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July 30, 2015

**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; Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269.**

Dear Ms. Dortch:

AT&T submits this letter as a further response to T-Mobile's recent request to modify the "market-based spectrum reserve auction" trigger. Specifically, T-Mobile now proposes that the reserve auction be triggered when the final stage rule ("FSR") is satisfied, or when the average price of Category 1 licenses in the top 40 markets reaches \$2.00 per MHz/pop, whichever comes first.<sup>1</sup> This would likely result in triggering the reserve auction before the auction's costs are covered, and effectively cap the price of reserve spectrum in the top 40 markets at \$2.00 per MHz/pop.<sup>2</sup>

In its petition for reconsideration of the Mobile Spectrum Holdings Order, T-Mobile did not suggest that the reserve should be triggered before the auction costs were covered. In fact, T-Mobile specifically observed that "[t]he brilliance of the Commission's *Mobile Spectrum Holdings Report and Order* is making the pro-

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<sup>1</sup> 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).

<sup>2</sup> See Letter from Joan Marsh (AT&T) to Marlene H. Dortch (FCC), *Re: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, AU Docket No. 14-252 (July 27, 2015) ("Marsh Letter").

competitive spectrum reserve contingent on satisfying the revenue requirements needed for broadcast interests, public safety organizations, and other public purposes.”<sup>3</sup> Instead, T-Mobile’s expressed concern was that the reserve would not be triggered until aggregate revenues in the top 40 markets exceeded an average price of \$1.25 per MHz/pop (the second component of the final stage rule).<sup>4</sup>

Now, T-Mobile has changed its tune, arguing that the reserve trigger should occur when the aggregate revenues in the top 40 markets average \$2.00 MHz/pop *or* when the final stage rule is satisfied, whichever happens first. In other words, apparently concerned that unimpaired 600 MHz spectrum in the top 40 markets is likely to sell for upwards of \$3.00 per MHz/pop, T-Mobile now proposes to move the goalposts. The Commission’s “brilliant” determination to satisfy auction revenue requirements now, apparently, need not serve as a condition precedent to establishing a reserve. As AT&T has noted, T-Mobile’s new idea is a potential auction killer, effectively capping the price of up to 40 percent of the spectrum in the auction before the auctions’ revenue requirement is even met. This approach is, quite plainly, not “brilliant.”<sup>5</sup>

Aside from the threat it would present to the success of the auction, T-Mobile’s recent proposal flatly contradicts its petition for reconsideration and, to the extent it seeks to restate its petition for reconsideration, is untimely. Nor can T-Mobile properly challenge the trigger under the guise of providing comments in response to the *Auction Procedures Public Notice*.<sup>6</sup> In the *Auction Procedures Public Notice*, the Commission sought no comment on the trigger, simply observing that “[t]he auction system will set the spectrum reserve trigger at the point when the final stage rule is satisfied.”<sup>7</sup> Accordingly, T-Mobile’s proposal to alter the spectrum reserve trigger is beyond the scope of the auction procedures proceeding as well. As a result, even if T-Mobile’s proposal was sound policy instead of a potential auction killer, the Commission could not lawfully adopt it absent a new rulemaking.

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<sup>3</sup> Petition for Reconsideration of T-Mobile USA, Inc., WT Docket No. 12-269, at 3 (Aug. 11, 2014).

<sup>4</sup> *Id.* at 13.

<sup>5</sup> *See* Marsh Letter. Because the proposed auction procedures would allocate any excess demand in the forward auction to the unreserved auction spectrum blocks, rather than the reserve spectrum, the price clocks on the reserve spectrum blocks are unlikely to rise at all once the reserve auction is established. T-Mobile’s proposal is, in rough terms, that they will pay an average of \$2.00 MHz/pop for the clean, reserved spectrum, or the Commission’s cost, whichever is *less*. Any funds needed for deficit reduction or even to close the auction, would have to come from others.

<sup>6</sup> *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, 29 FCC Rcd. 15750 (2014).

<sup>7</sup> *Id.* at ¶ 23.

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

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' and 'M' followed by a horizontal line extending to the right.

Joan Marsh

cc: Incentive Auction Task Force