Tamara Preiss
Vice President
Federal Regulatory Affairs

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2540
Fax 202 336-7922
tamara.preiss@verizon.com

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Ex Parte

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

Re: <u>Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Docket No. 12-268; Policies Regarding Mobile Spectrum Holdings, Docket No. 12-269</u>

Dear Ms. Dortch:

T-Mobile recently asserted that New Zealand's adoption of a cap on the number of licenses any firm could acquire in its 700 MHz auction supports T-Mobile's request for a cap on below-1 GHz spectrum holdings.[1] In fact, New Zealand's carrier-neutral bidding rule bears no similarity to T-Mobile's spectrum cap proposal or its so-called "Dynamic Market Rule." Those proposals would restrict *only* AT&T and Verizon and would allow T-Mobile to obtain licenses without having to compete with AT&T and Verizon at auction. T-Mobile's proposal would be *much* more restrictive and would cause much greater economic harm than the bidding restrictions that New Zealand and other countries have employed.

And as we and others have made clear elsewhere, the Commission cannot ignore that bidding restrictions – even the comparatively less onerous ones used internationally – often substantially suppress auction revenue. The results of New Zealand's auction, which took place last week, further undercut T-Mobile's claims that restrictions might somehow enhance revenue by encouraging broader auction participation.

1. <u>T-Mobile's Proposal Differs Drastically From the Nondiscriminatory and Less Restrictive Rules Adopted by Other Countries</u>.

T-Mobile wants the Commission to limit bidders to a single 5x5 MHz license if a bid would cause the bidder to exceed a cap of one-third of available spectrum below 1 GHz.[2] This rule would limit Verizon and AT&T to a *single 5x5 license* in almost all large markets.[3] That

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[1] *Ex Parte* Letter from Trey Hanbury, Hogan Lovells USLP, to Marlene H. Dortsch, Secretary, FCC, Docket Nos. 12-268 & 12-269 (Oct. 28, 2013) ("Oct. 28 Letter").

[2] *See, e.g.*, *Ex Parte* Letter from Trey Hanbury, Hogan Lovells USLP, to Marlene H. Dortsch, Secretary, FCC, Docket Nos. 12-268 & 12-269 (Sept. 26, 2013).

[3] *Id.* at 2.

means that under a band plan auctioning seven 5x5 licenses (which is what Verizon and T-Mobile support), Verizon and AT&T could each bid on less than 15% of the auctioned spectrum (i.e., one license out of seven). T-Mobile, on the other hand, could acquire *five out of the seven licenses* (over 71% of the paired spectrum) without any need to compete with Verizon or AT&T.

New Zealand did not adopt such an onerous and discriminatory rule. New Zealand's rule applied across the board to all bidders, and did not discriminate against certain carriers and favor others. In fact that proposal was *much* less restrictive: every auction participant could acquire up to (but no more than) *three* 5x5 licenses.[4] That is *three times* the spectrum Verizon and AT&T could acquire under T-Mobile's proposal.

New Zealand's approach is in line other countries. As Mobile Future recently established, when foreign regulators have experimented with bidding restrictions, they have overwhelmingly established rules permitting *all bidders* to acquire substantial amounts of spectrum – typically at least two 5x5 licenses and often more.[5] The evidence from foreign auctions does not support T-Mobile's attempt to insulate itself from auction competition.

2. Even the Less Onerous Restrictions Used Internationally Often Result in Lower Than Expected Revenues at Auction.

T-Mobile also ignores evidence that foreign bidding restrictions often result in reduced auction revenues – an effect that would be amplified if the Commission were to impose the much more onerous restrictions T-Mobile supports.

As detailed in the Mobile Future Paper, decisions by foreign regulators to impose bidding restrictions often result in disappointing revenues.[6] Those lower than expected returns often prompt investigations by government authorities into what went wrong and/or findings by analysts that certain auction participants received substantial government subsidies in the form of artificially low prices.[7] To take just one example, the Netherlands' decision to impose caps in its 2.5 GHz auction substantially suppressed bidding and led to very low revenues – less than $3.5 million for 130 MHz of spectrum.[8] The caps also caused more than 60 MHz of available

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4 *See* Hon. Amy Adams, New Zealand Minister for Communications and Information Technology, "Radio spectrum auction details announced" (Sept. 4, 2013), Beehive.gov.nz (The Official Website of the New Zealand Government) *available at* http://beehive.govt.nz/release/radio-spectrum-auction-details-announced ("Sept. 4 Press Release").

5 Mobile Future, *The Case For Inclusive Spectrum Auction Rules: How Failed International Experiments with Auction Bidding Restrictions Reveal the Strength of Inclusive Rules that Put Consumers and Innovation First* (Sept. 2012), at 2 (filed in Docket Nos. 12-268 & 269 on Sept. 19, 2013) ("Mobile Future Paper").

6 *Id.* at 4-12.

7 *Id.*, *passim*.

8 *Id.* at 9-10.

spectrum to remain unsold (and unavailable to serve customers) because the bidders who would have been willing to pay the reserve price on that spectrum were restricted from bidding on it. Remarkably, one month later, Denmark (a country with a smaller population than the Netherlands) auctioned its 2.6 GHz band without any caps – and that unrestricted auction raised *50 times* more revenue than the Dutch auction.[9]

The results of the New Zealand auction further undercut T-Mobile's claims. T-Mobile argues that bidding restrictions promote "enhanced participation" which in turn might "offset, or more than offset, the revenue effect of the reduced spectrum demand from large incumbents."[10] But the New Zealand auction attracted only three participants (the three existing operators), it failed to promote any competition among the bidders (each license sold for its reserve price), and it failed to receive any bids at all for one of the licenses.[11] Adopting T-Mobile's proposal is likely to produce the same lackluster bidding and lead to auction failure.[12]

3. <u>The International Evidence Proves That Low-Frequency Spectrum Is Not Necessary to Compete Aggressively.</u>

T-Mobile asserts that "international experts have recognized that making low-frequency spectrum available at auction without limits on aggregation poses a real risk that dominant players will foreclose bidders with smaller financial reserves and permanently skew the competitiveness of the mobile broadband marketplace."[13] But it does not support that statement with any evidence.

Numerous foreign firms – just like T-Mobile in the United States – have passed up opportunities to acquire low-frequency spectrum, and have instead deployed nationwide networks using higher-frequency spectrum.[14] Foreign regulators have confirmed that those

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9 *Id.*

10 *See* Jonathan B. Baker, "Spectrum Auction Rules That Foster Mobile Wireless Competition," paper submitted on behalf of T-Mobile, *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, at 10-11 ("Baker Paper"). Former FCC Chief Economist Leslie Marx provides a rigorous economic critique of Dr. Baker's speculation about the purported revenue-enhancing effects of T-Mobile's proposal. *See* Leslie M. Marx, *Economic Analysis of Proposals that Would Restrict Participation in the Incentive Auction*, Sept. 18, 2013, ¶¶ 81-88 ("Marx Paper").

11 *See* Sept. 4 Press Release; Hon. Amy Adams, "Three bidders successful in 700 MHz 4G spectrum auction," (Oct. 30, 2013), *available at* http://beehive.govt.nz/release/three-bidders-successful-700-mhz-4g-spectrum-auction.

12 *See* Marx Paper, Section VII (explaining that the harmful effects of bidding restrictions can be amplified in the context of a two-sided auction given that robust demand in the forward auction is needed to draw out supply in the reverse auction).

13 Oct. 28 Letter at 2.

14 *See* Mobile Future Paper at 15.

decisions should not be dismissed as mistakes by firms not acting rationally. For example, the U.K. regulator has rejected requests to ensure that a new entrant would have low-frequency spectrum, finding that "[h]aving considered the evidence and responses, our judgment is that it is unlikely to be necessary to hold sub-1 GHz spectrum to be a credible national wholesaler."[15] Ofcom therefore concluded that "[w]e do not consider it appropriate and proportionate" to establish rules ensuring that all four nationwide competitors have sub-1 GHz spectrum.[16]

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The international evidence proves that the Commission should continue its longstanding policy of authorizing open eligibility in auctions in order to ensure that licenses are assigned to the firms that value the spectrum most highly and that will put it to its highest and best use.

This letter is being filed pursuant to Section 1.1206 of the Commission's rules. Should you have any questions, please contact the undersigned.

Sincerely,

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[15] Ofcom Statement, Annex 3, *Assessment of future mobile competition and award of 800 MHz and 2.6 GHz* (July 24, 2012), ¶ A3.133, *available at* http://stakeholders.ofcom.org.uk/binaries/consultations/award-800mhz/statement/Annexes1-6.pdf.

[16] *Id.*