

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

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

To: The Commission

**REPLY COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to the initial Comments filed in response to the Commission’s Public Notice seeking input on the definition of the term “commence operations” in connection with the transition of the 600 MHz band to licensed wireless communications use from broadcast television and secondary and unlicensed uses, including television white space (“TVWS”) device users.<sup>1</sup> WISPA’s initial Comments generally endorsed the Commission’s approach, but with the proviso that additional detail and structure will be required to afford adequate notice to all parties and promote the most efficient use of spectrum during the transition period and following initial roll-out of 600 MHz licensed service.

Most of the commenters responding to the *Public Notice* affirmatively support the approach outlined therein with respect to commencement of operations. These commenters represent a broad cross-section of stakeholders, including entities that have not often found

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

themselves in agreement on spectrum use and transition issues.<sup>2</sup> The lone oppositions to the Commission's framework come from AT&T and CTIA – The Wireless Association (“CTIA”), which each represent the interests of the mobile wireless industry. These commenters espouse the view that because incumbent mobile wireless carriers are expected to pay very large sums of money for the right to exploit 600 MHz spectrum for licensed use, they should be permitted essentially to dictate terms concerning transitional operations to suit their convenience. This view should be rejected as it fails to consider the significant public interest benefits and spectrum efficiencies that arise from allowing continued unlicensed use of spectrum within a given area before actual infrastructure deployment and provision of service by 600 MHz licensees.

A diverse group of commenters recognizes the sound judgment underpinning the primary proposal advanced in the *Public Notice*. These parties agree that responsible spectrum management requires that existing unlicensed spectrum users be permitted to continue operations on an interim basis until licensed wireless service providers begin final preparations to launch service in a specific area. For example, Google states that “[t]ying commencement of operations to site activation and commissioning tests while defining the commencement area only to include locations in which those tests are taking place will provide licensees appropriate certainty while enhancing spectrum utilization.”<sup>3</sup> As Microsoft notes, “such an arrangement embodies the concept of ‘use-it-or-share-it,’ which is an important spectrum policy tool for increasing the efficient use of spectrum.”<sup>4</sup> Ensuring that spectrum remains available for unlicensed use during

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<sup>2</sup> See Comments of CP Communications, LLC at 1-2 (filed May 1, 2015); Comments of Dynamic Spectrum Alliance at 1 (filed April 30, 2015); Comments of Google Inc. at 1 (filed May 1, 2015); Comments of Microsoft Corporation at 1 & 2 (filed May 1, 2015); Comments of the National Association of Broadcasters at 1-3 (filed May 1, 2015).

<sup>3</sup> Google Comments at 1.

<sup>4</sup> Microsoft Comments at 1.

the pre-operational transition period is consistent with the Commission's efforts to promote pro-competitive, spectrum-efficient use of this finite resource.

The opposing views advanced by AT&T and CTIA are couched by AT&T as "a more simple approach" premised principally on three dubious contentions: (1) that the *Public Notice* proposal is too cumbersome and complex for mobile wireless carriers to implement; (2) that the licensee's payment of money to acquire spectrum at auction should afford them immediate exclusive access to the spectrum, regardless of whether they actually provide service; and (3) that any other course is inconsistent with the Spectrum Act. None of these overlapping arguments has merit.

Under the Commission's approach, the only step that is required to trigger the requirement for secondary and unlicensed users to clear the spectrum is for a licensed wireless network operator to make final preparation for provision of service to the public,<sup>5</sup> a step which is ultimately mandated under the licenses that the FCC will issue.<sup>6</sup> Thus, there is no merit to AT&T's assertion that it might have to "litigate" whether commencement of operations has, in fact, occurred.<sup>7</sup> Under the Commission's proposed procedures, a licensee's notice that it will begin site commissioning tests will be self-effectuating, cutting off on a date certain the rights of secondary and unlicensed users to access the band.<sup>8</sup> It is therefore inherently consistent with CTIA's request that the Commission "empower[] wireless carriers to initiate the transition

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<sup>5</sup> See *Public Notice* at 1.

<sup>6</sup> See, e.g., 47 U.S.C. § 309(j)(4)(B) (FCC licenses assigned via competitive bidding must "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services"); 47 C.F.R. § 1.946.

<sup>7</sup> AT&T Comments at 7.

<sup>8</sup> See *Public Notice* at 3 & n.12.

process.”<sup>9</sup> The Commission’s proposal provides criteria governing when such notice should properly be given, as opposed to allowing licensed wireless operators to simply declare, in their sole discretion, that operations have commenced, *i.e.*, by activating a single transmitter in the band.<sup>10</sup>

The commercial wireless interests nonetheless maintain that allowing secondary and unlicensed use prior to site commissioning testing would somehow impede the ability of operators to properly design and test their systems. These objections, however, fail to articulate a coherent basis for this conclusion. Instead, they argue, without elaboration, that unspecified preliminary “testing” prior to commercial operation requires an interference environment identical to the one needed once commercial service is initiated.<sup>11</sup> Given well understood radio propagation characteristics, it is disingenuous to suggest that all spectrum must be cleared in order to allow proper pre-operation system design and construction. The types of fine-tuning that the mobile wireless interests describe to align real-world, on-site coverage with predicted coverage would generally be undertaken in the stage just prior to service activation, at individual transmitter sites using permanent base station equipment, exactly as the Commission proposed in the *Public Notice*. In any case, to the extent that it may be beneficial for 600 MHz licensees to conduct testing before the site commissioning date proposed by the Commission, given the intermittent and temporary nature of such testing, it should not be difficult for wireless licensees and unlicensed users to work cooperatively to test for interference.

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<sup>9</sup> CTIA Comments at 2.

<sup>10</sup> *Compare* CTIA Comments at 6 (arguing that “commencement of operations” should mean “the moment when a wireless carrier initially transmits on its licensed spectrum”).

<sup>11</sup> *See* AT&T Comments at 8; CTIA Comments at 7.

Similarly, AT&T and CTIA fail to articulate any clear basis for allowing commencement of operations at a specific site within any geographic sub-area of a Partial Economic Area market to automatically cut off all interim spectrum use by unlicensed users throughout the entire market. AT&T considers the failure to terminate all unlicensed users simultaneously throughout an entire market area to be a “fragmented approach” that “would be overly complex and impose substantial administrative burdens on wireless licensees,”<sup>12</sup> but it fails to show that this is true. When a licensee commences new service, it has a very accurate understanding of the geographic scope of the new service and can provide clear notice to unlicensed users based on this knowledge.<sup>13</sup> Because all commercial licensees will carefully plan and manage their own roll-out of new service areas and markets, there would be little, if any, incremental burden to require the commercial licensee to provide an effective notice of these operations through an FCC-administered process.

Both AT&T and CTIA cite as justification for their proposed market-wide cut-off of all unlicensed use wireless operators’ anticipated purchase of “rights to use all spectrum in their licensed area without impingement from ongoing secondary operations.”<sup>14</sup> AT&T and CTIA appear to have lost sight of the legal underpinnings of the auction license assignment process by which the rights of commercial licensees extend only insofar as their use of the spectrum serves the statutory and regulatory predicates of operations “in the public interest, convenience and necessity.”<sup>15</sup> Winning bidders do not “own” licenses, and the privileges of holding exclusive

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<sup>12</sup> AT&T Comments at 9. *See also* CTIA Comments at 7-8.

<sup>13</sup> *See* WISPA Comments at 4-5.

<sup>14</sup> CTIA Comments at 7-8. *See also* AT&T Comments at 9 (“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”).

<sup>15</sup> 47 U.S.C. § 309(a).

licenses come with responsibilities. In short, licensed carriers are not acquiring *exclusive access* to the spectrum at issue, but an *exclusive license to provide service* to the public. For these reasons, the continued validity of a license will be contingent on the satisfaction of construction and coverage requirements that ensure the licensee is actually engaged in providing service.

Exclusivity in the absence of actual service to the public is effectively “spectrum warehousing,” which is explicitly and fundamentally disfavored by Congress and long-standing Commission policy.<sup>16</sup> Indeed, the Commission recently rejected very similar AT&T arguments on these grounds.<sup>17</sup> The licenses that commercial wireless operators will obtain at auction endow them with a right to *use* spectrum to provide service, not a right to artificially encumber fallow and unused spectrum and to foreclose its use by others, or to exploit it solely for the purpose of exacting rents from other spectrum users.<sup>18</sup>

Moreover, the use of the spectrum by unlicensed TV white space operators and other users prior to the commencement of commercial licensed operations was a carefully-crafted regulatory and policy decision that the Commission made years prior to the incentive auction and the Spectrum Act; those regulatory decisions are not now in conflict with the commercial

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<sup>16</sup> See 47 U.S.C. § 309(j)(4)(B).

<sup>17</sup> As the Commission stated in the recent Order adopting rules for the 3.5 GHz band, “[u]nder AT&T’s model, channels assigned to [Priority Access Licenses] would effectively lie fallow until the Priority Access Licensee chooses to deploy its network in a given area, precluding opportunistic use of the spectrum and limiting the scope of potential [General Authorized Access] deployments. Thus, AT&T’s suggested policy could encourage spectrum warehousing and disincentivize efficient use of the band. We believe that it is in the public interest to ensure that the 3.5 GHz Band is made widely available to Citizens Broadband Radio Service users – regardless of their operational tier – and that Priority Access Licensees should not be permitted to exclude other authorized users unless and until their networks are in use.” *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, FCC 15-47, at ¶ 73 (rel. April 21, 2015).

<sup>18</sup> With respect to the latter point, AT&T pointedly notes in its Comments that “the Commission’s existing secondary market licensing regime allows parties to negotiate the terms and conditions that would govern the continued spectrum usage.” AT&T Comments at 5.

licensee's legitimate rights and interests in the spectrum. To the extent that AT&T and CTIA are suggesting that unlicensed use of the spectrum prior to commencement of licensed operations will somehow lower winning bidders' valuation of the licenses at auction, and thus reduce incentive auction proceeds to the Federal Treasury, this point is both misguided and unsupported.<sup>19</sup> All sophisticated bidders in the Commission's spectrum auctions fully understand that they operate under a complex set of regulatory and statutory obligations that may include relocation of licensed and federal incumbents – a process that auction participants have frequently employed to clear spectrum bands in specific areas prior to commercial deployment.<sup>20</sup> It is simply disingenuous to argue that the Commission's approach somehow increases the interference risk presented by secondary and unlicensed users that *know* they are subject to displacement when, in fact, auction winners have been buying spectrum and relocating incumbents for years. The reality is that neither AT&T nor any one of the other wireless carriers will begin to see a return on its substantial auction investment until after it *commences actual service to the public*, a step that occurs only after operations have “commenced” under the FCC definition. For this reason, there is no reason to believe that the close temporal relationship proposed between “commencement of operations” and the offering of service will adversely impact auction revenue.

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<sup>19</sup> AT&T is particularly heavy-handed in its efforts to leverage the promise of “substantial bids, totaling into the billions of dollars” as justification for FCC capitulation to its policy and procedural preferences, ultimately warning that pre-operational use of spectrum by “secondary and unlicensed users” could “impact the value of the exclusive licenses the Commission is auctioning and could impact auction revenues.” *Id.* at 2 & 9-10; *see also id.* at 2, 4 & 7; CTIA Comments at 4, 8 & 9-10.

<sup>20</sup> *See, e.g.*, 47 C.F. R. § 22.602; 47 C.F.R. § 101.69, *et seq.*

Finally, AT&T and CTIA maintain that any interpretation at variance from theirs would run afoul of the explicit provisions of the Spectrum Act.<sup>21</sup> The plain language of the Spectrum Act, however, contradicts this argument. AT&T and CTIA incorrectly assert that Section 6407 of 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.”<sup>22</sup> In fact, because the Spectrum Act neither mandates nor prohibits unlicensed use of the 600 MHz band after licensing but prior to the initiation of actual service, this spectrum-efficient approach can be adopted at the Commission’s discretion. In the absence of jurisdictional limitations, it is consistent with the Commission’s authority, as the expert agency, to make on-the-record determinations on spectrum use. Here, the Commission has wisely proposed a balanced regulatory process that ensures efficient temporal and geographic use of spectrum without increasing the potential for harmful interference and without creating unnecessary burdens on licensees and unlicensed users.

Indeed, to the extent that the language of Section 6407(e) is germane to the discussion of “commencement of operations,” it affirmatively undermines AT&T’s and CTIA’s central argument. Because harmful interference itself is fundamentally defined as an emission that “seriously degrades, obstructs, or repeatedly interrupts” a radiocommunication *service*,<sup>23</sup> it cannot exist when such service is not yet being provided. The Commission’s approach to “commencement of operations,” as described in the *Public Notice*, appropriately transitions usage of the spectrum from unlicensed to licensed at the time when and in the area where the

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<sup>21</sup> *See id.* at 1, 2, 4, 6 & 9; CTIA Comments at 3, 8.

<sup>22</sup> AT&T Comments at 6. *See also* CTIA Comments at 8 (“Congress did not intend for secondary services to have rights to continued operation in the 600 MHz band once the band has been cleared and reallocated for wireless services”).

<sup>23</sup> *See, e.g.*, 47 C.F.R. §§ 2.1(c) & 15.3(m).

licensee is prepared to actually commence service to the public, and appropriately excludes mere licensing or pre-operational planning on the subject frequencies from satisfying this standard.

### **Conclusion**

For all of the foregoing reasons, WISPA urges the Commission to proceed with the balanced approach it outlined in the *Public Notice* for defining “commencement of operations” by 600 MHz wireless licensees and administering the transition from existing secondary and unlicensed spectrum users to licensed wireless use. The Commission need only adopt the minor refinements outlined in WISPA’s initial Comments to establish clear procedures for pre-commencement notification and TVWS database updates that will benefit both unlicensed users transitioning out of the band and wireless operators that are launching new 600 MHz service.

Respectfully submitted,

### **WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

May 18, 2015

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