demonstrable consumer benefits that competitive carriers including T-Mobile have generated in the market, the Commission must take immediate, meaningful measures to promote competition and protect consumers.

Specifically, the Commission should bring additional low-band spectrum to market as quickly as possible by holding the 600 MHz auction as scheduled at the beginning of next year. Also, as T-Mobile has asserted previously, the Commission should expand the spectrum reserve in that auction to at least 40 megahertz or half of the total cleared spectrum, which would allow two competitive carriers to acquire 20 megahertz each without having to battle the foreclosure tactics of the dominant carriers. Similarly, the Commission should ensure that the reserve is implemented before prices rise to foreclosure levels, and revise its proposed assignment round procedures to prevent the largest and best funded carriers from outspending all other bidders to acquire the least-impaired spectrum blocks.<sup>8</sup> The FCC also should not outright bar joint bidding

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<sup>8</sup> Many parties are currently working to find consensus solutions to the complicated issues presented by the first-of-its-kind incentive auction. Former Representative Henry Waxman, for example, has offered a compromise proposal that would accelerate the spectrum reserve trigger in high-clearing scenarios while maintaining the Commission's proposed two-pronged trigger at lower clearing targets. The proposal would also promote unlicensed operations at clearing targets above 84 megahertz by reserving access to the 600 MHz band duplex gap for white space devices, but prioritize the needs of licensed carriers at lower clearing targets by ensuring access to the low-band spectrum necessary to satisfy exploding wireless broadband demand. See Letter from Henry A. Waxman, Chairman, Waxman Strategies, to Hon. Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (July 9, 2015) ("*Waxman Proposal*").

between national carriers or between a national carrier and others, including smaller regional bidders. To do so unnecessarily undermines a robust auction by handicapping T-Mobile and smaller bidders from gaining the financial footing sufficient to bid against the deep pockets of AT&T and Verizon.

Furthermore, the Commission should thoroughly analyze the competitive harms of secondary-market transactions that trigger “enhanced factor” review, and it should insist on an especially compelling showing that public benefits outweigh potential competitive harms.<sup>9</sup> The Commission had good cause to adopt higher standards of proof and scrutiny when spectrum concentration is excessive.<sup>10</sup>

Finally, the Commission must also act to promote timely and commercially reasonable access to data roaming. Obtaining data roaming agreements with the “must have” roaming partners of AT&T and Verizon at commercially reasonable rates remains a serious problem affecting consumers and the competitive marketplace that the Commission must address. The Commission stated its intention in the *Open Internet Order* to revisit the issue of roaming in the context of mobile broadband Internet access service.<sup>11</sup> We urge the Commission to take steps in the wake of the *Open Internet Order* to ensure a competitive roaming marketplace.

Since first assuming leadership of the Commission, Chairman Wheeler has stressed “competition, competition, competition.”<sup>12</sup> Protecting and promoting competition in the face of

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<sup>9</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6239 ¶ 283.

<sup>10</sup> *Id.* at 6135-36 ¶ 5 (explaining that the rules adopted in the *Mobile Spectrum Holdings Report and Order* were designed to “protect against the risk that further concentration of spectrum, particularly low-band spectrum, would have significant effects on competition in the marketplace in the foreseeable future”).

<sup>11</sup> *Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling and Order*, 80 FR 19737 ¶¶ 523-526 (2015) (“*Open Internet Order*”).

<sup>12</sup> See Prepared Remarks of FCC Chairman Tom Wheeler, *The Facts and Future of Broadband Competition* (Sep. 4, 2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329161A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329161A1.pdf); see also Mike Snider, *New FCC (continued...)*

a wireless duopoly offers the best hope for sustaining a strong four carrier market that increases wireless broadband investment, innovation and deployment.

## **II. T-MOBILE'S PRO-CONSUMER INITIATIVES HAVE ARMED THE PUBLIC WITH AN ALTERNATIVE TO THE INDUSTRY'S DOMINANT CARRIERS.**

T-Mobile is proud of the value it provides to its customers and will continue to develop “Un-carrier” programs to address customer pain points. Frustrated consumers have embraced these service innovations. T-Mobile has added approximately 16 million total customers since the launch of its Un-carrier initiatives in 2013, and the Company expects to officially become the third-largest carrier this quarter.<sup>13</sup> Furthermore, T-Mobile’s products and programs are popular with a broad array of consumers: 56 percent of the Company’s subscribers are members of a minority group.<sup>14</sup> T-Mobile’s customer base is particularly diverse when compared to other national carriers, which cumulatively serve subscribers that are less than one-third minority.<sup>15</sup>

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*Chairman Seeks to Stoke Competition*, USA TODAY (Nov. 14, 2015), available at <http://www.usatoday.com/story/tech/personal/2013/11/14/fcc-chairman-tom-wheeler/3526303/> (“We've got some great people here at the FCC, but the forces of competition are more agile and more nimble to affect extension of services, quality of service and throughput pricing than we can ever be by regulation. So competition, competition, competition. That is the key to economic growth.”).

<sup>13</sup> See, T-Mobile US, Inc., *Investor Factbook Q1 2015* at 4, <http://investor.t-mobile.com/Cache/1001197521.PDF?Y=&O=PDF&D=&fid=1001197521&T=&iid=4091145> (reporting that “[s]ince the launch of its Un-carrier initiative eight quarters ago, T-Mobile has added nearly 14 million total customers”); *T-Mobile Adds 2.1 Million Customers in the Second Quarter 2015*, T-MOBILE MEDIA RELATIONS (July 9, 2015), <http://newsroom.t-mobile.com/news/q2-2015-customer-additions.htm> (T-Mobile added 2.1 million customers in the second quarter of 2015).

<sup>14</sup> See *Company Information – Diversity*, T-MOBILE, [http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt\\_Tab\\_Diversity](http://www.t-mobile.com/Company/CompanyInfo.aspx?tp=Abt_Tab_Diversity) (last visited July 14, 2015) (“*T-Mobile Diversity Page*”) (56 percent of subscribers are from a minority group, while 44 percent are identified as white). See *Eighteenth Report Public Notice* at 5 (seeking comment on the analysis of adoption rates of mobile wireless services among different socio-economic and demographic segments of the population).

<sup>15</sup> See *T-Mobile Diversity Page* (Verizon, AT&T and Sprint collectively serve subscribers that are approximately 68 percent white).

T-Mobile also has invested more than seven billion dollars to capital investments and spectrum acquisitions.<sup>16</sup> This level of investment is superior to any other nationwide carrier on both a “per-subscriber” basis and compared to annual revenue.<sup>17</sup> T-Mobile devoted 24 percent of all revenues in 2014 to capital investments or spectrum acquisitions,<sup>18</sup> but the Company’s nearest nationwide competitor invested only 19 percent.<sup>19</sup> In per subscriber terms, T-Mobile invested \$131.18 per subscriber in 2014<sup>20</sup> – more than either AT&T or Verizon, which invested only \$119.25<sup>21</sup> and \$97.18 per subscriber, respectively.<sup>22</sup>

T-Mobile also continues to expand its footprint. Its 4G LTE network currently covers over 275 million pops, and it plans to cover 300 million by the end of 2015 – an LTE footprint expansion of approximately one million miles this year alone.

T-Mobile wants to continue these efforts to challenge a duopoly that is fighting to maintain the *status quo*. But the lack of meaningful constraints on the dominant carriers’ ability to prevent their rivals from acquiring the low-band resources necessary to compete threatens the

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<sup>16</sup> T-Mobile US, Inc., 2014 Annual Report (Form 10-K) at 22 (Feb. 19, 2015) (purchases of property and equipment of \$4,317M, and purchases of spectrum licenses and other intangible assets, including deposits of \$2,900M). *See Eighteenth Report Public Notice* at 7 (seeking information on capital investments/expenditures in service providers’ networks).

<sup>17</sup> *See Eighteenth Report Public Notice* at 7 (seeking information relating to investment per subscriber and investment as a percentage of revenue).

<sup>18</sup> T-Mobile US, Inc., 2014 Annual Report (Form 10-K) at 22 (Feb. 19, 2015) (total investment of \$7,217M over total revenues of \$29,564M).

<sup>19</sup> AT&T Inc., 2014 Annual Report (Form 10-K) at 14, 29 (Feb. 20, 2015) (reporting \$73,992M in wireless revenues, \$21,199M in capital expenditures, 53% of which was devoted to wireless, and \$3,141M in spectrum acquisitions).

<sup>20</sup> T-Mobile US, Inc., 2014 Annual Report (Form 10-K) at 22 (Feb. 19, 2015) (total investment of \$7,217M over customers of 55.018M).

<sup>21</sup> AT&T Inc., 2014 Annual Report (Form 10-K) at 14, 29 (Feb. 20, 2015) (total investment of \$14,376M over 120.554M subscribers).

<sup>22</sup> Verizon Comm. Inc., 2014 Annual Report (Form 10-K) at 2, 26 (Feb. 23, 2015), *available at* [http://www.verizon.com/about/sites/default/files/2014\\_vz\\_annual\\_report.pdf](http://www.verizon.com/about/sites/default/files/2014_vz_annual_report.pdf) (total investment of \$10,515M over 108.2M retail connections).

ability of T-Mobile and every other non-dominant carrier to sustain the momentum T-Mobile has gained in the marketplace.<sup>23</sup> Continued deployment, investment and innovation in wireless broadband services depend on the adoption of policies that promote the broad dissemination of spectrum licenses, particularly low-band spectrum licenses.

### **III. THE MOBILE WIRELESS MARKET IS NOT SUFFICIENTLY COMPETITIVE.**

The Commission has not designated the market for mobile wireless services as “competitive” in its last several mobile competition reports.<sup>24</sup> The high concentration of industry customers, revenues, profits, and low-band spectrum by AT&T and Verizon indicate an attenuated level of competition that does not benefit consumers. As a result of their extensive low-band spectrum holdings – secured in part as a result of their original status as the local monopoly<sup>25</sup> – AT&T and Verizon can offer cost-effective coverage inside buildings and over wide areas that cannot be matched by competitors that lack low-band spectrum. As shown in the chart below, the two dominant carriers control the vast majority of market share, and all other

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<sup>23</sup> See Marguerite Reardon, *For T-Mobile’s Wireless Ambitions, a Make-Or-Break Moment Looms*, CNET (June 23, 2015), <http://www.cnet.com/news/why-t-mobile-is-crusading-for-a-leg-up-in-the-wireless-wars/> (describing the success of T-Mobile’s Un-carrier programs and the Company’s efforts to get the Commission to adopt rules that promote competition).

<sup>24</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd 15311, 15315 ¶ 6 (WTB 2014) (“*Seventeenth Mobile Wireless Competition Report*”) (“Consistent with the Commission’s first seven *Reports*, and the *Fourteenth* and subsequent *Reports*, this *Seventeenth Report* does not reach an overall conclusion or formal finding regarding whether or not the CMRS marketplace was effectively competitive”).

<sup>25</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6157 ¶ 46 (“Verizon Wireless and AT&T each were the beneficiaries from their predecessors in interest of one of the two initial cellular licenses that were granted to an incumbent local exchange carrier and a new entrant in the 1980s, and have since further increased their spectrum holdings within [the Cellular] band.”).

carriers are forced to compete with each other for the less than one-third of consumers that remain.<sup>26</sup>

<b>Nationwide Service Providers</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015 (Q1)</b>
<b>AT&amp;T</b>	32.4%	31.7%	32.5%	32.4%
<b>Sprint</b>	16.8%	15.9%	15.1%	15.2%
<b>T-Mobile</b>	9.2%	13.4%	14.8%	15.1%
<b>Verizon</b>	35.3%	36.1%	36.2%	35.9%
<b>Total National Service Provider Market Share</b>	<b>93.7%</b>	<b>97.1%</b>	<b>98.6%</b>	<b>98.6%</b>
<b>Regional Service Providers</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015 (Q1)</b>
<b>Cincinnati Bell</b>	0.1%	0.1%	0.0%	NA
<b>Leap</b>	1.6%	1.3%	NA	NA
<b>MetroPCS</b>	2.7%	NA	NA	NA
<b>NTELOS</b>	0.1%	0.1%	0.1%	0.1%
<b>United States Cellular Corp.</b>	1.8%	1.4%	1.3%	1.3%
<b>Total Regional Service Provider Market Share</b>	<b>6.3%</b>	<b>2.9%</b>	<b>1.4%</b>	<b>1.4%</b>

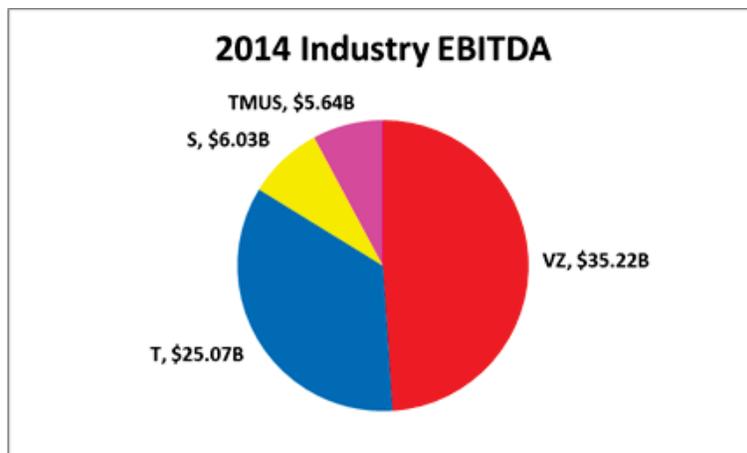
Similarly, AT&T and Verizon have priced their services knowing they have a captive market and that one is really only competing with the other. AT&T and Verizon consistently charge more than other carriers and impose overage fees for customers that exceed their data allotment. Nonetheless, competitive carriers lag far behind AT&T and Verizon’s subscriber numbers, despite charging significantly lower prices, because they are competing with each other for those customers that are more sensitive to price than coverage. These price-sensitive consumers are also the most reliant on their mobile devices for access to critical services and

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<sup>26</sup> This table is derived from independent third-party analysis. See John C. Hodulik, *et al.*, *US Wireless 411: Version 56*, UBS SECURITIES LLC, 22 (May 14, 2015) (“*US Wireless 411*”).

would most benefit from robust, sustainable competition.<sup>27</sup> But the two largest carriers have little interest in them. Verizon’s Chief Financial Officer Fran Shammo, for example, said in April 2015, “customer[s] who [are] price-sensitive . . . — that’s probably the customer we’re not going to be able to keep.”<sup>28</sup>

AT&T and Verizon have captured a disproportionate amount of the industry’s revenues and profits because this tiered market structure facilitates limited price competition.<sup>29</sup> The chart below shows that the profits of AT&T and Verizon in 2014 were *ten times* that of T-Mobile.<sup>30</sup>



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<sup>27</sup> For example, lower-income consumers are more than twice as likely to use their mobile devices during a job search, and nearly four times as likely to actually submit a job application using a smartphone. Aaron Smith, *U.S. Smartphone Use in 2015*, PEW RESEARCH CENTER 5 (Apr. 1, 2015), [http://www.pewinternet.org/files/2015/03/PI\\_Smartphones\\_0401151.pdf](http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf). Similarly, Mobile Future stated in its comments that more than fifty percent of poor households are “wireless-only” and often “depend on wireless alone for broadband access.” Comments of Mobile Future, WT Docket No. 15-125, 5 (June 29, 2015) (citing National Center for Health Statistics, “Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2013,” (July 2014), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf>).

<sup>28</sup> Joshua Brustein, *Verizon Bids Good Riddance to Customers Leaving for a Cheaper Deal*, BLOOMBERG BUSINESS (Apr. 21, 2015), <http://www.bloomberg.com/news/articles/2015-04-21/verizon-bids-good-riddance-to-customers-leaving-for-a-cheaper-deal>.

<sup>29</sup> See Comments of Competitive Carriers Association, WT Docket No. 15-125, 9 (June 29, 2015) (“CCA Comments”) (noting that AT&T and Verizon are predicted to account for 71 percent of industry revenues in 2015).

<sup>30</sup> This information is derived from independent third-party analysis. See *US Wireless 411* at 30.

In light of these figures that show the disparity between the dominant carriers and their closest competitors, it is entirely appropriate that the Commission continue to use profitability metrics in its analysis of market competitiveness.<sup>31</sup>

Some commenters have offered T-Mobile's recent successes in the market as proof that no further action is needed.<sup>32</sup> To be clear: T-Mobile's disruptive business model has met with success, but without scale and sufficient low-band spectrum, the Company is limited in its ability to reach a broader customer base with its Un-carrier initiatives.<sup>33</sup> If, as the Commission has stated, consumers benefit from four competitive nationwide carriers in the mobile wireless marketplace,<sup>34</sup> it must ensure access to the critical resources necessary to sustain meaningful four-carrier competition.<sup>35</sup>

Finally, price movement by the dominant carriers is the exception, not the rule. CTIA – The Wireless Association cited Verizon's and AT&T's recent price reduction on certain plans as

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<sup>31</sup> See *Seventeenth Mobile Wireless Competition Report*, 29 FCC Rcd at 15330 ¶ 42 (finding profitability to be an appropriate measure of competition). See also *Eighteenth Report Public Notice* at 4 (requesting comment on the use of profitability measures in its analysis).

<sup>32</sup> See Comments of AT&T, WT Docket No. 15-125, 3-5 (June 29, 2015); Comments of CTIA, WT Docket No. 15-125, 29 (June 29, 2015) (“*CTIA Comments*”).

<sup>33</sup> See Reardon, *supra* note 23 (explaining that “T-Mobile has become the face of the push to set aside a larger swath of spectrum for smaller players, so deeper-pocketed AT&T and Verizon don't dominate the auction,” and that “[T-Mobile] is in desperate need of more spectrum in order to propel its coverage beyond the major metropolitan markets. Without that coverage boost, T-Mobile just isn't a credible alternative to the Big Two.”).

<sup>34</sup> See Statement of Chairman Wheeler on Competition in the Mobile Marketplace, News Release (Aug. 6, 2014) (“Four national wireless providers are good for American consumers.”).

<sup>35</sup> Letter from William J. Baer, Assistant Attorney General, U.S. Department of Justice to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 (June 24, 2015) (“*DOJ 2015 Submission*”) (“[A]dequate spectrum resources are essential for any firm to meet consumer demand and function as an effective competitor in the wireless market”); Letter of William Lehr, Consultant to T-Mobile USA, Inc. to Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (July 6, 2015) (“Strong future competition in the mobile broadband market will come from allowing smaller providers to gain access to lower-frequency spectrum that will enable them to compete more effectively with the dominant providers because they will have enhanced indoor and outdoor coverage. Heightened competition, in turn, will force AT&T and Verizon to respond with lower prices or better service offerings across their entire customer base, directly benefitting consumers and encouraging innovation in the marketplace.”).

evidence that the wireless market is competitive.<sup>36</sup> As with other oligopolies, however, Verizon and AT&T move prices infrequently and, when prices are changed, they move in the same direction by roughly the same magnitude.<sup>37</sup> Moreover, whatever limited consumer benefits may arise from periodic pricing adjustments by the two dominant carriers will be fleeting unless competitive carriers have the spectrum resources needed to compete on coverage as well as price.

#### **IV. THE COMMISSION’S SPECTRUM POLICIES SHOULD SUPPORT COMPETITION.**

Commenters agree with the Commission that spectrum powers the innovation and consumer benefits the wireless industry has generated for consumers.<sup>38</sup> But the demands placed on commercial spectrum allocations have skyrocketed over the past five years, with more than 32 times the volume of mobile data traffic in 2014 than in 2009.<sup>39</sup> The Commission, recognizing this “spectrum crunch,” has concentrated on bringing additional spectrum resources to market since it last sought comment on the state of mobile wireless competition.

But the Commission must remain diligent, and not only bring additional spectrum allocations to market, but also ensure that in doing so it is supporting and promoting competition.

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<sup>36</sup> *CTIA Comments* at 28.

<sup>37</sup> See *An Examination of Competition in the Wireless Market: Hearing Before the S. Judiciary Comm. – Subcomm. on Antitrust, Competition Policy and Consumer Rights*, 113th Cong. 4-6 (2014) (statement of Matthew F. Wood, Policy Director, Free Press) (describing concentration in the wireless market and parallel pricing between AT&T and Verizon), available at [http://www.freepress.net/sites/default/files/resources/Wireless\\_Competition\\_Testimony\\_Matt\\_Wood\\_02-26-14.pdf](http://www.freepress.net/sites/default/files/resources/Wireless_Competition_Testimony_Matt_Wood_02-26-14.pdf).

<sup>38</sup> See *Seventeenth Mobile Wireless Competition Report*, 29 FCC Rcd at 15356 ¶ 92 (“[R]obust competition depends critically upon the availability of spectrum as a necessary input in the provision of mobile wireless services”). See also, e.g., *CTIA Comments* at 70; Comments of Verizon, WT Docket No. 15-125, 41-42 (June 29, 2015); *CCA Comments* at 10.

<sup>39</sup> *VNI Mobile Forecast Highlights, 2014-2019*, CISCO, [http://www.cisco.com/assets/sol/sp/vni/forecast\\_highlights\\_mobile/index.html#~Country](http://www.cisco.com/assets/sol/sp/vni/forecast_highlights_mobile/index.html#~Country) (last visited July 14, 2015) (“VNI Mobile Forecast Highlights”).

The two largest carriers have historically leveraged their superior spectrum holdings and deep pockets to stave off competition wherever they can.<sup>40</sup> By preventing further concentration of spectrum in the hands of the two dominant providers, the Commission can encourage greater consumer choice and promote the next wave of innovation.

**A. The high concentration of low-band spectrum in the hands of a duopoly threatens sustained competition.**

The Commission has correctly noted that “policies that would allow [dominant carriers] to acquire all or substantially all of the spectrum licenses to be auctioned in the near future . . . or that would allow further concentration in below-1-GHz spectrum in secondary market transactions without enhanced scrutiny, would raise significant competitive issues.”<sup>41</sup>

The Antitrust Division of the United States Department of Justice (“DOJ”) has also emphasized that low-band spectrum is a “competitively critical input” and that “some aspects of wireless coverage and quality, such as strong rural or in-building coverage, simply cannot be provided as cost-effectively without low-frequency spectrum.”<sup>42</sup>

T-Mobile’s real world experience deploying mid- and high-band spectrum supports these findings.<sup>43</sup> T-Mobile must deploy more sites to cover a smaller area (at greater cost) because of the propagation characteristics of its primarily mid-band spectrum holdings. Low-band spectrum also provides vastly superior in-building coverage, an increasingly important network attribute as

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<sup>40</sup> See, *AWS-3 Auction Closing PN*, Attachment B (showing that AT&T and Verizon outspent all other facilities-based carriers by a margin of ten-to-one).

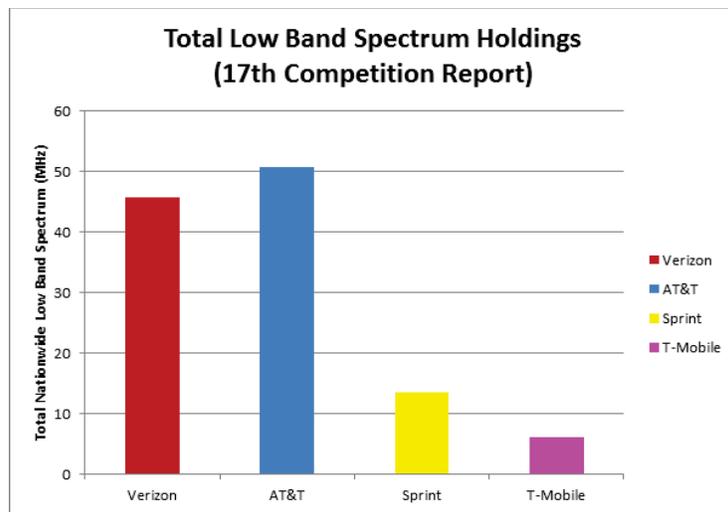
<sup>41</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6148 ¶ 28.

<sup>42</sup> Letter from William J. Baer, Assistant Attorney General, U.S. Department of Justice to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 at 2 (May 14, 2014) (“*DOJ 2014 Submission*”).

<sup>43</sup> Letter from Trey Hanbury, Counsel to T-Mobile to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269 (Apr. 1, 2014), Declaration of Mark McDiarmid at 17-18, 20. CCA echoed these findings in its comments when it explained that “a provider would need to deploy seven cell sites using mid-band spectrum, or 13 cell sites using high-band spectrum, to obtain the same coverage layer that one cell can provide using low-band spectrum.” *CCA Comments* at 12.

the majority of mobile device use moves indoors.<sup>44</sup> Neville Ray, T-Mobile’s Chief Technology Officer, recently reported to the Commission that field tests in Cleveland show up to 50 times greater indoor coverage since deploying 700 MHz spectrum.<sup>45</sup>

Despite the widely acknowledged importance of low-band spectrum to competition, the two largest incumbent carriers hold nearly all of this critical network input. The chart below<sup>46</sup> details the amount of low-band spectrum each nationwide carrier holds, but does not reflect AT&T’s spate of low-band acquisitions currently pending before the Commission.<sup>47</sup>



AT&T and Verizon hold 73 percent of all low-band spectrum on a nationwide average basis and much more in many critical markets.<sup>48</sup> The two incumbents now have the opportunity to further

<sup>44</sup> See Cisco, CISCO SERVICE PROVIDER WI-FI: A PLATFORM FOR BUSINESS INNOVATION AND REVENUE GENERATION 1 (2012), [http://www.cisco.com/c/en/us/solutions/collateral/service-provider/service-provider-wi-fi/solution\\_overview\\_c22-642482.pdf](http://www.cisco.com/c/en/us/solutions/collateral/service-provider/service-provider-wi-fi/solution_overview_c22-642482.pdf) (explaining that 80 percent of all mobile data consumption occurs indoors).

<sup>45</sup> Letter of Neville Ray, Chief Technology Officer, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269 at 5 (June 2, 2015) (“Neville Ray Letter”).

<sup>46</sup> *Seventeenth Mobile Wireless Competition Report*, 29 FCC Rcd at 15311 ¶ 42, as modified by Verizon and T-Mobile Assignment Applications, ULS File Nos. 0006090675, 0006090661 (approved Apr. 23, 2014).

<sup>47</sup> See, *supra* Section IV.C.

<sup>48</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6196 ¶ 153.

entrench that dominant position in the upcoming 600 MHz auction and in a continuing wave of transactions in the secondary market.

Of 134 megahertz of sub-1-GHz spectrum that is suitable and available for mobile broadband use, AT&T and Verizon hold at least 30 megahertz each of low-band spectrum in most markets and up to an eye-popping 108 megahertz in some markets.<sup>49</sup> By comparison, while T-Mobile has acquired low-band spectrum sufficient to support 5+5 megahertz operations in many metropolitan areas, it has nowhere near the depth or geographic coverage of AT&T's and Verizon's low-band spectrum holdings. And as T-Mobile has previously explained, much of the low-band spectrum it acquired has been encumbered by adjacent-channel broadcast operations.<sup>50</sup>

This disparity of low-band spectrum holdings between the two largest carriers and everyone else has given AT&T and Verizon a competitive advantage that they have used to capture the vast majority of market share.<sup>51</sup> As the record before the Commission makes clear, this excessive concentration of low-band spectrum has stifled competition to the detriment of consumers.<sup>52</sup> T-Mobile strongly supports the Commission's decision to recognize the

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<sup>49</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156 ¶ 46 (“[A]fter our decisions today, there will be 134 megahertz of spectrum below 1 GHz suitable and available for the provision of mobile broadband services”). Even after selling a number of 700 MHz A Block licenses to T-Mobile, Verizon still has vast low-band spectrum holdings, comprised of at least 45 MHz in most markets.

<sup>50</sup> See *Neville Ray Letter* at 4.

<sup>51</sup> The most recent available figures show that AT&T and Verizon hold a combined 68 percent of subscribers among nationwide carriers, while Sprint and T-Mobile and Sprint each hold only 15 percent. John C. Hodulik, *et al.*, *US Wireless 411: Version 56*, UBS SECURITIES LLC (May 14, 2015).

<sup>52</sup> In addition to T-Mobile and other competitive carriers, public interest groups have called for a broader distribution of low-band spectrum. See Letter of Open Technology Institute, Public Knowledge, Engine Advocacy, Center for Media Justice, Common Cause, Writers Guild of America West, Institute for Local Self Reliance, and Benton Foundation to Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269 at 3 (Feb. 24, 2015). In addition, a variety of state regulators and advocates have noted that increased low-band spectrum concentration threatens to harm consumers. See, e.g., Letter of Nebraska Public Service Commission to Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269 (Apr. 7, 2015); Letter of Eric Skrmetta, Louisiana Public Service Commission to Tom Wheeler, Chairman, Federal Communications Commission, WT Docket No. 12-269 (Dec. 6, 2013); *Ex Parte* (continued...)

competitive importance of low-band spectrum in its *Mobile Spectrum Holdings Report and Order*.<sup>53</sup>

**B. The incentive auction and the spectrum reserve are critical to competition.**

Perhaps the most alarming consideration relating to the auction of low-band spectrum is the incentive that AT&T and Verizon have to prevent any other carrier from acquiring licenses. In acknowledging the risk of foreclosure, the Commission stated that those few providers with low-band spectrum may have the incentive and ability to “stifle competition that may arise if multiple licensees were to hold low frequency spectrum.”<sup>54</sup> The DOJ has warned the Commission that “a large incumbent may benefit from acquiring spectrum even if its uses of the spectrum are not the most efficient”<sup>55</sup> and that “those with market power may be willing to pay the most to reinforce a leading position.”<sup>56</sup>

The 600 MHz auction is a once-in-a-generation opportunity to acquire greenfield low-band spectrum,<sup>57</sup> and by creating a market-based reserve, the Commission will ensure that non-

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Submission of the Massachusetts Department of Telecommunications and Cable Concerning 600 MHz Incentive Auction, GN Docket No. 12-268, WT Docket No. 12-269 at 6 (Mar. 28, 2014); *Ex Parte* Communications of the Iowa Utilities Board, GN Docket No. 12-268 (Apr. 28, 2015); *Ex Parte* Communication of the Public Service Commission of West Virginia, GN Docket No. 12-268, WT Docket No. 12-269 (May 13, 2015); Letter of the State of Connecticut Public Utilities Regulatory Authority, GN Docket No. 12-268, WT Docket No. 12-269, (June 17, 2015); Letter of Charles A. Acquard, Executive Director, National Association of State Utility Consumer Advocates (NASUCA) to Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269 (Mar. 19, 2015).

<sup>53</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6148 ¶ 28.

<sup>54</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6165 ¶ 62. See also *Seventeenth Mobile Wireless Competition Report*, 29 FCC Rcd at 15356 ¶ 92 (“[S]pectrum acquisition can be valuable in furthering a service provider’s competitive position as well as reducing opportunities available to its rivals.”).

<sup>55</sup> *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269, 11 (Apr. 11, 2013) (“*DOJ 2013 Submission*”).

<sup>56</sup> *DOJ 2015 Submission* at 3. DOJ explicitly urged the Commission to “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.” *Id.* at 2.

<sup>57</sup> *Id.* at 6134-35 ¶ 2.

dominant carriers have access to at least some low-band spectrum. Furthermore, by placing only Category 1 licenses (*i.e.*, licenses that are only 0-15 percent impaired) in the reserve, the Commission is ensuring that competitive carriers will be able to quickly deploy service and benefit consumers in the mobile wireless market. But the Commission should adopt additional measures in the auction proceeding to promote investment, innovation, and competition.<sup>58</sup> By expanding the spectrum reserve, ensuring that the reserve is triggered prior to foreclosure prices, and revising the auction's assignment round rules, the Commission can ensure that competitive carriers have access to the quantity and quality of low-band spectrum they need to compete in the mobile wireless marketplace.<sup>59</sup>

T-Mobile supports the Commission's plan to begin the 600 MHz auction in early 2016.<sup>60</sup>

Any delay of the auction would benefit only those two carriers that already have significant low-

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<sup>58</sup> See generally, *e.g.*, Save Wireless Choice Coalition, [www.SaveWirelessChoice.com](http://www.SaveWirelessChoice.com) (explaining key tenets of coalition advocacy and identifying charter members as C Spire, CCA, COMPTTEL, Computer & Communications Industry Association (CCIA), the Consumer Federation of America, DISH, Engine Advocacy, NTCA – The Rural Broadband Association, Public Knowledge, RWA, Sprint Corporation, T-Mobile and the Writers Guild of America, West). As the Coalition has explained, numerous non-nationwide carriers, such as Bluegrass Cellular, Chat Mobility and Nex-Tech Wireless; public interest organizations, such as the Benton Foundation, Common Cause, and the National Hispanic Media Coalition; and dozens of entrepreneurs and startups, including Fligoo, Poacht, and SportsFeed, have expressed support for increasing the size of the spectrum reserve; see also Letter from Non-Nationwide Wireless Carriers to The Honorable Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268 and WT Docket No. 12- 269 (Apr. 22, 2015); Letter from Nonprofit Groups to The Honorable Tom Wheeler, Chairman, Federal Communications Commission, WT Docket No. 12-269, GN Docket No. 12-268 (Feb. 24, 2015); Letter from Engine Advocacy to Tom Wheeler, Chairman, Federal Communications Commission, WT Docket No. 12-269, GN Docket No. 12-268, AU Docket No. 14-252 (May 13, 2015). Additionally, letters from thousands of concerned citizens have flooded the incentive auction and Mobile Spectrum Holdings dockets which urge the Commission to not delay the auction and to expand the amount of spectrum reserved for carriers that lack low-band spectrum.

<sup>59</sup> See *Eighteenth Report Public Notice* at 5 (asking what additional spectrum will be required to support next generation technologies and mobile broadband applications).

<sup>60</sup> See Statement of FCC Chairman Tom Wheeler Regarding DC Circuit Decision to Uphold Incentive Auction Framework, News Release (June 12, 2015) (“We are gratified that the Court agrees with the Commission’s balanced, market-based approach to freeing up more valuable spectrum for innovative wireless broadband services. This decision provides the Commission and all stakeholders with the certainty necessary to proceed apace toward a successful auction in the first quarter of next year.”). See also Malathi Nayak, *Broadcast TV Airwaves Auction 'On Track' For Early 2016: FCC Chief*, REUTERS (Apr. 15, 2015).

band spectrum holdings, perpetuating their dominance of the competitive landscape. A wide range of entities are expected to participate aggressively in the auction, and many likely bidders have access to large amounts of capital due to the generally favorable financing environment.<sup>61</sup> One economic consulting firm has estimated that failing to hold the incentive auction in early 2016 would result in “unrealized net revenues and consumer surplus for wireless mobile services that can never be recovered” that could amount to \$62 billion of lost opportunity for every year of delay.<sup>62</sup> By holding the auction as quickly as possible, the Commission can both promote competition and maximize the economic opportunities presented by this once-in-a-generation auction.

Expanding the amount of spectrum reserved for those carriers without significant low-band spectrum holdings in a given market would also promote competition by allowing more than one competitive carrier to acquire the 20 megahertz block that has become “table stakes” in the wireless industry.<sup>63</sup> The Commission has proposed a maximum reserve of 30 megahertz that will diminish quickly in low-clearing scenarios.<sup>64</sup> But 30 megahertz would be inadequate for

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<sup>61</sup> See, e.g., Kagan Media Appraisals, *Can the FCC Attract a Full House for the 2016 Broadcast Incentive Auction?* at 23 (Feb. 11, 2015) (“Kagan Report”), attached to Comments of Expanding Opportunities for Broadcasters Coalition, AU Docket No. 14-252, GN Docket No. 12-268 at 9-10 (Feb. 19, 2015) (“AT&T has robust access to capital at very attractive rates.”); see also *id.* at 15-16 (noting that Verizon “continues to have the highest wireless EBITDA margin in the industry”). AT&T has already committed to spend at least \$9 billion in the incentive auction, see AT&T/DirecTV, Description of Transaction, Public Interest Showing, and Related Demonstrations, MB Docket No. 14-90 at 51 n.166 (June 11, 2014), and has access to capital from a wide variety of sources at extremely competitive rates. See Kagan Report at 23 (observing that AT&T’s credit-worthiness is ranked A2 by Moody’s Investors Services, A by Fitch Ratings, and A- by Standard and Poor’s). Verizon is also exceptionally well-capitalized; in 2014, Verizon issued nearly \$30.8 billion in public debt, or 53% of the total debt issued by the four largest mobile wireless broadband providers. See Kagan Report at 33. In contrast, T-Mobile issued just \$3 billion in debt, or five percent of the total. *Id.*

<sup>62</sup> See Coleman Bazelon & Giulia McHenry, The Brattle Group, *Realizing the Benefits from the FCC’s Incentive Auction without Delay* at 13 (Feb. 20, 2015), attached to Comments of LocusPoint Networks, LLC, AU Docket No. 14-252, GN Docket No. 12-268 at 4 (Feb. 20, 2015).

<sup>63</sup> See *CCA Comments* at 13.

<sup>64</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6210-11 ¶ 191.

more than one competitive provider to secure a 20 megahertz block, which the Commission has found “particularly valuable” for broadband deployment.<sup>65</sup> In addition, the current framework maintains 40 megahertz of unreserved spectrum at nearly all levels of clearing,<sup>66</sup> creating the danger that Verizon and AT&T will divide the available unreserved spectrum evenly between them at 20 megahertz each. This even split would permit Verizon and AT&T to avoid directly competing against one another which would be detrimental to both wireless competition and auction revenues.<sup>67</sup>

The Commission should also cap the amount of reserved spectrum that any one bidder can win to 20 megahertz. AT&T and Verizon will be qualified to bid on reserve spectrum in markets that cover 40 percent of all consumers and 74 percent of all United States land mass. Allowing a single carrier, especially AT&T or Verizon, to win all 30 or 40 megahertz of reserve spectrum in a market would completely defeat the competitive safeguards provided by the reserve.

The Commission can also protect competition in the 600 MHz auction by implementing the spectrum reserve before auction prices reach foreclosure levels. The Commission’s current proposal to tie the reserve trigger to the final stage rule (“FSR”)<sup>68</sup> risks prices reaching a level

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<sup>65</sup> *Id.* at 6210 ¶ 190 (“20 megahertz of contiguous spectrum is particularly valuable for the deployment of next-generation networks”).

<sup>66</sup> *Id.* at 6208-09 ¶ 184.

<sup>67</sup> See Petition for Reconsideration of T-Mobile USA, Inc., WT Docket No. 12-269 at 10-11 (Aug. 11, 2014) (“*T-Mobile Petition for Reconsideration*”).

<sup>68</sup> See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6209 ¶ 187 (tying the reserve trigger to the final stage rule); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶¶ 338-346 (2014) (detailing the components of the final stage rule, including an average price per MHz-POP condition and a “payment obligation” condition).

that would preclude participation from most or all competitive carriers.<sup>69</sup> As T-Mobile has explained, there is no logical relationship between the FSR and the spectrum reserve, and tying the two together would serve no competitive purpose.<sup>70</sup> Because delaying the creation of the reserve could allow pricing to reach foreclosure levels in some or all markets before the reserve becomes effective, the Commission should begin the forward auction with the reserve already in place or implement the reserve at some common-sense level not to exceed \$2.00 per MHz-POP in the top 40 PEAs.<sup>71</sup>

Finally, the Commission should ensure that the benefits of the spectrum reserve are not undone by an assignment round that allows the dominant carriers to outspend all other bidders for the least impaired of the available spectrum blocks. In a report submitted into the record by T-Mobile and United States Cellular, a team of noted economists have proposed a mechanism for awarding licenses in the assignment round that is based on a “deferred acceptance” algorithm.<sup>72</sup> By establishing a non-monetary mechanism to assign licenses, the Commission can remove uncertainty from the auction process and ensure that bidders do not withhold funds in the forward auction to bid in the assignment round. More importantly, by preventing AT&T and Verizon from simply outbidding all of their competitors for the least impaired licenses, perhaps

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<sup>69</sup> See, e.g., Letter from Lawrence R. Krevor, Vice President, Legal and Governmental Affairs—Spectrum, Sprint Corp., et al., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 at 3-4 (May 20, 2015).

<sup>70</sup> See Petition for Reconsideration of T-Mobile USA, Inc., WT Docket No. 12-269 at 12-17 (filed Aug. 11, 2014) (“*T-Mobile Petition for Reconsideration*”).

<sup>71</sup> See Letter of Trey Hanbury, Counsel to T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (July 10, 2015) (providing declaration of Stanford University Economists Dr. Gregory Rosston and Dr. Andrzej Skrzypacz explaining that setting high clearing targets could have the unintended consequence of raising the reserve trigger so high it “negate[s] the intended goal of the reserve”); see also *Waxman Proposal* at 2.

<sup>72</sup> Gregory Rosston, Andrzej Skrzypacz, & Robert J. Weber, *Comments on the Assignment Round* (June 11, 2015) attached to Letter of Trey Hanbury to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (June 11, 2015).

for no other reason than foreclosure value,<sup>73</sup> the Commission can ensure the most efficient allocation of spectrum licenses and protect the competition created through the spectrum reserve. But without these and other reasonable, pro-competitive rules, the two largest carriers will be able to stave off meaningful competition to the detriment of innovation and consumer choice.

**C. AT&T’s attempts to further consolidate low-band spectrum holdings should be subjected to careful “Enhanced Factor” review.**

The threat to competition in the mobile wireless market presented by concentrated low-band spectrum holdings is being exacerbated by AT&T’s attempts to acquire even more low-band licenses through the secondary market.<sup>74</sup> AT&T has no fewer than nine pending low-band transactions being reviewed by the Commission that, if granted, would have the effect of entrenching AT&T’s already dominant position in the market.<sup>75</sup>

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<sup>73</sup> See *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269, at 10-11 (Apr. 11, 2013) (“[T]he private value [of spectrum] for incumbents in a given locale includes not only the revenue from use of the spectrum but also any benefits gained by preventing rivals from improving their services and thereby eroding the incumbents’ existing businesses. The latter might be called ‘foreclosure value’ as distinct from ‘use value.’”).

<sup>74</sup> See *CCA Comments* at 13-14.

<sup>75</sup> See *AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership Seek FCC Consent to the Assignment of Two Lower 700 MHz B Block Licenses in California*, Public Notice, 29 FCC Rcd 10525 (WTB Sep. 8, 2014) (“Club 42 Public Notice”); *AT&T Mobility Spectrum LLC and East Kentucky Network, LLC Seek FCC Consent to the Assignment of Three Lower 700 MHz C Block Licenses in Kentucky, Ohio, and West Virginia*, Public Notice, WT Docket No. 15-79, DA 15-617 (May 21, 2015) (“East Kentucky Public Notice”); *AT&T Inc. and Kaplan Telephone Company, Inc. Seek FCC Consent to the Assignment of Cellular and Lower 700 MHz Licenses*, Public Notice, 29 FCC Rcd 11602 (Sep. 30, 2014); *AT&T Inc. and Pine Cellular Phones, Inc. Seek FCC Grant of Long-Term De Facto Transfer Spectrum Leasing Applications Involving Lower 700 MHz and Personal Communications Service Licenses in Arkansas and Oklahoma*, Public Notice, 30 FCC Rcd 2882 (Apr 2, 2015); *AT&T Inc. and Kanokla Telephone Association Seek FCC Consent to the Assignment of Two Lower 700 MHz Licenses in Kansas and Oklahoma*, Public Notice, 29 FCC Rcd 14460 (Dec. 2, 2014); *AT&T Mobility Puerto Rico Inc. and Worldcall Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Licenses*, Public Notice, 29 FCC Rcd 14528 (Dec. 2, 2014); *AT&T Inc. and Cellular Properties, Inc. Seek FCC Consent to the Assignment of Two Cellular A Block Licenses, Point-to-Point Microwave Licenses, and an International Section 214 Authorization*, Public Notice, WT Docket No. 15-78, DA 15-608 (May 20, 2015); *AT&T Mobility Spectrum LLC and Consolidated Telephone Company Seek FCC Consent to the Assignment of Two Lower 700 MHz C Block Licenses in Minnesota*, Public Notice, 29 FCC Rcd 14826 (Dec. 11, 2014); ULS Application No. 0006842123 (assignment of several Lower 700 MHz licenses from Bluegrass Cellular Inc. and Bluegrass Wireless LLC to an indirect wholly-owned subsidiary of AT&T).

The Commission has explained that any transaction that would result in the assignee or transferee holding more than one-third of below-1-GHz spectrum in a market as a result of the transaction will be subjected to review, and that the further concentration of low-band spectrum will be an “enhanced factor” in the Commission’s case-by-case assessment of competitive harms.<sup>76</sup> For such a transaction, the acquiring party must provide “a detailed demonstration regarding why the public interest benefits outweigh harms.”<sup>77</sup> Unless the acquiring entity proves “by a preponderance of the evidence . . . that the proposed transaction . . . will serve the public interest,” then the transaction “will more likely be found to cause competitive harm in [the Commission’s] case-by-case review” of the application.<sup>78</sup> And while the Commission has explained that it will evaluate a number of factors in its review, it has yet to identify the specific factors it will use to determine which transactions will be permissible and which will be denied as anticompetitive.<sup>79</sup>

AT&T’s proposed spectrum acquisition from Club 42CM Limited Partnership offers an important case of first impression.<sup>80</sup> In this case, AT&T has sought to acquire Lower 700 MHz licenses in CMA 340 (California 5-San Luis Obispo) and CMA347 (California 12-Kings), even though the company already holds more than one-third of low-band spectrum in the San Luis

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<sup>76</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238-40 ¶¶ 282-287.

<sup>77</sup> *Id.* at 6240 ¶ 286.

<sup>78</sup> *Id.* at 6239-40 ¶¶ 285–86.

<sup>79</sup> *Id.* at 6239 ¶ 284 (explaining that the Commission will consider, among other things “the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms’ respective networks; the rival firms’ market shares; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; the spectrum holdings of each of the rival service providers; the acquisition of below-1-GHz spectrum nationwide; and concentration in a particular band with an important ecosystem.”).

<sup>80</sup> *See* ULS File No. 0006344543 (filed Aug. 1, 2014) (“Application”). *See also* Letter of Trey Hanbury, counsel to T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 14-145; Application File No. 0006344543 (July 2, 2015).

Obispo market. The Commission has found that transactions where the acquiring party controls more than one-third of the available spectrum before the transaction occurs should be denied unless the public interest benefits “clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors.”<sup>81</sup>

AT&T has not met that high standard, and the Commission should deny the application.

AT&T’s proposed acquisition of low-band spectrum from East Kentucky Network, LLC raises similar issues.<sup>82</sup> AT&T already controls more than 50 percent of the market share in Lexington, KY, which is one of the markets where AT&T will acquire additional 700 MHz spectrum. Allowing further concentration of low-band spectrum in this market that is already dominated by a single carrier would only exacerbate the lack of competition, and the Commission should therefore deny this application as well.<sup>83</sup>

T-Mobile urges the Commission to conduct rigorous analyses of AT&T’s proposed acquisitions that implicate “enhanced factor” review. As the Competitive Carriers Association has explained, “[f]ailing to give teeth to the measures adopted in the Mobile Spectrum Holdings Order would perpetuate the dominance of AT&T and Verizon to the detriment of consumers.”<sup>84</sup> The Commission should therefore review each of these proposed transactions, carefully analyze the damage further consolidation of low-band spectrum would inflict on competition and consumers and deny AT&T’s applications as failing to serve the public interest.

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<sup>81</sup> *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240 ¶ 287.

<sup>82</sup> See ULS File No. 0006672533 (filed Feb. 17, 2015); See also East Kentucky Public Notice.

<sup>83</sup> See Petition to Deny of T-Mobile USA, Inc., WT Docket No. 15-79; Application File No. 0006672533 (June 22, 2015).

<sup>84</sup> Petition to Deny of Competitive Carriers Association, WT Docket No. 14-145 at 8 (Oct. 17, 2014).

**V. THE COMMISSION CAN PROMOTE MOBILE WIRELESS COMPETITION IN OTHER PROCEEDINGS.**

**A. Data roaming is essential to competition and should be protected in future proceedings.**

Mobile data consumption is skyrocketing,<sup>85</sup> and consumers have come to expect that their mobile devices will allow them to use data services wherever they take them.<sup>86</sup> The provision of nationwide service to meet this exponential growth is made possible only via roaming agreements.<sup>87</sup>

The “must-have” status of AT&T and Verizon for data roaming, however, grants them unequal bargaining power and enables them to set commercially unreasonable rates and terms for the provider requesting a roaming agreement.<sup>88</sup> The “hardball” negotiating tactics of must-have roaming partners and the commercially unreasonable agreements forced on carriers have resulted in reduced services for consumers. For example, commercially unreasonable rates and terms have forced T-Mobile to “throttle and cap” data roaming by its subscribers in some areas,<sup>89</sup> and other carriers have reported similar issues.<sup>90</sup>

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<sup>85</sup> See *VNI Mobile Forecast Highlights* (U.S. consumer mobile data traffic grew 64 percent in 2014, and is expected to grow another sevenfold by 2019); *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6146 ¶ 23 (“The rapid adoption of smartphones, as well as tablet computers and the widespread use of mobile applications, combined with the increasing deployment of high-speed 3G and now 4G technologies, is driving significantly more intensive use of mobile networks.”).

<sup>86</sup> See *Eighteenth Report Public Notice* at 4-5 (seeking information on providers’ use of roaming to provide services in areas where they lack facilities-based coverage).

<sup>87</sup> See, e.g., *Seventeenth Mobile Wireless Competition Report*, 29 FCC Rcd at 15317 ¶ 11 (“coverage areas usually are supplemented through roaming agreements”).

<sup>88</sup> See *Petition for Expedited Declaratory Ruling of T-Mobile USA, Inc.*, WT Docket No. 05-265 at 3 (filed May 27, 2014) (“*Data Roaming Petition*”). In 2013, nearly 70 percent of respondents to a NTCA survey categorized negotiating roaming agreements with other providers as moderately to extremely difficult. Comments of Competitive Carriers Association, WT Docket No. 13-135, at 17 (filed June 17, 2013).

<sup>89</sup> See *Data Roaming Petition* at i.

<sup>90</sup> See Comments of Competitive Carriers Association, WT Docket No. 13-135 at 17 (June 17, 2013) (“CCA’s members continue to face challenges in achieving roaming arrangements with AT&T and Verizon on commercially (continued...)”).

In an effort to address these issues and to clarify what constitutes commercially reasonable terms under the rules, the Commission granted a T-Mobile Petition for Declaratory Ruling in December 2014, providing clarifications and guidance on how to evaluate data roaming agreements between carriers.<sup>91</sup> The Commission affirmed in the Declaratory Ruling that the “availability of roaming capabilities is and will continue to be a critical component enabling consumers to have a competitive choice of facilities-based providers offering nationwide access to mobile data services.”<sup>92</sup>

The Declaratory Ruling is an important first step. However, more measures are needed to enforce the rules and ensure that all parties are complying with their roaming obligations. T-Mobile urges the Commission to work with parties attempting to negotiate roaming arrangements and to enforce its rules when necessary, including by acting quickly when data roaming complaints are filed. Furthermore, the Commission stated its intention in the *Open Internet Order* to revisit the issue of roaming in the context of mobile broadband Internet access service.<sup>93</sup> We urge the Commission to take steps in the wake of the *Open Internet Order* to ensure a competitive roaming marketplace.

## VI. CONCLUSION

Promoting greater competition in the mobile marketplace is the first step towards greater consumer choice of wireless plans and devices, lower prices, and countless innovative offerings.

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reasonable terms and conditions, and find it challenging to negotiate roaming agreements without information regarding the terms and conditions that the Twin Bells are offering to other carriers, or to their own affiliates.”).

<sup>91</sup> *Data Roaming Declaratory Ruling*; see also 47 C.F.R. § 20.12.

<sup>92</sup> *Data Roaming Declaratory Ruling*, 29 FCC Rcd at 15487-88 ¶ 13. The Commission went on to clarify in the Declaratory Ruling that it will consider whether offered rates are substantially higher than retail rates, international rates, and MVNO/resale rates, as well as domestic data roaming rates charged by other providers, in resolving disputes over the reasonableness of rates in a data roaming agreement. *Id.*, at 15486 ¶ 9, 15488 ¶ 15.

<sup>93</sup> *Open Internet Order* 80 FR 19737 ¶¶ 523-526.

Adopting the measures proposed here can help ensure consumers benefit from competition in the mobile broadband market for years to come.

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