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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

Dear Ms. Dortch:

AT&T submits this letter to respond to T-Mobile's latest requests for modifications to the Incentive Auction rules.[1] The Commission has already adopted an unprecedented auction framework to give T-Mobile special treatment in the auction by creating a protected reserve auction that, by design, will allow T-Mobile to purchase large amounts of 600 MHz spectrum free from auction competition at the expense of taxpayers (auction revenues will be lower) and rivals (mainly AT&T and Verizon). T-Mobile's latest request seeks to further increase these windfalls through a rule change that would further depress prices in the reserve auction by effectively capping them at or near $2.00 per MHz POP in the 40 largest markets. T-Mobile offers no legitimate justification for this proposal. Instead, it mainly threatens to exit the auction if prices exceed $2.00 per MHz POP, which is not at all credible given that T-Mobile has paid far more than that for licenses in recent auctions and secondary market transactions.

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[1] *See* Letter from Trey Hanbury (attorney for T-Mobile) to Marlene H. Dortch (FCC), *Re: Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000 and 1002, AU Docket No. 14-252* (June 30, 2015); Letter from Trey Hanbury (attorney for T-Mobile) to Marlene H. Dortch (FCC), *Re: Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000 and 1002, AU Docket No. 14-252; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 (July 10, 2015).

Under the current rules, when the Final Stage Rule is met – *i.e.*, when forward auction prices reach levels sufficient to pay broadcasters for the spectrum and cover the FCC's costs of the auction and certain programs – a significant portion of the available spectrum will be placed into a "reserve" auction, where AT&T and Verizon are excluded from bidding in most major markets, thus leaving T-Mobile and Sprint as the only large carrier bidders. This reserve spectrum is further protected from competitive bidding – and hence price increases – by the Commission Staff's recent proposal to place any excess demand at the time the reserve is created into the *unreserved* auction, which could have the effect of freezing prices in the reserve auction at the levels achieved at the time the Final Stage Rule is satisfied.

T-Mobile now seeks to increase its potential windfall through a new rule in which the reserve auction would start *before* the auction is "paid for" (*i.e.*, before the Final Stage Rule is met). Specifically, T-Mobile proposes a new rule that would trigger the creation of the reserve auction when the bidding reaches 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 (*i.e.*, the Final Stage Rule is met), whichever occurs first. Given that the prices will almost certainly exceed $2.00 per MHz POP in the 40 largest markets long before the Final Stage Rule is met, T-Mobile's $2.00 per MHZ POP proposal would inevitably be the trigger for the reserve auction in almost any real-world scenario. Accordingly, under T-Mobile's proposal, the reserve auction would start, and a significant portion of the spectrum would be walled off from competitive bidding, when prices reach an average of $2.00 MHz POP in the 40 largest markets, even if the Commission would need a far higher price per MHz POP to reach the Final Stage Rule and pay for the auction.

The Commission should reject T-Mobile's proposal. Permitting the reserve to be created before the auction is paid for substantially increases the risk that auction prices will be insufficient to achieve reasonable clearing targets, and increases the potential for auction failure. Indeed, under the Commission Staff's proposed rules, T-Mobile's proposal would all but guarantee that reserve spectrum licenses will never sell for much more than $2.00. As noted, under the rules proposed by Commission Staff, when the split occurs, all excess demand is placed in the *unreserved* action. This means that there will be no excess demand in the reserve auction and prices in the reserve auction will cease to rise, while prices in the unreserved auction could continue to rise until there is no longer excess demand. Therefore, if the reserve is created at $2.00 per MHz POP in the top 40 PEAs and the auction is not paid for at those levels, the auction is far less likely to succeed, because the remaining costs of the auction must now be paid for entirely by bidders in the unreserved auction, which are bidding on a smaller pool of spectrum. To make matters even more challenging, under the current proposed rules the unreserved spectrum pool will include the more impaired and thus less valuable spectrum (Category 2 spectrum), thus creating further impediments to reaching the Final Stage Rule.

T-Mobile's proposal is also fundamentally unfair. Bidders won licenses in the top 40 markets at an average price of $3.52 per MHz POP in Auction 97 and $3.75 per MHz

POP in Auction 73 for the B Block,[2] and T-Mobile and others have consistently claimed that the spectrum here is even more valuable. Although T-Mobile claims this spectrum is essential to its competitive position, the gap between its proposed trigger and the evidence from previous auctions as to the likely value of this spectrum shows that T-Mobile's proposal is designed to give it an enormous and unfair windfall in the largest and most valuable markets. In addition, under T-Mobile's proposal, the reserve auction would be triggered when the average price reaches $2.00 in the top 40 PEAs, but the reserve auction would then be created *nationwide,* even if the average price outside the top 40 PEAs is below $2.00 – which would shift an even greater portion of the cost of paying for the auction to unreserved bidders. As AT&T has previously explained, although AT&T does not believe that a reserve auction is either lawful or necessary to help well-funded competitors like T-Mobile and Sprint, AT&T would not challenge the reserve if the Commission adopts adequate protections. Adopting T-Mobile's latest proposal would dramatically undermine the minimal protections already in place, thus tipping the auction rules too far in favor of T-Mobile and raising even greater questions about the lawfulness of the reserve.

T-Mobile claims that, without a $2.00 per MHz POP trigger for the reserve, it will be "foreclosed" from participating in the auction, but this threat to exit the reserve auction if prices rise above $2.00 is not remotely credible. The reserve auction will include the least impaired Category 1 spectrum and, as AT&T has previously documented,[3] T-Mobile and other reserve eligible bidders recently paid far more than $2.00 per MHz POP for AWS-3 spectrum and 700 MHz spectrum, which T-Mobile has argued is less valuable than 600 MHz spectrum. [4]

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[2] This analysis is based on a decomposition of the CMA/EA structure into counties and then aggregating them back up to PEAs to develop the POP-weighted average across the PEA using Nielsen 2014 POP estimates.

[3] *See* Reply Comments of AT&T, *Competitive Bidding Procedures for Broadcast Incentive Auction 1000 and 1002,* AU Docket No. 14-252*; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* GN Docket No. 12-268, at 19-20 (March 13, 2015).

[4] T-Mobile's only other argument is based on a purely hypothetical situation. According to T-Mobile, it is possible that prices will get close to but fail to reach the Final Stage Rule at the highest clearing targets. Under the Commission's rules, those prices will not be reset when the auction drops to the next lower clearing target, and could theoretically exceed the Final Stage Rule amount for the next lower clearing target (and thus T-Mobile would be stuck paying the higher price). The Commission already considered these effects, which apply to everyone, when it adopted the current rules, and T-Mobile provides no evidence that this hypothetical outcome is likely. In all events, T-Mobile is merely complaining that its already large windfall could be even a little larger with its $2.00 proposal, but as discussed above, the harms caused by T-Mobile's "$2.00 trigger" solution far outweigh concerns arising from T-Mobile's desire to scrape every last penny from the auction process and shift the burden to other bidders.

Insulating a significant amount of spectrum from full competitive bidding before the auction is even paid for clearly would increase the risk of auction failure. And, of course, T-Mobile's proposal would put an even greater burden on its competitors to bid at above-market levels to cover both T-Mobile's now-increased subsidy and the auction's costs. This auction is far too important to put a successful outcome at risk merely to give yet more unwarranted assistance to well-capitalized national competitors that have demonstrated in past auctions that they have the capital and resources to participate without special favors.

This letter is being filed electronically with the Secretary for inclusion in the public record.

Sincerely,

Joan Marsh