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

April 3, 2014

Ex Parte

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

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

Dear Ms. Dortch:

Despite their frequent filings in the above-captioned dockets, parties asking the Commission to restrict Verizon's and AT&T's participation in the Incentive Auction have not presented substantive economic evidence demonstrating that any competitor will be harmed if it does not get special preferences. T-Mobile recently submitted a cost study analyzing deployment costs in rural markets for different types of spectrum.[1] That study provides no support for T-Mobile's claim that it or any other firm is in danger of being "foreclosed" from competing effectively in any market. The *economic evidence* shows there is no valid basis for the Commission to abandon its longstanding and successful policy of assigning spectrum to those firms that value it most and that will put it to use promptly to serve their customers.

T-Mobile's Purported Concern about Rural Markets Is a Red Herring

T-Mobile claims that its cost study supports a conclusion that imposing restrictions in the Incentive Auction will promote "vigorous competition" by helping carriers to "overcome the dominant carriers' incentive to prevent their competitors from access to input resources necessary for effective facilities-based competition."[2] The cost study cannot possibly support that assertion because it analyzes only *unserved* high-cost rural areas that by definition are unprofitable absent government subsidies[3] – not markets where Verizon or AT&T might even

---

[1] *See* CostQuest Associates Economic Research & Analysis, *T-Mobile USF Mobile Model Report* (Oct. 1, 2012) (T-Mobile Study), *attached to* T-Mobile Ex Parte Letter, GN Docket No. 12-268, WT Docket No. 12-269 (filed Jan. 29, 2014) (T-Mobile Letter).

[2] T-Mobile Letter at 4.

[3] *Id.* at 1 n.2.

theoretically have an incentive to prevent T-Mobile or any other firm from serving. T-Mobile does not even assert that Verizon and AT&T provide service in these markets, let alone that they are "dominant" or that they earn profit that they might want to protect from competition by trying to buy up all of the low-frequency licenses. Neither the cost study nor any other T-Mobile submission identifies any market that T-Mobile seeks to serve, that T-Mobile cannot serve economically with its existing spectrum, and that Verizon and AT&T might have an incentive to protect from competition.

Moreover, even if AT&T or Verizon had an incentive to prevent competitors from purchasing low-frequency spectrum in rural markets, doing so would be impossible because there have always been ample opportunities for operators to acquire such spectrum from diverse sources. In the 2008 700 MHz auction, for example, carriers other than Verizon and AT&T won a large majority of rural CMA-level licenses (72% of all licenses and 62% of all spectrum in terms of MHz*POPs) despite the unrestricted participation of Verizon and AT&T.[4] And rural carriers have consistently been *net sellers* of low-frequency rural licenses on the secondary market.[5] In fact, rural carriers other than Verizon and AT&T sold 469 low-frequency licenses in rural CMAs between January 2007 and May 2013.[6] As summed up by Dr. Leslie Marx, a former FCC Chief Economist, extensive economic evidence shows that "concern that Verizon and AT&T may foreclose other buyers of the low-frequency spectrum in rural areas is misplaced."[7]

<u>In *Non*-Rural Markets T-Mobile Does Not Need Special Treatment – Especially Now that It Has Purchased the Low Frequency Coverage Layer It Says It Needs</u>

It is evident that T-Mobile and other proponents of auction restrictions really want preferences in *non-rural* markets, where spectrum is scarce and more expensive. These are also the markets, of course, where Sprint and T-Mobile would benefit from regulatory decisions that prevent their competitors (Verizon and AT&T) from acquiring the spectrum needed to meet their customers' exploding demand for wireless broadband services. But neither T-Mobile nor any other firm has presented economic evidence indicating that it cannot compete effectively in non-rural markets absent preferences in the Incentive Auction.

T-Mobile says it needs a coverage layer of low-frequency spectrum in non-rural markets to take advantage of the better building-penetrating characteristics of such spectrum. There is a substantial evidentiary record indicating that T-Mobile's behavior, including its historical disinterest in acquiring low-frequency spectrum either at auction or on the secondary market, suggests that it is not in fact disadvantaged.[8] But even if true that T-Mobile needs a coverage

---

[4] *See* Leslie M. Marx, *Economic Analysis of Proposals that Would Restrict Participation in the Incentive Auction*, ¶ 30 (Sept. 18, 2013) ("Marx Study"), *attached to* Verizon Ex Parte Letter, WT Docket No. 12-268 (filed Sept. 18, 2013).

[5] Marx Study, ¶ 45.

[6] *Id*.

[7] *Id.*, ¶ 30.

[8] *See*, *e.g.*, Marx Study at ¶ 3. International regulators have similarly found that holding low-frequency spectrum is not a competitive necessity, and there are various examples around the world of operators that have chosen to compete using only higher-frequency spectrum. Mobile Future, *The Case For Inclusive Spectrum Auction*

layer of low-frequency spectrum to fill in deficiencies in its existing coverage, T-Mobile can no longer rely on that argument because it has recently executed an agreement to purchase a "huge swath" of 700 MHz A Block licenses that covers 70% of its customer base and that will allow it to cover 9 of the 10 top markets.[9]

T-Mobile's senior management has made clear that only a small amount of low-frequency spectrum -- a 5x5 MHz block -- is needed in addition to its larger blocks of other spectrum to "dramatically" improve its coverage.[10] At least one regulator, the U.K.'s Ofcom, has similarly determined that a single 5x5 MHz low-frequency license, combined with a portfolio of mid-band spectrum (such as T-Mobile's), is sufficient for a facilities-based operator to be competitive.[11] T-Mobile has now agreed to purchase a *6x6 MHz block* of low-frequency 700 MHz spectrum which will enable it to cover 9 of the top 10 and 21 of the top 30 markets, and T-Mobile is already mobilizing to deploy that spectrum.[12] T-Mobile has stated that the low-frequency coverage layer it has already agreed to purchase will "substantially improve in-building coverage."[13] It has also acknowledged that if it decides to extend its coverage beyond the "huge swath" it already has, it can do so by purchasing more licenses on the secondary market.[14] Indeed, T-Mobile's CEO recently emphasized that the upcoming 600 MHz auction is just one option T-Mobile has for supplementing its existing low-frequency spectrum.[15] Most of the markets not already covered by T-Mobile's existing coverage layer are rural markets where, as discussed above, low-frequency spectrum is available from diverse sources.

Given that it had failed to present data demonstrating a competitive disadvantage *prior to* acquiring its low-frequency coverage layer, T-Mobile's claimed need for special treatment is now even weaker. Similarly, Sprint not only has *twice* as much spectrum as Verizon on an overall basis, but it also has a coverage layer of low-frequency spectrum with which it is *already* providing LTE service.[16] And as discussed above, rural carriers not only possess low-frequency

---

Rules: How Failed International Experiments with Auction Bidding Restrictions Reveal the Strength of Inclusive Rules that Put Consumers and Innovation First (Sept. 2013), at 14-17 (filed in GN Docket No. 12-268 and WT Docket No. 12-269 on Sept. 19, 2013) (Mobile Future Paper).

[9] Remarks of Neville Ray, T-Mobile CTO, T-Mobile US Inc. at Morgan Stanley Technology, Media & Telecom Conference (Mar. 5, 2014), at 3 (Morgan Stanley Tr.).

[10] August 28, 2013 Jefferies report, "T-Mobile USA" ("T-Mobile believes that its coverage would improve dramatically with just a small (5x5) channel of low band spectrum").

[11] Ofcom found that one of the packages of spectrum with which a new entrant could be a competitive presence is a 15x15 MHz block of 1800 MHz spectrum along with a 5x5 block of 800 MHz spectrum. *See* Mobile Future Paper at 16. Notably, another package of spectrum deemed competitive consisted of only mid-band and high-band spectrum. *Id.*

[12] *See* Morgan Stanley Tr. at 3.

[13] *See* Declaration of Mark McDiarmid, T-Mobile, ¶ 5 (Apr. 1, 2014), *attached to* T-Mobile Ex Parte Letter, GN Docket No. 12-268, WT Docket No. 12-269 (filed Apr. 1, 2014).

[14] Remarks of Neville Ray, T-Mobile CTO, T-Mobile US Inc. at Deutsche Bank Media, Internet & Telecom Conference (Mar. 10, 2014), at 9 (stating that T-Mobile has "a whole host of solutions" for expanding its low-frequency coverage, including acquiring additional 700 MHz licensees on the secondary market).

[15] *Id.* (stating that there is "a lot of optionality forming, and we are very excited about what we can do with our A Block spectrum").

[16] *See* Press Release, Sprint, Sprint Reports Second Quarter 2013 Results (July 30, 2013), *available at* http://newsroom.sprint.com/news-releases/sprint-reports-second-quarter-2013-results.htm.

spectrum, but have been net sellers of such spectrum – contrary to any claim that they could be disadvantaged absent auction policies that guarantee them more.

Having failed to present economic evidence that Verizon and AT&T have the incentive and ability to foreclose competitors in any market, proponents of restricting Verizon and AT&T rest their argument on a letter that the Antitrust Division of the U.S. Department of Justice filed with the Commission.[17] That letter observes that low-frequency and higher-frequency spectrum have different propagation characteristics, and it urges the Commission to evaluate whether there is a risk smaller nationwide carriers might be foreclosed in the Incentive Auction. But it contains no economic evidence, and the Division has clarified that it did *not* make a factual determination one way or another about whether there is a foreclosure risk.[18]

The Division's principal concern appears to be ensuring that operators do not purchase spectrum they do not need in the Incentive Auction and then "warehouse" it to keep it out of the hands of rivals that may use it more productively.[19] As shown in Exhibit A hereto, Verizon and AT&T are not warehousing spectrum – to the contrary, they use their spectrum more efficiently than Sprint and T-Mobile. And Verizon and AT&T will have no incentive to warehouse spectrum after the Incentive Auction both because they need spectrum to meet consumers' expanding demand for broadband and because the Commission presumably will (and should) impose build-out requirements on the spectrum assigned.[20]

Exhibit A shows that Sprint and T-Mobile, on the other hand, are the *least* capacity-constrained of the nationwide operators. As Dr. Marx observes, that fact is confirmed by their pricing strategies, including their use of unlimited data usage plans, and by their marketing campaigns, which stress the uncongested nature of their networks.[21] Given T-Mobile's and Sprint's strong existing spectrum portfolios and the fact that they can readily use their low-frequency spectrum to cure any coverage deficiencies they may experience, there is no basis to guarantee them more spectrum at the Incentive Auction.

***

---

[17] *See, e.g.*, Joint Ex Parte Letter from DISH, Sprint, T-Mobile, U.S. Cellular, C-Spire, The Competitive Carriers Association, Bluegrass Cellular, and Cellular One to Marlene Dortch, GN Docket No. 12-268, WT Docket No. 12-269 (filed Nov. 14, 2013) (citing "*Ex Parte* Submission of the U.S. Department of Justice," WT Docket No. 12-269 (Apr. 11, 2013) ("DOJ Letter")).

[18] *See Oversight of the Enforcement of the Antitrust Laws: Hearing Before the Subcomm. On Antitrust, Competition Policy, and Consumer Rights*, Testimony of William Baer before the Senate Judiciary Committee, April 16, 2013, *available at* http://www.judiciary.senate.gov/resources/webcasts/index.cfm. (stating that the DOJ's goal was to "urge the FCC… to take a look … at whether or not the playing field is already tilted in favor of big guys who may or may not – we were not making a factual judgment – … [be] using what they already have and use that as a factor in deciding what rules to set in the auction").

[19] DOJ Letter at 9-12.

[20] *See, e.g.*, United States Government Accountability Office, *Spectrum Management; FCC's Use and Enforcement of Buildout Requirements* (Feb. 2014), at 24-26 (finding that build-out requirements are effective at preventing the warehousing of spectrum).

[21] *See* Marx Study, ¶¶ 49-51.

In sum, the economic evidence supports a finding that the Commission should continue its longstanding, pro-consumer policy of assigning spectrum at auction in a nondiscriminatory manner.

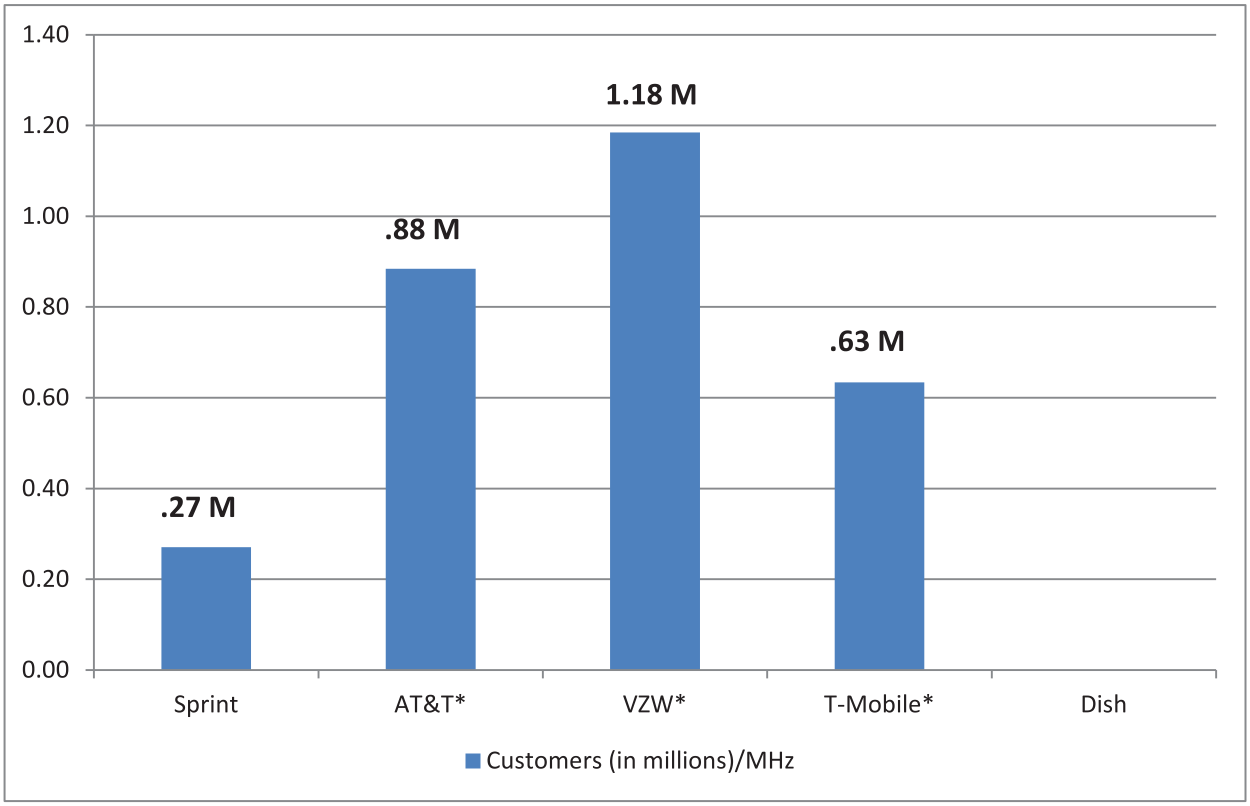
This letter is being filed pursuant to Section 1.1206 of the Commission's Rules. Please contact the undersigned if you have any questions.

Sincerely,

Attachment

Exhibit A

Spectrum Efficiency by Wireless Provider (as of March 13, 2014):



* After pending AT&T/Leap, AT&T/Aloha, and VZW/T-Mobile transactions

Notes: This is an update to a similar analysis in the Declaration of Allan L. Shampine (Nov. 26, 2012), at 18-19, *attached to* Comments of Verizon Wireless, *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269 (Nov. 28, 2012). Wireless providers' spectrum efficiency numbers were calculated by dividing carriers' total number of customer connections, as reported in 2Q 2013 financial statements filed with the SEC, by average spectrum holdings. Verizon reports its customer numbers as retail connections, rather than total connections. To create an apples-to-apples comparison with AT&T, T-Mobile and Sprint, who report retail, wholesale, and M2M customer connections numbers, Verizon used internal data to determine its total customer connections numbers.