

“Crafting a Successful Incentive Auction: Stakeholders’ Perspectives”

United States Senate Committee on Commerce, Science, and Transportation

Tuesday, December 10, 2013

Testimony of Hal J. Singer, Ph.D.

Senior Fellow, Progressive Policy Institute

The key policy issue facing this Committee is whether to impose asymmetric limits on the amount of spectrum that a bidder may acquire at the auction depending on the *location* of the bidder’s spectrum holdings—that is, whether to impose an “asymmetric spectrum cap.” In April of this year, the Department of Justice (DOJ) advocated for policies that would support an asymmetric spectrum cap designed to favor bidders that lack low-frequency spectrum. And at his first major policy speech at Ohio State last week, Federal Communications Commission (FCC) Chairman Tom Wheeler cited the DOJ’s letter in support of such limits. I want to make four simple points about the wisdom of an asymmetric spectrum cap from the perspective of a competition economist concerned with promoting consumer welfare.

*First*, as a condition of slanting the auction rules in a way to favor certain bidders, one must establish empirically that carriers without access to low-frequency spectrum are impaired in the ability to compete effectively. Although this particular *input* is not distributed uniformly across carriers, it is hard to detect any impairment in the *output* market. Despite its lack of low-frequency spectrum, Sprint's net additions for contract customers were up 18 percent in 2012, and during the third quarter of 2013, Sprint's postpaid service revenue and ARPU hit record levels. T-Mobile, another carrier that relies largely on high-frequency spectrum, enjoyed its biggest growth spurt in four years in the second quarter of 2013, adding 1.1 million new subscribers. In July, T-Mobile was gaining two subscribers from AT&T for every one it lost to AT&T. This evidence is hard to square with the notion of impairment.

If access to low-frequency spectrum were essential to compete effectively, as the DOJ implies in its comments, then AT&T and Verizon would be running away with the wireless prize: But U.S. wireless concentration as measured by the FCC has held steady since 2008. And if Sprint and T-Mobile continue to grow faster than and steal customers from AT&T and Verizon, wireless concentration could decline in the near future.

Perhaps the alleged impairment has manifested itself in the form of rising wireless prices? With one exception in 2009, when prices held steady, U.S. wireless prices have declined *every year* since the Bureau of Labor Statistics began tracking them in 1998. According to recent survey by Wall Communications commissioned by the Canadian telecom regulator, U.S. mobile broadband prices were within a few dollars of comparable offerings of 5 Gb per month plans in Canada, the UK, and Japan.

*Second*, although there may have been a role for smaller wireless carriers in the past, given the massive and growing economies of scale associated with providing nationwide wireless networks capable of supporting bandwidth-intensive applications like streaming video, it makes no sense to steer scarce spectrum away from companies with large customers bases that have invested heavily in LTE networks in favor of smaller companies that are ill-suited for this colossal undertaking. In the presence of such economies, promoting small carriers is an invitation for higher costs. U.S. consumers take pride in supporting small businesses like cafes, brew pubs, restaurants, and boutiques, but when it comes to wireless services, they want their provider to blanket the country in LTE coverage.

*Third*, given the nascent and growing substitution between wireless and wireline broadband services, regulators should not narrowly focus on promoting wireless broadband competition. Instead, they should focus on promoting broadband competition in any form. According to the FCC's latest deployment data, 62 percent of U.S. households had three or more broadband providers capable of supporting download speeds of 6 Mbps: Adding one more broadband pipe to the remaining homes served by one or two providers by stimulating wireless investment will generate significantly greater consumer benefits than promoting entry among wireless providers.

*Fourth*, less restrictive remedies than asymmetric spectrum caps can address any alleged impairment leading to competition concerns. For example, if regulators do not like the outcome of an unconstrained auction, they have the power to compel ex-post divestitures under existing law. And if regulators insist on going down the path of spectrum caps, *symmetric* spectrum caps that are agnostic to pre-auction spectrum holdings but instead treat all bidders equally would protect against the remote possibility that any single bidder acquired "too much" spectrum at the auction.

In sum, proponents of asymmetric spectrum caps have failed to meet their evidentiary burden of establishing any evidence of impairment among carriers

that lack low-frequency spectrum. This Committee should ask the FCC: How has this alleged impairment manifested itself? With persuasive evidence of impairment leading to supra-competitive price or reduced output, it would be reasonable to consider asymmetric spectrum caps. But in its absence of such evidence, this policy appears designed solely to benefit certain competitors at the expense of broadband consumers and taxpayers.

#### Suggested Reading

*The FCC's Incentive Auction: Getting Spectrum Policy Right*, Progressive Policy Institute Paper (2013), co-authored with David Balto.

*Is the U.S. Government's Internet Policy Broken? Review of Susan Crawford's "Captive Audience,"* 5 POLICY AND INTERNET 340-63 (2013), co-authored with Robert Hahn.

*Avoiding Rent-Seeking in Secondary Market Spectrum Transactions*, 65 FEDERAL COMMUNICATIONS LAW JOURNAL (2013), co-authored with Jeffrey Eisenach.

*Assessing Competition in U.S. Wireless Markets: Review of the FCC's Competition Reports*, 64 FEDERAL COMMUNICATIONS LAW JOURNAL (2012), co-authored with Gerald Faulhaber and Robert Hahn.