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Congress of the United States

House of Representatives

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May 2, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

The broadcast incentive auctions that Congress authorized in the Middle Class Tax Relief and Job Creation Act of 2012 are an incredible opportunity for the United States to continue its world leadership in spectrum innovation, bring valuable spectrum to market to meet our nation's wireless broadband demand, and generate needed revenue for the Treasury. Unfortunately, and in conflict with the plain language of the statute, it appears that the Commission intends to set aside spectrum licenses within the auction and prohibit certain bidders from winning those licenses. This type of market manipulation has been tried before to the detriment of auction participation, revenue, and wireless broadband progress. We have serious concerns with the Commission's intended course of action and urge you to adopt auction rules that allow the free market to decide the fate of the broadcast band.

One goal of the incentive auction legislation was to bring market forces, via auctions, to bear on the question of how best to allocate spectrum resources. A pure market-based approach would allow all qualified bidders to freely bid on spectrum licenses, thereby determining whether broadcasting or commercial wireless is the highest economic use of the spectrum. The Commission's proposed methodology would substitute these market mechanisms with market manipulation, artificially limiting supply to generate faux demand.

This attempt to manipulate the market is best exemplified by the Commission's plan for a scenario with 60 MHz of spectrum available for auction. In this case, the FCC would set aside 30 MHz of spectrum (3-2x5 MHz pairings) – half of all spectrum available for auction – for bidders the Commission favors, and prohibit disfavored bidders from bidding on those licenses. That would leave 30 MHz available for disfavored participants to bid on. Because modern wireless broadband networks are best deployed in spectrum bands at least 10 MHz wide, disfavored bidders will be bidding against

each other to win two of the three licenses not because of a lack of available spectrum to meet bidder demand, but because the Commission has made a decision to artificially restrict supply. This is not how a market-based auction should function; it is how a cartel controls price.

Artificial set-asides, restrictions on bidder eligibility, and contortions in auction design alter the playing field and distort the outcome. The Commission is not better able than the market to dictate the worth of spectrum and attempts to do so jeopardize the success of the auction. Recently, a group of 78 of our Democratic colleagues wrote to you urging an auction that maximizes participation by all bidders. We join them and urge the FCC to refrain from manipulating the market to force the hands of a select group of bidders.

Some have argued that it is within the ability of the bidders to trigger additional broadcast buyouts through higher bids. Unfortunately, this makes the assumption that clearing more than 60 MHz is even a possibility. Because this auction is voluntary, it requires both willing buyers and willing sellers. There may not be enough willing sellers – at any price – to clear more than 60 MHz for auction. Structuring the auction in an attempt to force a particular outcome is bad policy; when that outcome is potentially impossible, it borders on reckless.

If past is prologue, this type of interference by the FCC will negatively impact the auction. The FCC must not be in the business of picking winners and losers by excluding parties from the auction or constraining parties' ability to bid. We urge the Commission to reconsider any plans that would further cloud an already complex auction and threaten the outcome for providers, consumers, and the public safety community.

If you have any questions, please contact David Redl with the Energy & Commerce Committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Greg Walden
Chairman
Subcommittee on Communications and Technology

Bob Latta
Vice Chairman
Subcommittee on Communications and Technology

Joe Barton
Chairman Emeritus

Marsha Blackburn
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Lee Terry
Member

Mike Rogers
Member

Steve Scalise
Member

Leonard Lance
Member

Brett Guthrie
Member

Cory Gardner
Member

Adam Kinzinger
Member

Billy Long
Member

Renee Ellmers
Member

Mike Pompeo
Member

cc: The Honorable Henry A. Waxman, Ranking Member
House Committee on Energy and Commerce

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

The Honorable Mignon Clyburn, Commissioner
Federal Communications Commission

The Honorable Jessica Rosenworcel, Commissioner
Federal Communications Commission

The Honorable Ajit Pai, Commissioner
Federal Communications Commission

The Honorable Michael O'Rielly, Commissioner
Federal Communications Commission