

July 8, 2013

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Ex Parte Presentation**

**GN Docket No. 12-268; WT Docket No. 12-269**

Dear Ms. Dortch:

Attached on behalf of T-Mobile US, Inc. is a paper prepared by Professor Jonathan Baker of American University's Washington College of Law. Professor Baker's paper responds to a recent report that attempts to discredit the submission of the Department of Justice ("DOJ") in the above-referenced proceeding.<sup>1/</sup>

As Prof. Baker points out, the Phoenix Report concludes that there is no consumer benefit to enhancing competition in the wireless marketplace. It reaches this foreordained result by constructing a flawed economic model based on erroneous assumptions. First, it assumes that consumers would never be harmed if a large incumbent wireless provider foreclosed the ability of smaller rivals to obtain additional spectrum and thereby become more aggressive competitors. In fact, of course, smaller carriers often provide a substantial competitive threat to the largest incumbents by offering consumers new and innovative services and service options.

Second, the Phoenix Report assumes that a given spectrum acquisition would lower costs or improve service quality more for larger firms than for smaller firms. This ignores the evidence suggesting that smaller carriers can use incremental spectrum *more* efficiently than larger providers. It also ignores the fact that the upcoming incentive auction will make available low-band spectrum that would be expected to increase production efficiency more for small providers that currently lack such spectrum than for large ones.

Professor Baker demonstrates again what should be obvious – allowing the largest carriers to dominate the upcoming spectrum auctions will deprive consumers of competition and choice. The Phoenix Report's brief for monopoly should be summarily dismissed.

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<sup>1/</sup> See George S. Ford, PhD, and Lawrence J. Spiwak, J.D., *Phoenix Center Policy Bulletin No. 33: Equalizing Competition Among Competitors: A Review of the DOJ'S Spectrum Screen Ex Parte Filing* (May 2013), available at <http://www.phoenix-center.org/PolicyBulletin/PCPB33Final.pdf> ("Phoenix Report"); *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 (filed April 11, 2013).

In addition to the Phoenix Report that Prof. Baker discredits, one of the authors of the report recently posted additional flawed arguments against reasonable spectrum aggregation limits.<sup>2/</sup> First, while acknowledging that T-Mobile does not propose to exclude any carriers from the incentive auction, the Ford Blog Post asserts that a 30 percent spectrum cap would be an “effective exclusion” if the amount of spectrum made available by broadcasters is low. That overlooks essential elements of T-Mobile’s proposal – a “minimum access” exception ensuring that no carrier is excluded from the 600 MHz auction, regardless of how little spectrum is made available by broadcasters,<sup>3/</sup> and a “dynamic market rule” under which its proposed spectrum aggregation limit would be gradually relaxed and ultimately eliminated if the Commission does not meet its revenue target.<sup>4/</sup>

Second, the Ford Blog Post cites T-Mobile’s recent filing explaining that competitive carriers need AT&T and Verizon in the 600 MHz band ecosystem and argues that “this admission sinks the DOJ’s [foreclosure] argument” because it effectively acknowledges that the two largest carriers will use the 600 MHz spectrum to provide service. But just because AT&T and Verizon will put the spectrum to use, they still have strong incentives to outbid rivals in order to foreclose those rivals from also getting access to the spectrum to provide service. A reasonable spectrum aggregation policy will facilitate the creation of a robust ecosystem *and* ensure a competitive wireless marketplace.

Pursuant to Section 1.1206 of the Commission’s rules, an electronic copy of this letter is being filed electronically with the Office of the Secretary.

Please direct any questions regarding the foregoing to the undersigned.

Sincerely,



Howard J. Symons

Attachment

cc: Ruth Milkman  
Louis Peraertz

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<sup>2/</sup> George Ford, “Arguments for Bidder Exclusion Rules Remain Weak and Inconsistent . . .,” @lawandeconomics Blog (June 20, 2013), available at <http://phoenix-center.org/blog/archives/1408> (“Ford Blog Post”).

<sup>3/</sup> See Letter from Trey Hanbury, Hogan Lovells US LLP, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269, at 5 (filed May 30, 2013).

<sup>4/</sup> See Letter from Trey Hanbury, Hogan Lovells US LLP, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 and WT Docket No. 12-269 (filed June 21, 2013).

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