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## Verizon Says AWS-3 Auction Success Eliminates Need for Large Spectrum Buys

Officials with the Verizon Wireless management team advised investors during a conference call on Tuesday that Verizon's winnings in the recent Advanced Wireless Service (AWS)-3 auction have satisfied the company's spectrum requirements to the extent where large, near-term spectrum buys are no longer needed to fill gaps in coverage.

With net winning bids of \$10.4 billion that encompass 181 licenses and a population of 192 million, Verizon claimed second place in the AWS-3 sale that ended on January 29. Prior to the start of the auction on November 12, Verizon's average nationwide spectrum holdings were 105 MHz which includes 36 MHz in the AWS-1 band. According to Verizon Chief Technology Officer Tony Melone, the AWS-3 license winnings boost Verizon's average nationwide AWS coverage to 48 MHz, which meets the company's goal of covering 100% of the population in the top 25 U.S. markets with at least 40 MHz of AWS spectrum that will be earmarked for LTE. For all U.S. markets, the auction winnings boost Verizon's total AWS coverage (defined as at least 40 MHz per market) from 70% to 95%. Officials also confirmed that Verizon intends to augment its wireless broadband capacity further by re-farming its 1.9 GHz assets for LTE and by eventually shifting all CDMA traffic onto the carrier's new voice-over-LTE network.

Declaring, "we improved our spectrum depth in the markets that we wanted," Verizon Chief Financial Officer Fran Shammo told investors that the company no longer needs to acquire "a large block of spectrum in the near term." To fill smaller gaps in coverage, Shammo said that Verizon will instead look toward the secondary spectrum markets and to spectrum lease arrangements. Meanwhile, with respect to incentive auctions of reclaimed broadcast television spectrum that are expected to begin early next year, Melone did not rule out the possibility of Verizon's involvement and emphasized that the company "will carefully look at the rules and evaluate if, and, or how our participation would enhance achievement of our network strategy."

## Parties Urge Copyright Office to Enact DMCA Exemptions for Wireless Devices

Consumer groups joined representatives of the wireless and electronics industries in urging the U.S. Copyright Office (USCO) to exempt wireless device

unlocking and “jail breaking” from 1998 Digital Millennium Copyright Act (DMCA) provisions that prohibit the circumvention of technological protection measures in copyrighted materials.

Industry comments were released last week on the USCO’s sixth triennial rulemaking process, regarding DCMA Section 1201, in which the USCO has proposed exemptions for 27 classes of goods that include wireless smart phones and tablet PCs. Addressing the proposed unlocking exemption for cell phones, the Competitive Carriers Association (CCA) endorsed the plan as one that would enable users “to take control of their wireless handsets” and “permit them the choice of which network they will be connected to.” Such an exemption, argued CCA, would empower consumers “to retain their current handsets when selecting the wireless service provider of their choice” and without “relying on the presumed good will of wireless carriers or the availability of unlocking codes from manufacturers.” That sentiment was echoed in a submission by the Consumers Union, which pointed out that “Congress explicitly granted mobile device owners the right to unlock them last summer, ratifying that such activity is non-infringing.”

In joint comments, eBay and electronic device reseller Gazelle, Inc. voiced support for DCMA exemptions “to allow a reseller to unlock an eligible phone on behalf of a selling consumer, or on behalf of a reseller as its rightful owner,” asserting that such an exemption would be consistent with last summer’s Unlocking Consumer Choice and Wireless Competition Act. The Electronic Frontier Foundation (EFF), meanwhile, advocated exemptions for “jail breaking” that would allow consumers to remove unwanted software from their wireless devices or add lawful software of their choice. In support of its request, the EFF pointed out that, during the past five years, “the prevalence of mobile devices as a computing platform, the need for security, privacy and customization on those devices, and the demand for lawful, non-manufacturer approved software have all increased dramatically.”

## NCTA President Recommends Congressional Solution to Title II Question

National Cable & Telecommunications Association (NCTA) President Michael Powell suggested during a televised interview on C-SPAN’s *The Communicators* series that the key to resolving questions over the FCC’s authority to impose Title II regulation on Internet service providers (ISPs) lies in the hands of Congress. According to Powell: “if Congressional authority is unclear, then congressional action is the solution.”

A Republican and former chairman of the FCC, Powell appeared on the C-SPAN program last Saturday as debate continued to swirl over a draft FCC order that proposes to classify broadband ISPs as telecommunications service providers that would be subject to common carrier regulation under Title II of the 1934 Communications Act. The FCC is scheduled to vote on the order next Thursday (February 26). Describing the draft FCC order as a game-changer for a cable industry that has invested billions of dollars in broadband on the premise that the FCC would maintain its current light-touch regulatory approach, Powell termed the adoption of the Title II plan as a “fatal step” that is bound to result in protracted litigation. As he admitted that NCTA is likely to be included among the litigants, Powell countered that ISPs have committed no demonstrable harms that justify a Title II regime.

Because so much of the net neutrality debate is premised on FCC authority, Powell said it is up to Congress to help the FCC decide where that authority rests. Observing, “it’s really tragic to see people dismissive of the legislative process as though it is evil,” Powell said, “this whole thing can be fixed with a sentence if Congress wants to.” Otherwise, without such a pronouncement, Powell warned that enactment of the draft Title II order will ignite “a litigation circus” that “will go on for many years.”

## Study Projects Incentive Auction Windfall of Up to \$80 Billion

A study released Wednesday by SNL Kagan and commissioned by the Expanding Opportunities for Broadcasters Coalition (EOBC) cites wireless carrier hunger for low-band spectrum resources, access to capital, and an anticipated seven-fold surge in mobile data traffic as key factors that are likely to drive total bids as high as \$80 billion in next year's incentive auction of broadcast television channels to the wireless industry.

The EOBC represents television broadcasters that have confirmed their willingness to surrender their channels for sale to the wireless industry, contingent on the likelihood of robust bidding that would result in high compensation for their spectrum. During a conference call with reporters, EOBC Executive Director Preston Padden noted that his organization commissioned the study in response to suggestions that the FCC should delay the start of the incentive auction to give the wireless industry (which spent a record \$44.9 billion on spectrum acquisitions at the recently-concluded AWS-3 auction) extra time to raise needed capital. Dismissing this concern, Sharon Armbrust, the Kagan media consultant who wrote the study, stressed: "whenever the incentive auction takes place, the combination of surging wireless usage and demand, the desire to protect . . . franchises, the added foreclosure value of getting control of limited spectrum resources, the lure of low-band spectrum and the plans for generating new and lucrative cross-platform revenue streams should be irresistible drivers for the carriers to be there and bid hard."

Armbrust also told reporters that her estimates of incentive auction revenues of between \$60 billion and \$80 billion are based on assumptions that the FCC will reclaim between 84 MHz and 100 MHz of spectrum from broadcasters that will be offered for sale in the auction. The study also anticipates that the incentive auction will generate double the average paired spectrum price achieved in the FCC's sale of 700 MHz band channels in 2008. Notwithstanding Verizon's announcement that the company's short-term spectrum needs have been satisfied, the study contends that all four national wireless carriers and "very possibly, others" will be "fully engaged and sufficiently capitalized bidders" during the incentive auction process. As such, Padden proclaimed: "this analysis . . . should put to rest the false notion that the auction needs to be delayed because of carrier financial considerations."

## Altice Offers \$4.4 Billion for Numericable-SFR Stake

One year after gaining control of French telecom conglomerate SFR in a €13.5 billion deal that included merger of SFR with the Altice Numericable cable unit, Altice sought Wednesday to solidify its holdings in the merged entity with a €3.9 billion (U.S. \$4.4 billion) offer to purchase the stake held by French media concern Vivendi in the Numericable-SFR venture.

Last year's transaction left Altice with a 60% controlling stake in Numericable-SFR and Vivendi—the former owner of SFR—with 20% of the merged entity. Under the offer, which values Vivendi's stake at €40 (U.S. \$45.56) per share, Altice would acquire half of the Vivendi stake through a share buy-back program to be financed through Numericable-SFR cash and credit lines. A French subsidiary of Altice would purchase the remaining half of Vivendi's stake through a €1.95 billion payment to be completed by April 2016. For Vivendi, the deal would all but fulfill the company's mission over the past two years of returning its focus to core media and television assets after expanding into telecommunications, video gaming and various other business lines. Sources say the strategy has brought about the sale of more than €20 billion in Vivendi assets since mid-2013.

A Vivendi spokesman confirmed that Wednesday's offer "would cancel out any previous agreement and any discussions on price adjustments." Members of the Vivendi supervisory board, meanwhile, are expected to vote on the offer at a meeting to take place on February 27.

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