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July 31, 2015

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:

On July 29, 2015, I spoke with David Strickland in Commissioner Clyburn's office concerning the above-captioned proceedings. I emphasized COMPTTEL's support for fixing the spectrum-reserve trigger to promote competition and consumer choice, specifically referencing the letter COMPTTEL submitted in the proceeding on July 16 concerning this issue.¹ I reiterated that 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, consumers will suffer, and the hard-fought battle to adopt competitive safeguards for this "once-in-a-generation" opportunity for competitors to acquire much-needed low-band spectrum will have been for naught.²

The currently proposed trigger for the spectrum reserve would allow dominant wireless carriers to bid strategically to avoid triggering the spectrum reserve until the very late stages of

¹ Letter from Angie Kronenberg, Chief Advocate and General Counsel, COMPTTEL to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268, at 2 (July 16, 2015).

² *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").

the forward auction.³ At that point, reserve-eligible carriers may have already dropped out of the forward auction or may have insufficient bidding eligibility to meaningfully participate, defeating the very purpose of the spectrum reserve. Thus, triggering the reserve earlier in the auction is critical for promoting effective competition in the wireless market.⁴

COMPTTEL supports the adoption of any number of approaches to address the unacceptable risk presented by the flawed reserve trigger, including those suggested by T-Mobile and Sprint. T-Mobile proposes a “safety-value” approach, which would trigger the spectrum reserve if either: (1) forward auction bidding reaches at least an average of \$2.00 per MHz-POP in the top 40 PEAs; or (2) 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.⁵ By establishing a lower trigger threshold, the T-Mobile proposal would limit possible gaming opportunities for the dominant carriers. Alternatively, Sprint suggests that the Commission limit forward auction bidders to bidding on three spectrum blocks per PEA until the Final Stage Rule (“FSR”) is triggered.⁶ A simpler variation of Sprint’s proposal would be to impose a persistent 40 percent cap on bidding in any PEA for all bidders. Such a cap would 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.

During the call we also discussed the inaccurate argument that a fix for the reserve trigger is unnecessary because other auction rules make foreclosure tactics impractical. The many iterations of this argument rely on a single incorrect assumption: that AT&T and Verizon will behave like rational auction participants driven only by the “use value” of spectrum. On the contrary, as the Department of Justice has explained, AT&T and Verizon will pay above-market prices to prevent potential competitors from acquiring critical low-band spectrum.⁷

³ 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”).

⁴ 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.”)

⁵ 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.

⁶ See Sprint Letter at 3 n. 6.

⁷ *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269, at 10-11 (Apr. 11, 2013).

Specifically, the over-arching clock auction format will not mitigate the risk of the dominant carriers foreclosing competition in critical markets while delaying implementation of the reserve. While the clock auction format may prevent the dominant carriers from rapidly bidding up prices in particular markets *directly*, they will still be able to effectively raise the relative prices by focusing their demand in certain markets and withholding it in others.

Similarly, the “no excess supply” rule will not prevent AT&T and Verizon from using a targeted foreclosure tactic. Parties have argued that AT&T and Verizon will not express unreasonably high demand because of the risk that they could “get stuck with the tab.” This argument might be persuasive if not for the established fact that AT&T and Verizon will pay a premium “foreclosure value” to prevent competitors from acquiring low-band spectrum.⁸ Verizon recently explained that it does not have a pressing need for low-band spectrum, so its participation will be with the exclusive purpose of foreclosing competition.⁹ Under those circumstances, AT&T and Verizon will not be “bluffing” when they express demand for more spectrum licenses than they need to meet consumer demand; they will be willing to pay supra-competitive prices to keep that spectrum from their competitors.

Arguments that bidding activity requirements could make a foreclosure strategy more difficult are equally unpersuasive. As suggested earlier, AT&T and Verizon will be able to satisfy their activity-rule requirements by expressing excessively high demand on strategically important markets while maintaining activity on an as needed-basis in the rest of the markets.

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.¹⁰ By moving 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.

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

cc: David Strickland

⁸ *Id.*

⁹ See, Adam Levy, *5 Things Verizon Communications Inc. 's Management Wants Investors to Know*, THE MOTLEY FOOL (July 29, 2015) (reporting that Verizon CFO stated: “Low-band spectrum, for us, is not a great need”).

¹⁰ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).