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Ex Parte

Marlene H. Dortch
Secretary
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 Ms. Dortch:

Recently, some of the parties seeking bidding restrictions and spectrum caps in the Incentive Auction have claimed that the results of Canada's recent 700 MHz auction support their proposals.¹ This is incorrect. Canada's policy goal and the auction restriction it imposed bear no resemblance to what CCA and other parties have proposed for the Incentive Auction.

First, Canada's objective was to encourage entry of a fourth nationwide facilities-based competitor into its three-firm wireless industry – an irrelevant goal in the United States given that we already have the industry structure Canada seeks to emulate. Second, in sharp contrast to the asymmetrical bidding restrictions proposed here, the Canadian regulator restricted *all nationwide incumbents* in exactly the same way. Remarkably, the companies pushing for auction restrictions have not cited a single international regulatory decision subsidizing certain nationwide incumbents at the expense of their competitors. That is because there is no valid basis to do so. T-Mobile and Sprint are established incumbents with large multi-national owners that have the financial strength to acquire spectrum without special preferences. Indeed, the last time T-Mobile chose to participate in an auction, it dominated the bidding – spending \$4.2 billion and acquiring more spectrum than Verizon and AT&T combined.² Sprint already holds *twice* the amount of spectrum as Verizon and Sprint's owners have ample ability to buy more if they so choose.

Moreover, Canada's experience confirms that restrictions distort competition and can suppress revenue. Bidding in Canada's 700 MHz auction was more intense with respect to those licenses *not subject to the caps* (that is, the ones on which *all firms* could bid), whereas bidding for the licenses subject to the caps was less robust.³ In other words, the firms given preferential treatment got their licenses at *discounts*. The same thing happened in Canada's AWS auction in 2008, when the spectrum sheltered from bidding by the restricted carriers sold for *30% less* than the spectrum subject to

¹ See, e.g., *Ex Parte* Letter from Sean Spivey, Competitive Carriers Association, to Marlene Dortch, FCC (Feb. 24, 2014); Kathleen Ham, T-Mobile, "A tale of Two Auctions" available at http://multimediacapsule.thomsonone.com/mobileusa/blog_a-tale-of-two-auctions ("Ham Blog").

² See Auction No. 66 Summary (http://wireless.fcc.gov/auctions/66/charts/66press_3.pdf).

³ See Industry Canada, "700 MHz Auction FAQs" (<http://www.ic.gc.ca/eic/site/icgc.nsf/eng/07398.html>).

unrestricted bidding.⁴ That is exactly what Sprint and T-Mobile want in the Incentive Auction – to obtain spectrum at below-market prices while preventing their competitors (Verizon and AT&T) from acquiring the spectrum needed to meet their own customers’ surging demand for high-bandwidth wireless services.

T-Mobile, Sprint, and the Competitive Carriers Association assert that restrictions are needed to promote participation by smaller bidders. But the Canadian experience in no way supports that claim. In Canada, only four small bidders participated in the 700 MHz auction, accounting for 5% of the total demand for spectrum.⁵ By contrast, U.S. auctions characterized by open bidding have attracted *hundreds* of active participants and have broadly distributed licenses among numerous winning bidders. In fact, in the nine auctions offering spectrum for terrestrial mobile broadband services conducted over the past 10 years, non-nationwide operators and small businesses have won nearly half (46%) of the aggregate MHz/POPs.⁶ As explained by Dr. Leslie Marx, an auction expert and former FCC Chief Economist, extensive empirical data based on real world experience in this country undercut the unsupported hypothesis that restrictions might not suppress auction revenue because they might encourage smaller bidders to participate more robustly.⁷

Dr. Marx also observes that T-Mobile’s and Sprint’s economists do *not* assert that their clients are “small” firms that would be deterred by the unrestricted presence of Verizon and AT&T.⁸ She concludes that “even if [Sprint and T-Mobile] had provided factual support for their conjecture that *smaller* firms may be deterred by the presence of unrestricted *larger* firms (and they do not), Sprint and T-Mobile do not explain why their own presence would not similarly deter smaller rivals from participating.”⁹ Taking T-Mobile at its word that it wants an auction where “smaller carriers” have a “meaningful chance” to purchase low-band spectrum,¹⁰ T-Mobile’s *own* economic theory would require that it subject itself (and Sprint) to the exact same restrictions it seeks to impose on Verizon and AT&T.

Proponents of restricting Verizon and AT&T have failed to present economic evidence proving that the FCC should adopt rules that disadvantage Verizon and AT&T in the Incentive Auction. There is nothing learned from the Canadian experience that cures that failure.

Please contact the undersigned if you have any questions.

Sincerely,



⁴ See Mobile Future, *The Case for Inclusive Spectrum Auction Rules: How Failed International Experiments with Auction Bidding Restrictions Reveal the Strength of Inclusive Rules that Put Consumers First*, filed in Docket No. 12-268 on Sept. 19, 2013, at 8.

⁵ See Industry Canada, “700 MHz Spectrum Auction, Provisional Winners” available at http://agora.ic.gc.ca/ccawinners_eng.cfm?p_auction_id=8.0.

⁶ See Mobile Future, *FCC Spectrum Auctions and Secondary Market Policies: An Assessment of the Distribution of Spectrum Resources Under the Spectrum Screen*, filed in Docket No. 12-268 on Nov. 13, 2013), at 2.

⁷ See Leslie M. Marx, *Economic Analysis of Proposals that Would Restrict Participation in the Incentive Auction*, Sept. 18, 2013 (filed by Verizon in Docket No. 12-268 on Sept. 18, 2013), ¶¶ 77-88.

⁸ *Id.*, ¶ 85.

⁹ *Id.*

¹⁰ See Ham Blog.