December 10, 2013

The Honorable John D. Rockefeller IV
Chairman
U.S. Senate Committee on Commerce, Science, and Transportation
531 Hart Senate Office Building
Washington, DC 20510

Senator John R Thune
Ranking Member
U.S. Senate Committee on Commerce, Science, and Transportation
511 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Rockefeller and Ranking Member Thune:

In a wireless industry increasingly dominated by just two providers, the United States faces the very real prospect that in the months and years to come wireless investment will stall, prices will rise, and our nation's economy will never fully realize the economic growth that wireless broadband can enable. For this reason, we urge you to protect consumers, content creators, and wireless competition by supporting reasonable spectrum-aggregation limits on spectrum below 1 GHz.

As you know, low-band frequencies such as the 600 MHz band penetrate buildings better and travel farther than other frequencies can, and represent a critical building block for any carrier hoping to reach consumers where they live, work, and play.[1] Unfortunately, AT&T and Verizon currently control nearly 80 percent of all available low-band spectrum.[2] These two dominant

[1] *See, e.g.*, Martin Cave & William Webb, *Spectrum Limits and Auction Revenue: the European Experience*, attached to *Ex Parte* Presentation of Sprint Corporation, GN Docket No. 12-268 & WT Docket No. 12-269 (July 29, 2013); Competitive Carriers Association Notice of *Ex Parte*, GN Docket No. 12-268 & WT Docket No. 12-269 (Sept. 4, 2013).

[2] Sprint Nextel Comments, WT Docket No. 12-269, at 5-6 (filed Nov. 28, 2012).

incumbents also control more than 80 percent of the wireless industry's profits and two-thirds of its subscribers – up from just 43 percent of wireless subscribers in 2001.[3]

Given their commanding share of the market, AT&T and Verizon have an incentive to acquire the remaining low-band spectrum they do not already control to prevent competitors from undercutting them by offering consumers superior service, pricing, terms, or technology. The United States Department of Justice has grown concerned enough about this anti-competitive outcome to have urged the Federal Communications Commission to adopt rules ensuring non-dominant carriers have a fair opportunity to access low-frequency spectrum resources.[4] Protecting competitors' access to low-band spectrum, the Department of Justice has noted, is essential to "serv[ing] the dual goals of putting spectrum to use quickly and promoting competition in wireless markets."[5] The Small Business Administration recently voiced its support for reasonable spectrum-aggregation limits as well because reasonable aggregation limits have the potential to enhance competition, accelerate deployment, and increase auction revenues.[6]

We agree. Vigorous, sustainable wireless broadband competition means more innovation and enhanced economic growth as well as increases in hiring and investment. The Commission should design its rules in a manner that gives bidders of all sizes in the upcoming 600 MHz auction a meaningful opportunity to acquire spectrum where needed, rather than simply allowing AT&T and Verizon to dominate the auction and continue to foreclose competitors' access to vital low-band spectrum.

Even the two dominant carriers agree that spectrum-aggregation limits should exist with respect to low-band spectrum. The only question is when and how those limits should apply. In this case, AT&T and Verizon prefer post-auction divestitures to clear, upfront rules. But after-the-fact spectrum aggregation review by the FCC would involve more process, delay, and uncertainty than putting clear, upfront spectrum-aggregation limits on spectrum below 1 GHz. Worse, an after-the-fact limit on spectrum concentration would allow the two dominant carriers to pick and choose which competitors will have access to low-band spectrum, thereby blocking

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[3] Comments of Free Press, WT Docket No. 12-269, at 5 (filed Nov. 28, 2012) (citing Petition to Deny of Free Press, In the Matter of Applications of AT&T, Inc. and Deutsche Telekom AG For Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, at Figure 2 and SNL Kagan Wireless Industry Benchmarks (May 31, 2011)); Letter from Rebecca Thompson, General Counsel, CCA, et al., to Acting Chairwoman Mignon Clyburn et al., Docket No. WT 12-269, at 2 (May 20, 2013).

[4] *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269 (Apr. 11, 2013).

[5] *Id.* at 23.

[6] *See* Letter from Winslow L. Sargeant, Ph.D., Chief Counsel and Jamie Belcore Saloom, Assistant Chief Counsel for Telecommunications, U.S. Small Business Administration Office of Advocacy, to Thomas E. Wheeler, Chairman, Federal Communications Commission, 3 (Nov. 22, 2013), *available at* http://www.sba.gov/advocacy/816/766951 (last accessed Dec. 2, 2013) (asking the FCC to "consider seriously the possibility that imposing a cap on the amount of sub-1 Ghz spectrum any one carrier may acquire will increase participation in the auction, drive greater auction revenues, and provide further opportunities for competition to flourish in mobile broadband").

or delaying the emergence of meaningful competition. An after-the-fact regulation would increase the power of the two dominant incumbents, with consumers paying the price.

Competitive markets are best for the public interest. With the upcoming 600 MHz auction, the FCC has a unique opportunity to promote competition in the wireless marketplace. We urge you not to let this opportunity pass and, on behalf of consumers everywhere, ask you to support transparent, well-crafted spectrum-aggregation limits.

Respectfully submitted,

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