

March 26, 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: Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185; Policies Regarding Mobile Spectrum Holdings, GN Docket. 12-269**

Dear Ms. Dortch:

The world is watching as the Federal Communications Commission plans for the largest auction of public assets in American history. This auction of valuable low band 600 MHz spectrum will lead to improved wireless service across America, including rural areas in much need of broadband service. The accelerating demand for transmission of more wireless data already challenges America's network capacity and infrastructure.

This coming incentive auction will provide the opportunity to bring greater competition and innovation into the wireless industry, and thereby fuel America's growth. Unfortunately, the industry is presently dominated by the duopoly of AT&T and Verizon.<sup>1</sup> Therefore, the FCC will shoulder the important responsibility of ensuring that the smaller wireless businesses will finally be able to compete fairly in the bidding. Limits on the amount of spectrum that any one carrier (large or small) is allowed to purchase will increase competition, and thereby lower the cost of service for all American consumers.

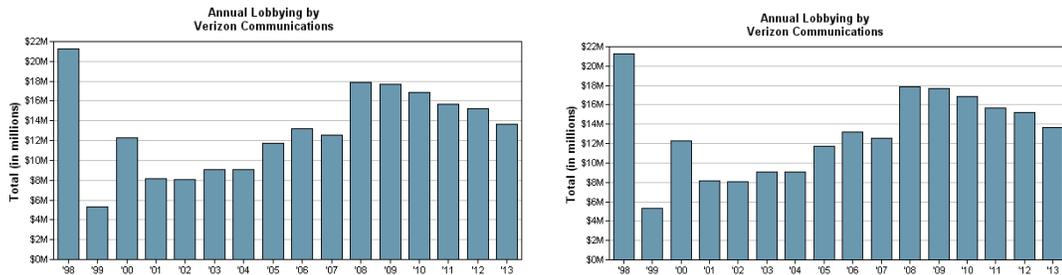
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<sup>1</sup> During 2013, AT&T amassed another 128.7 billion dollars. Verizon lagged behind with a mere 120.5 billion.

## HISTORY OF ABUSE

In the previous 2008, 700 MHz Auction #73, AT&T and Verizon were allowed to dominate the auction. Together, they won most of the valuable licences by bidding more than 83% of the total auction revenue.<sup>2</sup> In the recent 2013 H block auction, Dish Network was given a similar “no limit” latitude and allowed to purchase every available license in the auction. This illustrated history of past auction abuse shows that the smaller carriers must be protected from the giant nationwide predators, who will otherwise gobble up all of the valuable low band licenses.<sup>3</sup>

In order to foster competition, in Section 309(j) of the Communications Act of 1993, the FCC was instructed by Congress to avoid excessive concentration of licenses, and to disseminate licenses among a wide variety of applicants.<sup>4</sup> This has hardly been the outcome in past auctions. The FCC has the responsibility of ensuring the fair and healthy participation of the smaller businesses in all future spectrum auctions. The Commission must ensure that the valuable licenses for AWS and 600 MHz spectrum are fairly distributed among many different wireless bidders of all sizes and variety, and are not merely appropriated by AT&T or Verizon.



AT&T and Verizon would like to design the auction rules in their favor, but however scarce the American airwaves maybe the American airways should be purchased via FCC auctions that have been fairly designed for all bidders including small business, not sold to in the halls of congress to the highest bidder. <sup>5</sup> The FCC must disregard the rhetoric and foolish cries from AT&T and Verizon that having necessary limits on the amount of spectrum which they are allowed to purchase would somehow “reduce” the total auction revenue. The Commission must

<sup>2</sup> Auction #73 concluded with 1090 provisionally winning bids, totaling \$19,120,378,000.

<sup>3</sup> Spectrum Bridge’s proprietary “Historical Auction Data, FCC Auction Analyzer” is a tool for examining spectrum purchases from FCC auctions.

<sup>4</sup> In 1993, Congress further mandated that the FCC promote the participation of small, and women owned, and rural telephone businesses.

<sup>5</sup> The biggest industry spender on lobbying Congress in 2013 was again AT&T, spending over \$15 million dollars. Verizon was a close second, spending slightly less than \$14 million.

reject the mountains of manufactured and deceptive data which they have contrived for the purpose of eclipsing an obvious fact: Incentives like CMA markets that will invite more bidding by more businesses large and small, will drive auction revenue up not down.

Likewise, closing the bidding door to small and medium sized carriers will reduce total auction revenue. To effectively “lock out” less financially endowed carriers would again result in the wholesale transfer of America’s scarce low band spectrum to AT&T and Verizon at below fair market prices.

Bidding restrictions and mandatory caps on the amount of spectrum that any single carrier (large or small) can purchase must be imposed. These limits are absolutely necessary in order to prevent AT&T and Verizon from again dominating the bidding and winning most of the spectrum, effectively “hijacking” the incentive auction.

### **SIZE DOES MATTER**

The 2008 700 MHz spectrum Auction #73 results proved that the mistake of selling eight huge Regional Economic Area Grouping (REAG) licenses exclusively to Verizon cost the American taxpayers billions of dollars. The price realized for the large REAG markets averaged only \$0.77 per MHZ pop. In extreme contrast, the average price of \$2.71 per MHZ pop was realized in the sale of the smaller 734 Cellular Market Area (CMA) licences. These results clearly show that selling licenses in smaller CMA size markets, and thereby allowing the smaller carriers to participate in the bidding, will dramatically increase the FCC’s gross auction revenue.

Billion dollar sized markets are much too expensive for any true small businesses who need to raise the multimillion dollar deposit required for entry into bidding in the auction. Enormous sized markets also drain away smaller sized markets, making them unavailable to smaller businesses. Sadly for American consumers, the result becomes equivalent to a “private auction” held only for AT&T and Verizon. When small carrier businesses are shut out from market entry, their “bidding credit” incentives become “dead on arrival” and are virtually worthless.

The 2008 sale of 700 MHz of REAG sized markets amounted to its wholesale transfer at deep discounted prices. To repeat this mistake, would again subsidize AT&T and Verizon with billions of dollars worth of scarce low band spectrum and help to perpetuate the iron grip they presently hold over the wireless industry. By selling spectrum in only the smaller CMA size markets, and thereby inviting smaller business bidding competition, the FCC will raise far more revenue towards the admirable goals of funding FirstNet and subsidizing much needed broadband service throughout rural America. The 600 MHz spectrum is the last available low band spectrum. This coming incentive auction offers an unprecedented, “once in a lifetime” opportunity for smaller and “start up” business ventures to buy spectrum. They would then grow and create new jobs within the expanding future of America’s “everything mobile” industry.

## **IMPOSSIBLE ODDS**

There is no shortage of creative and intelligent entrepreneurs here in America. Some are experimenting with new innovative technology, while they dream of becoming the “next Steve Jobs.” Yet, the smaller and “start up” wireless carrier businesses in our land of opportunity still face a myriad of initial obstacles.<sup>6</sup> First, they must raise multi-millions of dollars in capital in order to purchase the necessary spectrum licenses and operating equipment. Next, they must convert and build a “greenfield” network into a successful operating company. If they purchased spectrum in the A Block, their financial planning has been considerably confused and delayed by the existing uncertainty as to “if and when” the radio broadcasters will finally be required to vacate Channel 51 and other channels which cause operational interference.

During this interim, a small carrier business will struggle to pay interest on their investors’ capital, while each day they see the calendar “time value” of their licenses to build out and operate their network disappear. Finally, the small carrier business will face the daunting duopoly of AT&T and Verizon, who would prefer to crush small business by the denial of interoperability. It will not require a rocket scientist to realize that when these two giants who together control 85% of the entire industry revenue, that something is horribly wrong in Kansas! It is similar to entering a “no limit” poker game with only one precious poker chip and facing two opposing players, each holding more than 10,000 chips.

## **FAIR SOLUTIONS**

- (1) Set an immediate mandatory time certain for all broadcasters to vacate channel 51 and all other channels which interfere with the operations of 700 MHz A block licenses. Mandatory decisions will clarify exactly when a viable 600 mhz auction can be scheduled, and exactly what spectrum will actually become available.
- (2) Auction all the AWS and 600 MHz spectrum into smaller CMA size markets in order to promote realistic competition, and issue all licenses in smaller paired 5 MHz x 5 MHz blocks.
- (3) For the purpose of awarding incentive small business bidding, all small business entity applicants that separate themselves into “different” entities, including “front” companies, or are otherwise controlled by the same parent company or principals, must be treated as one single business entity. The FCC must determine an exact maximum size limit that will qualify whether a “small” business really is a small business. Then, the small business bidding credit

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<sup>6</sup> The 1997 FCC Report 12, section 257, Proceeding to Identify and Eliminate Market Barriers for Small Businesses anticipated these obstacles.

should be raised to at least 40%, as necessary to entice more small business applicants to join in the bidding.

(4) In order to finally accomplish Congress' original mandate of promoting competition, the FCC must make the scarce and valuable AWS and the 600 MHz spectrum available to different wireless companies of all sizes and variety. The commission must ensure fair and healthy bidding from all of the smaller wireless carrier businesses. Nothing less than a balanced distribution of scarce low band spectrum will maximize total auction revenue and thereby afford relief to the American taxpayers. Attracting more auction bidders will create more competition in the industry and ultimately, lower the wireless communication costs for all American consumers.

(5) Impose a strict maximum purchase limit of 10 MHz of spectrum in each CMA market upon AT&T and Verizon and all other carriers, regardless of their size. Increased bidding competition will dramatically increase the total revenue received from auction of America's valuable airwaves. This additional revenue can be used to fund the network build-out of FirstNet, and subsidize the much needed rural broadband infrastructure.

Respectfully submitted,

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