Public Knowledge

October 22, 2015

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: **WT Docket No. 14-145**, AT&T Mobility Spectrum LLC and Club 42 CM Limited Partnership, Application for Consent to the Assignment of Two Lower 700 MHz B Block Licenses in California

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

Dear Ms. Dortch:

On October 20, 2015, Harold Feld and Phillip Berenbroick of Public Knowledge ("collectively, Public Knowledge") spoke with Johanna Thomas of Commissioner Rosenworcel's office. Separately, Phillip Berenbroick spoke with Holly Saurer of Commissioner Clyburn's office. On October 21, 2015, Harold Feld and Phillip Berenbroick spoke with Jessica Almond and Edward Smith of Chairman Wheeler's office, with regard to the above-captioned proceedings. All of these conversations were by telephone, and were substantially identical.

Public Knowledge explained that the Commission's consideration of the public interest harms and public interest benefits in a transaction review cannot take into account whether other parties had the opportunity to bid on a license. AT&T has claimed that Club 42 sold the licenses through a broker and that other parties had the opportunity to purchase the licenses.[1] This fact is irrelevant. As AT&T has correctly stated, "legally the Commission may not consider whether the public interest would be better served if the Club 42 Licenses were assigned a party other than AT&T."[2] Whether other parties may have been given an opportunity to bid on Club 42's licenses is utterly immaterial to the Commission's transaction review. The Commission must consider only the transaction before it, and on its own merits. Further, the Commission must review transactions that trigger the enhanced factor review with a presumption that low-band spectrum concentration is problematic for competition and harmful to consumers as it determines whether the public interest benefits outweigh the harms.[3] The Commission may not consider whether there were other bidders. And, in the case of the 700 MHz license AT&T seeks to acquire in San Luis Obispo, CA, AT&T must show that the public interest benefits "clearly outweigh" the public interest harms associated with additional aggregation of below-1-GHz spectrum, "irrespective of other factors."[4]

Additionally, even if the Commission were to consider whether Club 42 made the license available to other buyers, this factor fails to address the underlying concern of the spectrum screen – that the largest

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[1] *See, e.g.*, Response of AT&T Mobility Spectrum LLC to General Information Request, Dated September 22, 2014, WT Docket No. 14-145 at 12 (filed Oct. 6, 2014).
[2] Response of AT&T Mobility Spectrum LLC to Second Supplemental Information Request Dated May 20, 2014, WT Docket No. 14-145 at 12 (filed June 2, 2015) (citing 47 U.S.C. § 310(d)).
[3] *See* Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, 29 FCC Rcd 6133, 6168 ¶ 68 (2015) ("*Mobile Spectrum Holdings Order*") (finding that below-1-GHz spectrum is "disproportionately concentrated" in the hands of the two largest wireless providers, and that excessive concentration of low-band spectrum is harmful to the public interest and to competition); *see also id.* at 6164 ¶ 60, 6168 ¶ 69.
[4] *Id*. at 6240 ¶ 287.

providers with significant advantage in low-band spectrum will seek to foreclose competitors from access. A secondary market auction conducted by a broker is not conceptually different from an initial auction conducted by the Commission,[5] and therefore raises the same foreclosure concerns raised by the Department of Justice and the Commission in the *Mobile Spectrum Holdings Order*.[6] Accordingly, even if AT&T were correct that the Commission could legally take cognizance of the possibility of another buyer, this would be, at best, a non-factor under the "enhanced" review of low-band spectrum. Indeed, if anything, the ability of AT&T to outbid others simply confirms the need to block the transaction as an exercise of foreclosure.

In accordance with Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced docket. Please contact me with any questions regarding this filing.

Sincerely,

/s/ Phillip Berenbroick
Counsel, Government Affairs
Public Knowledge

CC: Johanna Thomas
Holly Saurer
Jessica Almond
Edward Smith

[5] Indeed, it is a central tenant of Coase's thesis on the value of market mechanisms and the justification of the superiority of auctions as a means of distribution of exclusive licenses that an auction is simply the initial market-based distribution, and that subsequent secondary market sales operate in the same fashion to improve efficiency, albeit sometimes at the expense of competition. *See* Harold Feld, Spectrum Efficiency v. Competition Part II: Why Do Verizon and AT&T Keep Ending Up With All the Spectrum?, Tales of the Sausage Factory (Mar. 15, 2012), http://www.wetmachine.com/tales-of-the-sausage-factory/spectrum-efficiency-v-competition-part-ii-why-do-verizon-and-att-keep-ending-up-with-all-the-spectrum/ (last visited Oct. 2, 2015).

[6] *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269, at 10-14 (filed Apr. 11, 2013); *Mobile Spectrum Holdings Order* at 6165 ¶ 62.