Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

Trey Hanbury
Partner
T: 202.637.5534
trey.hanbury@hoganlovells.com

July 27, 2015

***EX PARTE* VIA ECFS**

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

Re: ***Ex Parte Notice***
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268; Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269; Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, AU Docket No. 14-252

Dear Ms. Dortch:

On July 23, 2015, representatives for T-Mobile USA, Inc. ("T-Mobile")[1] met with members of the FCC's Incentive Auction Task Force to discuss steps the Commission can take to ensure the pro-consumer spectrum reserve comes into effect before the two dominant incumbents can purchase all or most of the low-band spectrum that the 600 MHz incentive auction will make available.[2]

T-Mobile's representatives explained that, like virtually every other participant in the incentive auction proceeding, T-Mobile strongly supports higher spectrum-clearing targets. Higher spectrum-clearing targets will provide broadcasters with a larger financial incentive to relinquish their spectrum rights while also providing broadband consumers greater access to critical low-band spectrum. Under the currently proposed rules, however, pursuing higher spectrum-clearing targets creates the potential for a lengthy delay in establishing the spectrum reserve, which the dominant carriers could use to drive competitors out of the auction. If the Commission does not address the flaws in its reserve trigger, Verizon and AT&T could delay satisfaction of the currently proposed dual reserve trigger until prices in those markets reach foreclosure levels.[3] T-Mobile also discussed how

[1] T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly traded company.

[2] The following people participated in the meeting: Steve Sharkey and Chris Wieczorek of T-Mobile; Dr. Gregory Rosston (by phone), Dr. Andrzej Skrzypacz (by phone), and Trey Hanbury, on behalf of T-Mobile; and Melissa Dunford, Gary Epstein, Chris Helzer, Mary Margaret Jackson, John Leibovitz, Paul Murray, and Howard Symons of the FCC.

[3] *See Ex Parte* Notification of T-Mobile USA, Inc. and Sprint Corporation, AU Docket No. 14-252, GN Docket No. 12-268, at 2 (July 16, 2015) (explaining that "[b]y withholding demand from a wider range of markets, AT&T and Verizon can ensure that the prices rise to foreclosure levels in a few critical markets prior to satisfaction of the Final Stage Rule").

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especially large clearing costs associated with aspirational initial spectrum-clearing targets could saddle auction participants in subsequent stages of the auction with inappropriately high trigger conditions for the reserve.[4]

The meeting attendees next discussed the many proposals that are currently on the record that could easily address these known flaws in the reserve trigger. T-Mobile described its proposed "safety-valve" trigger. Under this proposal, the Commission would implement the reserve when bids exceed an average of $2.00 per MHz-POP in the Top 40 markets or when revenues cover actual broadcast clearing costs, whichever occurs first.[5] Attendees also discussed the compromise approach proposed by former Representative Waxman.[6] Under the Waxman proposal, the Commission would use one of two potential reserve triggers depending on the spectrum-clearing target. At spectrum-clearing targets of more than 84 megahertz, the Commission would trigger the reserve when bids exceed an average of $2.00 per MHz-POP in the Top 40 markets. But at spectrum-clearing targets of 84 megahertz or less, the Commission would retain the currently proposed mechanism.[7] Finally, the attendees discussed Sprint's proposal to limit bidding to a maximum number of blocks in each geographic area.[8] This alternative would reduce the risk of any one bidder strategically increasing prices in critical markets.[9] Meeting participants discussed some of the implications these proposals would have for the Commission's auction software and the need for potential software modifications to support the proposed changes.

Attendees discussed steps the Commission can take to promote unlicensed innovation while ensuring that wireless providers gain access to sufficient unimpaired spectrum to meet growing consumer demand for mobile broadband services. Specifically, T-Mobile urged the Commission to place relocated broadcast stations in the duplex gap when necessary and reserve a different channel for unlicensed devices in those few markets where the duplex gap might be unavailable. As T-Mobile recently explained, failing to use the duplex gap for relocated broadcast stations would have a disproportionately negative effect on licensed operations while providing only marginal benefits to unlicensed devices.[10] The Commission has explained that reaching high nationwide clearing targets and minimizing license impairments will require using the duplex gap for broadcast relocation in a handful of markets.[11] The actual markets in which the duplex gap will be unavailable

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[4] *See* Letter of 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 (July 10, 2015) (explaining that "tying the spectrum reserve to the Final Stage Rule (FSR) could frustrate the purpose of the spectrum reserve").

[5] *Id.* at 2-3.

[6] Letter from Henry A. Waxman, Chairman, Waxman Strategies, to Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, at 2 (July 9, 2015).

[7] *Id.*

[8] Letter from Lawrence R. Krevor, *et al.* of Sprint Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268, at note 6 (July 9, 2015).

[9] *Id.*

[10] Letter from Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268 (July 21, 2015).

[11] *Incentive Auction Task Force Releases Initial Clearing Target Optimization Simulations*, Public Notice, 30 FCC Rcd 4854, 4856 ¶ 6 (WTB 2015) ("*Simulation Public Notice*").

for unlicensed operations will depend on the Commission's clearing target, but based on the Commission's simulations, the number of affected markets could range from two to seven out of 210 markets.[12] Even within those markets, a substantial portion of the geography may remain available for unlicensed use depending on the exact footprint of the broadcast station that happens to be located in the duplex gap.[13] The Commission's use of the duplex gap for broadcaster relocation would therefore only possibly impair a portion of the geographic scope of one unlicensed channel in a maximum of seven out of 210 markets.[14]

By contrast, failure to use the duplex gap for broadcaster relocation could have dire consequences for licensed operations. The Commission has projected that an across-the-board prohibition on broadcast stations in the duplex gap would create unavoidable impairments that would make clearing 114 megahertz or even just 84 megahertz impossible to achieve.[15] Reserving the duplex gap for unlicensed devices would also result in the Commission reclaiming fewer relatively unimpaired licenses and fewer total licenses for mobile broadband.[16]

T-Mobile added that it supports unlicensed uses and stated that alternative spectrum blocks exist for the handful of markets in which unlicensed devices may not have full access to the duplex gap spectrum. Meeting participants discussed the feasibility of reserving a second vacant channel in the UHF band or, alternatively, permitting expanded use of the guard band channel on either side of land-mobile radio systems in the UHF band, as proposed in the Commission's Part 15 proceeding in ET Docket No. 14-165.[17] As Competitive Carriers Association explained, offering unlicensed operations a "'replacement channel' would provide developers and manufacturers the certainty they need to invest in the band by making up for the capacity lost as a result of permitting broadcast operations in the duplex gap."[18]

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[12] As T-Mobile has explained, the staff analysis calculates impairments by designated market area ("DMA"). Because DMAs and partial economic areas ("PEAs") do not neatly align, the precise number of affected PEAs is difficult to determine based on the DMA impairment information.

[13] *See* Letter from Gary M. Epstein, Chair, Incentive Auction Task Force, Federal Communications Commission to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, at note 4 (July 10, 2015) ("In those scenarios which result in the duplex gap being impaired in certain DMAs, we note that whether the duplex gap would be available for white space devices in a given impaired DMA would depend on the station that was actually assigned.").

[14] Unlicensed devices would retain access to Channel 37 and a reserved vacant channel in the UHF band of each market not assigned to a television station after the auction.

[15] *Simulation Public Notice*, 30 FCC Rcd at 4858.

[16] *Id.*

[17] *Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37; Amendment of Part 74 of the Commission's Rules for Low Power Auxiliary Stations in the Repurposed 600 MHz Band and 600 MHz Duplex Gap; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* Notice of Proposed Rulemaking, 29 FCC Rcd 12248 (2014).

[18] Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268, at 3 (July 14, 2015).

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced dockets. Please direct any questions regarding this filing to me.

Respectfully submitted,

/s/ Trey Hanbury

Trey Hanbury
Counsel to T-Mobile USA, Inc.