

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Recommendations Approved By
WRC-19 Advisory Committee

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IB Docket No. 16-185

COMMENTS OF HC2 BROADCASTING, INC.

I. INTRODUCTION

HC2 Broadcasting, Inc. supports the deletion of the United States from Footnotes 5.295 and 5.297 from Article 5 of the International Telecommunication Union (ITU) Radio Regulations (Radio Regulations), as proposed to the 2019 World Radiocommunication Conference (WRC-19) Advisory Committee.¹ Article 5, Table of Frequency Allocations, includes country-specific footnotes delineating policies for specific frequency bands.² Footnote 5.297 explains that although the frequency band 512-608 MHz is allocated to broadcasting on a primary basis, the United States and several other countries have also allocated the frequency band to “the fixed and mobile services on a primary basis.”³ Footnote 5.295 explains that the United States, along with several other countries, has identified the frequency band 470–608 MHz, or portions thereof, for International Mobile Telecommunications (IMT).⁴

¹ *International Bureau Seeks Comment on Recommendations Approved by World Radiocommunication Conference Advisory Committee*, Public Notice, DA-18-423 (rel. Apr. 26, 2018) (“WRC Public Notice”), Attach. A (WAC/058).

² Int’l Telecomm. Union, *Radio Regulations* (2016).

³ *Id.* at 95.

⁴ *Id.* at 94.

The inclusion of the United States in Footnotes 5.295 and 5.297 made some sense before the Federal Communications Commission (FCC)’s broadcast television spectrum incentive auction (Incentive Auction) was completed in 2017. During the lead-up to the auction, there was at least a theoretical possibility that spectrum in the relevant bands would need to be re-allocated to mobile use. However, now that the auction is over, the Commission has determined that it will remove the allocation of the 512–608 MHz band for mobile or fixed services, and will not use the 470–608 MHz band for IMT. As a result, the continued inclusion of the United States in both footnotes is both outdated and inconsistent with fact.

Footnotes 5.295 and 5.297 should be updated to reflect the current U.S. policy reserving the 470–608 MHz band for television broadcasting (with the limited exception of limited land-mobile operations in 11 urbanized areas on certain frequencies in the 470–512 MHz band). Updating both footnotes will not only more accurately reflect U.S. policy, it will also provide much-needed certainty for broadcast companies, giving them greater incentives to invest in improved facilities, new technology, and employee training. Finally, deleting the United States from the two footnotes will not bind the Commission in future policy-making. Should the Commission decide at some future point in time to make those bands available for mobile use through another incentive auction, there will be ample time to revise the footnotes to reflect that change in future Conferences before the incentive auction is concluded.

For all of these reasons, HC2 Broadcasting supports View A, deleting the United States from Footnotes 5.295 and 5.297.

II. ELIMINATING THE UNITED STATES FROM FOOTNOTES 5.295 AND 5.297 ALIGNS THE RADIO REGULATIONS WITH CURRENT U.S. SPECTRUM POLICY.

Before the Incentive Auction was completed, it was reasonable to include the United States in Footnotes 5.295 and 5.297, in case the market demonstrated a need for additional

spectrum in these ranges for mobile services including IMT. However, now that the Incentive Auction has closed, the Commission has determined that neither of these bands will be used for either mobile services or IMT.⁵ The 614–698 MHz band will be reserved for mobile use, but frequencies below 614 MHz—including those referenced in the footnotes—remain for the exclusive use of broadcasting service.^{6 7}

Revising Footnotes 5.295 and 5.297 to remove the United States will ensure that the Radio Regulations are consistent with current U.S. spectrum policy. At the moment, the footnotes are misleading because they are at odds with how the United States has authorized licensees to use the 470–608 MHz band. The 470–608 MHz band is not used for IMT, nor are there any plans to use this band for IMT in the future. And, as the Incentive Auction just solidified, the 470–608 MHz band *cannot* be used for mobile use.⁸ An additional auction of broadcast spectrum would require new authorizing legislation because Congress imposed a “numerical limit” of one “on auctions and reorganizations” affecting the broadcast television spectrum.⁹ An additional incentive auction of television spectrum would require Congress to pass, and the President to sign into law, new authorizing legislation allowing such an auction to proceed. And while the Commission is capable of reallocating spectrum for use consistent with its statutory mandate under the Communications Act of 1934, as amended, the Commission has

⁵ *Incentive Auction Closing and Channel Reassignment Public Notice*, Public Notice, 32 FCC Rcd 2786 ¶ 15 (2017) (“*Incentive Auction Closing Public Notice*”).

⁶ *Id.*

⁷ With the limited exception of limited land-mobile operations in 11 urbanized areas on certain frequencies in the 470–512 MHz band. *See* 47 CFR §90.303.

⁸ *Incentive Auction Closing Public Notice*.

⁹ *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012).

only recently relied on the market to assess demand for wireless broadband spectrum in the television frequencies and has shown no sign of wanting to revisit its decision following that “once-in-a-lifetime” event.¹⁰ Therefore, at least until Congress or the Commission changes its mind on the appropriate use of the television spectrum, the 470-608 MHz band is unavailable for IMT or mobile use in the United States. It defies logic to keep the United States on a list of countries who purportedly allocate that band to both fixed and mobile services and identify it for IMT when the reality is that only broadcasting services may use that band in the United States. Moreover, the Commission already removed the mobile allocation from its domestic table last year to reflect the results of the auction.¹¹ Footnote 5.297 thus is directly at odds with current U.S. policy to use the 470–608 MHz band exclusively for broadcast use.

Proponents of View B suggest that removing the United States from the footnotes would limit the United States’ flexibility to implement mobile services in the 470–608 MHz band.¹² But whether the Commission hypothetically might or might not, *in the future*, permit mobile use in the 470–608 MHz band is irrelevant to the text of the footnotes, which explains *current* U.S. policy. In other words, View B recommends that the Commission sign-off on statements in

¹⁰ See, e.g., *Statement of Chairman Ajit Pai on the Completion of the Incentive Auction and the Start of the Post-Auction Transition Period* (April 13, 2017) (“Today marks a major accomplishment for the Commission: the ‘auction’ portion of the world’s first incentive auction is officially over. The reverse and forward auctions have concluded and the results have been announced.”); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 3 (2014) (“The auction presents a once-in-a-lifetime opportunity for broadcasters, and we are committed to providing them with information about both our process and the financial opportunity the auction represents to enable them to make informed business decisions about whether and how to participate”)

¹¹ *Expanding the Economic and Incentive Opportunities of Spectrum Through Incentive Auctions*, Order, 32 FCC Rcd 6916 ¶ 4 (2017) (“*Frequency Allocation Modification Order*”).

¹² *WRC Public Notice*, Attach. A at 72.

direct contradiction with the country's current spectrum use based on a theoretical, future change in policy. Such a position makes little sense.

View B makes even less sense when taking into account the current spectrum landscape. There are no discussions, much less plans, to allow mobile use in the 470–608 MHz band in the United States or anywhere else in the world. The 3GPP has specified no band class for that spectrum. Just last year the Commission permitted mobile use in the 600 MHz band (*i.e.*, 614–698 MHz), and the transition to that band will not be complete for another two years.¹³ The Commission should not base its recommendation on the remote possibility that, at some unknown point in the future, Congress might hypothetically decide to authorize another auction and the Commission, once given that authority, might decide to allow mobile use in lower bands and assign it from broadcasting to IMT uses, especially since demand for mobile allocation in the broadcast spectrum, as evidenced by the results of the Incentive Auction, was lower than anticipated.¹⁴ The Commission just put the demand for mobile spectrum to a market test and the Commission has rightly shown no desire to second-guess the market's decision.

¹³ *Frequency Allocation Modification Order*.

¹⁴ See, *e.g.*, John Eggerton, *Spectrum Auction: TV's New Exit Price Plummets to \$10B*, Broadcasting & Cable (Jan. 13, 2017), <https://www.broadcastingcable.com/news/spectrum-auction-tvs-new-exit-price-plummets-10b-162451> (noting that “[t]he broadcasters have stepped up and done their part to fulfill that demand . . . [but] [s]o far, the wireless bidders have not been ready to pay the price for that robust participation”); Colin Gibbs, *Clearing cost plummets to around \$10B for Stage 4 of FCC's incentive auction*, FierceWireless (Jan. 13, 2017), <https://www.fiercewireless.com/wireless/clearing-cost-plummets-for-stage-4-fcc-s-incentive-auction> (explaining that the auction was “underwhelming” in part because “[d]emand for 600 MHz spectrum appears to have dampened in favor of higher-band airwaves that can boost capacity”); Colin Gibbs, *Sprint CFO Robbiati: 600 MHz is ‘spectrum of the past’*, FierceWireless (Nov. 30, 2016), <https://www.fiercewireless.com/wireless/sprint-cfo-robbiati-600-mhz-spectrum-past> (Sprint declined to participate in the incentive auction because “[t]he world is moving toward high-capacity wireless data networks, and in that world the best and most efficient spectrum that is needed for that . . . is mid-band spectrum”).

Footnotes 5.295 and 5.297 should reflect current U.S. spectrum policy, not every remote possibility that may occur in the coming decades.

III. DELETING THE UNITED STATES FROM FOOTNOTES 5.295 AND 5.297 SOLIDIFIES BROADCASTER'S CERTAINTY IN THEIR EXCLUSIVE USE OF THE 470–608 MHz BAND, WHICH WILL LEAD TO INCREASED INVESTMENT AND IMPROVED SERVICES.

Revising Footnotes 5.295 and 5.297 to delete the United States also would signal to broadcasters that the Commission stands behind its decision to permit their exclusive use of the 470–608 MHz band for the foreseeable future. Such certainty will spur broadcasters' investment in critical infrastructure, research, and development, and lead to improved services, economic growth and job creation.

Broadcasters who are confident that they will retain the use of their spectrum are far more likely to invest robustly in their facilities, research new technologies, and hire and train employees than those facing a cloud of uncertainty about spectrum allocation. Such investment is both critically important and costly, because terrestrial broadcasting networks and equipment have a long life cycle. Regulatory stability is necessary to ensure that broadcasters will deem it worthwhile to invest their money and time in building infrastructure, developing new technologies, and training and hiring employees. Broadcasters who know that the spectrum allocated to broadcasting is recognized over the near future will also have the incentive to harmonize their operations among other broadcasters. Conversely, maintaining a statement that the United States recognizes co-primary mobile and broadcast allocation in the 470–608 MHz will threaten innovation, including investment in ATSC 3.0. The Commission should take a position that will spur investment in broadcast infrastructure and technology, rather than a position that will dis-incentivize such investment.

IV. REVISING FOOTNOTES 5.295 AND 5.297 WILL NOT HINDER THE COMMISSION IF IT CHOOSES TO AUCTION THE 470–608 MHz BAND IN THE FUTURE.

Finally, adopting View A and removing the United States from Footnotes 5.295 and 5.297 will not affect the Commission’s ability to conduct a future auction of the affected broadcast spectrum for mobile use. Proponents of keeping the United States in the footnotes argue that the proposed revisions “would cause the US to los[e] its current flexibility and leav[e] the US subject to gaining international consensus and lengthy delays to even consider allowing mobile use in the future.”¹⁵ But updating the footnotes would do no such thing.

It takes a considerable amount of time to plan, conduct, and conclude a spectrum auction. The recent Incentive Auction was proposed in 2012, and the transition from broadcast to mobile users will not be complete until late 2020—a full eight years after Congress proposed the auction.¹⁶ As noted in View B, reinstating the United States in the footnotes would take half as long.¹⁷ As a result, if the Commission decides to hold another auction in the future that might result in re-allocation of the affected spectrum, there will be more than enough time to revise the footnotes before the auction results go into effect.

V. CONCLUSION

The Commission should support View A for WRC-19 Agenda Item 8 and recommend the deletion of the United States from Footnotes 5.295 and 5.297 of the Radio Regulations. Revising these footnotes will align the Radio Regulations with current U.S. spectrum policy, which does not contemplate use the 470–608 MHz band for mobile use or IMT. The updated

¹⁵ *WRC Public Notice*, Attach. A at 72.

¹⁶ *Incentive Auction Closing Public Notice* ¶ 68.

¹⁷ *Public Notice*, Attach. A at 72 (explaining that the United States would need “at least one four year study cycle” to add the United States back to the footnotes).

footnotes will increase certainty for broadcasters, leading to increased investment in new technology and facilities. And deletion of the United States from the footnotes will not hinder the Commission if it ever decides to auction these bands for mobile use in the future.

Respectfully submitted,

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