



**U.S. DEPARTMENT OF JUSTICE**  
Antitrust Division

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June 24, 2015

Ex Parte

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

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

Dear Ms. Dortch:

The United States Department of Justice (“Department”) writes to update its views on the Federal Communications Commission’s (“FCC” or “Commission”) Mobile Spectrum Holdings proceeding, specifically on the rules regarding the 600 MHz incentive auction. The Commission has an opportunity through this spectrum auction to promote vigorous competition and innovation in wireless markets for the benefit of consumers. To that end, the Department continues to support the Commission’s decision to create a significant reserve of spectrum to ensure that wireless carriers, other than those that currently hold the majority of low-frequency spectrum, have a meaningful opportunity to acquire the spectrum necessary to foster a competitive wireless market. Because access to this key input is important to ensuring vigorous competition in the wireless market and building out new spectrum will take some time, the Department also believes that the 600 MHz incentive auction (“the auction”) should take place as expeditiously as possible.

In recent years, mobile wireless markets have undergone tremendous change. Mobile wireless telecommunications devices now include smartphones, feature phones, tablets, data cards, e-readers, and other devices. Consumers use these devices to access a growing number of data applications and services on a daily basis, including bandwidth-intensive offerings such as streaming video, leading to greater demand for faster and more reliable mobile broadband connections.

As both the Department and the Commission have often acknowledged, adequate spectrum resources are essential for any firm to meet consumer demand and function as an effective competitor in the wireless market. In particular, low-frequency spectrum is an effective way for wireless carriers to meet consumer demand for data intensive applications and services across a wide coverage area.<sup>1</sup> The propagation characteristics of lower-frequency spectrum permit better coverage in both rural areas and building interiors without additional investment in infrastructure build-out. In addition, there may be substantial capacity and capital cost efficiencies associated with deploying larger blocks of spectrum.<sup>2</sup> For example, twice the spectrum may, under certain conditions, provide more than twice the amount of capacity.

The Communications Act specifically requires that, in designing auction policies, the Commission promote competition “by avoiding excessive concentration of licenses.”<sup>3</sup> Due to the importance of low-frequency spectrum to competition in the wireless market, the Department is concerned that acquisitions of this spectrum, whether at auction or through other transactions, by carriers that already control large percentages of the available low-frequency spectrum, could be used to create or enhance market power.<sup>4</sup> Today, the two largest carriers have the vast majority of low-frequency spectrum.<sup>5</sup> Consistent with the views it has articulated in previous filings, the Department believes that the Commission should ensure that the allocation of spectrum through the auction does not enable carriers with high market shares to foreclose smaller carriers from acquiring the spectrum they need to improve their customers’ wireless coverage. The Department supports the Commission’s effort to reserve a significant amount of spectrum for sale in each geographic area for wireless carriers that do not already own a large proportion of the low-frequency spectrum in that area.

A number of stakeholders have called for the Commission to increase the amount of spectrum reserved from 30 to at least 40 MHz.<sup>6</sup> They assert that unless there is a reserve of at least 40 MHz, the two largest carriers will be able to further enhance their

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<sup>1</sup> See, e.g., *Ex Parte* Submission of the United States Department of Justice, In the Matter of Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, 77 Fed. Reg. 61, 330 (Apr. 12, 2013) (“DOJ Spectrum Holdings *Ex Parte*”) and *Ex Parte* Submission of the United States Department of Justice, In the Matter of Economic Issues in Broadband Competition: A National Broadband Plan for Our Future, GN Docket No. 09-51 (Jan. 4, 2010)

<sup>2</sup> See DOJ Spectrum Holdings *Ex Parte*, at 15.

<sup>3</sup> 47 U.S.C. § 309(j) (3) (B).

<sup>4</sup> DOJ Spectrum Holdings *Ex Parte*, at 8.

<sup>5</sup> According to the most recent Commission report, the two leading carriers have 73% of low-frequency spectrum. *Policies Regarding Mobile Spectrum Holdings: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6133, 6162 ¶ 58 (2014) (“Spectrum Holdings Order”).

<sup>6</sup> *Ex Parte* Submission of Engine, In the Matter of Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269 (May 13, 2015); *Ex Parte* Submission of Non-Nationwide Competitive Carriers, In the Matter of Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269 (Apr. 22, 2015); Reply Comments, Competitive Carriers Association, In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268 (Mar. 13, 2015).

Marlene H. Dortch

June 24, 2015

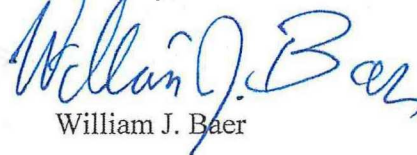
3

dominance in low-frequency spectrum holdings, limiting the potential for vigorous competition going forward. The Department recognizes that the Commission must balance competing policy priorities in setting the appropriate reserve levels. In balancing these priorities, the Department urges the Commission to give considerable weight in determining the amount of spectrum included in the reserve to protecting and promoting competition, and the well-established competition principle that those with market power may be willing to pay the most to reinforce a leading position.

The Department also recognizes that many considerations may affect the timing of the incentive auction. However, consumers will derive the greatest benefit from holding the auction as soon as practicable. Build-out does not happen overnight. Carriers must engage in years of planning and development before spectrum acquired at auction can be put to use to benefit consumers.<sup>7</sup> This planning is particularly important for smaller competitors or new entrants who hope to grow their customer base and, in so doing, provide more options for consumers. Because local mobile wireless markets across the nation are relatively concentrated, the sooner the auction is conducted, the sooner and more likely it is that the auction will provide significant competitive benefits for consumers.

As always, the Department looks forward to continuing to work with the Commission in protecting and promoting innovation, competition, and consumers in this vitally important industry.

Sincerely,

A handwritten signature in blue ink that reads "William J. Baer". The signature is fluid and cursive, with the first name "William" and last name "Baer" clearly legible.

William J. Baer

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<sup>7</sup> For example, once a carrier has certainty about which specific licenses it will be awarded, the carrier must then begin the process of ensuring that its customer devices and network equipment can communicate on those frequencies.