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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554

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

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the Expanding Opportunities for Broadcasters Coalition ("EOBC") submits this letter to offer its views on how the Commission should address important issues raised in the above-captioned proceeding.¹ EOBC is composed of broadcasters who together currently own, are proposed assignees, or have rights to acquire more than forty (40) television stations in many of the country's largest metropolitan areas, including eight of the ten largest television markets. As we explained in the Incentive Auction proceeding, EOBC members recognize the potential value of participating in an incentive auction and are committed to collaborating with the Commission to develop rules that will encourage broadcaster participation and thereby facilitate the auction's success.² EOBC members intend to participate in the incentive auction, provided that the reverse auction procedures are designed to permit broadcasters to recognize the true market value for any spectrum rights they choose to relinquish.³ To this end, in the Incentive Auction proceeding, EOBC suggested that the Commission encourage price discovery through a descending clock auction, entice broadcaster interest by offering high initial bid amounts, and resist the urge to place constraints on the forward auction that would limit auction participation.⁴

EOBC supports the Commission's efforts to improve the clarity, predictability, and relevance of its policies. As EOBC has counseled in other proceedings, however, the Commission should avoid *ex ante* eligibility restrictions for auction participation.⁵ *Ex ante* restrictions that preclude the highest valued users

¹ Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 2040 (2012) ("NPRM").

² Comments of the Expanding Opportunities for Broadcasters Coalition, Docket No. 12-268 (Jan. 23, 2012) ("EOBC Incentive Auction Comments").

³ *Id.* at 1.

⁴ *Id.* at ii.

⁵ *Id.*

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from participating in auctions are contrary to the public interest because they will: (1) result in inefficient allocation of spectrum and (2) cost the U.S. Treasury significant lost revenue. Accordingly, any artificial participation restrictions would likely jeopardize the success of a spectrum auction.

As the Commission has recognized, open eligibility for wireless spectrum allocations serves the public interest and is the most efficient means for licensing spectrum by auction.⁶ EOBC believes that any rules restricting open auction eligibility would be contrary to the Commission's statutory mandate to facilitate "the development and rapid deployment of new technologies, products, and services."⁷ *Ex ante* restrictions on auction eligibility decrease auction participation and reduce the likelihood that the party who values a particular spectrum license the most will win it.⁸ As AT&T has noted, there is no basis for the Commission to adopt *ex ante* restrictions that prevent providers who can make the highest-valued use of particular spectrum from participating in an auction for that spectrum.⁹ Indeed, *ex ante* eligibility restrictions would disserve the public interest by forcing excluded providers to resort to more expensive and less efficient means of addressing their spectrum needs.¹⁰ Over time, as spectrum falls into the hands of providers who cannot invest in developing and deploying it effectively, innovation may also be stymied and deployment of advanced wireless capabilities slowed. In sum, restricting providers' eligibility to participate in auctions would harm both competition and consumers because at least some portion of the available spectrum would likely go to providers other than those who value it most and are most likely to deploy it productively.¹¹ This is especially important where the potential economic benefits of efficient spectrum allocation have been estimated in the hundreds of billions of dollars.¹²

⁶ See In the Matter of Service Rules for the 698-746, 747-762, and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15383-84, ¶ 256 (2007) ("700 MHz Service Rules Order").

⁷ 47 U.S.C. § 309(j)(3)(A); see also Comments of Verizon and Verizon Wireless, Docket No. 12-268, at 41 (Jan. 25, 2013) ("Verizon Incentive Auction Comments").

⁸ See EOBC Incentive Auction Comments, Exhibit A: Declaration of Jeffrey A. Eisenach, ¶ 30 ("Eisenach Decl.") (noting that to achieve efficient spectrum allocation, demand cannot be reduced by the arbitrary exclusion of some potential buyers).

⁹ Comments of AT&T, Inc., WT Docket No. 12-269, at 33 (Nov. 28, 2012) ("AT&T Spectrum Aggregation Comments").

¹⁰ *Id.* at 8.

¹¹ See Verizon Incentive Auction Comments at 41.

¹² Eisenach Decl. at ¶ 2.

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In addition to causing inefficient spectrum allocations, *ex ante* auction eligibility restrictions would directly harm the public interest by reducing significantly auction revenues because of suppressed demand. Open auction participation, in contrast, would increase competitive bidding and ensure that spectrum licenses yield their full value. For an auction to allocate spectrum efficiently, sellers must enter the auction with confidence that they will face the full demand curve, and that demand will not be reduced by arbitrary exclusion of some potential buyers.¹³ In particular, diminishing demand would reduce auction revenue by eliminating the robust competition among bidders that drives transaction prices higher.¹⁴ Imposing auction eligibility restrictions would therefore cause major losses to the auction's intended beneficiary: the U.S. Treasury.¹⁵ This is especially problematic in the current economic climate, where deficit concerns loom large as a national priority.¹⁶ The value lost to the public will go directly into the hands of the permitted auction participants that will enjoy an economic windfall due to acquiring spectrum at below-market rates. Contrary to the Commission's statutory obligation to promote "economic opportunity and competition,"¹⁷ these auction winners will enjoy a competitive advantage through what effectively will be public subsidization of their business expenses. Alternatively, these companies may be unjustly enriched through reselling licenses on the secondary market to entities that value the spectrum more highly.¹⁸ Accordingly, the Commission should avoid imposing any spectrum aggregation constraints on participants' eligibility in any spectrum auction, both in the proposed incentive auction and in any other future spectrum auction.

Further, the Commission should not adopt a separate spectrum screen limit for spectrum holdings below 1 GHz. Parties that seek special aggregation limits or spectrum screens exclusively for spectrum below 1 GHz assert that such spectrum is "uniquely valuable" and should therefore be subject to different regulatory

¹³ See Eisenach Decl. at 13 ("If the Commission excludes or limits potential bidders from the auction in an effort to address concerns about market structure in the market for wireless broadband, it will reduce the amount of spectrum that is ultimately reallocated.").

¹⁴ See Verizon Incentive Auction Comments at 42; Eisenach Decl. at ¶ 37.

¹⁵ See EOBC Incentive Auction Comments at 14.

¹⁶ See *id.*

¹⁷ 47 U.S.C. § 309(j)(3)(B); see also Verizon Incentive Auction Comments at 41.

¹⁸ Verizon Incentive Auction Comments at 42.

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treatment.¹⁹ However, as Verizon has correctly noted, the proposition that 1 GHz spectrum is “uniquely valuable” simply cannot withstand scrutiny.²⁰ Indeed, spectrum at all levels has characteristics that may make it particularly useful for different applications.²¹ The proponents of special treatment for lower band spectrum holdings typically point to the greater propagation and penetration characteristics of this spectrum, however, spectrum above 1 GHz has its own distinct advantages related to device design, capacity, available bandwidth, and other factors.²² Indeed, depending on the specifics of the network architecture, local environment, and usage characteristics of the deployment, higher frequency spectrum may be much preferable to spectrum below 1 GHz.

Context is critical to spectrum valuation efforts – characteristics that may be valuable in covering wide geographic areas may be counterproductive for systems facing congestion and other constraints. For example, some network architectures, such as those based on small cell deployments, are better served by higher frequency spectrum.²³ The limited signal propagation of higher band spectrum facilitates denser network topographies, greatly increasing frequency reuse.²⁴ In turn, higher band spectrum may offer significant capacity advantages over lower band spectrum.²⁵ Because of these properties, high frequencies are well-suited for dense deployment requiring higher overall capacity in the covered area,²⁶ making them ideal for the urban environments where the demand for additional network resources often is greatest. As the President’s Council of Advisors on Science and Technology (PCAST) has noted in its Report on Realizing the Full Potential of

¹⁹ See, e.g., Comments of T-Mobile USA, Inc., Docket No. 12-269, at 14 (Nov. 28, 2012) (“T-Mobile Comments”); Comments of the Competitive Carriers Association, Docket No. 12-269, at 11 (Nov. 28, 2012) (“CCA Comments”).

²⁰ Reply Comments of Verizon Wireless, Docket No. 12-269, at 19 (Jan. 7, 2013) (“Verizon Wireless Reply Comments”).

²¹ *Id.*

²² *Id.* at 27.

²³ See Verizon Wireless Reply Comments, Exhibit 2: Declaration of William H. Stone, Executive Director of Network Strategy, Verizon, ¶ 11-12 (“Stone Decl.”); see generally PCAST, Report to the President: Realizing the Full Potential of Government-Held Spectrum to Spur Economic Growth, 17 (rel. Jul. 20, 2012) (“PCAST Report”), available at http://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast_spectrum_report_final_july_2012.pdf (explaining that the move toward higher frequencies and smaller cell sizes is a critical development to creating the new, more efficient spectrum architecture of the future).

²⁴ Verizon Wireless Reply Comments at 24; Stone Decl. at ¶ 11-12.

²⁵ See *id.* at ¶ 6.

²⁶ *Id.*

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Government-Held Spectrum to Spur Economic Growth, “the implementation of small cells could make higher frequency spectrum the next “beachfront” spectrum.”²⁷

Spectrum holdings below 1 GHz are not “uniquely valuable” and do not warrant disparate regulatory treatment. Auction participants can best take account of differing band characteristics organically during the auction bidding process, without the imposition of a targeted lower band spectrum screen. If anything, imposing a secondary screen focused only on spectrum below 1 GHz would simply favor select competitors that have chosen not to acquire such lower band spectrum in prior auctions.²⁸ The Commission should avoid such arbitrary preferences and therefore refrain from adopting a separate spectrum limit for spectrum holdings below 1 GHz.

* * *

EOBC supports the Commission’s initiative to revise its policies to increase clarity and predictability for providers. However, the Commission should not impose eligibility restrictions that preemptively limit providers’ ability to participate in spectrum auctions. Such *ex ante* restrictions are contrary to the public interest because they lead to inefficient spectrum allocations and reduced revenues for the U.S. Treasury. Similarly, the Commission should resist calls for separate spectrum limits for spectrum holdings below 1 GHz. Lower band spectrum does not offer advantages relative to other spectrum bands that would warrant application of different aggregation standards. As such, the Commission should only pursue the proposals suggested in the Notice that allow all providers to participate freely in spectrum auctions.

Best regards,

/s/ Richard J. Bodorff
Richard J. Bodorff

²⁷ PCAST Report at 19.

²⁸ *Id.* at 25-26.