April 2, 2015

Via Electronic Filing
The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554


Dear Chairman Wheeler:

There has been a great deal of analysis of the recently concluded AWS-3 auction. While there are certainly many important lessons to learn, Mobile Future takes this opportunity to respond directly to groups filing under the umbrella of the Public Interest Spectrum Coalition (PISC) who have drawn their own selective conclusions while choosing to ignore key elements of the auction. We urge the Commission to look closely and objectively at the lessons from the AWS-3 auction and use them constructively in preparation for the next big opportunity for wireless spectrum – the upcoming incentive auction.

Despite record auction revenues and expansive news coverage of DISH’s emergence to claim nearly half the licenses offered, PISC misleadingly argues that AT&T and Verizon “shut out” the rest of the industry.¹ But, when the full auction results are assessed objectively, a far different story emerges.

It is a matter of record that open and inclusive auction design principles – like those used in the AWS-3 auction – are essential to achieving auction outcomes that best serve mobile consumers, the public interest, and innovators alike. It is also imperative for the Commission to take steps to prevent certain self-interested competitors from ‘gaming the system.’ Mobile Future urges the Commission to recognize the realities of the AWS-3 auction and learn from this experience when crafting rules for the incentive auction.

To provide needed spectrum for deployment, expansion and upgrade of world-class, high-speed wireless networks throughout the United States, a successful incentive auction is essential. While PISC and nationwide carriers Sprint and T-Mobile are now pushing the FCC to expand the amount of spectrum set-asides in the upcoming incentive auction, the Commission must resist these self-serving demands and should instead allow and encourage all bidders to compete fairly and effectively for much-needed spectrum resources. The AWS-3 auction succeeded to the extent that it created a level playing field. However, the auction also demonstrated the dangers of granting preferences that large companies can manipulate to their own benefit but to the detriment of other bidders.

**The AWS-3 Auction was Dominated by DISH, not AT&T or Verizon**

The AWS-3 auction results are a matter of public record. While PISC is echoing the pleadings of some nationwide carriers for additional spectrum to be set aside in the incentive auction for their own benefit, the facts from the AWS-3 auction simply do not support such restrictive and unfair “thumb on the scales” rules.

In the AWS-3 auction, 31 of the 70 eligible bidders won spectrum licenses. As the results clearly show, it was not AT&T or Verizon, but DISH that outbid T-Mobile for the most licenses to be the big winner. DISH won 132 licenses over T-Mobile, while AT&T and Verizon outbid T-Mobile on 26 and 16 licenses, respectively. In fact, T-Mobile outbid Verizon for licenses on a 2:1 basis. DISH, through its joint bidding arrangement with two designated entities in which it has an 85% controlling interest, came home with 44% of all licenses allocated. The company was aggressive, accounting for 27% of all bids—more than Verizon and AT&T combined. As a result, DISH—a company that does not currently provide any wireless service—now holds an average of 81 MHz in the top 100 cellular market areas.

DISH dominated the auction by exploiting the designated entity rules to outbid competitors and obtain spectrum at a 25% discount. This allowed DISH to bid aggressively, outbidding other designated entities on 398 licenses and besting smaller, non-nationwide entities 42 times.

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This unquestionably hurt other designated entities and non-nationwide providers’ chances of acquiring spectrum. And if upheld, DISH’s winnings would come at a high price - $3 billion for U.S. taxpayers.

Unfortunately, now we see potentially major players in the auction like T-Mobile and Sprint seeking a similar advantage. Under the guise of set-asides, these companies are angling to avoid actual competition in the auction to make off with spectrum at a bargain basement rate.

Set-Asides Should be Used to Prevent Foreclosure, Not to Benefit Global Conglomerates Unwilling to Compete

Despite having 30 MHz of spectrum already reserved – an auction tool typically used to entice new entrants into the market rather than to subsidize well-funded incumbents – PISC is now asking for an even larger set aside. Moreover, the FCC has proposed placing only non-impaired spectrum in the reserve, sweetening the pot for reserve-eligible bidders and relegating other bidders to the most impaired licenses.

While much attention is focused on the set-aside spectrum, the companies seeking further changes are actually able to bid on all of the spectrum in the auction. To be clear, pushing for an increase in the set-aside is not about gaining new entrants or promoting competition – it’s about well-funded companies trying to acquire spectrum at a discount.

T-Mobile—the self-proclaimed third largest nationwide carrier operating in the United States—continues to argue that to acquire spectrum in future auctions, it needs expanded set-asides to shield it from head-to-head bidding competition from Verizon and AT&T. This is a surprising plea considering the combined market capitalization of T-Mobile and its parent company, Deutsche Telekom, is approximately $110 billion.7 The company has no shortage of capital to bid against any competitor. Rather, it chooses not to.

Sprint, too, is lobbying for even more special treatment—despite sitting out the AWS-3 auction altogether. And the company’s participation in the incentive auction is also in doubt. In a recent interview, Sprint CEO Marcelo Claure stated, “everyone wants and needs low-band spectrum. But our participation depends on the price of the spectrum, and how that will affect our return on investment.” 8 With its Softbank parent, Sprint has a combined market cap of $88 billion.9 The company has ample resources to acquire

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spectrum at full market value and with 197 MHz already, Sprint has the most spectrum of any carrier in the nation. It is clear that both T-Mobile and Sprint can get the spectrum they say they need by coming to the auction prepared to pay market prices and competing on the same terms as others.

Yet, despite financial backing and the significant opportunities these nationwide companies have to acquire spectrum on the secondary market, PISC is asking the Commission to provide them with more benefits. Asking the Commission to expand the spectrum set-asides already in place conflicts directly with one of the main objectives for holding an auction in the first place: to raise money for the Treasury by selling a scarce and coveted public resource. As we saw in the AWS-3 auction, DISH took advantage of the designated entity program and U.S. taxpayers paid the price. Now, PISC is asking for a similar break to benefit T-Mobile and Sprint – more set-aside spectrum, which would allow these carriers to buy more licenses with far less bidding competition.

While you have made competition your main objective at the Commission, setting-aside more spectrum for companies that are unwilling to invest and deploy service in large portions of the country will not help achieve this goal. Rather, limiting auction participation for service providers like AT&T and Verizon who are investing and deploying networks across the nation will likely hurt the significant number of consumers living in rural America. A recent analysis Mobile Future conducted very clearly shows that even in areas where Sprint and T-Mobile have sufficient spectrum holdings to invest and deploy networks, they still choose not to. In fact, in more than 75 percent of the counties in the five most rural states in the continental U.S., neither T-Mobile nor Sprint offer any of their own voice or data service.

PISC’s request for greater set-asides to avoid bidding competition is squarely at odds with your mantra – competition, competition, competition. Just last week, Sprint CEO Marcelo Claure made his intentions not to compete more broadly crystal clear. In remarks before an audience of small wireless company representatives, he stated, “the great thing [about] Sprint and its partnership with CCA and its different carriers is that, you’re in a place where we have no intention of going, and you have no intention of coming to where we are.”

The past 11 auctions in the U.S. have resulted in nearly half (48.28%) of all MHz/POPs being won by non-nationwide operators. As prior auction results and individual company decisions clearly show, there is no need for the FCC to contort the incentive auction rules to subsidize spectrum acquisitions by favored entities. PISC may rest assured that T-Mobile and Sprint will acquire the spectrum they say they need if they put their money

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where their mouths are, come to the auction prepared to pay market prices and compete on the same terms as everyone else.

To help ensure that spectrum in the incentive auction reaches its best and highest use, the Commission must resist calls to set aside additional spectrum. At the same time, the FCC must also make sure that network providers are not restricted when bidding for non-impaired airwaves.

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How will increasing the spectrum reserve help wireless competition in America? The short answer is – it won’t. We urge the Commission to design an incentive auction that addresses the growing spectrum needs of all providers, and the consumers they each serve. At the same time, the Commission must move forward with open, inclusive auctions and resist calls by certain self-interested competitors to implement rules that would limit auction participation in their favor to the detriment of tens of millions of other American mobile consumers.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS in the above-referenced dockets. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

_/s/ Jonathan Spalter_____________
Jonathan Spalter, Chairman
Allison Remsen, Executive Director
Rachael Bender, Policy Director
MOBILE FUTURE
1325 Pennsylvania Avenue, N.W., Suite 600
Washington, DC  20004
(202) 756-4154
www.mobilefuture.org

cc:  Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O’Rielly