

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

In the Matter of	)	
	)	
Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002	)	AU Docket No. 14-252
	)	
	)	GN Docket No. 12-268

**REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

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**I. INTRODUCTION AND SUMMARY.**

CTIA – The Wireless Association® (“CTIA”) respectfully submits these reply comments in response to the Commission’s Public Notice seeking comment on the procedures necessary to carry out the first-ever broadcast television incentive auction.<sup>1</sup> The initial comments in this proceeding demonstrate the importance of, and interested parties’ commitment to, developing an incentive auction framework that best serves the interests of the wireless and broadcast industries, consumers, and the requirements of the Spectrum Act. Accordingly, CTIA respectfully asks the Commission to take the following actions:

- **The Commission should seek to minimize impairments in licensed 600 MHz spectrum and provide absolute clarity on these impairments to potential forward auction bidders.** While some impairment in the 600 MHz band may be inevitable, the Commission should strive to keep it to a minimum. This proceeding demonstrates how truly difficult it will be to accommodate market variability. A clear, easily understood framework for addressing impairments will be essential. In particular, CTIA asks the Commission to consider clarifying and/or adjusting: (1) the Commission’s 20 percent “near-nationwide” standard to truly ensure a consistent band plan; (2) the methodology for determining if a particular county is fully impaired; and (3) the weighting of population used to calculate impairments. The Administrative Procedure Act (“APA”) requires the Commission, at a minimum, to provide additional information and clarity to interested parties concerning impairments of 600 MHz licenses.

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<sup>1</sup> *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, 29 FCC Rcd. 15750 (2014) (“Auction 1000 Public Notice”).

- **The Commission should provide sufficient time and data to promote informed decision-making by bidders.** The Commission can do this by providing additional inter-service interference information to bidders, which will empower them to conduct analyses of 600 MHz spectrum and inform their bidding strategies. The Commission should also avoid policies that would speed up the incentive auction at the expense of thoughtful auction processes. And the Commission should adopt manageable activity rules that will enable bidders to develop a comfort level with this unprecedented auction format.
- **The Commission should take steps to encourage broadcaster participation.** For example, the Commission should encourage participation by providing broadcasters with greater flexibility to adjust their bids during the auction.

By taking these steps, the Commission will help to ensure the success of the incentive auction while complying with the dictates of the Spectrum Act and the Administrative Procedures Act. In particular, it will encourage much-needed broadcaster participation in the reverse auction, permit forward auction bidders to most productively address their spectrum needs, and promote a 600 MHz environment that best serves American consumers.

## **II. THE COMMISSION SHOULD SEEK TO MINIMIZE IMPAIRMENTS IN LICENSED 600 MHZ SPECTRUM AND PROVIDE ABSOLUTE CLARITY ON THESE IMPAIRMENTS TO POTENTIAL FORWARD AUCTION BIDDERS.**

As CTIA asserted previously,<sup>2</sup> some amount of impairment of 600 MHz licenses may be necessary due to uncontrollable issues such as international border protection requirements. To allow interested bidders an opportunity to be informed prior to bidding, the Commission should provide additional clarity regarding license impairments, and how these impairments will affect the 600 MHz band plan as a whole. The standard ultimately adopted by the Commission will dictate how much spectrum is cleared overall, as license impairments will factor into the Commission's determination of a "near-nationwide" band plan. It will also significantly impact the licenses available for sale in the forward auction. A clear, easily understood framework for

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<sup>2</sup> See, e.g., Comments of CTIA, AU Docket No. 14-252, at 4 (filed Feb. 20, 2015) ("CTIA Comments"); Reply Comments of CTIA, GN Docket No. 12-268, at 17 (filed Feb. 5, 2015).

determining impairments is essential to ensure that potential wireless licensees can accurately calculate the value of licenses made available in the forward auction. As an initial matter, then, the Commission should look at ways to reduce impairment so that market variability is more limited. The Commission should also provide more specific information regarding license impairments and how they will be calculated. Given the considerable confusion and uncertainty reflected in the record, basic principles of administrative law dictate that the Commission must, at a minimum, clarify its proposals before it proceeds.

**A. The Commission Should Aim to Reduce Impairment in the 600 MHz Band.**

The Commission should seek to minimize license impairments, both because of the need for additional unencumbered spectrum and the importance of promoting an efficient, productive incentive auction. The record reflects a strong desire by commenting parties for the Commission to keep license impairments to a minimum. For example, license impairments will create significant uncertainty for bidders in the forward auction, making it difficult to assess the cumulative effect of impairments on the value of the underlying licenses particularly because the Commission has required that participants in the forward auction will bid on “generic” licenses.<sup>3</sup> This will necessarily reduce bidder certainty and depress participation. Also, the degree of impairment calculated by the Commission may not be an accurate reflection of a license’s value to bidders. As several commenters noted, a relatively small impairment to a license could

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<sup>3</sup> See, e.g., Comments of AT&T, AU Docket No. 14-252, at 17 (filed Feb. 20, 2015) (“AT&T Comments”) (“Participants in the forward clock auction would have to bid without knowing which spectrum blocks they may ultimately receive and what the quality of that spectrum will be.”); Comments of Verizon, AU Docket No. 14-252, at 7 (filed Feb. 20, 2015) (“Verizon Comments”) (“Bidders would then have to engage in the exceedingly difficult task of determining how to value these impairments, wherever and whatever they are.”).

nonetheless significantly reduce its utility.<sup>4</sup> And finally, license impairments will greatly complicate network design, potentially delaying deployment or compromising service to wireless consumers.<sup>5</sup>

The Commission should therefore look at ways to reduce impairments to individual licenses, and to reduce the number of licenses that are impaired. This will ultimately make it easier for the Commission to achieve its goal of a “near-nationwide” band plan that still clears a considerable amount of spectrum for wireless. Obviously certain impairments, such as those created by broadcast stations in Canada and Mexico, are unavoidable. CTIA appreciates the Commission’s effort to accommodate higher clearing targets by adopting a variable band plan and permitting impaired licenses. However, the Commission should examine possible ways to reduce license impairment, as discussed below in Section II. B, and limit market variability.

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<sup>4</sup> See, e.g., Comments of Sprint Corporation, AU Docket No. 14-252, at 25 (filed Feb. 20, 2015) (“Sprint Comments”) (“A narrow focus on the percentage of the license area population that is impaired overlooks a number of important factors. For instance, certain less-populated areas may hold significant utility value for operators – consider highway interchanges, sports stadiums and areas around them, or large shopping malls at a distance from population centers.”); Comments of United States Cellular Corporation, AU Docket No. 14-252, at 8 (filed Feb. 20, 2015) (“USCC Comments”) (“As a result, even if a 600 MHz license has a minimal level of impairment in relation to the [Partial Economic Area’s] PEA’s total population, the areas subject to inter-service interference could be concentrated in the portions of the PEA that encompass a carrier’s current service area, and thus have the greatest value to the carrier.”); AT&T Comments at 19-20 (“A license in which the impairment affects a dense downtown area may not be equivalent to a license with the same ‘percentage’ impairment but where the impairment affects more peripheral areas. Indeed, even a Category 2 license with a 20 percent interference impairment in less populated areas might be more valuable than a Category 1 license with a 10 percent exclusion zone covering a critical portion of the city.”).

<sup>5</sup> Sprint Comments at 26 (“The addition of impairment areas, in which 600 MHz deployment in an area is even *more* divergent from an operator’s existing deployment architecture, presents not only initial deployment (and upgrade) challenges but also continuing load-balancing challenges as an operator must consider unusually-distributed traffic-loading constraints across its license area.”); Verizon Comments at 8 (“The need to avoid impaired areas creates many problems in designing the network to provide seamless service, impacting license values and even the number of interested bidders. Building coverage that avoids impaired areas will also adversely impact wireless customers.”).

This will enable forward auction bidders to bid with confidence and will ultimately result in more robust 600 MHz mobile broadband networks.

**B. A Near-Nationwide 20 Percent Impairment Standard May Not Ensure a “Near-Nationwide” Band Plan.**

CTIA urges the Commission to reexamine its proposed 20 percent impairment threshold for determining whether a “near-nationwide” band plan has been achieved for a particular clearing target.<sup>6</sup> Several commenters in this proceeding, including CTIA, observed that a nationwide 20 percent impairment standard may not be the best way to create a “near-nationwide” band plan. Because a true “near-nationwide” band plan will be essential to promoting an efficient deployment of services in the 600 MHz band, the Commission should closely consider the input of commenters in this proceeding and whether an alternative approach would better promote the principle of a “near-nationwide” band plan.

In its initial comments, CTIA observed that the Commission’s approach to limiting market variation could produce less-than-ideal results.<sup>7</sup> For example, the Commission’s proposal could create significant impairments in a large number of major markets while still not

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<sup>6</sup> In an effort to establish a “near-nationwide” band plan, the Commission proposes to weight the affected population in a license area by a price index based on values from past auctions. Auction 1000 Public Notice ¶ 38 (“Under this approach, for a given clearing target and assignment of TV stations to channels, we calculate the percentage of the population impaired in every PEA for each license using the county level data generated using the measurement approach set forth above. We multiply that percentage by the weighted-pops associated with the PEA to determine the ‘impaired weighted-pops’ for the license.”). The Commission then proposes to set the near-nationwide clearing target at less than 20 percent. *Id.* ¶ 39 (“Under this standard, a clearing target could be chosen only if 80 percent or more of the weighted-pops in the targeted amount of spectrum nationwide is considered unimpaired according to our methodology.”). In other words, a clearing target could be chosen only if 80 percent or more of the weighted-pops in the targeted amount of spectrum nationwide is considered unimpaired according to the Commission’s methodology. *Id.*

<sup>7</sup> CTIA Comments at 9.

reaching the 20 percent impairment target.<sup>8</sup> Conversely, impairment of markets covering massive geographic swaths of the United States may nonetheless be permissible under a “near-nationwide” band plan, as these impairments would still amount to less than 20 percent.<sup>9</sup>

Several other commenters cited flaws with the “20 percent” standard. First, commenters noted that for any given clearing target, there could be multiple repacking solutions that would satisfy the 20 percent standard – but the Commission may not choose the “best” solution.<sup>10</sup> Second, the Commission’s approach will always prioritize the highest possible clearing target, even if there is a drastic reduction of impairment at the next-lowest clearing target.<sup>11</sup> Third, the Commission could satisfy the “near-nationwide” requirement even if more than half of the available blocks in major cities are more than 50 percent impaired and thus cannot be auctioned.<sup>12</sup> Indeed, a lower clearing target could contain more auctionable spectrum than a higher clearing target.<sup>13</sup> Alternatively, the 20 percent standard could result in a patchwork band plan that would make it very difficult for bidders to plan their bidding across adjacent markets.<sup>14</sup>

Commenters proposed a variety of potential improvements on the Commission’s proposed 20 percent standard. For example, some commenters have suggested that the

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<sup>8</sup> *Id.* at 7, 9.

<sup>9</sup> *Id.* at 9.

<sup>10</sup> AT&T Comments at 22.

<sup>11</sup> *Id.* at 22-23.

<sup>12</sup> Comments of T-Mobile USA, Inc., AU Docket No. 14-252, at 19 (filed Feb. 20, 2015) (“T-Mobile Comments”); Comments of the National Association of Broadcasters, AU Docket No. 14-252, at 9-10 (filed Feb. 20, 2015) (“NAB Comments”).

<sup>13</sup> AT&T Comments at 23.

<sup>14</sup> Verizon Comments at 4-5.

Commission adopt an additional requirement that a certain number or percentage of licenses in the top markets be unimpaired.<sup>15</sup> Other proposals include: (1) lowering the nationwide impairment threshold for larger clearing targets;<sup>16</sup> (2) only permitting impairments in border areas;<sup>17</sup> and (3) not adopting population-weighting of impairments.<sup>18</sup>

CTIA agrees that the Commission's proposed rules could lead to highly undesirable results that would nonetheless satisfy the Commission's 20 percent "near-nationwide" standard. The Commission should closely consider the submissions of commenters in this proceeding and determine a means of accommodating a minimal amount of market variation while adopting a band plan that is as consistent as possible.

**C. The Commission Must Provide Additional Detail and Clarity Regarding Its Proposed Methodology and Standards For Determining Impairments.**

Given the considerable confusion and uncertainty reflected in the record regarding license impairments, the Commission is obligated by basic principles of administrative law to provide additional clarity regarding the standards it has proposed and its means of applying them. Several of the Commission's proposals with respect to impairments appear to be arbitrary, overly complex, and inadequately explained. It is not surprising that several commenters in this proceeding expressed confusion regarding what the Commission is proposing and how it will impact their individual bidding strategies. This reaction suggests that the Commission should reform or simplify its procedures or, at a minimum, provide additional information prior to

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<sup>15</sup> See, e.g., Comments of the Competitive Carriers Association, AU Docket No. 14-252, at 10 (filed Feb. 20, 2015) ("CCA Comments"); T-Mobile Comments at 18.

<sup>16</sup> T-Mobile Comments at 19.

<sup>17</sup> AT&T Comments at 11; Verizon Comments at 4.

<sup>18</sup> Verizon Comments at 6.

adopting its rules. Indeed, as explained further below, principles of administrative law compel such action. CTIA identified several Commission proposals that require clarification prior to final action.

***The Near-Nationwide 20 Percent Impairment Threshold.*** The Commission proposes to limit the amount of market variation associated with a clearing target by limiting impairments on a nationwide aggregated basis to less than 20 percent of “weighted-pops.”<sup>19</sup> Not only does the record reveal several flaws with this proposal (see above), but the Commission also provides no explanation for why or how it chose the 20 percent number – it simply indicated its belief that this limit “is appropriate.”<sup>20</sup> This number “is plucked from thin air” and the Public Notice “provides no basis for auctioning spectrum that would subject as much as one-fifth of the weighted population to inter-service interference.”<sup>21</sup> Moreover, this standard neither “impose[s] reliable constraints on how broadly or how narrowly the impairments to the 600 MHz band plan will be distributed by geography,” nor “constrain[s] the amount of spectrum encumbered in the forward auction relative to a spectrum-clearing target that can vary over the course of the incentive auction.”<sup>22</sup> The choice of this number was criticized as an action that will allow “the variability exception [to] have swallowed whole the rule of a unified, nationwide band plan.”<sup>23</sup> If the Commission did, in fact, contemplate alternate numbers, it did not indicate as such in the Public Notice or explain why the alternatives were discarded in favor of this proposal. As

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<sup>19</sup> Auction 1000 Public Notice ¶ 37.

<sup>20</sup> *Id.* ¶ 39.

<sup>21</sup> AT&T Comments at 23.

<sup>22</sup> T-Mobile Comments at 17.

<sup>23</sup> NAB Comments at 8-9.

described above, CTIA urges the Commission to carefully evaluate commenters' proposals for improving the impairment standard.

***Determining Whether a County is Impaired.*** For determining whether a county is “impaired” for purposes of determining impairments for a given clearing target, the Commission proposes setting a threshold “within the range of 10-to-20 percent.” Impairment above that threshold level would result in the county being considered wholly impaired.<sup>24</sup> The proposed 10 to 20 percent range, however, is extremely wide, and the Commission has not proffered a sufficient explanation for why such a broad range is acceptable, or why this particular range is appropriate. The Commission should thus provide more detail about the proposed metric before adopting it. It is extremely difficult for commenters to meaningfully evaluate proposals, such as this one, that lack specificity and have a vastly different impact depending on which end of the range the Commission elects. This proposal is particularly confusing in light of the fact that the Commission proposes to apply it differently to uplink and downlink spectrum.<sup>25</sup>

***Population-Weighting to Determine Impairments.*** The Commission proposes to measure the impact of impairments in terms of “weighted-pops,” weighting the affected population in a license area by a FCC-created price index.<sup>26</sup> However, the Commission has not revealed enough information about its proposed price index to understand how it will operate – all the Commission said is that the price index is based on previous auctions. CTIA agrees with Verizon’s observation that “the Public Notice does not identify any non-arbitrary standard for

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<sup>24</sup> Auction 1000 Public Notice ¶ 29.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* ¶ 38.

deciding which prior auctions should be included and which should not.”<sup>27</sup> As CTIA and others noted, the Commission did not provide the calculations it used to arrive at its proposed price index numbers, the specific auction data it relied upon, or the mathematical formulas used.<sup>28</sup> This makes it nearly impossible for interested parties to provide meaningful feedback on this proposal.<sup>29</sup>

These examples illustrate that, as a general matter, the Commission’s proposed impairment-related policies that are complicated, often amorphous, and not sufficiently explained. As a result, interested parties – including prospective forward auction bidders – expressed considerable uncertainty and confusion regarding the framework the Commission seeks to adopt. The Commission should simplify and clarify its proposals, provide additional information, and not adopt rules until interested parties can truly understand the proposed rules and their impact on license impairments and, ultimately, the auction’s success.

Providing additional information to interested parties will not only increase the likelihood of a successful auction, but it is also required by basic principles of administrative law. The APA requires agencies to “provide sufficient factual detail and rationale” for proposed rules to “permit interested parties to comment meaningfully” on the proposal.<sup>30</sup> Notices that propose the adoption of rules are accordingly required to present concrete, detailed proposals, supported by

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<sup>27</sup> Verizon Comments at 6.

<sup>28</sup> See, e.g., Verizon Comments at 6; CTIA Comments at 8-9.

<sup>29</sup> See, e.g., AT&T Comments at 20; NAB Comments at 9; Verizon Comments at 6.

<sup>30</sup> *Florida Power & Light Co. v. U.S.*, 846 F.2d 765, 771 (D.C. Cir. 1988).

reasoning and discussion of possible alternatives, to allow for meaningful public comment.<sup>31</sup> Courts have held that an agency fails to give adequate notice and opportunity to comment if a proposal is too general or too amorphous to permit meaningful comment.<sup>32</sup> Agencies are thus obligated to “provide an accurate picture of the reasoning that has led . . . to the proposed rule,”<sup>33</sup> “make its views known to the public in a concrete and focused form,”<sup>34</sup> and “include sufficient detail” on the content of its proposals.<sup>35</sup> As discussed above, in the initial round of comments, parties expressed significant confusion regarding key elements of the Commission’s impairment analysis. Without the benefit of detailed, understandable proposals before them, interested parties in this proceeding have not been given adequate notice or the opportunity to meaningfully comment on the proposed procedures.

### **III. THE COMMISSION SHOULD PROVIDE SUFFICIENT TIME AND DATA TO PROMOTE INFORMED DECISION-MAKING BY BIDDERS.**

For the incentive auction to be a true success, it must be structured in a manner that provides forward auction bidders the time and data necessary to make informed decisions that reflect their individual spectrum needs and strategies. To enable this, the Commission should take several steps. First, the Commission should provide additional inter-service interference

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<sup>31</sup> See *Honeywell Int’l, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004) (stating that a “notice of proposed rulemaking must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully”).

<sup>32</sup> See *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983) (holding that a proposal was too general to provide adequate notice and comment opportunity because it did not “describe the range of alternatives being considered with reasonable specificity”).

<sup>33</sup> *Conn. Light & Power Co. v. NRC*, 673 F.2d 525, 530 (D.C. Cir. 1982).

<sup>34</sup> *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977).

<sup>35</sup> *Am. Med Ass’n v. Reno*, 57 F.3d 1129, 1132-33 (D.C. Cir. 1995).

data to enable bidders to further research potential impairments to their licenses. Second, the Commission should ensure that its proposals do not sacrifice informed decision-making in favor of auction speed. Finally, the Commission should adopt activity rules that accommodate the needs of bidders and do not unduly burden them as they make key decisions regarding their auction participation.

**A. The Commission Should Provide Additional Inter-Service Interference Data to Enable Bidders to Calculate Impairments.**

One key way the Commission can assist bidders is by providing them with inter-service interference data based on both the F(50,50) and F(50,10) statistical measures.<sup>36</sup> This will allow bidders to model in more detail the interference environment in markets where they plan to bid, and will help to inform their bidding strategies. However, the Commission indicated that it will only provide license impairment data based on the F(50,50) statistical measure.<sup>37</sup> As CTIA previously explained, the Commission's more conservative F(50,10) interference measure will provide forward auction bidders with more useful information regarding the nature and frequency of interference they may suffer in particular impaired markets. By providing information based on *both* statistical measures, the Commission will give bidders a more complete interference picture. In its comments, Sprint highlighted numerous examples of how provision of this data can benefit bidders by providing more complete information regarding interference in a particular market.<sup>38</sup>

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<sup>36</sup> The F(50,50) statistical measure for field strength prediction assumes that an interfering signal will be strong enough to interfere in 50 percent of the locations 50 percent of the time. The F(50,10) measure for field strength prediction assumes that an interfering signal will be strong enough to interfere in 50 percent of the locations 10 percent of the time.

<sup>37</sup> Auction 1000 Public Notice ¶ 140, n.251.

<sup>38</sup> See Sprint Comments at 18-21 (providing examples).

The Commission should also consider providing forward auction bidders with additional information on the broadcasters that would serve as a source of license impairment. As CTIA noted in its opening comments, by providing key broadcaster operating parameters to forward auction bidders on a confidential basis, the Commission would arm bidders with extremely useful information.<sup>39</sup> Because data would only be provided from broadcasters who exited – or never entered – the reverse auction, provision of this data on a confidential basis would help ensure that the identities of participating broadcasters remain confidential, consistent with the Spectrum Act.<sup>40</sup>

**B. Speed Should Not Trump More Important Considerations.**

While CTIA understands the Commission’s desire to expedite the incentive auction in an efficient manner, this goal should not undermine other, more important considerations that will have a greater bearing on the auction’s success. In particular, the Commission should provide forward auction bidders with more time to regroup and make key strategy decisions between auction phases. Additionally, the Commission should not rush to auction the most impaired licenses – *i.e.*, those that are impaired by more than 50 percent.

**1. The Commission Should Provide More Time Between Rounds.**

Several commenters echoed CTIA’s call for the Commission to provide bidders with more time between auction stages, and CTIA reiterates its request that the Commission allow at least two weeks between auction stages. The Commission suggests that forward auction bidding will start on the second business day after the close of bidding in the reverse auction (for the first stage of the auction), then the forward auction bidding will start on the next business day after

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<sup>39</sup> See CTIA Comments at 10.

<sup>40</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(a)(3) (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (“Spectrum Act”).

the close of reverse auction bidding in subsequent stages.<sup>41</sup> This is not enough time for bidders to analyze the results of the reverse auction and develop strategies for the forward auction. As LocusPoint Networks noted, “[w]hile this period may suffice if impairments are few, forward auction bidders may need additional time to evaluate the situation under the level of potential impairment proposed by the Commission.”<sup>42</sup> Further, forward auction bidders “will have to perform detailed, independent calculations on virtually every license in the country that has an impairment and adjust the internal valuations of each license based on an assessment of the degree of the impairment relative to the carrier’s coverage and capacity objectives in that market and across the nation.”<sup>43</sup> Thus, additional time is warranted.<sup>44</sup> For the same reasons, commenters supported the provision of additional time between the forward auction and the assignment round.<sup>45</sup> During this period, “bidders would have to identify adjacent and contiguous blocks and assess their relative preferences for a variety of combinations among and between the licenses based on a complex, multi-market assessment of known impairments, possible frequency assignments, existing spectrum holdings, and potential competitors.”<sup>46</sup>

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<sup>41</sup> Auction 1000 Public Notice ¶ 66.

<sup>42</sup> Comments of LocusPoint Networks, AU Docket No. 14-252, at 12 (filed Feb. 20, 2015) (“LocusPoint Comments”).

<sup>43</sup> T-Mobile Comments at 37.

<sup>44</sup> Commenters presented varying proposals for how much additional time the Commission should allow. *See, e.g., id.* at 38 (proposing at least five business days in the initial stage and three business days in subsequent stages); Sprint Comments at 50 (arguing that the Commission should provide two weeks after it optimizes its provisional repacking plan and provides block impairment information).

<sup>45</sup> T-Mobile Comments at 38.

<sup>46</sup> *Id.*

In its initial comments, CTIA requested that the Commission provide at least two weeks between the reverse auction and forward auction and between the conclusion of the forward auction and the start of the assignment round to permit interested parties sufficient opportunity to analyze results and develop future strategies.<sup>47</sup> CTIA takes this opportunity to reiterate that request. The provision of additional time “will not materially prolong the incentive auction, but will permit bidders to make more informed choices about their license bids and assignments and have greater confidence in the overall accuracy and reliability of the auction.”<sup>48</sup> This is a key public interest benefit, and the Commission should not overlook it in its effort to bring the auction to a rapid conclusion.

**2. The Commission Should Not Rush to Auction the Most Impaired Licenses.**

To promote an efficient assignment round and productive allocation of the most impaired licenses, the Commission should not take action to auction licenses with greater than 50 percent impairment until a later date. This will promote a more productive use of spectrum than if the Commission makes “overlay” licenses available in the assignment phase.

The Commission would be acting prematurely if it bundled the most impaired licenses with other spectrum during the assignment round. Bidders may not be in a position to know their interest in this spectrum until after the assignment phase is over and winning bidders have an opportunity to evaluate their individual auction results. By addressing these licenses at a later date, the Commission will promote a more efficient assignment round and ensure that this spectrum is acquired by the parties that most value it. Indeed, “[c]ompetitive bidding would

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<sup>47</sup> CTIA Comments at 15-18.

<sup>48</sup> T-Mobile Comments at 40.

allow the market to determine a fair price for these spectrum blocks, which could enable expanded and accelerated network deployment by mobile broadband providers.”<sup>49</sup>

**C. The Commission’s Activity Rules Should Not Unduly Burden Forward Auction Bidders.**

Several commenters agreed with CTIA that the Commission’s proposed activity rule for the forward auction is overly aggressive, particularly in light of the innovative and unprecedented nature of the incentive auction. The activity requirements proposed by the Commission – which would require that bidders be active on between 92 and 97 percent of their bidding eligibility in all regular clock rounds<sup>50</sup> – would have a significant negative impact on forward auction bidders. Not only should the Commission adopt less aggressive activity requirements, but it should also – consistent with past practice – not move to higher activity levels until it confirms that bidders are comfortable with such action.

Several parties highlighted how the Commission’s proposed activity rules could negatively impact the bidding process and have “unintended harmful consequences” on bidders.<sup>51</sup> For example, application of the activity rule could limit a bidder’s ability to make strategic moves that allow them to obtain the best possible spectrum available within their budget.<sup>52</sup> Also, because the incentive auction is the first of its kind, bidders will necessarily be

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<sup>49</sup> *Id.* at 33.

<sup>50</sup> Auction 1000 Public Notice ¶¶ 186-188.

<sup>51</sup> AT&T Comments at 48.

<sup>52</sup> Sprint Comments at 51-52 (“Suppose, for example, a bidder wants to buy licenses in New York, San Francisco, and Los Angeles. While the bidder can afford one license in all three markets, it can only afford to have a second license in either New York City alone or Los Angeles and San Francisco combined. Ideally, the bidder should be able to shift its interest between those two market options until either the bidder is able to secure the second license or the bidder is priced out of one of the markets. An 80 percent activity rule would permit such bidding and would also help ensure that the highest and best use of the spectrum in all three

uncomfortable with the new format at first, and will need time to adjust. Commenters also highlighted how the proposed activity rules – particularly in the absence of rule waivers – would have a particular negative impact on smaller carriers.<sup>53</sup>

Commenters therefore supported less aggressive activity rules than those proposed by the Commission, noting that “a better approach would be to adopt a lower activity rule in earlier rounds, and then higher requirements in later rounds.”<sup>54</sup> Commenters also supported the provision of activity rule waivers, noting that these waivers allow bidders – particularly resource-constrained bidders – to “carefully analyze all of the potential consequences of their bidding activity prior to placing bids.”<sup>55</sup> Such waivers also “ensure that a bidder who makes an honest error during the bidding process that results in activity that does not satisfy the rule is not unduly punished.”<sup>56</sup>

CTIA agrees that “especially with an auction this complex, some flexibility is needed in order for bidders to make intelligent decisions.”<sup>57</sup> With this principle in mind, the Commission should adopt less aggressive activity rules, permit activity rule waivers, and reach out to bidders between auction stages to ensure they are comfortable with the Commission moving to a higher activity requirement.

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markets is obtained; however, the Commission’s higher activity rule proposal could foreclose the bidder from obtaining second licenses in Los Angeles and San Francisco, even if those licenses proved to be less expensive than a second license in New York City.”).

<sup>53</sup> Sprint Comments at 52; USCC Comments at 32; Comments of Cellular South, Inc., AU Docket No. 14-252, at 5 (filed Feb. 20, 2015) (“C Spire Comments”).

<sup>54</sup> AT&T Comments at 48. *See also* Sprint Comments at 52; C Spire Comments at 5.

<sup>55</sup> USCC Comments at 32.

<sup>56</sup> AT&T Comments at 48.

<sup>57</sup> Sprint Comments at 52.

#### **IV. THE COMMISSION SHOULD PROVIDE BROADCASTERS WITH GREATER FLEXIBILITY TO ADJUST THEIR BIDS DURING THE AUCTION.**

Because the overall success of the incentive auction is tied to the degree of broadcaster participation, the Commission's rules and procedures for the incentive auction must make the encouragement of broadcaster participation a top priority. The Commission can and should do more to provide broadcasters with the incentive and ability to participate, including by providing broadcasters with greater flexibility to adjust their bids during the auction. Specifically, the Commission should permit participating broadcasters to adjust their bids both "up" and "down" the Commission's hierarchy of bid options.

The Commission organized the three bid options to broadcasters (plus the option to maintain the status quo) into a hierarchy in order of relinquishment and value to the auction.<sup>58</sup> Under the Commission's current proposal, a broadcaster would be able to move through the hierarchy from greater relinquishment to less, but not vice versa.<sup>59</sup> In other words, once a bidder elects to change its bid option to one that involves less relinquishment, that choice is irreversible. While the Commission asserted that its proposed approach will "simplify bidding choices and lead to a speedier reverse auction,"<sup>60</sup> it may also discourage otherwise-interested broadcasters from participating, a result not in the public interest. CTIA therefore believes this proposal could unnecessarily inhibit auction participation.

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<sup>58</sup> *Id.* ¶ 73. The order of the hierarchy is as follows: (1) go off-air; (2) move to Low-VHF (where applicable); (3) move to High-VHF (where applicable); and (4) remain in the licensee's existing band.

<sup>59</sup> Auction 1000 Public Notice ¶ 74 ("If and when the auction system accepts that change in the bidder's preferred option, the bidder will not be allowed to request to go off-air later because that would represent a move down in the hierarchy of options.").

<sup>60</sup> *Id.*

Broadcasters should instead be given greater flexibility to move both up and down the hierarchy in the course of bidding. CTIA can envision a scenario where a broadcaster initially decides to go off the air, opts to move to VHF, but then desires to revert to its original option. The Commission’s current proposal would prohibit this, but CTIA believes that the Commission should permit broadcasters such flexibility. By doing so, the Commission will give bidders flexibility to ultimately choose the best bid option for them. This will encourage auction participation and is in the public interest. Indeed, some broadcast commenters argued that this proposal will have a particular negative impact on broadcasters looking to move to VHF, and may discourage them from participating, noting that “if a broadcaster elects the move to high-VHF option in the first round of the auction and that option either becomes unavailable or the price for that option falls below the price that the broadcaster is willing to accept, its only option will be to remain in UHF.”<sup>61</sup>

The Commission offered no justification for its proposal beyond its statement that the “one-way” approach will lead to a speedier reverse auction. Even assuming this is true, the benefit of this proposal is not sufficient to outweigh the potential harm of broadcasters sitting out the auction when they might otherwise have opted to participate. To promote broadcaster participation, the Commission should be looking for opportunities to provide broadcasters with additional flexibility, and should decline to adopt procedures that would unnecessarily limit flexibility. The “one-way-hierarchy” is one such policy that should be rejected.

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<sup>61</sup> Comments of Broadcasters for VHF Pricing Parity, AU Docket No. 14-252, at 10 (filed Feb. 20, 2015).

## V. CONCLUSION.

The outcome of this proceeding will be critically important to the incentive auction's ultimate outcome. Thus, the Commission should adopt procedures that help ensure the auction's success. Specifically, it should provide forward auction bidders with the information needed to make informed decisions regarding spectrum assets, provide sufficient time for these key decisions to be made, and encourage participation by broadcasters. These actions, taken together, will help enable the incentive auction to satisfy the goals of the Commission and Congress.

Respectfully submitted,

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