

March 17, 2014

EX PARTE VIA ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

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

Dear Ms. Dortch:

The world is watching as the Federal Communications Commission (FCC) plans for the largest auction of public assets in American history which is expected to recover billions of dollars for the United States Treasury.

More importantly the auctions will lead to the introduction of new wireless communications services, an "Internet of Things" that is expected to fuel our nation's economic growth and revolutionize everyday life. The FCC has a big responsibility ahead of itself in making sure that the incentive auctions are fair and successful for everyone.

The results of the 700 MHz spectrum auction back in 2008 show the highest average price per MHz pop of \$2.71 was realized for the 734 Cellular Market Area (CMA) licenses and the lowest average price realized was \$ 0.77 per MHz pop for licenses sold as 8 Regional Economic Area Grouping (REAG). Verizon Wireless, (Verzion) was the high bidder for every REAG market in the auction except the Alaska REAG market which Verzion later acquired post auction. The fact is that AT&T did not place one bid for any of the REAG markets and the REAG markets was sold to Verzion at a discount compared to the CMA markets. This below market pricing per MHz pop had greatly suppressed the overall 2008 auction revenues. The 2008 auction results prove that

selling licenses in smaller CMA blocks would bring a much higher price per MHz pop and the total auction revenues could have been increased significantly if all the markets in the 700 MHz auction was sold as Basic Trading Areas (BTA) or CMA size markets. <sup>1</sup>

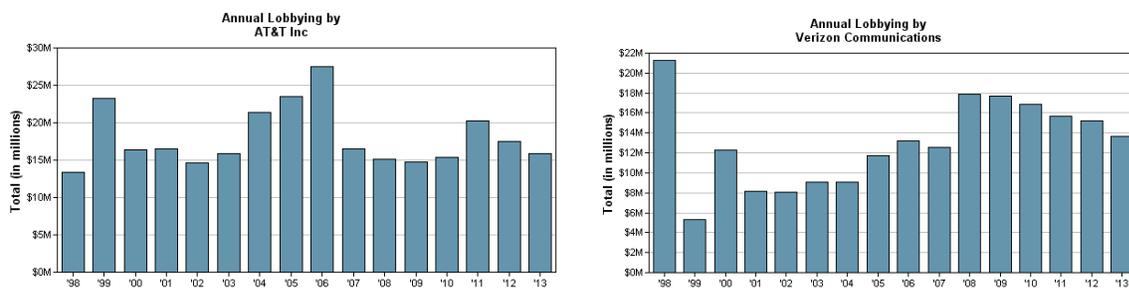


If the licenses in the incentive auction are sold strictly as CMA markets it could mean the difference of \$40 billion or more in auction revenues. Since the U.S. population is 315 million - and the estimated amount of available spectrum for the incentive auction is 70 MHz by simple multiplication you get 22 billion MHz of spectrum set for the auction block. Selling the American airwaves in large REAG markets is subsidizing certain nationwide incumbents with billions of dollars worth of low band spectrum at the expense of the American taxpayers. The end result is a wholesale transfer of valuable public airwaves into the private hands of a few multinational companies at deep discounted prices. In other words the US Treasury has already suffered a loss of tens of billions of dollars, by selling valuable licenses below their true market value. The licenses should have been sold as 734 CMA markets instead 8 REAG markets. Selling spectrum licenses in the upcoming incentive auctions strictly as CMA markets will help recapture billions of dollars in lost revenues being ignored that can be used to fund First Net and help subsidize broadband access across all of rural America. <sup>2</sup> A small business bidding credits has zero value regardless of size, when the size of the markets

<sup>1</sup>Spectrum Bridge proprietary Historical Auction Data FCC Auction Analyzer provides historical auction data as one of the best sources of comparable transaction data for spectrum purchased from the FCC. Analysis Tool which makes the job of filtering and analyzing thousands of FCC records fast, easy and efficient.

<sup>2</sup> Auction 73 concluded with 1090 provisionally winning bids covering 1091 licenses and totaling \$19,120,378,000 in winning bids.

are unaffordable to start. Considering the use of REAG size markets removes the number of available licenses a small business can afford to bid on. The upfront deposit alone on REAG size markets prevents small business competition by default. REAG size markets is a barrier to entry to small business participation in the incentive auction. REAG size markets is nothing more than a private auction of set-aside spectrum in favor of AT&T and Verizon. Remember it is the American airwaves that is on the auction block to the highest bidder, not the hallways of Congress.<sup>3</sup>



We ask the Commission to turn a deaf ear to AT&T and Verizon endless cries of unfairness. Bidding restrictions and spectrum limits are absolutely necessary in order to have a fair and successful incentive auction. The incentive auction must have structural protections carved into the auction rules to ensure an adequate distribution of spectrum among many bidders including small businesses. AT&T and Verizon may be too big to fail but ensuring an appropriate competitive framework and encouraging small business participation would be the highest and best use of the 600 MHz spectrum. Revising auction rules so that new technologies can flourish would be the forward thinking way to focus on the incentive auction.

It is important that the Commission ignore the mountains of manufactured data and statistics that have been manipulated and hand molded to support the rhetoric. Spectrum limits are a reasonable implementation of Section 309(j) of the Communications Act. The Commission has a sound foundation with a long history of factual evidence of record in support of spectrum limits. Without spectrum caps AT&T and Verizon would highjack the incentive auctions and dominate

<sup>3</sup> The industry spent \$43 million on lobbying in 2009 -- slightly off its 2008 pace. The biggest spender on lobbying in 2009 was again AT&T, with \$14.7 million in lobbying expenditures, followed closely by Verizon Communications, which spent \$13.1 million on lobbying.

the bidding - winning most if not all of the spectrum in the incentive auction. The Commission can't afford to repeat the 700 MHz auction with AT&T and Verizon winning most of the 700 MHz licenses after bidding more than 81% of the total auction revenues in the 2008 auction. And the Commission must avoid a repeat of the H block auction that was dominated by one bidder Dish Network, winning every license in the auction. The last few spectrum auctions results have proved to be a failure in light of what congress has mandated when it first asked the FCC to allocate scarce public radio frequency spectrum via competitive bidding and tasked the Commission to encourage a healthy participation of small business by having the licenses broadly distributed among numerous bidders<sup>4</sup> Without having spectrum caps in the incentive auctions AT&T and Verizon will control most of the available low band spectrum. Without access to low band spectrum small business competition in the U.S. will disappear into thin air. The Commission must learn from history and not repeat the disastrous results of the 700 MHz spectrum auction which allowed AT&T and Verizon to introduce the flawed idea of non-interoperability. AT&T and Verizon already control most of the available low band spectrum. Small business should be allowed to participate fairly for low band spectrum if the Commission expects to have a successful incentive auction. The incentive auction have to include provisions to protect small businesses by setting spectrum caps on the amount of spectrum AT&T and Verizon can win. The fact is licenses sold as CMA markets bring higher auction bids.

AT&T and Verizon is asking the Commission to design the incentive auction in their favor selling licenses in REAG markets but at the same time is makes the argument that the incentive auction revenues would be greatly suppressed if AT&T and Verizon was not allowed to win an unlimited amount of low band spectrum for below-market REAG size discounts. *"You can't eat your cake and have it, too"* REAG markets is unrealistic and will prevent small business competitors from acquiring low band spectrum that is needed in order to provide reliable wireless services. It is very clear that AT&T and Verizon would enjoy a big advantage with

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<sup>4</sup> Congress first authorized the Federal Communications Commission ("FCC" or "Commission") to allocate scarce public radiofrequency spectrum via competitive bidding (auctions) in Section 309(j) of the Communications Act in 1993, they mandated that the agency promote the participation of small, MBE and women-owned business enterprises ("WBEs") and rural telephone companies (collectively known as "Designated Entities" or "DEs"), avoid excessive concentration of licenses, and disseminate licenses among a wide variety of applicants.

REAG size markets. CMA size markets will provide low band spectrum for small businesses and the Commission has good reason to sell all available spectrum licenses as 734 CMA markets. AT&T and Verizon must be limited to no more than 10 MHz of spectrum for each CMA. This would guarantee no less than 4 winning bidders for each of the 734 CMA markets assuming the FCC recovers the full 70 MHz of spectrum from the broadcasters it is hoping for. CMA market sizes will ensure a record number of small businesses participation.<sup>5</sup> Small size markets like Basic Trading Areas (BTA) and Cellular Market Areas (CMA) would guarantee overall higher auction revenues.

Small businesses will be at a big disadvantage and closed-out from winning any licenses in the auction without having spectrum caps. Low band spectrum has a superior reach and in-building penetration making the mobile network reliable and more affordable when building a greenfield network. Without access to low band spectrum it would be impossible for a small business to thrive in current markets against AT&T and Verizon. AT&T and Verizon already control the available low band spectrum along with most of the industry revenues. The AT&T and Verizon oligopoly has a big edge over the competition. AT&T and Verizon must be limited to the amount of spectrum it can win in the incentive auction - designating available spectrum to be sold in CMA size markets will insure a record number of small businesses taking part in the incentive auctions.

**Small Business Incentive Auction Encouragements:**

- Spectrum Limits.
- Licenses sold as CMA markets.
- Greenfield 8 year build-out requirement.
- Licenses in paired 5 MHz x 5 MHz blocks.

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<sup>5</sup> Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Business, Report, 12 FCC Rcd 16802, 16824-46 ¶¶35-81 (1997); see also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5537-38 ¶¶11 (1994) (“Fifth R&O”).

- Clear and re-pack Ch 51 within a 6-9 month timeline.

To prevent the abuse of any small business bidding credits a small business entity must aggregate total net assets and gross revenues for all interest holders in order to qualify as a small business entity. A qualified small business can not exceed a set dollar amount in gross bids in the incentive auction. Avoiding the formation of front companies and collusion. The set gross bids dollar amount will help maintain the integrity and transparency of the incentive auctions.<sup>6</sup>

**Qualified Small Business Bidding Credit Size:**

- 60% Nano: \$50 million in Assets and \$50 million limit in Gross Auction Bids.
- 40% Micro: \$100 million in Assets with a \$100 million limit in Gross Auction Bids.
- 25% Macro: \$300 million in Assets with a \$300 million limit in Gross Auction Bids.

The incentive auction offers an unprecedented opportunity for small businesses to become involved in the future of everything mobile. The 600 MHz spectrum is the last available low band spectrum and is a once in a lifetime opportunity.

Respectfully submitted,

Vincent D. McBRIDE  
Managing Member  
McBride Spectrum Partners, LLC

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<sup>6</sup> 6/3/1998 PUBLIC NOTICE (DA 98-1051) U.S. Department of Justice Approves Debt Forgiveness Personal Communications Service (PCS) C Block The Department of Justice has authorized the reduction of debt owed to the United States by all C Block licensees who make elections on June 8, 1998. [pdf](#) - [text](#) - [WordPerfect](#) The FCC initially participated in the bankruptcy proceedings as a creditor. See the Entrepreneurs C block blunder. See, e.g., *In re NextWave Personal Communications, Inc.*, 235 B. R. 314 (Bkrtcy. Ct. SDNY 1999)