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VIA ELECTRONIC FILING

Chairwoman Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte Presentation

WT Docket No. 12-269

Policies Regarding Mobile Spectrum Holdings

Dear Chairwoman Clyburn and Commissioners Rosenworcel and Pai:

T-Mobile USA, Inc. (“T-Mobile”) submits this letter to address a paper by Robert J. Shapiro, Douglas Holtz-Eakin, and Coleman Bazelon that purports to offer an academic analysis of the allegedly adverse effects that spectrum aggregation limits may have on auction revenues and the downstream wireless market.¹ Putting aside the numerous flaws in its approach and assumptions, the analysis, in fact, affirms that ***reasonable limits on spectrum aggregation would not adversely affect anticipated revenues from the 600 MHz incentive auction.***

The authors’ April 30th study is comprised of three sections: an introduction by John Mayo; a retrospective analysis by Bazelon and Holtz-Eakin; and a series of normative recommendations by Shapiro.²

¹ Robert J. Shapiro, Douglas Holtz-Eakin, and Coleman Bazelon, *The Economic Implications of Restricting Spectrum Purchases in the Incentive Auctions*, WT Docket No. 12-269 (Apr. 30, 2013) (“April 30th Study”), <http://bit.ly/ZIqDqU>.

² While the study purports to be independent and objective, it is worth noting (although it is not mentioned in the report) that three of the four authors, Mayo, Bazelon, and Shapiro, serve or have served as advisors or consultants to AT&T Inc. (“AT&T”). See, e.g., AT&T Inc., Acknowledgements of Confidentiality, *In re Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses & Authorizations*, WT Docket No. 11-65 at 4 (identifying Coleman Bazelon and twelve other employees of the Brattle Group as economic consultants to AT&T), available at <http://bit.ly/17RXGI7>; Robert J. Shapiro, *Creating Broad Access to New Communications Technologies: Build-Out Requirements versus Market Competition and Technological Progress* (2006) (noting that study was funded by AT&T); Robert J. Shapiro & Douglas Dowson, *Corporate Political Spending: Why the New Critics Are Wrong* (2012) (stating in its description of the authors that AT&T was a client of Shapiro’s consulting group, Sonecon); *John Mayo Faculty Profile*, Georgetown University McDonough School of Business (last visited June 4, 2013), <http://bit.ly/11W6RNX> (noting that Dr. Mayo, author of the Foreword to the paper, has “served as an advisor and consultant” to AT&T).

In their portion of the document, Holtz-Eakin and Bazelon erect a strawman in which the Commission would *entirely* exclude AT&T and Verizon from the auction and, from this faulty premise, assert that auction revenues would be reduced by pro-competitive spectrum aggregation limits. In fact, ***no party has proposed to exclude AT&T and Verizon from the incentive auction.*** Indeed, a coalition of competitive carriers and public interest groups recently affirmed this point in an ex parte filing with the Commission.³ As noted in that filing, it would be against the interest of competitive carriers to exclude AT&T and Verizon from the bidding: given the realities of the global wireless market, carriers such as T-Mobile need AT&T and Verizon in the 600 MHz band ecosystem. Without the purchasing power of these two carriers, commanding attention from the global supply chain of manufacturers would prove difficult, and competitive carriers would be left facing significant challenges in acquiring affordable devices for the new band.

Yet strikingly, even under the extreme strawman of a complete ban on AT&T and Verizon participating in the 600 MHz auction, the authors conclude that the auction would still generate \$19 billion in revenues, which is more than one-third of the revenue of all other spectrum auctions *combined*.⁴ As Holtz-Eakin and Bazelon concede, this “worst case” \$19 billion revenue projection is more than sufficient to cover the nearly \$2 billion to reimburse broadcasters for relocation costs and the \$7 billion for purposes of funding the nationwide “First Responder Network Authority,” while still leaving \$10 billion to compensate broadcasters for relinquishing their spectrum.⁵

Under the actual type of pro-competitive spectrum aggregation limits proposed in the record, moreover, Holtz-Eakin and Bazelon explain that there would likely be ***little or no effect on auction revenues.*** According to the authors, for such limitations (as opposed to outright exclusions), “other bidders may have the resources to offset reduced demand by” AT&T and Verizon.⁶ The ultimate effect on revenues boils down to “the degree of the restrictions” on spectrum aggregation and “how much those restrictions bite” or, in other words, how much these limitation reduce AT&T and Verizon’s demand for spectrum relative to how much more other bidders would be willing to pay.⁷ Tellingly, Holtz-Eakin and Bazelon note that the “bite” of a spectrum-aggregation limit of “about one-third” is likely to be small to non-existent.⁸ Reasonable spectrum aggregation limits will leave auction revenue largely unaffected, Holtz-Eakin and Bazelon explain, because ***other bidders’ demand for spectrum would offset any diminution in demand that a pro-competitive limit on spectrum aggregation might generate.***⁹

³ *Ex Parte* Presentation of C Spire Wireless, Computer & Communications Industry Association, Public Knowledge, Rural Telecommunications Group, Inc., Competitive Carriers Association, T-Mobile USA, Inc., US Cellular, New America Foundation, Sprint Nextel Corporation, COMPTTEL, Free Press, & National Telecommunications Cooperative Association, GN Docket No. 12-268 & WT Docket No. 12-269 (May 20, 2013), <http://bit.ly/ZVfbxB>.

⁴ April 30th Study at 2.

⁵ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96 § 6413(b)(3) (Feb. 22, 2012).

⁶ April 30th Study at 6.

⁷ *Id.* at 11, 19.

⁸ See *id.* at 6.

⁹ *Id.* at 11.

Far from supporting the proposition that a pro-competitive limit on spectrum aggregation will diminish auction revenues, therefore, *the Holtz-Eakin/Bazelon study actually affirms that an auction with reasonable spectrum caps will generate substantial overall auction revenues with ample funding for public safety's \$7 billion allocation.*¹⁰

Even Shapiro, who – incredibly – recommends allowing AT&T and Verizon to acquire *all* of the wireless spectrum available in the 600 MHz auction as the most efficient outcome for consumers,¹¹ concedes that one of the surest ways to increase auction revenues is to increase the number of participants in the auction.¹² More bidders simply means more money chasing the same number of goods.¹³ However, if smaller players, such as T-Mobile, Sprint, US Cellular and other competitive carriers assume that defeat is inevitable because AT&T and Verizon, which already hold the lion's share of the low-frequency spectrum available in the United States, will pay to exclude their competitors from this critical low-frequency resource, auction revenue may well suffer. Allowing the two largest carriers to acquire all or nearly all of the available 600 MHz spectrum perversely threatens to lower auction revenues by robbing the auction of the large number of participants and unpredictable types of bidding that increase spectrum prices and raise auction revenues.¹⁴

Contrary to Shapiro's contention, it is difficult to fathom how permitting the two dominant market participants to acquire all of the available 600 MHz spectrum – the last lower band spectrum that will come on the market for the foreseeable future – would benefit consumers.¹⁵

¹⁰ The Holtz-Eakin/Bazelon study, in other words, does *not* support the conclusion trumpeted by AT&T that auction revenues would somehow be at risk if the Commission were to adopt reasonable, pro-competitive spectrum aggregation limits. Undeterred by its own study, AT&T continues to press this assertion. See, e.g., Bob Quinn, Supporting Public Safety Through Effective Spectrum Policy (June 7, 2013), <http://bit.ly/13hCD4K>.

¹¹ See April 30th Study at 33-38. This statement, which strains credulity, ignores ample record evidence that demonstrates the competition-dampening market power of having the two dominant wireless carriers control 78% of below 1 GHz spectrum. The statement also overlooks record evidence in this docket strong enough to lead the Department of Justice to conclude that “[b]ased on [its] experience with highly concentrated telecommunications markets, . . . there are substantial advantages to making available new spectrum in order to enable smaller or additional providers to mount stronger challenges to large wireless incumbents.” *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 at 11-12 (Apr. 11, 2013) (“DOJ *Ex Parte* Submission”), <http://bit.ly/16S6zag>; see also Letter from Henry A. Waxman et al., to Chairman Genachowski, WT Docket No. 12-269 (May 16, 2013), <http://1.usa.gov/16CnoJ1> (“We believe the views of the Antitrust Division of the Department of Justice are entitled to serious consideration on such core antitrust principles as market foreclosure and the relative competitive value of various spectrum bands.”).

¹² See April 30th Study at 29.

¹³ In addition, unpredictable, disruptive bidding can stimulate bidding activity by other bidders and drive prices higher and higher as the auction progresses.

¹⁴ See, e.g., *Ex Parte* Letter of T-Mobile, WT Docket No. 12-269 at 5-7, 10-11 (May 7, 2013), <http://bit.ly/1ado8S7>; Jonathan B. Baker, *Spectrum Auction Rules That Foster Mobile Wireless Competition*, (Mar. 12, 2013), attached to Letter from Howard J. Symons, Member, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269 (Mar. 12, 2013), <http://bit.ly/Yy9Z1Q>; Stanley M. Besen, Serge X. Moresi, & Steven C. Salop, *Why Restricting Participation in Spectrum Auctions Can Increase Bidder Participation, Increase Auction Revenues, and Increase Competition in Wireless Markets* (Mar. 12, 2013), exhibit to Reply Comments of Sprint Nextel Corporation, GN Docket No. 12-268 at 2 (Mar. 12, 2013), <http://bit.ly/ZAbI14>.

¹⁵ See e.g., DOJ *Ex Parte* Submission at 11-12, 14.

Shapiro's flawed assumptions are too numerous to fully address.¹⁶ But the result Shapiro seeks is a roadmap to duopoly – an outcome that would benefit the two dominant carriers, but most assuredly not American consumers.

Moreover, permitting the two dominant players to acquire all of the available 600 MHz spectrum would undermine the goal of limited government and, in particular, the successful model of the last 15+ years under which the wireless industry was allowed to operate on the basis of competition rather than intrusive regulation. Excessive concentration in spectrum resources, especially the critical lower-frequency spectrum, will entrench market power and diminish competitive pressure in the wireless industry, which, in turn, will lead to calls for undesirable government intervention over the terms and conditions of wireless service offerings. ***Ensuring robust competition today can prevent costly and complex government intervention in a duopoly market of the future.***

In sum, the April 30th study does not call into question what the Commission already well knows: stimulating robust wireless broadband competition *during* and *after* the auction can encourage vigorous bidding, increase auction revenues, strengthen broadband reliability, inspire wireless innovation, and accelerate broadband deployment. To the extent this study contributes anything to the record, it reaffirms that ***reasonable, pro-competitive spectrum caps remain fully consistent with the considerable auction revenues*** predicted for the highly prized, low-frequency spectrum found in the 600 MHz band.

Respectfully submitted,

/s/ Kathleen O'Brien Ham

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¹⁶ Like Holtz-Eakin and Bazelon's portion of the analysis regarding auction revenues, Shapiro's analysis relies heavily upon a strawman scenario where AT&T and Verizon are entirely excluded from the auction. See April 30th Study at 29. Moreover, Shapiro uses numerical values that are at war with reality. For instance, Shapiro indiscriminately applies an 80% utilization rate for all spectrum bands, regardless of frequency, despite the fact that many bands, including the 90 MHz AWS band, the 194 MHz BRS-EBS band, and the 30 MHz WCS band have not reached anywhere close to that level of deployment. See *id.* at 32. Shapiro also takes liberties with his sources. At one point, for example, Shapiro cites Paul Klemperer to support the proposition that *any* limitation on market power in an auction "necessarily" makes an auction "less competitive and less efficient." See *id.* at 29. Klemperer, in fact, has argued just the opposite. See Paul Klemperer, *What Really Matters in Auction Design*, 16 J. of Econ. Perspectives 169, 178 (2002) (explaining that because of anticompetitive market foreclosure incentives, it may sometimes be wiser to limit the number of licenses any one bidder can accumulate in an auction).