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July 12, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW, Room TWB-204
Washington, DC 20554

Re: WT Docket Nos. 96-86, 06-150, 06-169; PS Docket No. 06-229
EX PARTE

Dear Ms. Dortch:

On behalf of AT&T Inc. ("AT&T"), I write in response to the eleventh hour request of Google Inc. ("Google") to encumber the licenses to be awarded in the 700 MHz auction with a laundry list of intrusive "open access" requirements that would, perhaps, entice Google to participate in the auction.[1] By its own admission, Google's request is intended to diminish the value of those licenses, thus preventing wireless service providers such as AT&T from bidding on them and clearing the path for Google to obtain them at below-market rates. Google's request – to obtain a leg-up in the auction process through the artifice of "open access" regulation – is a self-serving attempt to obtain spectrum at discounted rates that would turn the clock back on a decade of bipartisan consensus on the proper approach to wireless deregulation, deprive taxpayers of billions of dollars, inhibit the explosive growth of wireless broadband, and – perhaps most importantly – expose the Commission to reversal in the courts and thereby delay the vital public purposes to be served by the 700 MHz auction.

I. Google's "Corporate Welfare" Proposal Defies the Commission's and Congress's Goals in the 700 MHz Auction

Google acknowledges from the outset that its proposal is intended to *diminish* the value of the 700 MHz spectrum. If unencumbered by the conditions it proposes, Google explains, the spectrum "simply has more economic value and overall usefulness" to established wireless

[1] *See* Ex Parte Letter of Richard S. Whitt on behalf of Google Inc., WC Docket Nos. 06-150 and 06-129; PS Docket No. 06-229; WT Docket No. 96-86 (FCC filed July 9, 2007) ("Letter"). The discussion in this letter applies equally to Skype's July 10, 2007 letter, which advocates similar encumbrances on the spectrum to be auctioned in this proceeding. *See* Ex Parte Letter of Christopher Libertelli on behalf of Skype Communications Sarl, WC Docket Nos. 06-150 and 06-129; PS Docket No. 06-229; WT Docket No. 96-86 (FCC filed July 10, 2007).

providers such as AT&T "than to a would-be new entrant like Google."[2] Because existing providers value the spectrum more and are better situated to put it to more efficient use, Google complains, they are willing to pay more for it.[3] To remedy that supposed ill – and to enable companies such as Google "with little pertinent experience in the wireless market" to obtain the spectrum – Google proposes a raft of highly intrusive and discredited regulatory obligations that are expressly intended to exclude established providers from the auction, drive down the price of the spectrum, and allow Google to obtain it for a price below that which would prevail in an open auction.

Even putting aside the misconceived nature of Google's specific proposals – a matter discussed in more detail below – Google's approach is fatally at odds with the basic purpose of auctioning spectrum. The Commission's charge here is to identify – and to award spectrum to – precisely those companies that Google seeks to exclude from the auction: the companies that value the spectrum most and that will put it to its most efficient use. The Commission itself has repeatedly embraced this point: "[T]he competitive bidding process" mandated by statute, the Commission has explained, "ensures that spectrum licenses are assigned to those who place the highest value on the resource and will be suited to put the licenses to their most efficient use."[4] Congress has made the same point, stressing more than a decade ago that a "*competitive* bidding system . . . will encourage innovative ideas, and give proper incentive to spur a new wave of products and services that will keep the United States in a competitive position."[5] Google's approach – to, in effect, rig the bidding process so that the very companies that value the spectrum most are disabled from competing – is directly contrary to this basic insight.

Google's bid-rigging approach is particularly misguided, moreover, because it would impede broadband deployment. The Commission is under a statutory mandate in this proceeding to encourage broadband deployment,[6] and each of the Commissioners has expressly emphasized

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[2] *Id.* at 4.

[3] *See id.*

[4] Report and Order and Further Notice of Proposed Rulemaking, *Service Rule for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd 8064, ¶ 235 (2007) ("*700 MHz Order and NPRM*"); *see id.* ¶ 63 ("setting aside licenses risks denying the licenses to other applicants that may be more likely to use them effectively or efficiently for the benefit of consumers"); *see also, e.g.*, Second Report and Order, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Report and Order*, 9 FCC Rcd 2349, ¶¶ 70-71 (1994).

[5] H. Rep. No. 103-111 (1993) (emphasis added).

[6] *See* 1996 Act § 706(a), 110 Stat. 153, *codified at* 47 U.S.C. § 157 note (directing the FCC to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability . . . by utilizing . . . measures that promote competition . . . or other regulating methods that remove barriers to infrastructure investment"); *see also* 47 U.S.C. § 309(j)(3)(A) (requiring the Commission to design competitive bidding systems to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public").

that goal as a primary aim here.[7] There can be no serious dispute that existing wireless providers, having already invested billions in deploying 3G wireless broadband networks, are best situated to utilize the 700 MHz band to further that deployment. Yet, far from ensuring that the spectrum available here is placed "in the hands of those who can best put it to work" fulfilling the Commission's objective of widespread broadband deployment,[8] Google's proposal is specifically designed to ensure the opposite result.

Nor is it any answer to blandly assert – as Google does without explanation or support of any kind – that disabling existing providers from bidding for spectrum "will maximize consumer welfare by bringing in new forms of broadband competition" that "spur broadband deployment and uptake in every corner of the nation."[9] If that were the case – i.e., if the regulatory mandates Google advocates would truly maximize welfare and spur "an explosion of innovative applications, content, services, and devices"[10] – then Google, having embraced those mandates voluntarily, would be able to outbid existing providers who are planning to use the spectrum (on Google's theory) in a less efficient manner that does *not* maximize consumer welfare. Indeed, by the mere act of submitting its proposal, Google has in effect conceded that one of two things must be true: either its proposal represents a less efficient, less valuable use of spectrum that all interested parties agree is critical to wireless broadband deployment, or Google is simply attempting to abuse the regulatory process to eliminate competition and thereby gain a valuable asset at a cut-rate price. Neither aim is worthy of the Commission's consideration.

Google also defends its effort to limit participation in the auction on the theory that the entities it would exclude – i.e., existing wireless providers such as AT&T and Verizon – are likely to mothball the 700 MHz spectrum in order to "extend and protect" their existing wireline broadband offerings.[11] But there is absolutely no evidence to support this claim in the marketplace (much less in the record of the proceeding), and it is directly contrary to fact. Wireless carriers invested more than $20 billion in capital expenditures *each* year between 2001

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[7] *700 MHz Order and NPRM*, Separate Statement of Chairman Kevin J. Martin (emphasizing importance of the auction to "competition among broadband platforms," and, as a result, "increased broadband availability and reduced prices"); *id.*, Sep. Statement of Commissioner Michael J. Copps at 1 (the auction has the potential "to inject some much-needed competition into the market for broadband services across the nation (especially in rural areas)"; *id.*, Sep. Statement of Commissioner Jonathan S. Adelstein ("our decisions today and in the near future will have a profound impact on the future role of wireless broadband services"); *id.*, Separate Statement of Commissioner Deborah Taylor Tate ("The rules we adopt today, along with the detailed questions set forth in the Further Notice, bring us one step closer to putting this critical spectrum in the hands of those who can best put it to work" providing broadband service throughout the country); *id.*, Separate Statement of Commissioner Robert M. McDowell ("Opening up the Lower and Upper 700 MHz Band for auction is America's best opportunity for spurring more competition in the broadband market.").

[8] *Id.*, Separate Statement of Commissioner Taylor Tate.

[9] Letter at 4, 5.

[10] *Id.* at 8.

[11] *Id.* at 2.

and 2005, with the bulk of it directed to wireless broadband deployment.[12] They have made those massive investments in order to meet the competition: each carrier is keenly aware that if it does not provide innovative broadband services that attract and retain customers, it will lose those customers to its competitors. Google's suggestion here – that existing carriers are going to stop that process in its tracks in the hopes that their wireline affiliates will be able to sell more DSL instead – is absurd on its face and provides no justification for the Commission-mandated discount Google seeks.

That is especially so, finally, in view of the fact that the discount Google seeks would come at the expense of U.S. taxpayers. As Commissioner Copps has stressed, if the Commission "do[es] [its] job[] correctly" in this proceeding, it will "deliver . . . billions of dollars" – much of it earmarked for public safety – "to the U.S. Treasury."[13] Yet Google would have the Commission intentionally limit the amount of money raised by the auction by diminishing the value of the spectrum, solely to entice Google – a company with a market capitalization of $170 billion that should not and does not need any special favors from this Commission – to participate. There is no basis in law or policy to support that result.

II. Google's "Open Access" Conditions Are Contrary to a Decade of Wireless Deregulation and Would Inhibit Broadband Deployment

Google's proposal also fails because it runs counter to the Commission's and Congress's deregulatory framework for wireless – an approach that has been overwhelmingly validated in the marketplace and which continues to lead to unprecedented consumer welfare.

As Chairman Martin has observed – and as many others have echoed – "wireless is the poster child for competition."[14] "[I]n the past five years, there have been 100 million new subscribers to mobile telephony services."[15] Meanwhile, usage has surged, with "[m]inutes of use among the leading national wireless providers climb[ing] 20-fold between 1999 and 2006,"[16]

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[12] *See* B. Bath, *et al.*, Lehman Brothers, *W3 Preview, 05 Wrls Net Add Fcst to 22M* at 7-8 & Fig. 10 (May 24, 2005).

[13] *700 MHz Order and NPRM*, Sep. Statement of Commissioner Copps at 1.

[14] Kevin J. Martin, Commissioner, FCC, *Wireless and Broadband: Trends and Challenges*, Presentation for Dow Lohnes-Comm Daily Speaker Series, Washington, DC, 2004 FCC LEXIS 5871, at *3 (Oct. 15, 2004); *see also, e.g.*, Report and Order, *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket No. 01-14, FCC 01-328 (rel. Dec. 18, 2001) ("*2000 Biennial Report*") (Dissenting Statement of Commissioner Michael J. Copps) ("The wireless industry . . . is a great success story. CMRS providers give customers a wide variety of services and technologies."), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-01-328A1.pdf.

[15] *700 MHz Order and NPRM* ¶ 3.

[16] S. Flannery, *et al.*, Morgan Stanley, *4Q06 Preview/2007 Outlook: Is Telecom Back for Good?* at 32 (Jan. 24, 2007).

and prices have plummeted, with revenue-per-minute dropping 22% in 2005 alone.[17] Wireless subscribers in the United States use their service about three times as much as their counterparts in Europe,[18] and they pay about a third as much for each minute of use.[19] Consumers in the United States were also the first to enjoy the benefits of a WCDMA/HSDPA network, which AT&T deployed in December 2005 and which "provide[d] much faster speeds than Europe's [then prevalent] WCDMA networks."[20] Indeed, as the Commission has stressed in this very proceeding, as a result of the massive infrastructure investments AT&T and other carriers have made over the last several years,[21] the wireless industry is boasting "unprecedented growth in the demand for and the provision of wireless broadband services," with subscribership climbing from fewer than 100,000 in June 2000 to over 11 million in June 2006.[22] Moreover, wireless broadband is only one component – albeit an enormously important and quickly growing one – of a larger broadband marketplace that is characterized by multiple forms of broadband transmission, a diverse group of market participants, and robust competition.[23]

These pro-competitive trends – and the consumer welfare that flows from them – are a direct result of the bipartisan consensus in both the Commission and Congress that consumers are best served by market-based spectrum policies and an overall deregulatory environment for wireless. Since the early 1990s, the Commission has moved aggressively to deregulate the wireless industry, licensing multiple carriers in each market,[24] forbearing from spectrum ownership limitations,[25] and phasing out the requirement to maintain analog network capabilities

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[17] Eleventh Report, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 21 FCC Rcd 10947, ¶ 154 (2006) ("*Eleventh Competition Report*"); *see also id.* ¶ 153 ("From 2004 to 2005, the annual Cellular CPI decreased by about 1.8 percent while the overall CPI increased by 3.4 percent. The Cellular CPI has declined 35 percent since December 1997, when BLS began tracking it.").

[18] *See* Marius Schwartz & Federico Mini, *Hanging Up On* Carterfone*: The Economic Case Against Access Regulation in Mobile Wireless*, at 12-13 (May 2, 2007) ("Schwartz & Mini") (attached as Exh. A to Reply Comments of AT&T Inc., RM-11361 (FCC filed May 15, 2007)).

[19] *Eleventh Competition Report* ¶ 193.

[20] *Id.* ¶ 202.

[21] *See supra* pp. 3-4 & note 12.

[22] *700 MHz Order and NPRM* ¶ 3.

[23] *See, e.g.*, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of June 30, 2006*, at 1 (WCB rel. Jan. 2007) (noting that, "[f]or the full twelve month period ending June 30, 2006, high-speed lines increased by 52% (or 22 million lines)"); *see also id.* at Table 1 and Chart 2 (identifying the competing broadband platforms).

[24] *See* William C. Beckwith, *Cutting the Cord: Removing the CMRS Spectrum Cap to Promote Wireless-Landline Convergence and Wireless Alternatives in the Local Loop*, 7 CommLaw Conspectus 369, 371 n.19 (1999) (citing Report of Council of Economic Advisors showing "full-fledged competition" in wireless services as the Commission began to "creat[e] new wireless licensees in U.S. markets").

[25] *See 2000 Biennial Report* ¶ 47.

in light of the competitive state of the industry.[26] Most importantly for present purposes, the Commission has long embraced a policy of flexible, exclusive-use, geographically defined licenses that – rather than dictate a business plan based on one particular company's untried vision of the marketplace – allow carriers to choose the business model that will enable them to compete in this highly competitive market.[27] And Congress has assisted in this process as well, by preempting state regulation of wireless rates,[28] eliminating the restriction on Bell companies' provisioning of wireless long distance,[29] and authorizing the use of competitive bidding for CMRS and other wireless licenses.[30] In the wake of these and other deregulatory steps – which enabled the emergence of multiple robust, national networks operating on different digital standards – the industry and the consumers that it serves have thrived.

Google's request for "open access" conditions in the 700 MHz band is nothing less than a request for the Commission to repudiate this history of competition, consumer welfare, and ongoing investment, and to adopt instead highly regulatory, deeply intrusive requirements that would frustrate innovation and inhibit broadband deployment. But Google identifies no evidence in the record or elsewhere of the sort of market failure that would justify such a stunning about-face. In fact, the regulatory intervention Google seeks is not merely unsupported and unnecessary, it would be affirmatively harmful. Wholly apart from the effect on the U.S. Treasury of devaluing the 700 MHz spectrum, Google's proposal would impose enormous costs on the industry and the consumers it serves. It would inhibit broadband deployment by keeping spectrum out of the hands of the providers that value it most, and it would impose significant regulatory compliance and monitoring costs. And it would require development of a complex and elaborate web of implementing regulations, while exposing the Commission to a reversal in the courts, which would prevent the Commission from timely completing the auction or, at a minimum, delay the auction winner from making use of the spectrum. Indeed, each component of Google's "open access" proposal is unaccompanied by any remotely plausible showing that

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[26] *See* Report and Order, *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, 17 FCC Rcd 18401, ¶ 8 (2002) (modifying 47 C.F.R. §§ 22.901 and 22.933 (2000) in light of the "competitive state of mobile telephony").

[27] *See, e.g.*, Report and Order, *Amendment of Parts 2 and 22 of the Commission's Rules To Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, 3 FCC Rcd 7033 (1988) (the "Liberalization of Technical and Auxiliary Offerings" Order of 1988).

[28] *See* 47 U.S.C. § 332(c)(3)(A) ("no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service").

[29] *Id.* § 271(b)(3), (g)(3) (permitting Bell companies to provide "incidental interLATA services," which include "commercial mobile services").

[30] *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 387-392 (1993); *see id.*, 107 Stat. at 389 (the Commission shall "prescribe area designations and bandwidth assignments that promote . . . an equitable distribution of licenses and services among geographic areas" and "investment in and rapid deployment of new technologies and services").

the costs it would impose are justified by an existing market failure, and each represents a stark reversal of long-held Commission policy.

Unrestricted Applications and Devices. Borrowing entirely from Skype's recent request for aggressive Commission intervention foreclosing wireless carriers from certifying the handsets and applications that run on their networks, Google requests that spectrum licensees be required to run *any* application, and attach *any* handset, to their networks.[31] In Google's view, Skype's petition established that there is a "growing list of discriminatory and anticompetitive practices occurring in the wireless world" that would be remedied by enabling consumers to run the applications and devices of their choosing on the wireless networks of their choosing.[32]

Skype's petition, however, established nothing of the sort. As the extensive record assembled in response to that petition makes clear,[33] Skype's claims of "discrimination" were, in reality, based on anecdotes that were in each case either mistaken or, at a minimum, incomplete to the point of being misleading. Equally important, the record assembled in response to Skype's petition established that the handset and application certification processes that Google's proposal would foreclose are vitally important to ensuring the efficient utilization and the security of the wireless network.[34] By foreclosing those processes, Google's proposal would necessarily foreclose practices that have been adopted by highly sophisticated businesses operating in a robustly competitive market and that are therefore, by definition, efficient.[35] That result, in turn, would impose substantial costs that would inhibit broadband deployment and ultimately limit customer choice.[36]

Resale Requirement. Google next proposes a mandatory resale requirement, pursuant to which licensees would be required to provide wholesale service, "at commercially reasonable rates, terms, and conditions" overseen by the Commission, to third party service providers.[37] Such a requirement, Google maintains, is a "must" for "a new entrant looking to extend its

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[31] *See* Letter at 5-7.

[32] *See id.* at 6

[33] *See* Comments of AT&T Inc. Opposing Skype Communications' Petition, RM-11361 (FCC filed Apr. 30, 2007); Reply Comments of AT&T Inc. Opposing Skype Communications' Petitition, RM-11361 (FCC filed May 15, 2007). Because Google relies on its (unsupported) characterization of the record assembled in response to Skype's petition, AT&T incorporates herein by reference its comments and reply comments in that proceeding.

[34] *See* Declaration in Support of Comments of AT&T Inc. Opposing Skype Communications' Petition, RM-11361 (FCC filed Apr. 30, 2007); Charles L. Jackson, *Wireless Handsets Are Part of the Network*, Attach. C to Opposition of CTIA – the Wireless Association, RM-11361 (FCC filed Apr. 30, 2007).

[35] *See* Schwartz & Mini at 17-24.

[36] *See id.*

[37] *See* Letter at 7.

geographic reach."[38] The Commission, however, already had a CMRS resale requirement, which it found unnecessary and therefore permitted to *sunset* pursuant to rule in 2002.[39] Since that time, moreover, the Commission has sought and received extensive comments "on the extent and vigor of resale activity" in the wireless industry, as well as the effect of the "sunset of the CMRS resale rule" on that activity.[40] Yet the Commission, in response to the wealth of comments received in response to that request for comment, has declined to impose the resale requirement Google seeks here. Google's suggestion – that the Commission, having declined to impose a resale requirement in the CMRS industry in response to the record assembled in that proceeding, should nevertheless impose one here on the basis of Google's one-line assertion that resale is a "must" – should be rejected out-of-hand.

Unrestricted Interconnection. Google also proposes that spectrum licensees be subject to a broad regulatory mandate to interconnect with *any* third party, "at any reasonable point in the wireless network."[41] But, even putting aside the unworkable nature of this open-ended mandate, here again the Commission has already addressed what (if any) interconnection obligations should apply to CMRS providers,[42] and there is simply no basis in the record before the Commission to alter the Commission's existing rules.

"Sufficiently Tailored" and "Enforceable" Rules. Although Google's proposal is deeply flawed as a matter of both law and policy, there is one respect in which Google has it right: its proposal would require a complex slate of highly "detailed" regulations in an industry that the Commission has long labored to *de*-regulate.[43] Beyond its cursory description of the "open access" requirements described above, Google does not itself specify the "detailed" regulations it seeks, but they presumably would include, at a minimum:

- Part 68-like rules governing standards for handset compatibility. These would include, at a minimum:
    - comprehensive regulations on the conditions on use of handsets, including such topics as attachment and spectral efficiency standards;
    - approval procedures to ensure satisfaction of the Commission's standards;
    - any exceptions or limitations relating to network capacity, compatibility and/or security.

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[38] *See id.*

[39] *See* 47 C.F.R. § 20.12(b)(3).

[40] Notice of Inquiry, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 19 FCC Rcd 5608, ¶ 17 (2004).

[41] Letter at 8.

[42] *See generally* Fourth Report and Order, *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 15 FCC Rcd 13523 (2000).

[43] *See* Letter at 8-9.

- Comprehensive and enforceable standards dictating how carriers may determine the applications that they must allow on their networks, including provisions addressing:
    - the standards that such applications must meet in order to warrant network support;
    - appropriate testing processes to ensure applications meet those standards;
    - any exceptions or limitations relating to network capacity, compatibility and/or security.
- Comprehensive rules governing Google's proposed "resale" requirement, including:
    - the characteristics of services that must be made available for resale;
    - whether there are any capacity or other limitations on the resale requirements;
    - the rates and other terms and conditions that would apply.
- Interconnection rules, including:
    - the characteristics of entities that are entitled to interconnect;
    - what constitutes a "reasonable point" of interconnection;
    - the mutual obligations that attach to any entity seeking interconnection;
    - the rates and other terms and conditions that would apply to such interconnection.

Even assuming rules such as these were ever appropriate in the wireless industry, they plainly are uncalled for in today's robustly competitive marketplace, where consumers can choose among multiple service providers, where each of these providers is investing heavily to provide 3G capabilities and beyond, and where innovation is occurring at breakneck pace.

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As the above discussion makes clear, the legal flaws in Google's proposal are manifest. By intentionally excluding the carriers that value the spectrum at issue the most and are thus likely to pay the most for it, the proposal runs directly counter to the Commission's obligation to use a competitive bidding process to auction the spectrum at issue.[44] The proposal also contradicts the Commission's own precedent, in this very proceeding and elsewhere, establishing that its aim in auctioning spectrum is to award it to the entities that will make the most efficient use of it.[45] And the specific requirements that Google would have the Commission impose are

[44] *See supra* p. 2.

[45] *See, e.g.*, *Ramaprakash v. FAA*, 346 F.3d 1121, 1124-25 (D.C. Cir. 2003) ("An agency's failure to come to grips with conflicting precedent constitutes an inexcusable departure from the essential requirement of reasoned decision making.") (internal quotation marks omitted).

devoid of any evidentiary support in the record,[46] nor were they fairly encompassed in the notice of proposed rulemaking that gave rise to this proceeding.[47]

The Commission is operating under a congressionally mandated deadline to begin the 700 MHz auction in January 2008 and to deposit the auction proceeds by June 2008.[48] Even apart from that mandate, the importance of the spectrum at issue to wireless broadband deployment compels prompt Commission action. By adopting all or any aspect of Google's proposal, the Commission not only would inhibit broadband deployment by keeping the spectrum out of the hands of those that value it most and would use it most efficiently, but also would invite a serious legal challenge that would throw into doubt the Commission's ability to complete the auction on the timetable contemplated by Congress. The Commission should instead adhere to its announced plan to hold an open auction, with licenses awarded to those bidders who value the spectrum the most, free of restrictions that would inhibit innovation and limit competition and broadband deployment.

In accordance with Section 1.1206 of the Commission's rules, an electronic copy of this letter is being submitted via the Commission's Electronic Comment Filing System.

Sincerely,

/s/
Robert W. Quinn, Jr.

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[46] *See, e.g.*, *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 843 (D.C. Cir. 2006) (holding that "[p]rofessing that an order ameliorates a real industry problem but then citing no evidence demonstrating that there is in fact an industry problem is not reasoned decisionmaking," and vacating order where there was "*zero* evidence of actual abuse").

[47] *See, e.g.*, *Sprint Corp. v. FCC*, 315 F.3d 369, 377 (D.C. Cir. 2003) (vacating agency action taken "without observance of procedure required by law," 5 U.S.C. § 706(2)(D)); *Sprint Corp. v. FCC*, Nos. 01-1266 *et al*. (D.C. Cir. Apr. 1, 2003) (clarifying that failure to provide notice requires vacatur of rule).

[48] *See 700 MHz Order and NPRM* ¶ 2.