

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Expanding the Economic and Innovation) GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)
Auctions)

OPPOSITION OF MOBILE FUTURE TO PETITIONS FOR RECONSIDERATION

Mobile Future submits the following Opposition to the Petitions for Reconsideration filed by the Advanced Television Broadcasting Alliance, Artemis Networks, LLC, Free Access & Broadcast Telemedia, LLC, LPTV Spectrum Rights Coalition, Mako Communications, LLC, Sennheiser Electronics Corporation, T-Mobile USA, Inc., the Competitive Carriers Association (“CCA”), and U.S. Television, LLC, in the above captioned proceeding. The Commission should reject requests to reimburse Low Power television (“LPTV”) stations or wireless microphone users for the costs associated with relocation following the Incentive Auction, because those entities are not eligible for reimbursement of relocation expenses under the Spectrum Act.¹ The Commission similarly should reject requests to protect LPTV and TV Translator stations in the repacking process as inconsistent with the Spectrum Act. Finally, the Commission should deny requests to set aside spectrum for wireless microphone users, to eliminate the price per MHz/POP component of the spectrum reserve trigger, and to include Time Division Duplexing in the 600 MHz band plan, as the proponents of those arguments have failed to provide any new information or arguments warranting reversal of the Commission’s

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (“Spectrum Act”).

previous decisions to the contrary, as set forth in the *Incentive Auction Report and Order*.² The Commission must move forward with finalizing plans for the Incentive Auction or risk further delays in repurposing much-needed spectrum for mobile broadband deployment.

The U.S. wireless industry is one of the most innovative and dynamic in the world. Wireless products, services, and broadband networks continue to advance rapidly, benefitting American consumers with billions of dollars in investment, new products and services, and countless opportunities across our economy. The key input into the wireless ecosystem is spectrum. The Commission must reject calls to reconsider the decisions it adopted in the Incentive Auction Report and Order, which would only diminish and delay the positive effects of increased spectrum access the Incentive Auction promises.

I. THE SPECTRUM ACT DOES NOT ENTITLE LPTV STATIONS TO PROTECTION IN THE REPACKING PROCESS.

The Commission should reject calls to reconsider its decision not to extend repacking protection to low-power television (“LPTV”) stations.³ The Commission’s consideration and rejection of requests to afford repacking protection to LPTV stations is consistent with the Spectrum Act, and petitioners have not provided new facts or arguments to contradict that.⁴

As the Commission appropriately concluded in the *Incentive Auction R&O*, the Spectrum Act does not require the Commission to provide repacking protection to LPTV stations.⁵ Section 6403(b)(2) provides protection for “each broadcast television licensee,” which is defined as the

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014) (“Incentive Auction R&O”).

³ See Petition for Reconsideration of Advanced Television Broadcasting Alliance (filed Sept. 15, 2014); Petition for Reconsideration of Free Access & Broadcast Telemedia, LLC (filed Sept. 15, 2014); Petition for Reconsideration of LPTV Spectrum Rights Coalition (filed Sept. 15, 2014); Petition for Reconsideration of Mako Communications, LLC (filed Sept. 15, 2014); Petition for Reconsideration of U.S. Television, LLC (filed Sept. 15, 2014).

⁴ *Incentive Auction R&O* at ¶¶ 236-45.

⁵ *Id.* at ¶ 236.

licensee of a full-power television station, or a low-power television station that has been accorded primary status as a Class A television licensee.⁶ Therefore, there is no basis to argue that lower power stations that have not been afforded Class A status are entitled to repacking.⁷

The Commission's decision also is consistent with Section 6403(b)(5), which states that Section 6403 shall not be construed to "alter the spectrum usage rights of low-power television stations."⁸ The Commission's decision not to protect LPTV stations in the repacking process does not "alter" LPTV stations' spectrum usage rights. LPTV stations have long operated on a secondary basis with respect to full power television stations, and full power stations may be authorized and operated without regard to existing or proposed LPTV stations.⁹ Further, the Commission notes that it "made clear more than three decades ago that secondary, low power television stations 'may not cause interference to, and must accept interference from, full-service television stations, certain land mobile radio operations, and other primary services.'"¹⁰ Any displacement as a result of the Incentive Auction is consistent with LPTV stations' secondary status.

Finally, the Commission correctly found that the interference protection ordinarily accorded to LPTV facilities against *licensee-proposed* modifications of Class A facilities under Section 336(f)(7)(B) of the Communications Act does not apply to channel assignments made in the repacking process.¹¹ Section 336(f)(7)(B) prohibits the Commission from approving a

⁶ *Incentive Auction R&O*, ¶ 238; Spectrum Act § 6001(6).

⁷ *Id.*

⁸ Spectrum Act § 6403(b)(5).

⁹ *Incentive Auction R&O*, ¶ 239.

¹⁰ *Incentive Auction R&O*, ¶ 239 (citing T-Mobile Reply Comments at 99; *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend the Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333 ¶ 2 (2004)).

¹¹ *Incentive Auction R&O*, ¶ 236.

proposed modification of a Class A license unless the licensee shows non-interference to existing or previously-proposed LPTV facilities.¹² The Commission appropriately interpreted Section 336(f)(7)(B) to reflect an “intention to grant protection against changes in Class A facilities *proposed by licensees*, not to limit the previously unanticipated broadcast television spectrum auction required by Congress in the Spectrum Act.”¹³

II. THE COMMISSION SHOULD DECLINE TO REQUIRE REIMBURSEMENT OF LPTV LICENSEES’ AND WIRELESS MICROPHONE USERS’ RELOCATION COSTS.

LPTV licensees and wireless microphone users are not eligible for reimbursement from the Broadcaster Relocation Fund or otherwise out of auction proceeds under the Spectrum Act.¹⁴ First, the Spectrum Act authorizes the Commission to pay relocation costs to certain broadcast station licensees, multichannel video programming distributors (“MVPDs”), and Channel 37 incumbent users.¹⁵ LPTV licensees and wireless microphone users do not fall under the Commission’s definition of a “broadcast station licensee.” LPTV licensees and wireless microphone users also do not fall within the other eligible categories of MVPDs or Channel 37 incumbent users.¹⁶ Further, the Spectrum Act does not authorize the FCC to distribute auction proceeds to cover the relocation expenses of any other class of entity.

Second, requiring winning bidders to separately reimburse wireless microphone users’ relocation expenses is inconsistent with the goals of the Spectrum Act to clear as much broadcast spectrum as possible for broadband wireless service. If bidders in the forward auction will incur

¹² 47 U.S.C. § 336(f)(7)(B).

¹³ *Id.* at n.732 (citing *Incentive Auction NPRM*, 27 FCC Rcd at ¶ 118) (emphasis added).

¹⁴ Spectrum Act at §§ 6402(G)(iii); 6403(d) (Auction proceeds not disbursed to broadcasters relinquishing spectrum in the reverse auction, or through the Broadcaster Relocation Fund, must be deposited in the Public Safety Trust Fund or the general fund of the Treasury).

¹⁵ Spectrum Act § 6403(b)(4).

¹⁶ 47 C.F.R. 73.6001(e).

additional, unquantified costs to reimburse myriad wireless microphone users, that additional expense will be factored into their analysis of their overall financial exposure and could impact bidding. This could reduce auction proceeds, thereby resulting in auction failure. Ultimately, the amount of money deposited in the U.S. Treasury would be reduced for deficit reduction, frustrating Congressional intent.

III. THE COMMISSION SHOULD REJECT REQUESTS TO WITHHOLD SPECTRUM FROM THE AUCTION FOR EXCLUSIVE USE BY WIRELESS MICROPHONES.

The Commission should reject Sennheiser's passing suggestion that the Commission set aside an unauctioned 5 MHz pair of 600 MHz spectrum for wireless microphone use.¹⁷ Diverting spectrum to wireless microphone use is contrary to Congress's and the Commission's goal of reallocating spectrum for mobile broadband as set forth in the Spectrum Act, the *Incentive Auction NPRM* and the *Incentive Auction R&O*.¹⁸ Sennheiser makes no arguments to address this fundamental inconsistency.¹⁹ The Commission has already considered the technical implications of eliminating exclusive spectrum allocations for wireless microphone use²⁰ and concluded that the needs of those users could be met without retaining the two channels currently designated. Further, the Commission already has initiated a separate proceeding to consider a long-term solution for wireless microphone users and the technical rules associated with their

¹⁷ Petition for Reconsideration of Sennheiser Electronics Corporation at 10 (filed Sept. 15, 2014).

¹⁸ *Incentive Auction R&O* ¶ 1; *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12368 ¶¶ 25-26; *id.* at 12362-72, ¶¶ 11-34 (2012) ("Incentive Auction NPRM").

¹⁹ Sennheiser Petition at 10.

²⁰ *Incentive Auction R&O*, ¶¶ 299-316.

operation.²¹ Concerns regarding those technical aspects of the rules should be addressed in that proceeding.

IV. THE COMMISSION SHOULD RETAIN THE PRICE PER MHZ-POP COMPONENT OF THE SPECTRUM RESERVE TRIGGER TO ENSURE THAT ALL BIDDERS PAY A FAIR PRICE.

The Commission should reject requests to reconsider the price per MHz-POP portion of the spectrum reserve trigger.²² The Commission decided in the *Mobile Spectrum Holdings R&O* to allow all bidders to bid on all licenses, until bidding reaches the “point at which the spectrum reserve trigger is reached.”²³ T-Mobile’s and CCA’s challenges to the spectrum reserve trigger are premature. The details of the spectrum reserve trigger will be addressed in a subsequent Public Notice,²⁴ and any concerns about how the spectrum reserve trigger is determined should be addressed in that proceeding.

However, the Commission correctly concluded that the trigger will ensure that the responsibility for satisfying the costs of the Incentive Auction is fairly distributed among all bidders.²⁵ This decision reflected a careful balance of the Commission’s desire to permit open bidding and allow market forces to work, with its desire to set-aside some spectrum for T-Mobile and other favored firms. T-Mobile’s efforts to eliminate this component of the spectrum reserve trigger are aimed toward having the reserve triggered well before prices have reached a level that would approximate prices that would result from competition, essentially resulting in an additional subsidy to T-Mobile. Given that T-Mobile has demonstrated its ability to acquire

²¹ *Promoting Spectrum Access for Wireless Microphone Operations*, Notice of Proposed Rulemaking, FCC 14-145 (rel. Sept. 30, 2014); Incentive Auction R&O, ¶ 316.

²² See, e.g., CCA Petition for Reconsideration at 1; T-Mobile Petition for Reconsideration at 3-4 (filed Sept. 15, 2014).

²³ *Policies Regarding Mobile Spectrum Holdings*, Report and Order, 29 FCC Rcd 6133, ¶ 187 (“Mobile Spectrum Holdings R&O”).

²⁴ *Mobile Spectrum Holdings R&O*, ¶ 195.

²⁵ *Mobile Spectrum Holdings R&O*, ¶ 186-87.

spectrum at auction and in the secondary market, this type of subsidy – at the expense of consumers and deficit reduction – is unwarranted.

V. THE COMMISSION SHOULD DENY REQUESTS TO RECONSIDER THE FDD-BASED DESIGN OF THE 600 MHZ BAND PLAN.

The Commission should reject Artemis Networks’ request to introduce Time Division Duplex operations into the repurposed 600 MHz band.²⁶ The Commission already considered this issue, and chose to adopt the FDD-based plan after the proposal received overwhelming support in the record.²⁷ The Commission carefully considered the technical implications and constraints of a TDD-based band plan as well as hybrid band plans, and correctly concluded that an FDD-based plan would best serve the public interest.²⁸ The Commission previously rejected arguments that a TDD-based band plan would provide a better platform for broad global adoption, improved spectrum efficiency, or more dynamic spectrum use.²⁹ Among other drawbacks associated with TDD-based band plans, the Commission noted that TDD operations require guard time – as opposed to guard bands – and are therefore not necessarily more efficient.³⁰ The Commission declined to allow a mix of TDD and FDD operations in the band because allowing mixed operations would require additional guard bands and increase the potential for harmful interference both in and outside of the band.³¹

²⁶ Petition for Reconsideration of Artemis Networks (filed Sept. 15, 2014).

²⁷ *Incentive Auction R&O*, ¶ 51 (“Commenters overwhelmingly support this approach”) (citing Comments filed by AT&T, The Competitive Carriers Association, the Consumer Electronics Association, C Spire Wireless, Ericsson, Google and Microsoft, Leap Wireless, MetroPCS, Mobile Future, Motorola, Research in Motion, US Cellular, and Verizon.)

²⁸ *Incentive Auction R&O*, ¶¶ 51-52.

²⁹ *Incentive Auction R&O*, at ¶51.

³⁰ *Id.*

³¹ *Incentive Auction R&O*, ¶ 52.

