



Received & Inspected

**Thomas A. Schatz**  
President

April 26, 2013

APR 30 2013

FCC Mail Room

Chairman Julius Genachowski  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: WT Docket No. 12-269

Dear Chairman Genachowski,

On behalf of the more than one million members and supporters of Citizens Against Government Waste (CAGW), I am writing to express our concerns with the April 11, 2013 *Ex Parte* Submission of the United States Department of Justice (DOJ) regarding the upcoming broadcast spectrum incentive auctions.<sup>1</sup>

The DOJ suggested that the Federal Communications Commission (FCC) adopt rules that prohibit or discourage larger mobile competitors from bidding on low-frequency spectrum in order to give smaller nationwide carriers the ability to purchase blocks of this spectrum. CAGW supports the use of the incentive auctions to increase the amount of spectrum available for mobile use. However, if the FCC uses DOJ's criteria for selecting who should participate in the auctions, it will do little to spread the amount of available spectrum across all carriers.

The DOJ's recommendations for the upcoming spectrum auctions are not the first time the federal government has tried to choose corporate winners and losers. In 2003, Northpoint Technology sought \$100 million worth of spectrum directly from Congress to provide wireless and satellite services. The company attempted to subvert the auction process by mounting a large lobbying campaign for the inclusion of language in authorization and appropriations bills.

The language nearly made it into the law, except for protests from legislators and groups like the Council for Citizens Against Government Waste. CCAGW called the proposal "a \$100 million giveaway to an organization whose only asset was in knowing the right people in Washington." Ultimately, the company failed to obtain the free spectrum allocation from Congress.

In addition, smaller carrier bids do not always lead to increased competition in the marketplace, particularly if a smaller, less experienced company wins a large segment of spectrum in the auctions. In May 2000, Winstar Communications was awarded 931 spectrum

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<sup>1</sup> United States Department of Justice, "Ex Parte Submission of the United States Department of Justice," Docket No. 12-269 (filed April 11, 2013), <http://wireless.fcc.gov/auctions/30/charts/30cls2.pdf>.

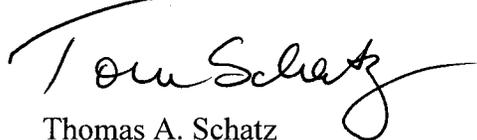
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licenses in the FCC's closed 39 GHz auction #30 to provide wireless broadband services.<sup>2</sup> However, the company was unable to generate enough sales to cover its large capital infrastructure build outs, and filed for Chapter 11 bankruptcy protection in 2001.<sup>3</sup>

While DOJ asserts that its recommendation is meant to provide a level playing field, it is in fact anti-competitive. If the FCC follows DOJ's recommendations, it would be in the position of determining winners and losers in the spectrum auctions before they even begin. An April 15, 2013 article in ZDNet reported that if larger communications companies like Verizon and AT&T are not permitted to bid on prime low-frequency spectrum, they may not even participate in the upcoming auctions.<sup>4</sup>

Past mistakes of opening up spectrum auctions only to politically-connected or inexperienced telecommunications companies should be avoided. The FCC should allow a truly free market competitive bidding process to move forward and reject the DOJ's recommendations.

Sincerely,

A handwritten signature in black ink that reads "Thomas A. Schatz". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Thomas A. Schatz  
President

cc: Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai

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<sup>2</sup> Federal Communications Commission, "FCC "Closed" 39 GHz Auction #30," May 8, 2000, <http://wireless.fcc.gov/auctions/30/charts/30cls2.pdf>.

<sup>3</sup> Melanie Austria Farmer, "Winstar files for bankruptcy, sues Lucent," CNET News, April 5, 2001, [http://news.cnet.com/Winstar-files-for-bankruptcy,-sues-Lucent/2100-1033\\_3-256005.html](http://news.cnet.com/Winstar-files-for-bankruptcy,-sues-Lucent/2100-1033_3-256005.html).

<sup>4</sup> Charlie Osborne, "Justice Dept: US spectrum sale must encourage competition," ZDNet, April 15, 2013, <http://www.zdnet.com/justice-dept-us-spectrum-sale-must-encourage-competition-7000014001/>.