



Consumer Federation of America

June 3, 2013

Acting Chairwoman Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai

RE: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions: GN Docket No. 12-268; Policies Regarding Mobile Spectrum Holdings: WT Docket No. 12-269

Dear Chairwoman Clyburn and Commissioners Rosenworcel and Pai:

In response to the above-captioned Notice of Proposed Rulemaking, the Department of Justice (DOJ) filed an *Ex Parte* Submission that raises concerns about excessive concentration of control over high-quality spectrum.¹ The submission urged the Federal Communications Commission (FCC) to consider policies to ensure that the rules governing the auction of such spectrum be written to promote greater competition in a market that is currently highly concentrated.

The DOJ filing, and the general proposition that the FCC should place some limits on the ability of the dominant wireless carriers, who currently hold licenses for almost four fifths of all high-quality spectrum, to acquire additional high-quality spectrum has been roundly criticized by AT&T.² Several analysts who frequently defend the interests of the dominant wireless carriers have released reports that echo the AT&T criticism.³

A careful examination of the dispute reveals that the DOJ analysis rests on well-established fundamentals of the wireless market that the DOJ has consistently articulated and promoted throughout the entire history of U.S. wireless broadband service.⁴ Given the strong evidentiary and legal basis for the DOJ submission, the

¹Ex Parte Submission of the United States Department of Justice, In the Matter of Policies Regarding Mobile Spectrum Holdings: WT Docket No. 12-269, April 11, 2013.

²Wayne Watts, Senior Executive Vice President and General Counsel, AT&T Inc., Letter, RE: Policies Regarding Mobile Spectrum Holdings: WT Docket No. 12-269, April 24, 2013.

³Robert J. Shapiro, Douglas Holtz-Eakin and Coleman Bazelon, The Economic Implications of Restricting Spectrum Purchases in the Incentive Auctions, Georgetown University, McDonough School of Business, April 30, 2013; George S. Ford and Lawrence J. Spiwak, Equalizing Competition Among Competitors: A Review of the DOJ's Spectrum Screen Ex Parte Filing, Phoenix Center Policy Bulletin No. 33, May 2013.

⁴Ex Parte Filing of the United States Department of Justice, In re Broadband Industry Practices, FCC WC Docket No. 07-52 (Sept. 6, 2007); 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, FCC GN Docket No. 09-51 (January

critics are forced to either misrepresent what the DOJ actually said and/or, more importantly, ignore the fundamental empirical observations on which it rests.

THE DEPARTMENT OF JUSTICE'S MARKET STRUCTURE/SPECTRUM ANALYSIS

Because AT&T's has so badly misrepresented the DOJ submission the Commission must not be misled by its criticism.

Propagation Characteristics and Economic Efficiency

The DOJ starts its analysis by noting the important role that spectrum plays in wireless service and also the impact that utilization of different frequencies has on the ability to deliver --and cost of -- service. Access to spectrum is a critical (bottleneck) input for wireless service and different frequency bands have different propagation characteristics that significantly affect the economic costs of provisioning wireless networks and therefore the competitive structure of the sector.⁵ Lower-frequency spectrum (generally spectrum below 1 GHz) has far more robust propagation characteristics, affording broader coverage and better in-building penetration than higher-band spectrum.⁶

While it typically is the case that there is the possibility of substituting among spectrum and investment in facilities to deliver service, the DOJ underscores the fact that access to high-quality, low-frequency spectrum reduces the amount of capital necessary to provision the network.⁷

4, 2010), The conditioning and opposition to mergers, United States, et al. v. Cingular Wireless Corp., SBC Commc 'n Inc., Bell/South Corp., and AT&T Wireless Serv's, Inc., 2004, available at www.justice.gov/atr/cases/cingular.htm; United States, et al. v. Verizon Commc 'n Inc. and Alltel Corp., 2008, available at www.justice.gov/atr/cases/verizon3.htm; United States v. AT&T Inc. and Dobson Commc'n Corp., available at www.justice.gov/atr/cases/dobson.htm; United States et al. v. AT&T Inc. and Centennial Commc 'n Corp., available at www.justice.gov/atr/cases/attcentennial.htm; Complaint, United States et al. v. AT&T Inc., T-Mobile USA, Inc. and Deutsche Telekom AG (D.D.C. filed Sep. 30, 2011) (No. 11-1560). U.S. Dep't of Justice, Justice Department Issues Statements Regarding AT&T Inc.'s Abandonment of Its Proposed Acquisition of T-Mobile USA Inc. (Dec. 19, 2011), available at www.justice.gov/atr/public/pressReleases/20111278406.pdf; U.S. Dep't of Justice, Justice Department Requires Changes to Verizon-Cable Company Transactions to Protect Consumers, Allows Pro competitive Spectrum Acquisitions to Go Forward (Aug. 16, 2012), available at www.justice.gov/atr/public/pressReleases/20121286098.pdf.

⁵ DOJ Submission, p. 1, The Department notes that bands of spectrum have different characteristics that may affect the competitive landscape. In particular, for instance, the propagation characteristics of lower frequency spectrum permit better coverage in both rural areas and building interiors. A carrier's position in low-frequency spectrum may determine its ability to compete in offering a broad service area, including its ability to provide coverage efficiently in rural areas. Therefore, the Department concludes that rules that ensure the smaller nationwide networks, which currently lack substantial low-frequency spectrum, have an opportunity to acquire such spectrum, could improve the competitive dynamic among nationwide carriers and benefit consumers.

⁶ DOJ Submission, p. 12, For example, low-frequency spectrum (usually referring to frequencies below 1 GHz) has superior propagation characteristics, permitting better coverage in both rural areas and buildings.

⁷ DOJ Submission, p. 11, Also, a competitor's lack of spectrum may require higher capital expenditures, such as having to build more cell towers, in order to provide competitive service. Thus, a large incumbent may benefit from

Market Structure and Market Power

At present, the holding of licenses for high-quality, low-frequency spectrum is highly concentrated in the hands of the two dominant wireless carriers, which accounts in part for their dominance. The smaller wireless carriers have little if any high-quality, low-frequency spectrum, which diminishes their ability to maintain effective economic competition with carriers that enjoy the benefits of large low-band portfolios. Enhanced competition created by broader access to high-quality, low-frequency spectrum has broad market-wide benefits.⁸

The auction that is the subject of the current policy activity is likely to be the last major release of low-frequency, high-quality spectrum in the foreseeable future. Access to this valuable resource takes on great importance because the wireless market is highly concentrated, has exhibited abusive practices, and would be denied the benefits of more competition if access to high-quality spectrum were denied to the small competitors.⁹

The resulting highly-concentrated market structure creates an incentive for and gives dominant firms the ability to not only foreclose access to high-quality, low-frequency spectrum to protect their market power and the resulting monopoly rents they extract from consumers in the wireless market, but also their dominant position in the wireline market.¹⁰ Wireless broadband cannot even begin to act as a ‘third-pipe’ for American consumers so long as the best spectrum for the provision of mobile broadband is concentrated in the hands of dominant incumbents who also control the other pipes.

Policy Concerns

acquiring spectrum even if its uses of the spectrum are not the most efficient if that acquisition helps preserve high prices. 10.

⁸ DOJ Submission, p. 11, The Department believes that consideration of the role that "foreclosure value" might play in how spectrum is used is crucial because local mobile wireless markets across the nation are relatively concentrated. In a highly concentrated industry with large margins between the price and incremental cost of existing wireless broadband services, the value of keeping spectrum out of competitors' hands could be very high. For example, if competitors acquire spectrum to provide broader service offerings, expand coverage, or increase capacity, prices for existing customers would fall, threatening the margins being earned.

⁹ DOJ Submission, p. 8, Even though the carriers engage in this competition, the marketplace is not uniformly competitive. Carriers do have the ability and, in some cases, the incentive to exercise at least some degree of market power, particularly given that there is already significant nationwide concentration in the wireless industry. Therefore, the Department believes it is essential to maintain vigilance against any lessening of the intensity of competitive forces.

¹⁰ DOJ Submission, p. 10, Namely, the more concentrated a wireless market is, the more likely a carrier will find it profitable to acquire spectrum with the aim of raising competitors' costs. This could take the shape, for example, of pursuing spectrum in order to prevent its use by a competitor, independent of how efficiently the carrier uses the spectrum.

Given the importance, concentration and scarcity of high-quality, low-frequency spectrum, the Department of Justice identifies important policy considerations for designing auction rules.¹¹

- The failure to ensure that the auction has a pro-competitive impact represents a major lost opportunity to promote the public interest.¹²

This real world view of the wireless marketplace lays the foundation for crafting auction rules that promote more vigorous competition in the wireless space.

- Ensuring greater access to high-quality, low-frequency spectrum for non-dominant wireless service is in the public interest because it will lower prices and increase penetration of wireless broadband service.¹³
- The market effects of the denial of the AT&T/T-Mobile merger provide clear evidence that resisting concentration and protecting competition has beneficial effects,¹⁴ and that competition is the mother of invention.

The DOJ analysis is not only consistent with earlier DOJ comments filed at the FCC and actions taken under its merger review authority; its recommendations are consistent with the broad principles of the Telecommunications Act of 1996, as well as the provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (the Spectrum Act), which was enacted by Congress to authorize the recapture and auctioning of the TV broadcast spectrum.

¹¹ DOJ Submission, p. 6, The Department also believes that spectrum policies that promote competition and enhance the potential for entry and expansion in the wireless market play a vital role in protecting, and indeed enhancing, the competitive dynamic to the benefit of American consumers.

¹² DOJ Submission, p. 14, The Department believes it is important that the Commission devise policies that address the allocation of low-frequency spectrum in particular so that acquisitions of such spectrum do not hamper the ability of carriers to compete in markets where that spectrum is important. Particularly if low-frequency spectrum remains scarce, the Commission must ensure that the allocation of spectrum at auction does not enable carriers with high market shares to foreclose smaller carriers from improving their customers' coverage... The Commission's policies, particularly regarding auction of new low-frequency spectrum, can potentially improve the competitive landscape by preventing the leading carriers from foreclosing their rivals from access to low-frequency spectrum.

¹³ DOJ Submission, p. 6, Rivalry among competitors provides strong pressures to maintain existing demand and to win over new customers in a number of ways, such as seeking out means for lowering costs or for developing new or better products and services, through new technology, new business methods, or other sources of efficiency. Indeed, competitive forces have been a central driver of innovations that have enabled carriers to expand capacity and improve service quality.

¹⁴ DOJ Submission, p. 17, For example, in the course of investigating the proposed transaction between AT&T and T-Mobile, the Department cast doubt on the parties' claims that there were few alternatives to deal with spectrum shortages. Since abandoning the transaction, both companies have announced plans to deploy LTE more extensively than they had earlier suggested would be possible by, for instance, deploying spectrum previously dedicated to older technologies.(17)

- Well-crafted, pro-competitive auction rules will not only promote the public interest through competition, they can also be expected to generate revenues *that equal or exceed* the revenues that would be expected from auction rules that allow the incumbents to monopolize the acquisition of high-quality, low-frequency spectrum.
- If the dominant wireless carriers are allowed to bid on some, but not all of the high-quality, low-frequency spectrum made available, they will spend their auction budgets on acquiring that spectrum (bidding up the price), while the non-dominant carriers will bid more vigorously for the spectrum to which they have access.

The fact that the wireless market has a small number of national providers with very different sizes makes it relatively easy to estimate the impact of pro-competitive policies on specific providers.¹⁵ The competitive benefit is the driving force behind the DOJ analysis and recommendations.¹⁶ While one can expect smaller competitors to gain, new entrants might as well.¹⁷

AT&T'S MISREPRESENTATION AND FAULTY ANALYSIS OF THE ISSUES

Propagation Characteristics and Economic Efficiency

AT&T incorrectly claims that the propagation characteristics of spectrum frequencies are unimportant, “because the propagation qualities of low-frequency spectrum do not in and of themselves provide any systematic marketplace advantage.”¹⁸ The claim that the large dominant carriers use spectrum more efficiently rests on this erroneous assumption.¹⁹ The advantages of high-quality, low-

¹⁵ DOJ Submission, p. 8, We therefore welcome the opportunity to provide our views on the relationship between the work of the Commission as it designs its auction and other spectrum-related rules and the preservation of the competitive forces that are a critical engine for innovation in the wireless market.... The Department of Justice's principal concern is that acquisitions of spectrum, whether at auction or through subsequent transactions, should not be used to create or enhance market power.

¹⁶ DOJ, Submission, p. 14, Today, the two leading carriers have the vast majority of low-frequency spectrum whereas the two other nationwide carriers have virtually none. This results in the two smaller nationwide carriers having a somewhat diminished ability to compete, particularly in rural areas where the cost to build out coverage is higher with high-frequency spectrum.

¹⁷ DOJ Submission, p. 11-12, This potential risk, in turn underscores the need for additional spectrum. Based on the Department's experience with highly concentrated telecommunications markets, and more generally, there are substantial advantages to making available new spectrum in order to enable smaller or additional providers to mount stronger challenges to large wireless incumbents.

¹⁸ AT&T Submission, p. 8.

¹⁹ Shapiro, p. 25, referring to carriers other than AT&T and Verizon as “less efficient.” The hypothetical/theoretical analysis presented by the Phoenix Center (p. 7) assumes that both the large and small wireless companies enjoy the same marginal benefit from the acquisition of high-quality, low-frequency spectrum. The only sensitivity case considered has the large companies enjoying a marginal benefit twice as large as the smaller companies (p. 9). Given that the smaller companies have been starved of high-quality low-frequency spectrum, those assumptions are

frequency spectrum in area coverage and penetration of structures are widely recognized,²⁰ even by a senior executive of Verizon.²¹ As shown in Attachment A, Exhibit 1, once the propagation characteristics of frequencies are taken into account, large carriers that dominate the holdings of high-quality, low-frequency spectrum are clearly less efficient.²²

Market Power

AT&T uses the word “hoard” ten times in a ten-page letter; the Department of Justice did not use it once. In fact, the DOJ explicitly notes that it is not a question of whether the spectrum will be used or not (hoarded), but how its availability affects the economics of network utilization.²³ Whether or not the spectrum is used is not the central point of the DOJ analysis.

The misrepresentation of the DOJ analysis stems from the failure of AT&T and other critics of the DOJ to accept the reality that the wireless sector is highly concentrated, which stems in part from the extreme concentration of high-quality, low-frequency spectrum in the hands of the dominant wireless carriers.²⁴ Given their dominant position, they have the incentive and ability to deny high-quality, low-frequency spectrum to their competitors by outbidding them in spectrum auctions.²⁵

backwards. The acquisition of high-quality, low-frequency spectrum will increase the efficiency of the smaller operators more than it will benefit dominant operators.

²⁰ Richard Thanki, 2009, *The Economic Value Generated by Current And Future Allocations of Unlicensed Spectrum*, Perspective, p. 59.

²¹ Tony Melone, Verizon Wireless – Senior VP & CTO, Wells Fargo Securities Technology, Media & Telecom Conference, November 10, 2010, slide 12.

²² While it is certainly the case that capital and spectrum are inputs that can be traded off to deliver service, the mistake made by AT&T's and its apologists is to fail to recognize that the capital/spectrum “indifference curve” varies between frequencies. The tradeoff of capital for spectrum -- and the failure of the dominant incumbents to make adequate infrastructure investment in the context of use of unlicensed spectrum -- was addressed in earlier CFA comments filed in this proceeding. See Mark Cooper, Comments Of The Consumer Federation Of America, Before the Federal Communications Commission, In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Revisions to Rules Authorizing the Operation of Low Power, Auxiliary Stations in the 698-806 MHz Band, Public Interest Spectrum Coalition, Petition for Rulemaking, Regarding Low Power Auxiliary Stations, Including Wireless, Microphones, and the Digital Television Transition, Amendment of Parts 15, 74 and 90 of the Commission's rules, Regarding Low Power Auxiliary Stations, Including Wireless, WT Docket No. 12-268, Docket No. 08-166, WT Docket No. 08-167, ET Docket No. 10-24, January 25, 2013

²³ DOJ Submission, p. 15, “Even if a carrier has not yet identified a use for specific spectrum to accommodate its customers' data consumption, deploying the spectrum can provide a significant increase in user throughput at relatively low cost.”

²⁴ The exercise of market power by the dominant wireless carriers was examined in the historical context in Mark Cooper, “The Central Role of Wireless in the 21st Century Communications Ecology: Adapting Spectrum and Universal Service Policy to the New Reality,” *Telecommunications Policy Research Conference*, September, 2011.

²⁵ AT&T, Shapiro and the hypothetical/theoretical Phoenix center analysis all assume that the large wireless providers have no market power, which renders their analysis irrelevant, at best, misleading at worst, on two grounds. First, they assume equal pass through of efficiency gains to consumers, thereby multiplying the impact of the erroneous assumption that dominant carriers are more efficient. Second, ignoring the existence of market power blinds the

The refusal to recognize market power in the wireless market pervades the critique of the DOJ analysis. AT&T selectively quotes the DOJ analysis, to reach a conclusion that is totally at odds with the intent of the DOJ proposal.

AT&T quotes DOJ selectively:

the best way to pursue this goal in allocating new resources is typically to auction them off, on the theory that the highest bidder, *i.e.*, the one with the highest private value, will also generate the greatest benefits to consumers.²⁶

AT&T has ripped this quote out of its context. In the full statement, DOJ reached the exact opposite conclusion:

When market power is not an issue, the best way to pursue this goal in allocating new resources is typically to auction them off, on the theory that the highest bidder, *i.e.*, the one with the highest private value, will also generate the greatest benefits to consumers. ***But that approach may not lead to market outcomes that would ordinarily maximize consumer welfare due to the presence of strong wireline or wireless incumbents***²⁷

AT&T's economic argument against the possibility of foreclosure is also inconsistent and incorrect. On page 8 it argues that access to high-quality, low-frequency spectrum is irrelevant to the economics of competition for two reasons:²⁸

- First, it does not matter to a carrier who has “built out” its network.
- Second, investment in infrastructure is “equivalent” to acquisition of spectrum for a carrier that is seeking to expand.
- Therefore, for the smaller carriers “there is no meaningful distinction between high- and low frequency from the perspective of a foreclosure analysis.”²⁹

their analysis to the unique incentives that the dominant wireline companies have to foreclose competition by denying access to high-quality, low frequency spectrum. Consequently, the benefit of enhancing competition are ignored and, where they are recognized, underestimated. Enhancing competition would have a market-wide price effect, forcing the larger companies to lower their prices broadly to stave off the loss of customers. Therefore, it will squeeze out excess profits, lower prices and raise total sales.

²⁶ AT&T Submission, p. 5

²⁷ DOJ Submission, p. 10, emphasis added.

²⁸ AT&T Submission, pp. 7-8, “The Department focuses on the superior propagation characteristics of low-frequency spectrum that have the potential to reduce network build-out costs in some areas (because fewer cell towers may be needed to provide basic coverage). But, apart from the fact that both Sprint and T-Mobile already have built out their networks – which is itself a fatal flaw in the Department’s analysis – a second flaw is that it is the full cost of entry and expansion – *i.e.*, the *combined* cost of spectrum and the infrastructure on which it is deployed – that is relevant for foreclosure analysis. And in areas where the propagation qualities of a given spectrum band do materially decrease deployment costs, that spectrum commands a correspondingly higher price in the marketplace. Because the propagation qualities of low-frequency spectrum do not in and of themselves provide any systematic marketplace advantage – all else being equal, lower cost spectrum (that costs more to deploy) and higher cost spectrum (that costs less to deploy) are economically equivalent to a carrier seeking to expand...”

Curiously, on page 9, AT&T argues that denying the large dominant carriers access to low-frequency spectrum actually does matter. As it asserts, “By arbitrarily restricting the ability of successful firms to obtain additional spectrum needed to support expansion and driving up their costs, such limits would inevitably stifle both innovation and competition.”

AT&T cannot have it all three ways. In fact, it is wrong on all three counts:

- First, the dominant large carriers have built out their networks more extensively, in part because they already have access to high-quality, low-frequency spectrum, so if there is any benefit to build out, it will flow by providing access to smaller carriers.
- Second, the assumption that capital and spectrum can be traded off on a dollar-for-dollar basis is doubtful within spectrum bands and flat out wrong across bands. Higher-quality spectrum requires less capital investment per unit of output.
- Third, given the high level of concentration in the industry, if the rich get richer in terms of their holding of high-quality spectrum, the poor get relatively poorer and competition and consumers pay the price.

With the national wireless market exceeding the highly-concentrated threshold of the recently revised *Merger Guidelines* and local market concentration likely to be substantially higher than that, the threat of the abuse of market power must be taken very seriously and the benefits of enhancing competition through well-designed auction rules valued very highly. As shown in Attachment A, Exhibit 2, evidence on margins and revenues indicate that the dominant carriers exercise market power. If they were to further monopolize high-quality, low-frequency spectrum through the 600 MHz auction, they would certainly pocket a disproportionate share of any efficiency gains that are achieved. More importantly, the enhanced competition that would result from a more balanced distribution of high-quality, low-frequency spectrum would have a market-wide effect forcing the larger companies to lower their prices broadly to stave off the loss of customers. Excess profits will be squeezed out and total sales will increase more under the more vigorous competition.³⁰

Policy Concerns: Auction Revenue

²⁹ AT&T Submission, p. 8.

³⁰ Shapiro and the Phoenix center assume equal pass through of (incorrectly assumed) equal efficiency gains.

Assuming that large dominant wireless carriers would be excluded, AT&T asserts that auction revenues will be dramatically lowered.³¹

The claim of reduced revenue rests on the assumption that the large dominant carriers would be excluded from the auction. Limitations on the amount of spectrum for which they are allowed to bid would not necessarily decrease revenue³² and could actually increase it. Facing a reduced supply, the large carriers might increase their bids and spend their budgets, while small carriers are induced to bid for more spectrum where they have the broader opportunity created by the more nuanced rule.

AT&T's claim that rules along the lines that DOJ recommended are illegal rests on an obvious misreading of the statute. AT&T claimed that "this provision clearly forecloses rules that would 'prevent' AT&T and Verizon from fully participating."³³ The statute as written states that the Commission "may not prevent a person from participating." In fact, the statute specifically allows the Commission "to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition."³⁴

The recommendation offered by the DOJ (reproduced below), which allows participation by *all* carriers, subject to limitations that promote competition, is entirely consistent with the law.

...well-defined rules for spectrum acquisition in auctions would best serve the dual goals of putting spectrum to use quickly and promoting competition in wireless markets. Such rules could both provide predictability and prevent foreclosure of entry or expansion. Given the characteristics of different spectrum bands, as discussed above, different rules, weights or caps could, for example apply based on the kinds of spectrum frequency put up for auction... Auction rules of this nature would ensure the smaller nationwide networks, which currently lack substantial low frequency spectrum, would have an opportunity to acquire it. Such an outcome could improve the competitive dynamic among nationwide carriers. As such, using a pre-announced set of rules would allow the Commission to realize substantial benefits to competition from quick allocation of new spectrum while minimizing the potential risk that procompetitive acquisitions would be prevented.³⁵

³¹ AT&T Submission, p. 5, "...with less competition for the spectrum, Sprint, T-Mobile and other auction winners would pay less than they would have without the special rules favoring them. The reduced auction revenues would mean less (and potentially no) broadcast spectrum cleared for mobile wireless use and less (or no) surplus available to fund the Spectrum Act's other goals."

³² Bazon, p. 12, recognizes that partial limitations on the amount of spectrum that large carriers can bid for need not reduce revenues because smaller carriers are induced to bid for more spectrum. "Put differently, one-third of the decline in their demand would likely be offset. Consequently, any restrictions that reduce their demand beyond about one-third would be expected to have significant impact on revenue."

³³ AT&T Submission, p. 4.

³⁴ 47 U.S.C. § 309 (j) (17)(A).

³⁵ DOJ, Submission, p. 23.

Even AT&T recognizes that the DOJ did not actually propose to “prevent” AT&T from participating, but they assert that “The Department’s proposal, by effectively reserving much of the 600 MHz spectrum” does just that.³⁶ The DOJ did not recommend any specific restriction on acquisition, but called on the FCC to adopt rules that enhance competition.

As a dominant incumbent, AT&T can be expected to dismiss any policy to promote competition as an effort to “rig” the outcome,³⁷ but the fact that rules are not entirely in AT&T’s interest does not make them illegal or mean that they are not in the public interest. AT&T, as in the days of its regulated monopoly, falsely conflates its own interest with the public interest.

The claim that public policy should not seek to shape competition in the wireless market flies in the face of critically important decisions made by public policy that have gone a long way to determine the current market structure. Indeed, the gift of huge quantities of low-frequency, high-quality spectrum to the dominant incumbent wireline carriers is the cornerstone of their current market dominance. The need to address the mal-distribution of high-quality spectrum is magnified by the fact that the initial head start of free access to a large swath of high-quality spectrum was not the only thumb that public policy placed on the scale of competition to favor the dominant incumbents. The current highly-concentrated market structure was reinforced over the years by vertical integration into the backhaul market (i.e. dominance and premature deregulation of special access) and reconsolidation of the telecommunications sector through the ill-considered approval of mergers between the “Baby Bells.” Adopting pro-competitive auction rules is the first and most important step in rebuilding competition in the wireless sector.

Sincerely,



Mark Cooper
Director of Research
Consumer Federation of America

³⁶ AT&T Submission, p. 8.

³⁷ AT&T Submission, p. 7.

ATTACHMENT A

**Promoting Efficiency and Competition with
Spectrum Auction Rules:
The Key to Wireless Consumer Benefits**

**Mark Cooper
Director of Research
Consumer Federation of America**

**FCC Spectrum Auctions: Maximizing Competition,
Revenues, And Consumer Choice
253 Russell Senate Office Building, Thursday, May 30, 2013**

EXHIBIT 1

The claim that the propagation characteristics of spectrum do not affect the economics of service delivery is wrong. Therefore, the claim that the large, dominant carriers are more efficient is wrong.

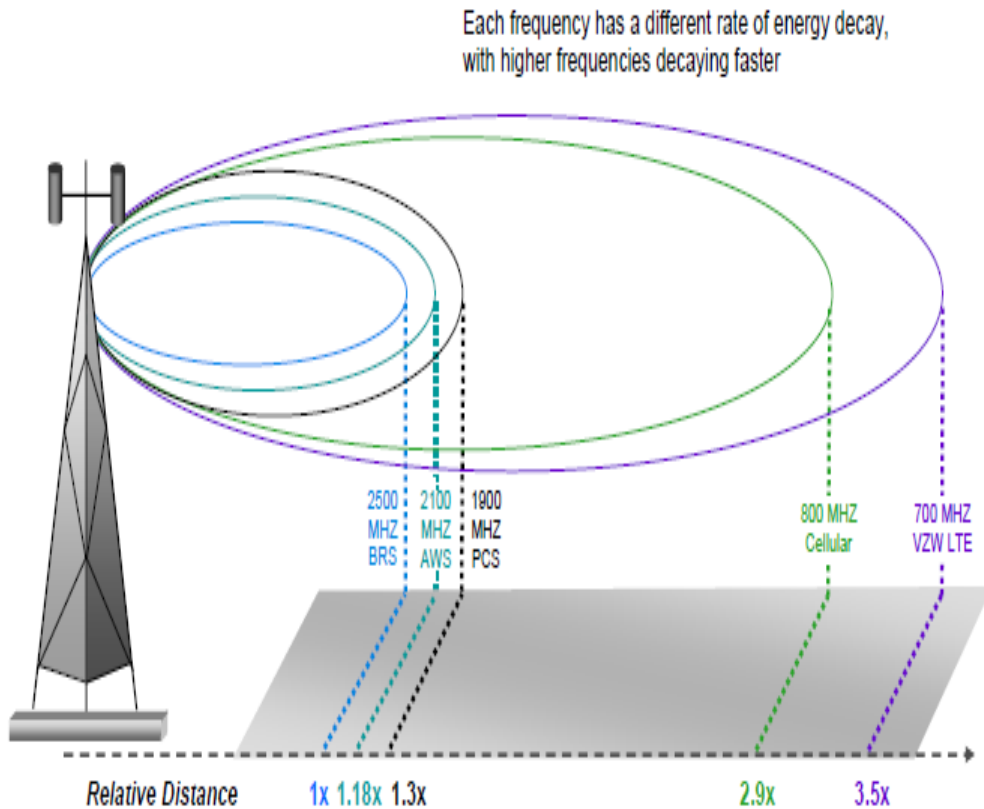
Wells Fargo Securities

Technology, Media & Telecom Conference

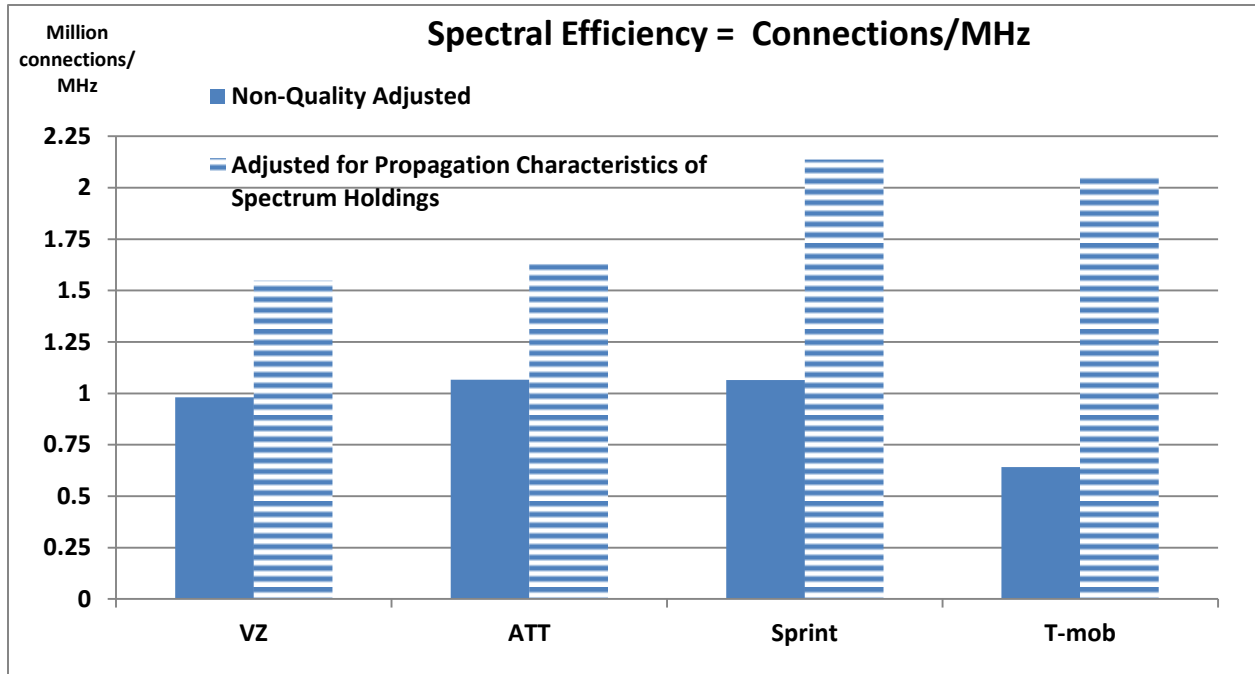
Tony Melone

Verizon Wireless – Senior VP & CTO

Coverage Comparison



700 MHz Delivers Superior Coverage

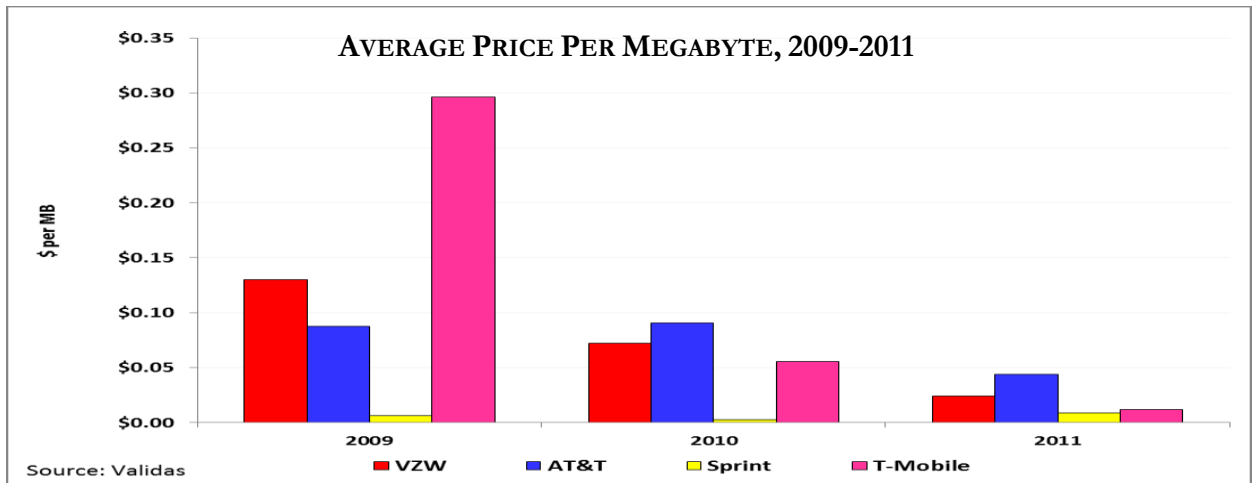
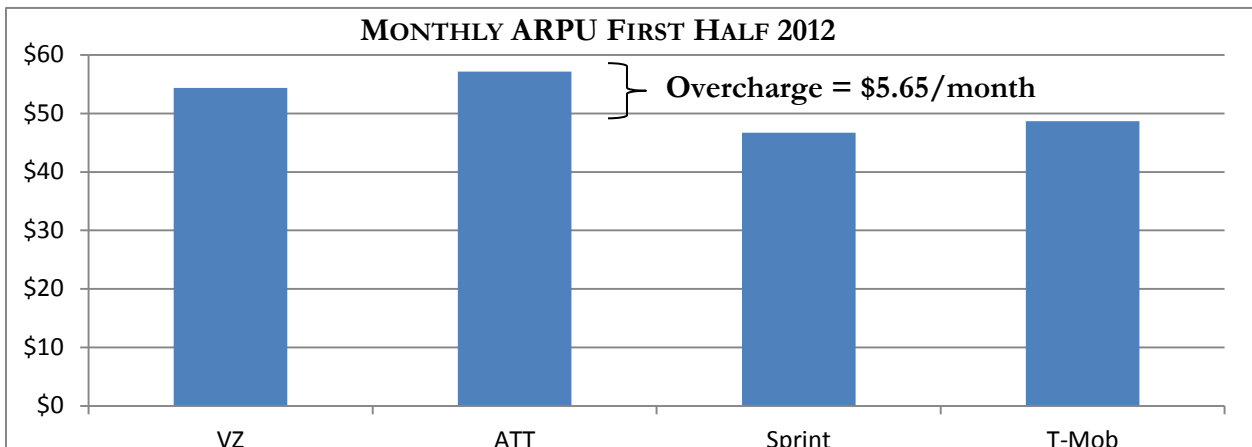
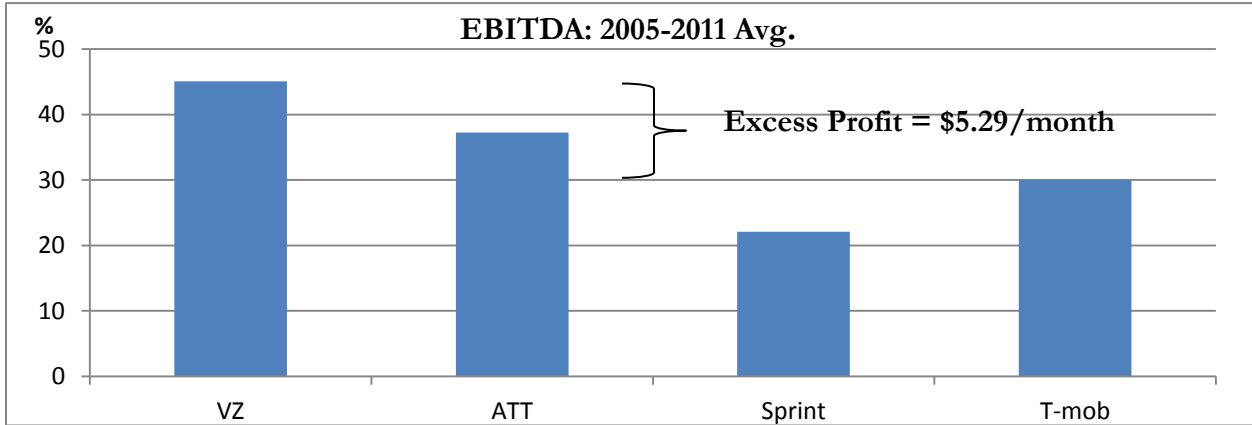


Source: Propagation Adjustment; Richard Thanki, 2009, *The Economic Value Generated by Current And Future Allocations of Unlicensed Spectrum*, Perspective, p. 59; Tony Melone, Verizon Wireless – Senior VP & CTO, *Wells Fargo Securities Technology, Media & Telecom Conference*, November 10, 2010. Spectrum holdings and connections: 16th Annual Report, Connection Table 13, Spectrum Table, 18.

EXHIBIT 2

The claim that large dominant carriers and small competitors will both pass efficiency gains through to consumers equally is wrong.

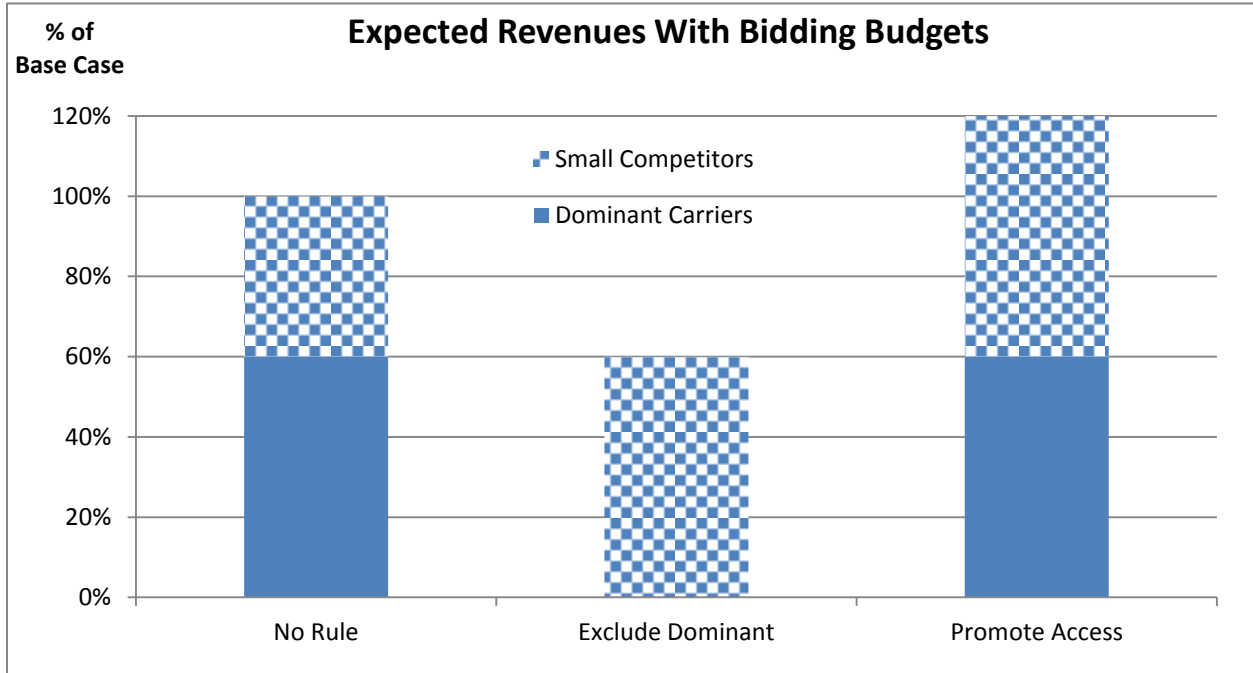
Large dominant carriers exercise market power and they will pocket a larger part of the savings.



Source: 16th Annual Report, EBITDA, pp. 17, 21, ARPU, pp. 54, 55; Prices, p. 182

EXHIBIT 3

If wireless firms “spend their budgets,” as some analyst suggest, well-designed auction rules that limit, but do not exclude, participation by large dominant carriers to induce participation by small competitive carriers can produce more auction revenue, no less.



Source: No Rule and Exclude Dominant revenue estimates from Robert J. Shapiro, Douglas Holtz-Eakin and Coleman Bazelon, *The Economic Implications of Restricting Spectrum Purchases in the Incentive Auction*, April 30, 2013. Promote access assumes large carriers spend their auction budgets and bid up the price for spectrum that is available to them, while small carriers bid for the larger amount of spectrum that is available to them.