Competitive Carriers Association
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April 9, 2014

VIA ECFS

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

Re: EX PARTE NOTICE
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:

Adopting reasonable low-band spectrum-aggregation limits is critical to Competitive Carriers Association ("CCA") and its more than 100 competitive-carrier members, particularly small carriers and those that serve rural and underserved populations. By strengthening the role of small competitors in the market for wireless broadband services, reasonable spectrum-aggregation limits have the potential to extend the reach of broadband deployment, expand consumer choice, and accelerate the pace of technological innovation across the country.

Consumers in rural and less densely populated areas stand to benefit just as much from greater choice and more robust competitive wireless broadband offerings that reasonable spectrum-aggregation limits would bring as do consumers in urban areas. In fact, Americans in these parts of the country are even more in need of additional choice. As the Commission noted in its most recent *Mobile Competition Report*, while 92.4% of non-rural Americans were covered by four or more mobile broadband service providers as of October 2012, only 37.4% of rural Americans had access to the same number of providers.[1] Based on this disparity, CCA has advocated for the FCC to adopt a multi-prong spectrum holdings approach, including three separate screens limiting: (1) a carrier's spectrum holdings below 1 GHz in a given market; (2) a carrier's total spectrum holdings (both above and below 1 GHz) in any given market; and (3) a provider's holdings on a national basis.[2]

Comprehensive aggregation limits are especially important in the upcoming 600 MHz incentive auction because low-band spectrum travels longer distances and penetrates buildings and other obstacles far

[1] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd 3700, 3727 ¶ 2 (2013) ("*Sixteenth Mobile Competition Report*").

[2] Comments of Competitive Carriers Association, WT Docket No. 12-269, at 9-14 (Nov. 28, 2012); Reply Comments of Competitive Carriers Association, WT Docket No. 12-269, at 3 (Jan. 7, 2013)

more readily than higher-band spectrum. As T-Mobile recently explained, "numerous studies have verified in practice the basic fact that lower-frequency spectrum has a significant path loss advantage over higher-band spectrum in all kinds of terrain . . . [and] simply stated, when signals travel further, as low-band signals do, [carriers] can construct networks of larger cells and use fewer sites to cover the same area."[3] These qualities result in substantially lower deployment costs, which make providing service to less densely populated areas of the country economically sustainable. Moreover, access to low-band spectrum improves indoor coverage, both because low-frequency signals attenuate less initially and because the effects of obstacles on low-frequency signals are less pronounced than on higher-frequency spectrum.[4] Contrary to assertions by the dominant carriers, moreover, "work-around" technologies such as small cells are not an adequate replacement for low-band spectrum and, in many cases, simply are not feasible, especially in areas that are less densely populated.[5] Small and rural carriers need access to new low-band ecosystems to ensure that their customers enjoy the same high-quality device and service offerings as customers in urban areas do. Reasonable spectrum aggregation limits advance this goal.

Reasonable limits on spectrum aggregation also help ensure that smaller carriers and those operating in more rural areas have access to the right mix of spectrum resources – both inside their home markets and outside of them, too. One under-appreciated aspect of the economics of running a rural or small carrier business is the challenge associated with securing cost-effective voice and data roaming. As the Commission has recognized, roaming is "particularly important for customers in rural areas."[6] The Commission has also acknowledged that "the ability to negotiate data roaming agreements on non-discriminatory terms and at reasonable rates remains a concern."[7] Confirming the challenges our carrier members' face, the FCC has been unable to declare that the wireless industry is "effectively competitive" for the past three years.[8] Meanwhile, Verizon and AT&T continue to dominate the market by every conceivable metric, including subscribers, revenues and spectrum holdings.[9] As a result, CCA's carrier members have long struggled to reach commercially reasonable terms with the Big Two carriers for voice and data roaming. For those CCA members operating on cellular spectrum, for example, nationwide cellular roaming choices are generally limited to either AT&T or Verizon.[10] Therefore, the introduction of additional competitive opportunities for nationwide low-band roaming could materially

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[3] Declaration of Mark McDiarmid, Vice President for Radio Network Engineering and Development, T-Mobile USA, Inc. ¶¶ 24-25 (executed Apr. 1, 2014), *attached to* Letter from Trey Hanbury to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268; WT Docket No. 12-269 (filed Apr. 1, 2014).

[4] *Id.* ¶ 13.

[5] *Id.* ¶¶ 18-23.

[6] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶ 15 (2011).

[7] *See Sixteenth Mobile Competition Report* ¶ 210.

[8] *See Sixteenth Mobile Competition Report* ¶ 2; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Fifteenth Report, 26 FCC Rcd 9664 (2011); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407 (2010).

[9] *See* CCA, *A Framework for Sustainable Competition in the Digital Age: Fostering Connectivity, Innovation and Consumer Choice* 7-10 (2013), *available at* http://competitivecarriers.org/wp-content/uploads/2014/01/CCA_SustainableCompetition_FINAL.pdf; *see also* Josh Pichler, *Cincinnati Bell Selling Wireless Division to Verizon* (Apr. 7, 2014), *available at* http://cin.ci/1fWUeYR.

[10] *See* Reply Comments of Competitive Carriers Association, GN Docket No. 12-268, at 11 (Mar. 21, 2013) ("Over the last decade, AT&T and Verizon have come to hold a vast majority of licenses for 850 MHz Cellular spectrum. Due to the divergence of 3G technologies . . . , competitive carriers have been left with limited choice in roaming partners to operate within this band throughout most of the United States.").

improve smaller carriers' bargaining power with respect to the national carriers.[11] If carriers in addition to AT&T and Verizon are able to win licenses for low-band spectrum in the incentive auction, CCA's small and rural carriers will have a greater number of carriers with which to negotiate roaming agreements, particularly for the competitively important low-band roaming agreements, which offer superior service. A more competitive market for low-band roaming services would then allow CCA's members to improve voice and data services, lower costs, and expand coverage.

Low-band spectrum aggregation limits also provide assurance that our small and rural members will not be foreclosed from this valuable 600 MHz spectrum. Because of the advantageous propagation characteristics of low-band spectrum, CCA's rural members can deploy these resources to provide competitive wireless services over sparsely populated areas. Adopting a spectrum aggregation limit will ensure that competitive carriers are not kept from accessing a resource they require to effectively compete in their home markets.[12] The Commission also has sound empirical evidence demonstrating that when auction policies are adopted with the needs of smaller carriers in mind, participation increases leading to greater competition.[13] In addition, broader-based participation can create more upward pricing pressure during the competitive bidding process, which has the potential to increase auction revenues.[14] Increased auction revenues resulting from broader participation will not only help to fund any remaining balance for FirstNet, as directed in the statute, but also will provide increased partnering opportunities for the public safety network. In many instances, FirstNet partnering opportunities will help to encourage low-band mobile broadband deployments in rural, high-cost areas areas where it may not be economically sustainable to deploy using higher frequency spectrum, if at all, helping to bridge the urban – rural digital gap. History shows that smaller carriers serving rural areas are more likely to deploy new services sooner than larger carriers focused on dense population centers. More revenue and partnering opportunities create a win-win for public safety and competitive carriers provided with meaningful opportunity to bid.

The upcoming 600 MHz spectrum auction represents the first significant opportunity in more than eight years for service providers to obtain low-band spectrum through a competitive bidding process. Competitive carriers are prepared to invest in, construct, and operate wireless broadband networks throughout the country.[15] But this opportunity will likely be out of reach if the FCC does not establish a reasonable, up-front spectrum aggregation limit for the auction. To invest capital in infrastructure, operating entities must be able to justify cash expenditures to their shareholders or take on additional debt financing (or both). Further, it takes an initial investment of time and effort to raise capital to participate in spectrum auctions.[16] Many competitive carriers may prove unable to secure the equity or

[11] *See, e.g.*, Letter of Steven K. Berry and Rebecca Murphy Thompson, CCA, to Chairman and Commissioners of the Federal Communications Commission, GN Docket No. 12-268; WT Docket No. 12-269, at 3 (May 9, 2013) (discussing the dominant carriers' "refusal to enter into commercially reasonable data roaming agreements").

[12] *See, e.g.*, *Ex Parte* Submission of the United States Department of Justice, Docket No. 12-269 (Apr. 11, 2013).

[13] Letter of Steven K. Berry, President & CEO, CCA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 12-268, 13-185, at 2, n.5 (filed Oct. 2, 2013).

[14] *See* Summit Ridge Group, *Right-sizing Spectrum Auction Licenses: The Case for Smaller Geographic License Areas in the TV Broadcast Incentive Auction* 22-25 (Nov. 20, 2013), *attached to* Letter of Steven K. Berry, President & CEO, CCA, to The Hon. Tom Wheeler, Chairman, FCC, GN Docket No. 12-268 (filed Nov. 20, 2013).

[15] For example, the third through tenth largest wireless providers in the U.S. invested a combined $5.5 billion in capital expenditures in 2012. *Id.* at 6. This figure obviously doesn't account for the capital expenditures of the other 90+ wireless operators throughout America.

[16] It has been shown previously that smaller firms are prone to initially face more limited financing options and consequently confront higher capital costs. *See, e.g.*, Joe Peek, Office of Advocacy, U.S. Small Bus. Admin., THE IMPACT OF CREDIT AVAILABILITY ON SMALL BUSINESS EXPORTERS 7-8 (Apr. 2013), *available at* http://www.sba.gov/sites/default/files/files/rs-404tot(3).pdf.

debt financing they need to participate in an auction without some assurance that the two dominant wireless carriers will not acquire all or most of the licenses in the auction. The Commission's auction design should take market power into account and help insure opportunities for competitive carriers to compete against Verizon and AT&T.

As CCA has previously explained, competition in the mobile broadband ecosystem is critical to realizing what has been referred to as an innovation-fueled virtuous cycle where firms introduce new network capabilities, new devices, and new content. These new capabilities stimulate growth in consumer demand, which, in turn, stimulates additional investment in expanding capacity and enhancing network quality.[17] Absent a limit on the ability of the two dominant carriers to foreclose other carriers from winning licenses during the upcoming 600 MHz auction, AT&T and Verizon will increase their dominance in low-band spectrum holdings at the expense of competitive carriers and will thus reduce overall competition in the wireless market to the detriment of consumers.[18]

CCA's members need access to low-band spectrum, including access via reasonable roaming agreements that only competition can bring, to deliver next-generation services to their customers and to drive innovation in the wireless market. Adopting reasonable limits on the amount of low-band spectrum the largest national carriers may acquire in the incentive auction will help ensure that competitive carriers remain a vital part of the wireless broadband ecosystem.

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

Sincerely,

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[17] *See* Letter of Rebecca Murphy Thompson, General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 13-135; WT Docket No. 12-269; GN Docket No. 13-185 at 1-2 (Mar. 24, 2014).

[18] An unbridled ability for AT&T and Verizon to foreclose other carriers may also harm auction revenues by discouraging participation from smaller bidders. *See, e.g.*, Letter from Patrick D. Riordan, President and CEO, New-Cell, Inc. d/b/a Cellcom, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 13-178, GN Docket No. 13-185 at 2 (Aug. 5, 2013); Letter from Terry Addington, Chief Executive Officer, SI Wireless LLC d/b/a MobileNation, et al., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, GN Docket No. 13-185 at 2 (Oct. 2, 2013); Letter from Slayton Stewart, Chief Executive Officer, Carolina West Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 13-178, GN Docket No. 13-185 at 2 (Oct. 7, 2013).