

**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	)	

**COMMENTS OF AT&T**

Michael Goggin  
Gary L. Phillips  
Lori A. Fink  
1120 20th Street, N.W.  
Suite 1000  
Washington, DC 20036  
(202) 457-2040  
*Counsel for AT&T Services, Inc.*

May 1, 2015

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. SECONDARY AND UNLICENSED USERS SHOULD BE REQUIRED TO VACATE THE BAND ONCE A LICENSEE PROVIDES NOTICE THAT IT INTENDS TO BEGIN RADIOFREQUENCY TRANSMISSIONS IN A MARKET .....	3
III. THE PROPOSAL IN THE <i>PUBLIC NOTICE</i> IS OVERLY COMPLEX AND UNDULY BURDENSOME .....	6
IV. CONCLUSION.....	10

**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	)	

**COMMENTS OF AT&T**

**I. INTRODUCTION**

AT&T Services Inc. (“AT&T”), on behalf of the subsidiaries and affiliates of AT&T Inc. (collectively, “AT&T”) hereby submits the following comments in response to the Federal Communications Commission’s (“Commission”) Public Notice (“*Public Notice*”) in the above captioned proceeding.<sup>1</sup> The *Public Notice* proposes a framework for defining when a 600 MHz band licensee “commences operations” in its licensed spectrum, which then serves as a deadline for secondary and unlicensed users to cease operations in the area. As discussed herein, AT&T believes that the Commission should define the commencement of operations to more clearly protect the rights of wireless licensees as it transitions to the post-auction 600 MHz band environment.

Congress’s express purpose in granting the Commission incentive auction authority was to reallocate TV broadcast spectrum for exclusive, licensed use. To this end, the Spectrum Act affords almost no protections for secondary LPTV uses and mandates specifically that unlicensed services may not cause harmful interference to licensed users. Congress’s intent in passing the Spectrum Act was clear: reallocating much-needed spectrum for highly demanded mobile

---

<sup>1</sup> *Comment Sought on Defining Commencement of Operations in the 600 MHz Band*, Public Notice, FCC 15-38 (Mar. 26, 2015) (“*Public Notice*”).

services on an exclusive use basis. To comply with this mandate, the Commission will need to ensure that 600 MHz licensees are able to expeditiously clear spectrum won at auction from interfering operators. As a baseline, AT&T proposes that the Commission should require secondary and unlicensed users to cease operating in the repurposed spectrum at a date certain: the end of the post-auction transition period. Further, licensees should be able to clear spectrum in advance of this end date by providing 120 days' notice of the licensee's good faith intent to begin any radiofrequency transmissions in a given Partial Economic Area ("PEA"). An expedited process for removing operators who fail to timely vacate the PEA should be established so that licensees can efficiently handle any removal issues that may arise.

AT&T is concerned that the *Public Notice*'s proposed framework for determining whether a licensee has commenced operations places unreasonable burdens on licensees. The proposed approach would create unprecedented rights for secondary and unlicensed users—effectively allowing such users to freely access spectrum licensed exclusively to others without a lease or even the consent of the licensee. Not only is this proposed framework antithetical to traditional notions of exclusive use licensing, but it is completely untethered to anything in the Spectrum Act. What is more, as foreshadowed by the AWS-3 auction, 600 MHz exclusive use licenses are expected to draw substantial bids, totaling into the billions of dollars. The Commission should ensure that winning bidders obtain the full array of rights that come with the licenses they have purchased, including the ability to exclude interfering operators from the spectrum.

## II. SECONDARY AND UNLICENSED USERS SHOULD BE REQUIRED TO VACATE THE BAND ONCE A LICENSEE PROVIDES NOTICE THAT IT INTENDS TO BEGIN RADIOFREQUENCY TRANSMISSIONS IN A MARKET

AT&T submits that the Commission should pursue a more simple approach to transitioning broadcast television services and other operations out of the 600 MHz band. As an initial matter, all secondary and unlicensed users should be required to cease operations in the repurposed spectrum at a date certain—no later than 39 months from the issuance of the *Channel Reassignment Public Notice*.<sup>2</sup> In addition to this generally applicable transition deadline, a 600 MHz licensee should be able to clear its licensed spectrum by providing secondary and unlicensed users with 120 days’ notice that the licensee, in good faith, intends to commence operations.<sup>3</sup> In this context, “commencing operations” should mean beginning any radiofrequency transmissions in the 600 MHz band in the PEA in question. Under this framework, all secondary and unlicensed users would cease operations by the end of the 39

---

<sup>2</sup> As the Commission explains, the *Channel Reassignment Public Notice* will announce the incentive auction results and detail the repacking process. *Id.* ¶ 4, n. 7.

<sup>3</sup> To provide appropriate notice to TV white space (“TVWS”) devices, the Commission appears to contemplate licensees notifying “any of the TV bands database administrators when and where it plans to commence operations.” *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report & Order, GN Docket No. 12-268, ¶ 681 (2014) (“*Incentive Auction Report & Order*”). The National Association of Broadcasters (NAB) recently filed an emergency petition arguing that deep flaws permeate the current TVWS database, including widespread, inaccurate data. *See* National Association of Broadcasters Petition to Amend Sections 47 C.F.R. 15711(b) and 47 C.F.R. 15717, RM-11745 (Mar. 19, 2015). While AT&T has not closely examined the TVWS database, the NAB’s allegations, if true, are a cause for serious alarm. Industry will be dependent on the database policing complex interference environments, and for this reason, the Commission must act swiftly to ensure that the database is accurate and reliable.

month post-auction transition period and would be required to cease operating at an earlier date if a licensee provides 120 days' notice that it intends to commence operations.<sup>4</sup>

To ensure a smooth transition, the Commission should also send all secondary and registered unlicensed users a letter following the auction making clear that such users should begin immediate preparations to clear out of the band. For secondary licensees, the letter should also require licensees to correct any licensing information in CDBS for their stations, as well as certifying the operational status of their facilities.<sup>5</sup> By providing these users with early notice that transition plans are imminent, the Commission will eliminate any concerns about the adequacy of a 120 day notice period. In addition, the Commission should establish an expedited procedure for licensees to remove any operators that linger past the applicable transition deadline—that is, whichever comes first: the end of the 120 day notice period or 39 months after the *Channel Reassignment Public Notice* is issued.<sup>6</sup>

This straightforward approach to transitioning the repurposed broadcast spectrum is consistent with the dictates of the Spectrum Act and the exclusive use license rights for which the Commission will be seeking billions of dollars in bids. Never before has the Commission

---

<sup>4</sup> The Commission appears to contemplate such a framework for secondary users operating in the guard band (including the duplex gap). *See Public Notice* ¶ 4, n. 11. There is no reason why this framework should not be applied consistently throughout the 600 MHz band. If anything, it is incongruous to afford unlicensed services in the guard bands with elevated exclusion rights compared to wireless licensees who purchased their spectrum rights at tremendous cost.

<sup>5</sup> Any licensee not able to certify that they are currently operational should be required to demonstrate why their license should not be canceled.

<sup>6</sup> This framework is consistent with the transitional framework adopted for the 700 MHz band. *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television*, Second Report and Order, 26 FCC Rcd 10732 ¶ 36 (2011) (“Second Low Power TV Order”) (requiring LPTV operators to “cease operation[s]” within “120 days” of receiving notice that a wireless licensee intends to “initiate or change operations”).

carved out for secondary or unlicensed users significant rights to use spectrum that has been purchased at auction for a licensee’s exclusive use. This policy has evolved for good reason—the Commission historically has recognized that along with exclusive use licensing inherently comes dominion, control, and the power to exclude others from the purchased spectrum.<sup>7</sup> With these basic characteristics in mind, the Commission has required secondary licensees to cease operations and make way for exclusive use licensees in previous spectrum reallocations.<sup>8</sup> Similarly, establishing an outer limit for the transition process—39 months after the release of the *Channel Reassignment Public Notice*—aligns with the principles of exclusive use licensing and provides licensees with much needed certainty about when licensed spectrum will be available for the purpose for which the Commission has allocated it.<sup>9</sup> If a third party wishes to continue using licensed spectrum in a market where a licensee has given notice that it intends to commence service, the Commission’s existing secondary market licensing regime allows parties to negotiate the terms and conditions that would govern the continued spectrum usage.<sup>10</sup>

---

<sup>7</sup> See, e.g., *Manhattan U.S. Attorney Announces Seizure of Radio Equipment From Pirate Radio Stations*, Press Release, 2014 WL 1466881 (Apr. 14, 2014) (noting that pirate radio operators were “lin[ing] their own pockets while disrupting legitimate [licensees],” and thus should be “out of business and off the air”).

<sup>8</sup> See, e.g., *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 Rules for Digital Class A Television Stations*, Second Memorandum Opinion and Order, 28 FCC Rcd 14412, ¶ 8 (2013) (explaining that LPTV operators understood they “would ultimately be displaced by new wireless licensees, and that shortly after the completion of the full power digital conversion they would be forced to vacate these channels”).

<sup>9</sup> Setting a date certain for the transition is also consistent with the Commission’s approach to clearing the 700 MHz band. See *Second Low Power TV Order* ¶ 23.

<sup>10</sup> See, e.g., 47 U.S.C. § 19001 *et seq.*; Comments of CTIA – The Wireless Association, ET Docket No. 14-165, GN Docket No. 14-166, GN Docket No. 12-268, at 40 (Feb. 4, 2015) (“CTIA Unlicensed Comments”) (advocating private commons options that would permit parties to negotiate equitable arrangements with clearly defined rights and responsibilities).

Recognizing the benefits that flow from a licensing regime founded upon clarity, simplicity, and certainty, Congress declined to preserve a role for secondary or unlicensed operations in the 600 MHz band once a licensee intends to commence service. Indeed, the Spectrum Act affords LPTV stations “few to no rights” in the incentive auction reallocation process at all.<sup>11</sup> Likewise, the legislation does not contemplate any protection for unlicensed operations within exclusively licensed PEA markets; to the contrary, the Spectrum Act provides simply that the Commission “may permit the use of . . . guard bands for unlicensed use” so long as such use does not cause “harmful interference to licensed services.”<sup>12</sup> Put simply, the Spectrum Act does not contemplate secondary or unlicensed users continuing operations in the licensed 600 MHz band once a licensee acquires exclusive rights to the license. Nor does it contemplate requiring licensees to eject such users from purchased spectrum themselves via piecemeal notifications. The Commission should thus preserve the simplicity and certainty inherent in the exclusive use licensing regime by taking the transitional approach outlined by AT&T herein.

### **III. THE PROPOSAL IN THE *PUBLIC NOTICE* IS OVERLY COMPLEX AND UNDULY BURDENSOME**

The detailed and technical proposal in the *Public Notice* for determining when a licensee’s operations “commence” threatens to undermine the very rights winning bidders would purchase in the 600 MHz auction. Under this proposal, secondary LPTV users and unlicensed TVWS devices may operate “indefinitely” in licensed 600 MHz spectrum until a licensee

---

<sup>11</sup> Opposition and Reply of CTIA – The Wireless Association® To Petitions For Reconsideration, GN Docket No. 12-268, at 18 (Nov. 12, 2014); *see* 47 U.S.C. § 1401(6) (omitting LPTV stations from the definition of “broadcast television licensee”).

<sup>12</sup> 47 U.S.C. § 6407(c), (e).

provides notice that it intends to “commence operations.”<sup>13</sup> The *Public Notice* proposes that a licensee’s operations are deemed to commence only “after a cell site has been fully constructed, with all base station equipment, antennas, feed systems, and other hardware installed, and with all power systems and backhaul connectivity installed and operational.”<sup>14</sup> The proposal thus appears to envision secondary and unlicensed users continuing operations in the band until a licensee achieves these specified commencement criteria and provides users with notice, either directly or through the TV bands database.<sup>15</sup>

This unprecedented approach is antithetical to the license rights the Commission proposes to sell in the 600 MHz auction. By specifying a litany of criteria required to show that a licensee has “commenced operations,” the Commission creates the unreasonable suggestion that a licensee may need to litigate over whether it has sufficiently “commenced” operations in order to clear its licensed frequencies with an unlicensed or secondary use holdover. Allowing licensees to clear purchased spectrum for dedicated use is the cornerstone to the exclusive use licensing regime and has been critical in attracting investment in mobile broadband and, by extension, investment supporting auctions for mobile broadband spectrum.<sup>16</sup> With the FCC expecting to clear billions of dollars to ensure the success of the 600 MHz auction, avoiding

---

<sup>13</sup> *Public Notice* ¶¶ 4-5.

<sup>14</sup> *Id.* ¶ 5.

<sup>15</sup> *Incentive Auction Report & Order* ¶¶ 669, 680.

<sup>16</sup> *See* Comments of AT&T, Inc., Dkt. No. 12-354, at 8 (Jul. 14, 2014) (“AT&T 3.5 GHz Comments”).

rules that would impair a licensee's *exclusive* right to use its purchased spectrum is of paramount importance.<sup>17</sup>

As CTIA has recognized, permitting secondary and unlicensed users' continued access to exclusively licensed spectrum creates "substantial uncertainty for licensees" leading to "hindered or delayed deployment of services."<sup>18</sup> Before licensees can launch commercial service in a particular market, "they must engage in extensive construction and testing of equipment and services."<sup>19</sup> Having purchased expensive exclusive rights to use 600 MHz spectrum at auction, licensees should be free to satisfy these testing needs by a variety of methods and approaches. With the level of detail included in the Commission's interpretation of "commencement" however, licensees may be constrained to conducting tests that comport with the Commission's prescribed definition, perhaps solely to gain the right to clear holdover users from its licensed frequencies. Artificially limiting the kinds of testing that wireless licensees may choose to conduct in this way is unreasonable and unduly burdensome. Licensees should retain the flexibility to experiment with a variety of testing methods without fear that it may face challenges from holdover users to the adequacy of its commencement notice.

In addition to the overly constrained definition of commencing operations, the Commission proposes a very narrow approach to determining the precise market area that a notification would cover. In particular, the Commission proposes that notification of a licensee's intent to commence operations would only "cover the area served by the licensee's commercial

---

<sup>17</sup> See *Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97*, Public Notice, DA 15-131 (Jan. 30, 2015) (announcing that Auction 97 raised a total of over \$41 billion in bids).

<sup>18</sup> See Comments of CTIA – The Wireless Association®, GN Docket No. 12-268, at 40 (Jan. 25, 2013) ("CTIA January 2013 Comments").

<sup>19</sup> *Id.*

service infrastructure deployment.”<sup>20</sup> Under the Commission’s proposed coverage scheme, notices may thus only cover portions of a PEA market. In some cases, a licensee’s notice may only cover areas as small as a “highway corridor” if, for example, the licensee is “deploying commercial service in phases.”<sup>21</sup> This fragmented approach to clearing licensees’ spectrum would be overly complex and impose substantial administrative burdens on wireless licensees. It would also cause confusion among secondary and unlicensed users, adding more complexity to the TVWS database. A licensee should not be required to issue thousands of notices across the country to clear the spectrum that it has purchased for exclusive use. A piecemeal approach to clearing PEA markets would be inefficient and divert licensee resources from investing in new service deployments to tracking spectrum clearance notifications as deployments progress. Moreover, the proposed patchwork process would inevitably delay the deployment of commercial mobile services on the spectrum Congress and the Commission have reallocated for that express purpose—an outcome that contravenes the public interest.

Nothing in the Spectrum Act compels or even envisions the Commission’s proposed approach to clearing the reallocated 600 MHz band. To the contrary, as explained above, the Spectrum Act does not contemplate *any* protection for secondary or unlicensed users once the repurposed spectrum is auctioned. Although the Commission has recognized that some LPTV stations may provide “important services,” Congress determined that such services should have no corresponding protections.<sup>22</sup> The Commission should not second guess Congress’s policy judgment as it implements the Spectrum Act by granting secondary and unlicensed users

---

<sup>20</sup> *Public Notice* ¶ 6.

<sup>21</sup> *Id.*

<sup>22</sup> *Incentive Auction Report & Order* ¶ 656.

unprecedented rights and protections—rights that impact the value of the exclusive licenses the Commission is auctioning and could impact auction revenues. To this end, consistent with the Commission’s traditional approach to exclusive use licensing, licensees should have the unfettered ability and broad rights to remove secondary or unlicensed users that interfere with their planned operations.

In sum, the Commission should not require licensees to prove that they have commenced service, only to send notice of their intent to do so in a given PEA. Secondary and unlicensed users should be required to vacate the entire PEA market after receiving appropriate notice from the licensee or, in any event, within 39 months of the *Channel Reassignment Public Notice*’s release. To streamline the transition process and promote administrative efficiency, the Commission should also establish an expedited process to enforce these provisions against any such users still operating past the clearance deadline.

#### **IV. CONCLUSION**

AT&T appreciates the opportunity to comment on the Commission’s proposed approach to transitioning secondary and unlicensed users out of the repurposed broadcast spectrum. The Commission should implement a simple and straightforward approach to clearing the 600 MHz band after the auction concludes. Specifically, secondary and unlicensed users should be required to vacate the band by the end of the post-auction transition period. In addition, wireless licensees should be able to clear such users from PEAs by providing 120 days’ notice that it intends, in good faith, to begin radiofrequency transmissions in a given PEA. Further, the Commission should protect licensee’s exclusive use rights by establishing an expedited procedure to remove operators that fail to vacate the spectrum within the applicable timeframe. By taking the steps AT&T has advocated in these comments, the Commission will help foster a successful transition to the post-auction 600 MHz band environment.

Respectfully submitted,

By: /s/ Michael Goggin

Michael Goggin  
Gary L. Phillips  
Lori A. Fink  
1120 20th Street, N.W.  
Suite 1000  
Washington, DC 20036  
(202) 457-2040  
*Counsel for AT&T Services, Inc.*

Dated: May 1, 2015