

WRITTEN TESTIMONY OF JOAN MARSH
VICE PRESIDENT, FEDERAL REGULATORY, AT&T
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
ON
CRAFTING A SUCCESSFUL INCENTIVE AUCTION: STAKEHOLDERS' PERSPECTIVES
DECEMBER 10, 2013

Thank you Chairman Rockefeller and Ranking Member Thune for inviting AT&T to join in the discussion today.

Much has changed since the incentive auction proceeding was initiated by the Commission last year. T-Mobile has substantially bolstered its spectrum footprint with additional AWS holdings, and earlier this year, it completed its acquisition of MetroPCS. Over the last few quarters, T-Mobile has re-emerged as a formidable competitor. Indeed, during each of the last two quarters, T-Mobile added more branded postpaid phone customers than either AT&T or Verizon.

SoftBank/Sprint for its part emerged victorious in a battle with Dish to solidify its ownership of Clearwire and now has the largest spectrum arsenal in the industry. According to Sprint's CEO, this spectrum gives Sprint "competitive parity" and "will give us extraordinary capacity and some speed and performance advantages in the market." Indeed, its spectrum holdings are so significant that it recently announced it was no longer interested in pursuing the PCS H Block at auction, a block that is adjacent to PCS spectrum that Sprint already holds and thus uniquely suited to Sprint, and a block Sprint had long fought to protect.

These recent developments underscore the robust and intensifying competition that characterizes the mobile wireless services market in the United States. According to the FCC's most recent report to Congress, the U.S. market remains among the least concentrated in the world—over 90 percent of Americans have 4 or more providers from which to choose, and more than 99 percent of Americans have access to mobile broadband services. Usage continues to skyrocket, with data traffic more than doubling every year for the last four years. Capital investment by the industry has increased as carriers deploy advanced technology and deploy more site density to keep up with demand. And despite soaring capital investment, prices have been in steady decline, with the average price of a minute of voice usage falling from from \$0.47 to less than \$0.04 over the last 18 years. SMS prices have fallen continuously since 2008, and data prices fell from \$0.47 per megabyte to \$0.05 per megabyte, an 89 percent decrease, in just two years.¹ While the FCC has declined in its recent reports to draw any broad conclusions about just how intensely competitive the wireless industry is, the data in its reports speak volumes: this is an intensely competitive market, not one where regulatory intervention is necessary to preserve competition.

This robust competition has made the US industry the envy of the world. US customers use more wireless service than elsewhere, and they pay much less for it. We lead the world in LTE deployment and adoption. We lead the world in smartphone adoption. The most advanced network technologies, smartphones and applications are released in the US first. The reallocation of UHF-TV spectrum to mobile wireless use will be critically important to ensure that this leadership can continue, by affording wireless carriers the opportunity to continue to grow, to advance, and to innovate.

¹ 16th Report at ¶ 2.

Against the backdrop of all of this competitive activity, the FCC has made substantial progress on the incentive auction proceeding and has built a significant record on a wide range of issues, including the band plan, auction design and repacking. Yet, many open issues remain, including the key question of who should be permitted to participate at auction and by what rules. That will be the primary focus of my comments here today.

AT&T continues to believe that an open and unrestricted auction is the best way forward. First, an open auction is the fairest method to assign licenses because it ensures that all applicants have the same opportunity to obtain spectrum. Second, an open auction would allow market competition, rather than regulation, to allocate spectrum, ensuring that it is put to its best and highest use. Third, an open auction will raise the most revenue at auction, maximizing the amount of spectrum made available for mobile broadband, while raising funds for public safety and deficit reduction. Moreover, an open auction will produce a multiplicity of winners. History shows this is true. In the 700 MHz auction – which was open and unrestricted – over 200 entities qualified to participate and over 100 bidders won licenses. While AT&T is often accused of dominating that auction, the fact is that AT&T bid on and won spectrum in only a single block of the 5 spectrum blocks available.

It bears noting that this single block of spectrum, combined with additional allocations AT&T acquired on the secondary market, have been the foundation for billions of dollars of investment in LTE deployments that have helped to make the United States the world leader in mobile broadband. By that measure, the 700 MHz auction was an enormous success.

Similarly, the AWS auction in 2006 was an open auction, and it attracted 167 different applicants. Notably, T-Mobile, not AT&T or Verizon, was the big winner in that auction. What

history shows, therefore, is that no one “runs the table” in an open auction, and - if there were any lingering concerns about that possibility - the heightened scrutiny triggered by the Commission’s existing spectrum screen is more than sufficient to address those concerns.

Nonetheless, some argue that new rules must now be adopted for the incentive auction to ensure a multiplicity of winners. If that is the goal, the lead proposal for restrictions in the auction -- T-Mobile’s Dynamic Market Proposal -- falls far short. T-Mobile’s proposal would impose dramatic restrictions on only two potential bidders-- AT&T and Verizon-- while leaving T-Mobile free to amass as much spectrum as it chooses, and at prices depressed by the restrictions on AT&T and Verizon. Indeed, if T-Mobile’s proposal were adopted, AT&T and Verizon would be allowed to bid on only a single 5MHz pair in most major markets, an amount that even T-Mobile admits is too little to deploy LTE efficiently.

The purported justification for proposed auction restrictions are that a carrier must have some low band spectrum—spectrum below 1 GHz –in order to compete effectively. If that were, in fact, true it begs the question of why T-Mobile and Sprint, which are owned by two of the largest telecommunications providers in the world, cannot obtain spectrum through an open bidding process. As noted, they have won spectrum at prior Commission auctions, even when faced with competing bids by AT&T, Verizon and others. But in all events, the argument that low band spectrum is a prerequisite to effective competition is entirely belied by the facts.

As an initial matter, the fact that T-Mobile is adding customers faster than its competitors, despite the fact that it has no “low band” spectrum is proof in itself that low band spectrum is not essential to compete effectively. Moreover, if low band spectrum were as critical as T-Mobile and Sprint now claim, surely T-Mobile and Sprint would have made some effort to

obtain such spectrum at the only recent auction of this spectrum or on the secondary market. In fact, neither company even applied to bid at the auction, although over 100 other carriers bid and won band spectrum at that auction. Likewise, while T-Mobile and Sprint have acquired huge amounts of spectrum on the secondary market in the past year, they did not pursue low band spectrum – despite the availability of such spectrum in the secondary market. Instead, T-Mobile chose to acquire AWS spectrum from AT&T and Verizon, and bought MetroPCS and its high band spectrum portfolio. For its part, Sprint purchased Clearwire and its massive trove of high band spectrum.

The reason T-Mobile and Sprint have not deemed it necessary to obtain low band spectrum is because claims regarding the indispensability of such spectrum are not true. While it is true that, all else being equal, signals can propagate farther over low band spectrum, there is no inherent network quality advantage in using low frequency spectrum versus high frequency spectrum. As a matter of both physics and engineering, a provider can achieve the same coverage with either type of spectrum; it is merely a question of how the provider builds out its network. Likewise, all providers can address in-building penetration challenges with high-frequency spectrum by increasing network density and deploying femtocells, picocells, wi-fi offload, and other means. To be sure, denser networks cost more to build, but to the extent high band spectrum entails higher build out costs, the spectrum itself will sell for lower prices in the marketplace. This is critical because the cost of provisioning a service includes spectrum costs as well as network build out costs. Sprint and T-Mobile's claims about low band spectrum simply write spectrum costs out of the equation.

Beyond that, and in all events, it is no longer the case that low band spectrum permits significantly lower build out costs than high band spectrum. To the contrary, the explosive

growth of mobile broadband services has dramatically diminished differences in the real world costs of building out low band and high band spectrum, and that trend will only accelerate in the coming years. As a result of this dramatic growth, the industry faces what former FCC Chairman Julius Genachowski referred to as a “looming spectrum crisis,” under which the principal challenge facing wireless providers today is meeting rapidly escalating demand for bandwidth. What that means is that in today’s broadband world, unlike the voice world of yesterday, network deployments are driven by network capacity needs, not coverage. Regardless of whether a carrier is using high band or low band spectrum, it must build dense networks in all but the most rural areas where network congestion is not an existing or looming challenge. And to optimize building penetration, they must deploy small cells as well. Indeed, the superior propagation of low band spectrum leads to certain relative *disadvantages* in the form of increased interference between cells, particularly in densely populated cities.

The restrictions T-Mobile proposes thus are not about ensuring that Sprint and T-Mobile get access to an essential input—they are pretextual. They are intended to ensure that AT&T and Verizon are effectively excluded from the auction, and that T-Mobile itself has an easy path to winning as much spectrum as it would like – at bargain prices. This proposal is not pro-competitive; it is not consistent with the intent of the authorizing legislation; it is not fair; and it is not a reflection of informed public policy.

In stark contrast to T-Mobile’s proposal, some countries have adopted auction rules that define either by MHz or percentage the amount of spectrum any one bidder can acquire at auction. Like any proposals that restrict auction participation, these proposals could suppress bidding competition and impact auction revenues. But assuming the limits adopted permitted all winners to obtain at least a 10 x 2 paired allocation, this approach would at least ensure multiple

winners in a fair and nondiscriminatory manner – unlike the T-Mobile proposal, which pretends to be fair, but which in reality tries to preclude Verizon and AT&T from effective participation.

As to broadcaster participation, AT&T continues to believe that broadcasters who come to auction are not selling a broadcast business. They are relinquishing their rights to 6 MHz of spectrum much needed for mobile wireless use. Indeed, as AT&T continues to study this problem it is becoming more apparent that the issue that matters the most is how difficult a broadcaster is to repack.

If a broadcaster that presents significant repacking challenges agrees to surrender its spectrum, that deal should be struck, even if a premium is necessary. Any valuation mechanisms adopted in the reverse auction should be consistent with that reality and opening bid prices should be set at a level that will encourage the broadest participation.

Finally, a word on timing. This is by far the most complex auction proceeding ever undertaken anywhere in the world. The Commission must persuade two different sets of auction bidders to participate in two separate but inter-related auctions. While those auctions proceed, the Commission must conduct a dynamic repacking analysis that protects and repacks the broadcasters that remain. The enormous complexity of this task cannot be overstated. While AT&T is eager to see these new allocations brought to market as soon as practical, we appreciate the enormity of the task the Commission faces and believe that time must be taken to get it right.

In conclusion, AT&T remains confident that under Chairman Wheeler's leadership, the Commission will ultimately conduct a successful auction that maximizes participation, raises significant revenue and achieves all the attendant benefits Congress envisioned.