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January 29, 2014

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

Ex Parte Presentation

Re: WT Docket No. 12-269 – Policies Regarding Mobile Spectrum Holdings

Dear Chairman Wheeler:

As the Washington State Attorney General, I am the primary enforcer of my state's Consumer Protection and Antitrust laws. I write today on behalf of millions of consumers of wireless and mobile computing services to urge the Commission to adopt spectrum auction rules that keep those laws and consumers' best interests in mind.

Indeed, in your Notice of Proposed Rulemaking, released in this matter on September 28, 2013, you point out that Congress tasked the FCC with protecting the interests of our wireless consumers when it endorsed the objective of "*promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants. . .*" 47 U.S.C. § 309(j)(3)(B).

In addition, you point out that when taking action to manage the spectrum to be made available for use by the private mobile services, the Commission must consider whether those actions will, among other things, "(1) promote the safety of life and property; (2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, . . . and (3) encourage competition and provide services to the largest feasible number of users. . ." 47 U.S.C. § 332(a)(3).

On September 16, 2011, with the best interests of Washington's consumers in mind, I joined several other states and the Antitrust Division of the United States Department of Justice (USDOJ) in filing a lawsuit to enjoin the proposed merger of AT&T and T-Mobile. We achieved success when the parties walked away from the proposed merger prior to protracted litigation. The Complaint we filed warned that the proposed merger would concentrate far too much wireless spectrum capacity in the hands of far too few players, to the detriment of our consumers.

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Since that merger failed, indications are that the wireless industry is economically healthy, competitive, and more innovative and efficient in its use of limited resources.¹ I am concerned, however, that without reasonable auction controls designed to prevent spectrum aggregation and promote competition, particularly in the low-frequency spectrum that is now at issue, Washington's consumers may end up having won the battle but lost the war.

In reviewing the submissions on file in this matter, coupled with what my office already knows from our experience in this segment of the marketplace, I believe the low-frequency spectrum auction now at issue comes at a critical juncture for the wireless industry. As it stands now, the two largest providers together control the bulk of the low-frequency spectrum currently available. Permitting excessive low-band spectrum aggregation by the two largest providers would work irreparable harm on competition.

Because low-frequency spectrum is especially important for wireless access and coverage in buildings and rural areas, obtaining portions of this spectrum would greatly incent the nation's smaller carriers to build out infrastructure in order to create new markets and obtain new consumers. Conversely, competition, innovation, and the efficient use of scarce spectrum will undoubtedly be damaged in an auction environment where the highest bid is the sole or primary factor. Such a scenario likely will reduce the competitive incentive to invest in wireless networks.

Given these recent efforts to prevent excessive concentration in the wireless industry and the unique state issues raised by those efforts, and of Congress's direction that the Commission develop rules to promote competition, ensure that new and innovative technologies are readily accessible to consumers, and avoid excessive concentration, I join the USDOJ in strongly encouraging the adoption of rules that prevent excessive concentration of spectrum ownership, thereby keeping the long-term interests of America's wireless consumers firmly in mind and protecting a fair and open marketplace for healthy competition.

This is an opportunity to give smaller carriers the chance to obtain a critical resource and thereby promote a competitive and dynamic wireless landscape.

Thank you for the opportunity to comment on this matter.

Respectfully submitted,


BOB FERGUSON
Washington State Attorney General

¹ See generally, *Ex Parte* Submission of the United States Department of Justice Before the Federal Communications Commission, WT Docket No. 12-269, pp. 7-8, April 11, 2013.