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May 17, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Communication – WT Docket 12-4

Dear Ms. Dortch:

On behalf of T-Mobile USA, Inc. (“T-Mobile”), and pursuant to Section 1.1206 of the Commission’s Rules, 47 C.F.R. § 1.1206, this is to provide notice of *ex parte* meetings held on May 15, 2012, in connection with WT Docket No. 12-4. The meetings were attended by Thomas J. Sugrue, Senior Vice President of Government Affairs, Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, Steve B. Sharkey, Director, Federal Regulatory Affairs and Chief, Engineering and Technology Policy, Joshua Roland, Senior Corporate Counsel, and Christopher A. Wieczorek, Corporate Counsel, of T-Mobile; Professor Judith Chevalier, Professor of Economics and Finance at the Yale School of Management; David Sosa of the Analysis Group; and the undersigned (together, the “T-Mobile Representatives”). The T-Mobile Representatives met with Catherine Matraves, Paul Murray, Tom Peters, Jim Schlichting, Susan Singer, Michael Smith, Joel Taubenblatt, Thuy Tran, Melissa Tye, and Aleks Yankelevich of the Wireless Telecommunications Bureau; Virginia Metallo and Joel Rabinovitz of the Office of General Counsel; Octavian Carare, Eric Ralph, and Tim Stelzig of the Wireline Competition Bureau; and Evan Kwerel, Paul LaFontaine, and Marius Schwartz of the Office of Strategic Planning and Policy Analysis (together, the “FCC Representatives”).

During the course of the meeting, the T-Mobile Representatives discussed the matters raised in T-Mobile’s Petition to Deny filed on February 21, 2012, and Reply to Opposition filed on March 26, 2012, in WT Docket No. 12-4, and the Declaration and Supplemental Declaration of Professor Chevalier submitted in support thereof. In particular, Professor Chevalier described the economic analysis that is the basis for her conclusion that the public interest would not be served by the transfer of significant amounts of scarce spectrum resources to Verizon Wireless. She noted that spectrum is an essential input to the provision of commercial mobile wireless services and that the transfer of the AWS-1 spectrum to Verizon Wireless proposed by the Applicants in the

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above-referenced docket would result in an inappropriate concentration of spectrum in Verizon's hands.

Professor Chevalier pointed out that the deployment of LTE services is a competitive necessity and, as shown in the *ex parte* filing submitted by T-Mobile on May 15, 2012, that Verizon Wireless already has significantly more spectrum free and clear for the deployment of LTE than any of the other three national wireless carriers *combined*.¹ Professor Chevalier explained that even though Verizon Wireless does not have an immediate need for the spectrum to deploy LTE services,² the spectrum is valuable to Verizon Wireless because it forecloses competition. To illustrate the principle that a large firm like Verizon Wireless can benefit from hoarding spectrum, Professor Chevalier discussed the Model of Spectrum Utilization as set forth in her Declaration and the attached handout that was provided to the FCC Representatives during the meeting.

In order to grant the pending applications, the Commission's Section 310(d) mandate requires that it determine that the "public interest, convenience and necessity will be served thereby."³ As demonstrated by T-Mobile's Petition to Deny and Reply, and

¹ See Attachment to T-Mobile's *ex parte* Letter to Marlene H. Dortch, WT Docket No. 12-4 (filed May 15, 2012), at p. 3, citing Deutsche Bank research showing that Verizon Wireless Verizon already holds 13.1 billion MHz pops of spectrum for LTE use, which is more MHz pops than AT&T, Sprint and T-Mobile *combined*, and that if the proposed transaction were to be completed, Verizon Wireless would hold an average of 63 MHz of spectrum for LTE whereas the other three national carriers *combined* only hold 50 MHz.

² Based on its review of the proposed AT&T Wireless/T-Mobile merger, the Staff Report in WT Docket 11-65 concluded that AT&T had sufficient spectrum with which to deploy LTE services. See *Staff Analysis and Findings, Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 26 FCC Rcd 16184, at ¶ 215 (2011) (stating that the "standalone AT&T ... would have sufficient spectrum for LTE deployment"). As Professor Chevalier noted, the fact that Verizon Wireless *already* holds an average of 44 MHz nationwide of clear spectrum for LTE compared with AT&T's 28 MHz confirms that Verizon already has more than sufficient spectrum with which to deploy LTE. Were the instant transactions to be approved, that excess would be significantly expanded.

³ The Commission must flatly reject Applicants' claims that it is precluded by Section 310(d) from engaging in a public interest analysis that examines the competitive impact of the transactions. *E.g.*, *Ex Parte* Letter to Marlene H. Dortch from John T. Scott, WT Dkt. No. 12-4, dated Apr. 12, 2012. The public interest analysis required by Section 310(d) "necessarily encompasses the 'broad aims of the Communications Act,' which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing spectrum in the public interest." *BRH Holdings GP, Ltd. and EchoStar Corporation*, 26 FCC Rcd 7976, at ¶ 7 (2011). In

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confirmed by Professor Chevalier's economic analysis, the public interest will not be served by allowing Verizon Wireless to add to its existing stockpile of warehoused spectrum which, in the absence of the transactions, could be used by competitors to deploy LTE services to the benefit of competition and consumers.⁴

Should any additional information be required with respect to this *ex parte* notice, please do not hesitate to contact me.

Very truly yours,

/s/ Jean L. Kiddoo

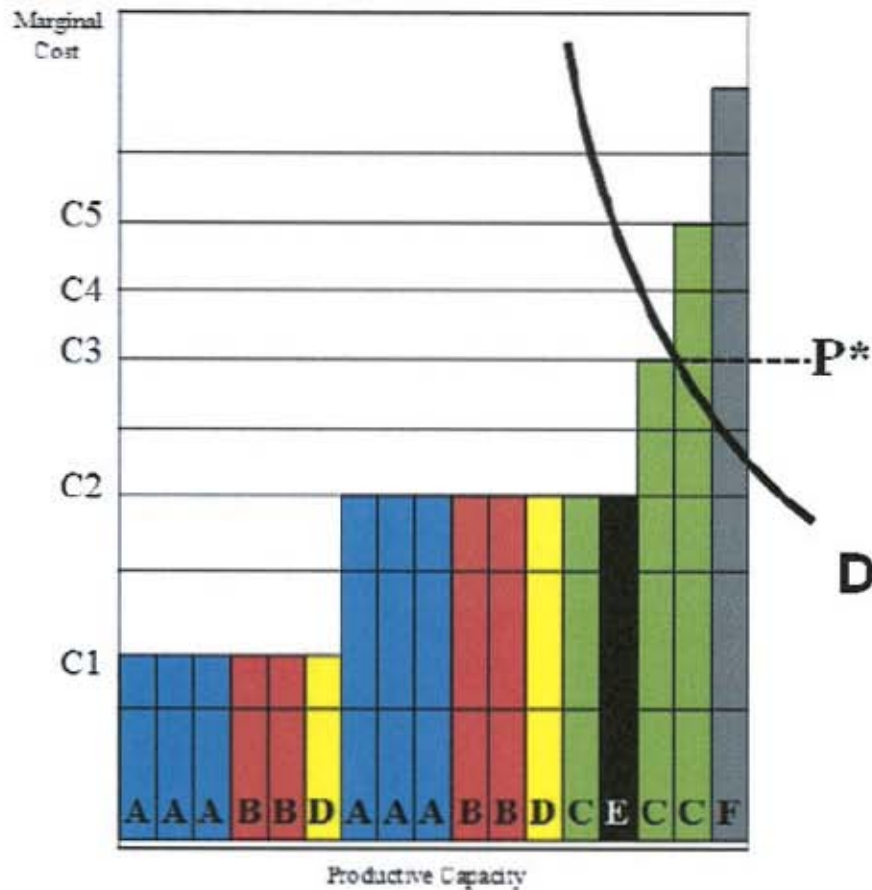
Jean L. Kiddoo
Counsel to T-Mobile USA, Inc.

Attachment
cc (by email): FCC Representatives

undertaking that public interest analysis, the Commission will consider "whether a transaction will enhance, rather than merely preserve, existing competition, and examine[] potential and future competition and its impact on the relevant market." *Applications of Celco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444, at ¶ 28 (2008). Moreover, in rejecting an applicant's claim that the Commission is precluded by Section 310(d) from denying a transfer of scarce satellite orbital locations on the ground that it might disadvantage competitors filing in a subsequent processing window, the Commission noted that it was not making a judgment that "the public interest might be better served by the assignment to another entity," but "[r]ather, we are only considering whether approval of the assignment is consistent with the Commission domestic satellite policy objectives...." *American Telephone & Telegraph Co. and Ford Aerospace Satellite Services Corp.*, 2 FCC Rcd 4431, at ¶16, n.27 (1987).

⁴ In an analogous context, Congress has recognized the potential harms of warehousing spectrum. *See, e.g.*, Section 309(j)(4)(B) of the Communications Act, 47 U.S.C. § 309(j)(4)(B), which required the Commission to design its spectrum auction rules to "prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."

Modeling Full Capacity Equilibrium



Assumed Capacity by Firm

- Firm A: 6 units
- Firm B: 4 units
- Firm C: 3 units
- Firm D: 2 units

Assumed Marginal Cost of Capacity

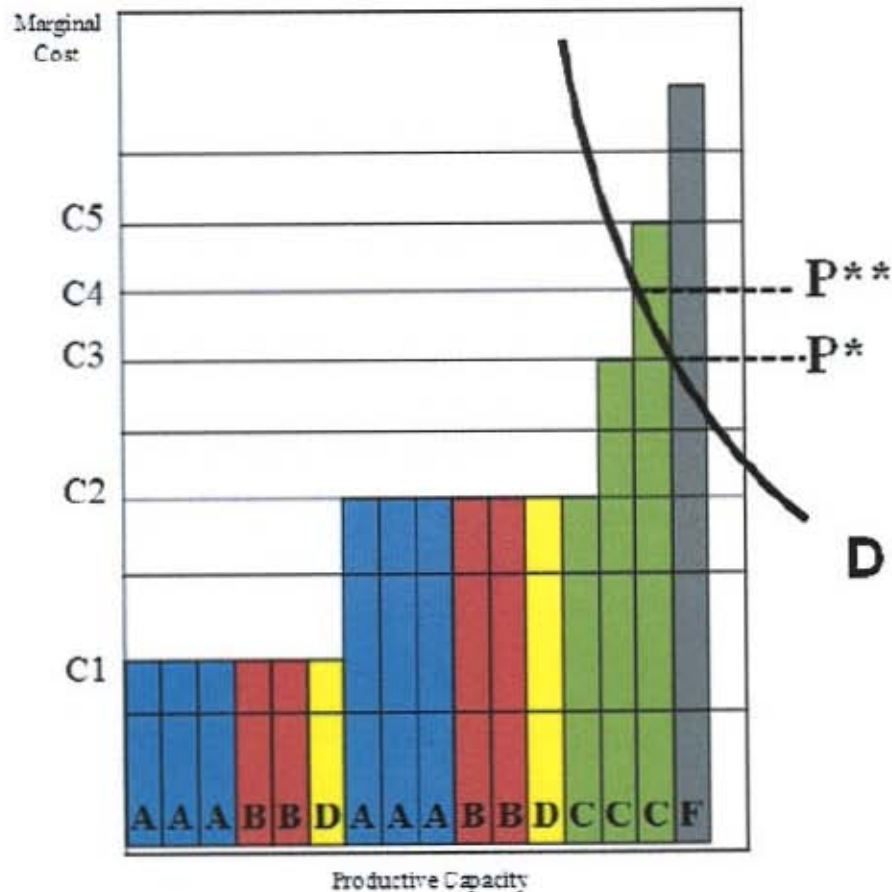
- Firm A: c_1 and c_2
- Firm B: c_1 and c_2
- Firm C: c_2 , c_3 , and c_5
- Firm D: c_1 and c_2

Newly available capacity: E

Assumed Marginal Cost of E: c_2

Bertrand Equilibrium: $P^*=c_3$

Modeling Undeployed Capacity Equilibrium



Assumption:

Newly available capacity E is idle

Bertrand Equilibrium: $P^{}=c4$**

If Firm A holds E, Firm A is better off from holding capacity idle if:

$$6(c4-c3) - (c3-c2) > 0$$

If Firm D holds E, Firm D is better off from holding capacity idle if:

$$2(c4-c3) - (c3-c2) > 0$$