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November 23, 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 Notification***
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 November 19, 2015, representatives for T-Mobile USA, Inc.¹ met with representatives of the Wireless Telecommunications Bureau to discuss the FCC's list of nationwide carriers qualified to bid on reserve spectrum in each Partial Economic Area of the 600 MHz incentive auction.²

The FCC's reserve-eligibility list will determine the degree to which competitive carriers can participate in the auction without fear of foreclosure by the dominant carriers that already hold more than 73 percent of low-band spectrum.³ Every market where a dominant carrier improperly gains reserve eligibility is a market where competition, investment and innovation may suffer. Consistent with its filing of November 16, 2016, therefore, T-Mobile's representatives reviewed four issues in the FCC's current reserve-eligibility list.⁴

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: Chris Wiczorek (by phone) and Steve Sharkey of T-Mobile; Trey Hanbury, Tom Peters, and David Crawford on behalf of T-Mobile; and Joel Taubenblatt, Catherine Matraves (by phone), Karen Sprung, and Ben Freeman of the Wireless Telecommunications Bureau.

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 (2014) ("*Mobile Spectrum Holdings Order*") ("In today's marketplace, in many service areas currently suitable and available below-1-GHz spectrum is disproportionately concentrated in the hands of larger nationwide service providers: the two largest providers hold 73 percent of the low-band spectrum.").

⁴ See, e.g., Letter of Trey Hanbury, Counsel to T-Mobile USA, Inc. to Catherine Matraves and Karen Sprung, FCC, GN Docket No. 12-268; WT Docket No. 12-269; AU Docket No. 14-252 (Nov. 16, 2015) ("*T-Mobile Correction Letter*").

First, the reserve-eligibility list sometimes appears to omit attributable spectrum interests that the dominant carriers hold. T-Mobile identified two markets where Verizon holds an attributable interest in certain licenses, but the reserve-eligibility list excludes Verizon's population-weighted spectrum holdings for those licenses.⁵ The FCC acknowledged these two omissions and said it intends to make the necessary corrections.

Second, the reserve-eligibility list can identify a dominant carrier as reserve eligible even though it holds more than one-third of the suitable and available low-band spectrum in a market. For purposes of establishing the reserve-eligibility threshold, the FCC rounded one-third of 134 megahertz up by $0.\overline{33}$ megahertz to 45 megahertz.⁶ However, when calculating population-weighted spectrum holdings for nationwide carriers and applying the reserve-eligibility threshold, the FCC did not apply any rounding. Verizon's population-weighted spectrum holdings in Brownsville, TX (PEA047) of 44.97 megahertz, for example, are not rounded up to 45 megahertz.⁷ Failing to round fractional values that exceed the one-third benchmark for purposes of applying the reserve-eligibility threshold is arbitrary and logically inconsistent with the FCC's decision to round up for purposes of calculating what constitutes one-third of suitable and available spectrum below one gigahertz.

Third, the reserve-eligibility list adopts an across-the-board increase to the reserve-eligibility threshold in markets if there is any spectrum-leasing activity in that market. In calculating the eligibility threshold, the FCC increases the total below one-gigahertz spectrum amount for the leasing carrier by the population-weighted amount of spectrum in a long-term lease.⁸ But the reserve-eligibility list increases the total amount of spectrum for *all* providers in a market by the amount of *any* long-term spectrum lease in that market. The FCC's novel, open-ended treatment of spectrum leases in the *Application Procedures Public Notice* not only opens the door to improper gaming, but also discourages legitimate, efficiency-enhancing leasing activity by non-dominant carriers.⁹ Unless the methodology is revised, competitive carriers concerned about expanding the reserve-eligibility status of the two dominant carriers will have a strong incentive to avoid spectrum leasing activity until the FCC finalizes the 600 MHz auction applicants' reserve eligibility.

⁵ In Galesburg, IL (PEA282), Verizon holds an attributable interest in Illinois Valley Cellular RSA 2-II Partnership. Verizon has confirmed that it is not reserve-eligible in this market. See Letter of Tamara Preiss, Vice President, Verizon to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269; AU Docket No. 14-252 (Nov. 12, 2015) ("Verizon Letter"). Similarly in Springfield, MA (PEA069), Verizon holds an attributable interest in Pittsfield Cellular Telephone Company. See ULS License Call Sign KNKA691.

⁶ See *Mobile Spectrum Holdings Order*, 29 FCC Rcd at 6205 ¶ 176. One-third of 134 is equal to $44.\overline{66}$.

⁷ See T-Mobile Correction Letter at 2.

⁸ See *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Technical Formulas for Competitive Bidding*, Public Notice, DA 15-1183, ¶ 102, n. 166 (Oct. 15, 2015) ("*Application Procedures Public Notice*").

⁹ Indeed, it appears that the dominant carriers may already be attempting to exploit loopholes in the *Application Procedures Public Notice* relating to eligibility and spectrum leases. See Verizon Letter at 1 (explaining that Verizon would gain reserve-eligibility in PEA303 upon FCC approval of its lease of low-band spectrum to Triangle Communication System, Inc.); see also *Notification of Triangle Communication System, Inc. and Cellco Partnership d/b/a Verizon Wireless for a Long-Term Spectrum Manager Leasing Arrangement*, ULS File No. 0006824167, WT Docket No. 15-120.

Fourth, the reserve-eligibility list sometimes relies on a calculation of cellular geographic service area ("CGSA") populations that T-Mobile cannot replicate. The differences between T-Mobile's calculations and the FCC's calculations can be relatively small, but even small inaccuracies in the CGSA data could alter reserve eligibility under the FCC's current methodology. In Valentine NE (PEA410), for example, the difference between T-Mobile's calculated spectrum holdings for Verizon of 45.02 megahertz (ineligible) and the FCC's calculation of 44.9993 megahertz (eligible) reflect a difference of 11 people in the underlying CGSA data.¹⁰ Attached is the data T-Mobile used to determine that Verizon is ineligible for the reserve in PEA410.

T-Mobile urged the Bureau to consider the potential unintended consequences of inconsistent rounding and illogical treatment of spectrum leasing under the methodology announced in its *Application Procedures Public Notice*. The FCC should not permit the two dominant carriers to bid on reserve spectrum in markets where either carrier holds an attributable interest in more than one-third of the suitable and available low-band spectrum.

Under section 1.1206(b)(1) 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.

Enclosure

cc: Joel Taubenblatt
Catherine Matraves
Karen Sprung
Ben Freeman

¹⁰ The possibility Verizon securing reserve-eligible status despite holding 44.9993 megahertz of population-weighted spectrum only reinforces the need for a consistently applied rounding regime.