



**Competitive Carriers Association**  
Rural • Regional • Nationwide®

May 1, 2014

**Via ECFS**

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

**RE: EX PARTE NOTICE**

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

Dear Ms. Dortch:

On April 28, 2014, Steve Berry, Sean Spivey and I, on behalf of Competitive Carriers Association (“CCA”) met with Louis Peraertz, Legal Advisor for wireless, international and public safety issues to Commissioner Clyburn, to discuss elements of the FCC’s Mobile Spectrum Holdings proceeding<sup>1</sup> and related incentive auction policies.<sup>2</sup> On April 29th, Steve Berry, Sean Spivey and I, as well as Trey Hanbury of Hogan Lovells US LLP, met with David Goldman, Senior Legal Advisor for wireless, international and public safety issues to Commissioner Rosenworcel.

During these meetings, CCA first expressed its appreciation for a transparent auction framework that seeks to balance one-time revenue objectives and the long-term benefits of robust competition. It is critical that competitive carriers have a feasible opportunity to bid on and win spectrum in the upcoming 600 MHz auction. CCA expressed its support for the FCC’s recognition of the unique value of low-band spectrum. Low-band spectrum propagates further than higher frequency spectrum, improving coverage both in urban centers and in rural areas at lower deployment costs. Just as important to the economic and competitive benefits of low-frequency spectrum, competitive carriers must be a part of the 600 MHz ecosystem to provide LTE services. Crafting pro-competitive auction rules will bring economies of scale to every competitive carrier, facilitating new consumer services and leading to greater auction revenue—which means more money for broadcasters who voluntarily sell their spectrum and other stipulated revenue goals of the Spectrum Act. Building on the Commission’s current proposal, CCA suggested a few modifications

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<sup>1</sup> *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 (2012).

<sup>2</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012).

to further increase revenues, promote competition to the wireless market, and encourage broader and faster LTE deployments—particularly in rural areas.

First, CCA explained that under the current proposal several of its rural and regional carrier members would be excluded from bidding on reserved spectrum in their core service areas. There is little rationale for putting a small, rural competitor in the same (or worse) position than better capitalized, dominant nationwide providers. CCA has identified multiple examples of this result for carriers located throughout the country. To correct this unintended consequence, CCA proposes that, in addition to a local (PEA) reserved spectrum eligibility requirement, the Commission also adopt a national eligibility requirement. CCA has advocated previously that the Commission review spectrum aggregation both locally and nationally.<sup>3</sup> This proposal allows rural and regional providers to bid on reserved spectrum in their core markets, but does not change the two largest providers' capability to bid on reserved spectrum in any market. For example, under CCA's proposal, AT&T would still be able to bid on reserved spectrum in Cleveland, Phoenix and Puerto Rico. Verizon would still be able to bid on reserved spectrum in Dallas, Miami, Tampa, and Jacksonville. Moreover, CCA's recommendation is consistent with the Commission's transaction review,<sup>4</sup> as well as arguments made by the U.S. Department of Justice.<sup>5</sup> A dual eligibility requirement would more accurately reflect market power while still allowing AT&T and Verizon to bid on reserved blocks of spectrum in areas where they do not hold excessive low-band spectrum.

Similarly, CCA noted that competition would be enhanced if the Commission reserved more licenses for competitive access by allocating an odd number of unreserved licenses, which would force the largest carriers to compete with each other and increase the likelihood of generating more revenue in both the reserved and unreserved blocks. The Commission has recognized that the two largest carriers hold a vast majority of spectrum below 1 GHz today.<sup>6</sup> Rather than having a multitude of competitors battle for limited reserved spectrum while the dominant carriers divide the 40 or more megahertz of unreserved spectrum amongst themselves, the Commission should allocate an odd number of blocks of unreserved spectrum and place more spectrum in the reserved blocks. For example, in a 70 MHz clearing scenario, the Commission should reserve 40 MHz of spectrum, leaving 30 MHz of unreserved spectrum. Doing so alleviates risks potentially borne by competitive

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<sup>3</sup> Comments of Competitive Carriers Association, WT Docket No. 12-269 at 9-14 (filed Nov. 28, 2012); Reply Comments of Competitive Carriers Association, WT Docket No. 12-269 at 3-11 (filed Jan. 7, 2013).

<sup>4</sup> See *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, WT Docket No. 11-18, Order, 26 FCC Rcd 17589, 17604-05 ¶¶ 34-37 (2011); *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, WT Docket No. 12-4, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, 10718 ¶ 54 (2012).

<sup>5</sup> *Ex Parte* Submission of the U.S. Dept. of Justice, WT Docket No. 12-269 at 20 (filed Apr. 11, 2013) (“Generally, mobile wireless telecommunications services are sold to consumers in local markets, though these markets are affected by nationwide competition among the larger service providers. *It is therefore appropriate both to identify local markets and to identify the nature of nationwide competitive effects affecting local markets.*”) (emphasis added).

<sup>6</sup> Chairman Tom Wheeler, Ensuring a Fair and Competitive Incentive Auction, Official FCC Blog, [www.fcc.gov/blog](http://www.fcc.gov/blog) (Apr. 25, 2014).

carriers, such as constrained supply in the auction for reserved spectrum and upward pricing pressure on participants least capable of bearing it. The results of Industry Canada's 700 MHz auction depict these revenue-enhancing and pro-competitive benefits.<sup>7</sup>

Finally, CCA addressed the varying utility and availability of different types of spectrum and raised the need to account for the differences in low-band, mid-band and high-band spectrum in the Commission's transaction screen. Adding a significant amount of spectrum above 1 GHz to the transaction screen without accounting for any of its limitations would primarily benefit Verizon and AT&T, as they would have new headroom to pursue further acquisitions. The consequence would be additional consolidation in a market that for the past several years the Commission has been unable to characterize as effectively competitive. The Commission's screen should take these differences into account and analyze proposed transactions with further granularity.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules. A notification for the meeting with Mr. Peraertz was to be filed on April 30; however, due to an inadvertent error it is being submitted on the morning of May 1st. Please contact the undersigned with any questions or concerns.

Sincerely,

*/s/ Rebecca Murphy Thompson*

Rebecca Murphy Thompson  
General Counsel

cc (via email): Louis Peraertz  
David Goldman

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<sup>7</sup> See Peter Cramton, Lessons from the Canadian 700 MHz Auction at 1-2 (Apr. 2014), attached to *Ex Parte* Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268; WT Docket No. 12-268 (filed Apr. 3, 2014).