



July 30, 2015

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**Ex Parte**

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Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
455 Twelfth Street, S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

The Commission should reject T-Mobile's proposal to change the "cost" component of the trigger for the spectrum set-aside for the many reasons parties have noted: The different \$2.00 per MHz pop trigger T-Mobile wants would jeopardize the auction, by shielding bidders for set-aside spectrum from fully competitive bidding before the auction raises enough money to cover all expenses. It would tilt the auction rules further in their favor. And by triggering the set aside when prices reach \$2.00 in the largest 40 markets, an arbitrary figure that is not grounded in market data, the proposal would allow T-Mobile and others to win spectrum at even lower prices.<sup>1</sup>

Changing the cost component of the trigger would also go well beyond the scope of the *Auction Procedures Public Notice*<sup>2</sup> and thus raise serious process concerns. Here's why:

The *Procedures Notice* did not ask for comment on changing the cost component. It referred to the Commission's decisions in the *Incentive Auction Order*<sup>3</sup> and *Mobile Spectrum Holdings Order*<sup>4</sup> to tie the set-aside trigger to the Final Stage Rule and to adopt two components

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<sup>1</sup> See Letter to Marlene Dortch from Joan Marsh, AT&T, AU Docket No. 14-252, filed July 27, 2015; Letter to Marlene Dortch from John T Scott III, Verizon, WT Docket No. 12-268, AU Docket No. 14-252, and GN Docket No. 12-269, filed July 8, 2015.

<sup>2</sup> *Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, WT Docket No. 14-252*, released Dec. 14, 2014 ("*Procedures Notice*").

<sup>3</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order*, GN Docket No. 12-268, 29 FCC Rcd 6567 (2014).

<sup>4</sup> *Policies Regarding Mobile Spectrum Holdings, Report and Order*, WT Docket No. 12-269, 29 FCC Rcd 6133 (2014).

of that Rule: (1) a “price” component, to ensure spectrum is not sold for prices well below market, and (2) a “cost” component, to ensure the auction raises sufficient revenues to pay all broadcasters to vacate or relocate and to pay all other auction-related expenses, as required by the Spectrum Act. The Notice proposed to set a \$1.25 per MHz pop floor for the price component and sought comment on that price.<sup>5</sup> But it did not invite input on whether to change or add to the “cost” component. To the contrary, it emphasized, as did the *Incentive Auction Order*, that “the proceeds of the forward auction be sufficient to meet mandatory costs and expenses set forth in the Spectrum Act.”<sup>6</sup> It thus only sought comment on how to compute those costs and determine when auction proceeds had covered them.

T-Mobile’s proposal is outside the scope of the *Procedures Notice* because it seeks to supplant the cost component with a new price trigger irrespective of costs, and thus cannot be considered without raising Administrative Procedure Act issues. An “[a]gency notice must describe the range of alternatives being considered with reasonable specificity.”<sup>7</sup> The *Procedures Notice* did not ask about changing the cost component, let alone replacing it with a new rule that would allow that component to be met by an arbitrary cap unrelated to costs, thus triggering the set-aside before the auction covered all expenses. But that is just what the proposal seeks to accomplish: the cost component would be met once prices reached \$2.00 per MHz pop in the top 40 PEAs and the set-aside would kick in – even if all costs have not been met. (The \$1.25 price component would by definition already have been met.) “[N]otice necessarily must come – if at all – from the agency,”<sup>8</sup> and commenters’ proposals “do not satisfy an agency’s obligation to provide notice.”<sup>9</sup>

T-Mobile could have sought to change the cost component of the set-aside trigger after it was adopted. T-Mobile filed petitions for reconsideration of both the *Incentive Auction Order* and the *Mobile Spectrum Holdings Order*. But it only challenged the amount of spectrum that would be set aside (requesting more) and the price component (requesting that it be eliminated). Neither T-Mobile nor any other party objected to the FCC’s decision to adopt the cost trigger to ensure the auction covered all expenses before applying the set-aside. It is way too late for T-Mobile to do so now.

Far from challenging the cost component of the set-aside, T-Mobile endorsed it and called it both “necessary” and “reasonable.”<sup>10</sup> T-Mobile said it had “no concerns” about the

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<sup>5</sup> *Procedures Notice* at ¶¶ 47-54.

<sup>6</sup> *Id.* at ¶ 55.

<sup>7</sup> *Small Refiner Lead Phase Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983).

<sup>8</sup> *Id.*

<sup>9</sup> *Nat’l Black Media Coal. v. FCC*, 791 F.2d 1016, 1023 (2d Cir. 1986).

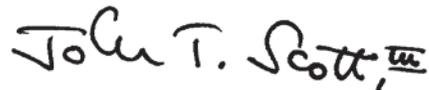
<sup>10</sup> T-Mobile Petition for Reconsideration, *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, filed August 11, 2014, at 3, 12-13 (“A reserve trigger based on the sum of the amounts necessary to pay broadcasters to exit, repack all remaining broadcasters, account for other statutory expenses and cover any remaining FirstNet expenses is necessary to ensure a successful auction”; “Offering reserved spectrum only after the auction raises

Commission's decision to cover costs before the set-aside was triggered – only the additional price component.<sup>11</sup> While T-Mobile now has second thoughts because it may not be able to get spectrum at as large a discount as it wants, that is no basis for the Commission to reconsider the cost component. Were it to do so and change key prior decisions, the Commission risks violating the Administrative Procedure Act.

Rather than take up T-Mobile's last-minute request to change year-old Commission decisions, and inject legal complications into a proceeding that is already amply complicated, the FCC should dismiss T-Mobile's request without consideration.

This letter is being filed pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions please contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line under the name.

John T. Scott, III

cc: Renee Gregory  
Jessica Almond  
Matthew Berry  
Brendan Carr  
Valery Galasso  
Erin McGrath  
Louis Peraertz  
David Strickland  
Roger Sherman  
Gary Epstein  
Howard Symons  
Jim Schlichting  
Evan Kwerel

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sufficient amounts to compensate participating broadcasters, relocate stations that stay on the air, and cover any remaining FirstNet expenses is reasonable and will ensure that the auction successfully transitions spectrum to more flexible use while covering all necessary costs.”).

<sup>11</sup> T-Mobile Petition for Reconsideration, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order*, GN Docket No. 12-269, filed Sept. 15, 2014, at 2-3