



April 2, 2014

Via Electronic Filing

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

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

Dear Ms. Dortch:

The FCC has received filings from certain national wireless carriers and other parties urging it to adopt a spectrum cap that would restrict participation in upcoming spectrum auctions, based on the faulty assertion that “dominant carriers ... [are] prevent[ing] their competitors from access to the input resources necessary for effective facilities-based competition.”¹

The “input resources” referred to here are low-band spectrum. Mobile Future, in its own recent filing, sought objectively to demonstrate that, when such parties have indeed chosen to participate in FCC spectrum auctions and secondary market transactions, they have been successful – and abundantly so – in securing significant additional spectrum resources – without the application of a spectrum cap restricting other carriers’ access to those spectrum resources.² A similar analysis of secondary market transactions specifically related to the 700 MHz spectrum band further confirms Mobile Future’s earlier findings.

¹ Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 and GN Docket No 12-268 (January 29, 2014), p. 4; see also Letter from C. Sean Spivey, Assistant General Counsel to the Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 and GN Docket No 12-268 (February 5, 2014).

² Mobile Future, Ex Parte, *FCC Spectrum Auctions and Secondary Market Policies: An Assessment of the Distribution of Spectrum Resources Under the Spectrum Screen*, GN Docket No. 12-268 and WT Docket No. 12-269 (November 13, 2013).

Indeed, secondary market transactions involving the 700 MHz spectrum won at Auction 73 have benefitted both nationwide and non-nationwide carriers. Of the 2,226,852,504 MHz/POPs transferred or assigned since Auction 73,³ 58.20% of those MHz/POPs were acquired by nationwide operators, and 41.80% of the MHz/POPs were acquired by non-nationwide operators. Further, while T-Mobile did not participate in Auction 73, it has been successful in acquiring 700 MHz spectrum in post-auction transactions. Based on FCC licensing records, T-Mobile already has acquired 95,454,648 MHz/POPs of 700 MHz spectrum from non-nationwide carriers. More recently, it penned a deal with Verizon Wireless by which T-Mobile would acquire all of Verizon Wireless's 700 MHz A Block licenses (as well as certain full or partial AWS and PCS licenses).⁴ As described in the lead FCC application related to that transaction, the deal will provide T-Mobile with twelve megahertz of 700 MHz spectrum "in geographic areas with an aggregate population of approximately 150 million people... [] ... Following these transactions, ... T-Mobile will hold low-band 700 MHz licenses in 9 of the top 10 and 21 of the top 30 markets in the U.S..."⁵ Using T-Mobile's population estimates, this translates into 1.8 billion MHz/POPs.

Each of these secondary market transactions occurred under the auspices of a spectrum screen and a case-by-case analysis of the competitive impact of the proposed transaction. No spectrum caps or other artificially restrictive constraints on carrier spectrum aggregation were in place, and T-Mobile and many non-nationwide operators were able successfully to secure low-band spectrum resources in the open market. The Commission's thoughtful case-by-case review process has been proven effective, and is working precisely as it was intended. Given the high national stakes involved in ensuring the availability of adequate spectrum for all American consumers, the adage "if it ain't broke don't fix it" has particular salience when it comes to the merits of abandoning this successful case-by-case approach. Also given these stakes, the Commission should be clear-eyed about and wary of any effort by any party to obtain the government's support in shaping policies, auction design principles, or the marketplace itself in service of one company's narrow commercial interests.

Respectfully submitted,

/s/ Jonathan Spalter

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³ Data provided is based on all consummated, non-*pro forma* assignments and transfers of spectrum won in Auction 73, including licenses that were partitioned and/or disaggregated, from the close of that auction through December 19, 2013.

⁴ See File No. 0006090675 (lead application for transaction).

⁵ *Id.*, Ex. 1 p. 5.