

May 8, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Chairman Wheeler:

The undersigned members of the Public Interest Spectrum Coalition (“PISC”) write to express our strong support for the pro-competitive steps we understand to be contained in the Incentive Auction proposal on circulation now. Specifically, we believe that reserving some reclaimed broadcast spectrum in each local market for competitive carriers will be a significant step forward. This proceeding may represent one of the last chances to clear and auction low-band spectrum for some time, and that low-band spectrum is critical for offering competitive mobile broadband services.

While PISC supports this general framework, we reiterate that the current reported proposals for both of the above-captioned dockets do not go nearly far enough to truly promote competition. With respect to the Incentive Auction, in fact, the Commission should consider capping the amount of low-band spectrum that the dominant providers can capture (the so-called “unreserved” spectrum) rather than capping the spectrum reserved to promote competition. And in light of the dramatic expansion of the spectrum screen contemplated by the Commission in the Mobile Spectrum Holdings proceeding, further opening the door to future acquisitions and consolidation by AT&T and Verizon, the current proposal to hold approximately 30 MHz (depending on the amount of spectrum that is reclaimed) in reserve for non-dominant carriers constitutes the *bare minimum* needed to promote competition.

Unsurprisingly, the dominant carriers have launched an all-out attack on even this modest proposal to ensure that competitive carriers have a chance to obtain low-band spectrum. For all the ferocity of their last minute lobbying, AT&T and Verizon have raised no new arguments. The robust and well developed record, including the analysis of the Department of Justice Antitrust Division, indicates that the Commission’s proposal is necessary to protect competition and bring consumers lower prices, better service, and innovative new offerings. The Commission has not only the legal authority, but the legal responsibility under Section 309(j)(3)(B), to design auction rules that prevent “excessive concentration of licenses,” an authority Congress expressly preserved when it authorized the Incentive Auction as part of the Middle Class Tax Relief Act of 2012.

Three Reasons Why The FCC Should Reserve At Least 30 MHz For Competitors.

In light of the recent efforts by AT&T and Verizon to confuse the issues, we want to stress the three most important reasons the Commission should reject these last minute efforts to undermine the existing auction proposal.

Consumers should have more good choices as a result of the auction, not just an increasingly entrenched duopoly.

Contrary to the claims of AT&T and Verizon, the Commission does not impose spectrum limits to benefit any company or provider. The FCC's proposal benefits **consumers** by ensuring that the public will have access to real choices from competitive providers. It not the Commission, but the market – and wireless customers – that can and will “pick winners and losers” from among the competing options they have. But for that to happen and for the market to actually work, subscribers must have real choices. The Commission's proposal to reserve at least 30 MHz in different auction scenarios will prevent the dominant carriers from completely foreclosing their rivals and denying consumers choice between providers. And an even higher proportion for reserved spectrum would not deny any carrier the opportunity to bid in each market, it would just do more to promote a competitive marketplace.

Those who accuse the Commission of “picking winners” by ensuring that two companies do not continue to corner the market on low-band spectrum seem to think that “the market” should be nothing more than a government sanctioned duopoly. The Commission's proposal will make it possible for a real wireless market to work and actual wireless customers to decide who wins.

If even AT&T and Verizon need 20 MHz each to make participation worthwhile, then how can competitors with even less low-band spectrum hope to compete without a reserve of 30 MHz or more?

AT&T and Verizon insist that they need an unreserved band of at least 40 MHz under any circumstances, so that they may each be sure of capturing 20 MHz of new low-band spectrum. Yet in that scenario they would insist that the entire remaining wireless industry should compete against each other for a *total* 20 MHz reserve, or none at all.

First, rather than an argument in favor of weakening the current proposal, this amounts to a tantamount admission that AT&T and Verizon plan to split the available spectrum between them unless the Commission guards against such tactics. In any conceivable scenario, AT&T and Verizon would have access to more than 20 MHz – provided they would bid against each other. But AT&T and Verizon claim that unless *each* of them can walk away with 20 MHz then they don't see a reason to participate? Why can't AT&T bid against Verizon, or Verizon against AT&T? Isn't that how auctions work? The fact that AT&T and Verizon insist that they must each be able to walk away with 20 MHz, while denying that the Commission needs to set anything aside to provide competing carriers with any similar “guarantees,” underscores the reality that AT&T and

Verizon know very well that they can easily outbid their competitors while dividing the market between themselves.

Even setting this aside, AT&T's and Verizon's insistence that they need at least 20 MHz of reclaimed broadcast spectrum underscores the even greater need to ensure more 600 MHz spectrum for competitors. If even AT&T and Verizon with their already overwhelming advantage in low-band spectrum each need 20 MHz to make entering the auction attractive, then competitors without such significant low-band holdings need access to even more. If anything, this argument supports enlarging the reserve, rather than decreasing it.

Finally, the structure of the FCC's proposal allows AT&T and Verizon to get access to more spectrum by simply bidding more money to meet various broadcaster clearance prices. If AT&T and Verizon truly value the spectrum for its use, rather than for its foreclosure value, they will bid enough money to free up the spectrum they need. As a happy side effect, this should increase overall revenue. By contrast, reducing or eliminating the reserve would deny competing carriers the ability to get the spectrum they need and, under the logic of AT&T's and Verizon's own arguments, would reduce the incentive of rivals to participate and thus lower auction revenues.

The Commission must nurture the current “green shoots” of reinvigorated competition.

Finally, AT&T and Verizon point to the recent subscriber gains of T-Mobile and the resurgence of investment in the wireless market by companies such as DISH and Softbank as evidence that competition is working, and that the Commission should take no further action. These recent trends in the marketplace follow years of Commission action to promote competition and reverse the slide to duopoly with measures AT&T and Verizon fiercely resisted. They prove that policies to ensure competitors have an opportunity to access spectrum are essential if consumers are to have genuine choice. The Commission must nurture these “green shoots” of competition finally sprouting in the marketplace, rather than allow AT&T and Verizon to nip them in the bud.

As supporters of the Incentive Auction made clear since the Commission first began to consider this proposal in 2009, the Incentive Auction is about meeting rising future demand. If the need for spectrum that motivated this experiment is real, then it applies to everyone in the industry. If AT&T and Verizon – with their advantage in low-band spectrum -- insist that they need this auction to meet growing consumer demand, then the same argument applies with even greater force to the rest of the industry.

Failure to reserve a sufficient amount for competitors, of at least 30 MHz or more under the most likely clearing scenarios, will allow AT&T and Verizon to foreclose competitors from challenging the continued dominance of the *de facto* duopoly.

The Commission's efforts to promote competition by denying the AT&T/T-Mobile merger, mandating data roaming, and promoting interoperability are finally

beginning to bear fruit. Failure to set aside sufficient reserve spectrum for competitors will see these fruits wither on the vine.

CONCLUSION

In 2007, in the proceeding to set rules for the auction of broadcast spectrum returned as part of the transition to digital television, PISC urged the FCC to set aside a reserve for competitors and new entrants. The Commission rejected this proposal. AT&T and Verizon went on to dominate the 700 MHz auction and the steady slide to duopoly accelerated.

Today, the Commission has the opportunity to learn from this past mistake and put us back on the road to competition. The current proposal in the MSH proceeding would allow AT&T and Verizon to consolidate further in high-band spectrum by relaxing the existing spectrum screen. AT&T and Verizon will have access in 600 MHz to a minimum of 20 MHz they claim to need to participate – provided they are willing to bid against each other. And, if they need more spectrum, they can always entice broadcasters to make more unreserved spectrum available by meeting the higher broadcaster reserve price.

If we really want “the market” to pick winners, the Commission should reject this last minute effort to undermine the proposed spectrum reserve.

Respectfully submitted,

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Center for Rural Strategies
Common Cause
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Free Press
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