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July 16, 2014

VIA ECFS

EX PARTE NOTICE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
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; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268*

Dear Ms. Dortch:

COMPTTEL respectfully requests the Commission: (i) fix the spectrum-reserve trigger to promote competition and consumer choice; and (ii) act quickly to adopt procedures for the 600 MHz incentive auction to make more critical low-band spectrum available for wireless broadband use. The spectrum reserve is the only competitive safeguard preventing dominant wireless providers from acquiring all or nearly all of the low-band spectrum being made available in the 600 MHz incentive auction. If the spectrum reserve does not work as intended (or kicks in too late to do any good), consumers will suffer, and the hard-fought battle to adopt competitive safeguards for this “once-in-a-generation” opportunity will have been for naught.¹

The currently proposed trigger for the spectrum reserve is problematic because dominant wireless carriers participating in the forward auction could bid strategically to avoid triggering the spectrum reserve until the very late stages of the forward auction.² At that point, reserve-eligible carriers may have already dropped out of the forward auction or may have insufficient

¹ *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6134-35 ¶ 2 (Jun. 2, 2014) (“Spectrum Holdings Report and Order”).

² *See, e.g.*, Letter from Lawrence R. Krevor, Vice President, Legal and Government Affairs – Spectrum, Sprint Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268 at 2-3 (Jul. 9, 2015) (“Sprint Letter”); Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268 at 2 (Jul. 10, 2015) (“T-Mobile Letter”).

bidding eligibility to meaningfully participate, defeating the very purpose of the spectrum reserve – to prevent the dominant carriers from limiting competitive opportunities in the bidding. Thus, triggering the reserve earlier in the auction is critical for promoting effective competition in the wireless market.³

COMPTTEL supports the adoption of any number of approaches, including those suggested by T-Mobile and Sprint, to ensure that the spectrum reserve is triggered early enough in the auction to serve its pro-competitive purpose. Absent such a fix, the dominant wireless carriers could concentrate their bidding in a small number of key Partial Economic Areas (“PEAs”) and raise prices in those PEAs to foreclosure levels while at the same time not triggering the spectrum reserve. To address this concern, T-Mobile proposes a “safety-value” approach, which would allow the spectrum reserve to trigger if either of the following conditions are satisfied: (1) the forward auction bidding reaches at least an average of \$2.00 per MHz-POP in the top 40 PEAs; or (2) the forward auction bidding exceeds the price to purchase the 600 MHz spectrum from broadcasters in the reverse auction, repack non-selling broadcasters, and reimburse the Commission for the administrative costs for conducting the auction.⁴ By establishing a lower trigger threshold, while still ensuring that all successful bidders share in paying for the costs of the spectrum reallocation, the T-Mobile proposal would limit possible gaming opportunities for the dominant carriers. Similarly, Sprint suggests that the Commission limit forward auction bidders to bidding on three 5 x 5 MHz spectrum blocks per PEA (30 MHz per PEA) until the Final Stage Rule (“FSR”) is triggered.⁵ This proposal would drive bidders to spread their bids across PEAs, which would prevent strategic bidding concentration and help the total auction proceeds satisfy the cost prong of the FSR. A simpler variation of Sprint’s proposal would be to impose a persistent 40 percent cap on bidding for all bidders in the 600 MHz auction. Such a cap, which would amount to a generous four blocks per bidder at a 10-block spectrum-clearing target, would also constrain the dominant carriers’ ability to focus a disproportionate amount of their eligibility on certain critical markets in the hope of increasing prices in those markets prior to the spectrum reserve becoming effective.

The Commission should act quickly to fix the spectrum trigger and finalize the other procedures necessary to conduct the 600 MHz incentive auction. Policymakers adopted the spectrum-related provisions of the Middle Class Tax Relief and Job Creation Act of 2012 to help satisfy consumer demand for faster, more affordable wireless broadband access.⁶ By moving

³ See Spectrum Holdings Report and Order at 6145 ¶ 21 (“[W]e must ensure that multiple service providers have access to spectrum in the foreseeable future.”); Letter from William J. Baer, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-269 at 1 (Jun. 24, 2015) (“[T]he Department continues to support the Commission’s decision to create a significant reserve of spectrum to ensure that wireless carriers, other than those that currently hold the majority of low-frequency spectrum, have a meaningful opportunity to acquire the spectrum necessary to foster a competitive wireless market.”)

⁴ See T-Mobile Letter at 2; see also Sprint Letter at 1. The Commission could alternatively employ a trigger that incorporates an average price of \$2.00 per MHz-POP in the Top 40 PEAs at higher spectrum-clearing targets of 84 MHz or more while using the “safety valve” dual trigger T-Mobile has proposed at lower spectrum clearing targets. Alternatively, some have proposed the Commission could use the average price of \$2.00 per MHz-POP in the Top 40 PEAs as the single trigger for establishing the spectrum reserve.

⁵ See Sprint Letter at 3 n. 6.

⁶ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).

quickly to finalize pro-competitive rules and auction the 600 MHz band, the Commission can respond to the bipartisan consensus that the United States must allocate more wireless spectrum for broadband use. Timely adoption of rules in this proceeding will help deliver the additional wireless broadband investment, innovation, and deployment that a more competitive wireless market promises to offer.

Please do not hesitate to contact me if you have any questions about this submission.

Respectfully submitted,

/s/ Angie Kronenberg

Angie Kronenberg
Chief Advocate and General Counsel