

December 11, 2008



Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WT Docket Nos. 07-195 and 04-356
Notice of Oral Ex Parte Presentation

Dear Ms. Dortch:

On December 10, 2008, Harold Feld, Senior Vice President, Media Access Project spoke with Chris Matthias, wireless advisor to Chairman Martin, with regard to the above captioned proceeding.

Mr. Feld stated that, regardless of the band plan or other rules adopted by the Commission, in the event the Commission auctions the AWS-2 or AWS-3 spectrum, it should include eligibility requirements designed to prevent AT&T and Verizon from further enhancing their dominant position in the mobile telephony and mobile broadband markets. As noted by PISC in previous filings, the Commission explicitly solicited comment in Docket No. 04-356 on whether to adopt eligibility requirements.

The Commission noted in the initial NPRM that the then-recent elimination of the spectrum cap created a real concern that unhealthy levels of concentration might emerge. Recent developments, extensively documented in numerous dockets before the Commission, demonstrate that this has now come to pass. Given the recent decision by the Commission to use the "spectrum screen" as part of the auction process, it makes sense to adopt the screen as an eligibility requirement for any AWS-2 or AWS-3 auction.¹ To maximize the likelihood that the proposed auction will enhance competition, the Commission should exclude any potential bidder from the auction if grant of any AWS-2 or AWS-3 license would exceed the spectrum screen *anywhere*. The Commission should not permit companies exceeding the eligibility cap to participate and subsequently divest to

¹PISC has filed timely *Petitions for Reconsideration* asking that the Commission reconsider inclusion of BRS spectrum in the screen. See *PISC Petition for Reconsideration*, WT Docket No. 08-95 (filed December 10, 2008); *PISC Petition for Reconsideration*, WT Docket No. 08-94 (filed December 8, 2008). Regardless of the outcome of those *Petitions* the Commission should exclude BRS spectrum from calculation of any spectrum cap as an eligibility requirement.

meet the cap. Nor, in the event the Commission adopts a plan using geographic licenses rather than a single national license, should the Commission permit companies that exceed the proposed eligibility cap in any region to participate in the auction, even if they limit bidding to regions where winning the new license would not exceed the eligibility cap.

Alternatively, the Commission could create eligibility requirements designed to exclude participation based on vertical integration, in that the combination of wireline and wireless broadband systems raises competitive concerns related to but different from concerns over spectrum aggregation.

Finally, Mr. Feld reiterated PISC's consistent opposition to any filtering mandate, even if it includes an ability to "opt out" based on proof of age.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 CFR §1.1206, this letter is being filed with your office.

Respectfully submitted,

/s/

Harold Feld
Senior Vice President

cc: Bruce Gottlieb