



June 28, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation

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

Dear Ms. Dortch:

On June 24, 2015, Michael Calabrese of the New America's Open Technology Institute (OTI), Matt Wood of Free Press, and Colin Oldberg of Common Cause met with Louis Peraertz, Legal Counsel to Commissioner Mignon Clyburn, concerning the above-referenced proceeding.

The public interest advocates conveyed the widespread concern in the unlicensed community that the incentive auction team's recommendation to relocate broadcast stations in the Duplex Gap in certain key markets, including quite possibly Los Angeles, Philadelphia and Baltimore, among others possibly, amounted to a reversal of the Commission's decision in last year's Report and Order to ensure nationwide markets for unlicensed TV White Space devices. The advocates said that if the Commission adopts the staff's recommendation, this would also reverse the agency's decision last year to adopt a balanced policy that protected the public interest in unlicensed spectrum, and in over-the-air broadcasting, in addition to a successful auction for the benefit of the wireless industry.

The Commission's 2014 Report and Order explicitly decided that under every auction scenario the band plan would include a 11 megahertz-wide Duplex Gap in every market nationwide and make all guard bands (including the Duplex Gap) available for unlicensed use.¹

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268, 29 FCC Rcd 6567, ¶¶ 270-271 (rel. June 2, 2014).

The Order stated: “Permitting unlicensed operations in the 600 MHz Band guard bands will make additional spectrum *available for unlicensed devices nationwide*. The record provides significant support for this action.”² The “support” cited by the Commission includes the express intent of Congress in the Middle Class Tax Relief and Job Creation Act, as described by former Rep. Henry Waxman, who was the House Commerce Committee’s ranking Democrat and negotiated the compromise the Report and Order cites: “Section 6407(c) was a compromise intended by the conferees to ‘create a *nationwide band* of spectrum that can be used for innovative unlicensed applications.’ 158 Cong. Rec. H915 (daily ed. Feb. 17, 2012) (remarks of Rep. Waxman).”³

The advocates noted that last year the auction team similarly recommended an unbalanced policy that would have largely crippled the great potential for low-band unlicensed spectrum. The auction team had recommended a band plan with a variable Duplex Gap as small as 7 megahertz. After hearing strong opposition from the Public Interest Spectrum Coalition (PISC) and the broader unlicensed community, the Commission amended the draft Report and Order and adopted a uniform, contiguous and nationwide Duplex Gap of 11 megahertz, which Broadcom, Google and other technology companies said is both technically reasonable and the minimum needed to ensure a “clean” unlicensed channel in every market nationwide would not interfere with LTE downlink channels.

The advocates noted that at the time of the 2014 Report and Order, it was widely discussed and accepted that locating an unlicensed channel in the Duplex Gap nationwide was essential to ensuring three six-megahertz channels in every market. Continued unlicensed access to at least three unlicensed channels is the minimum needed to spur and sustain the investment by companies including Broadcom and MediaTek to integrate the IEEE 802.11af standard for TVWS into Wi-Fi chips for smartphones, tablets and other mobile devices that would benefit from the greater penetration and range of low-band unlicensed spectrum. Together with unlicensed access to Channel 37 (shared with Wireless Medical Telemetry Services) and to one reserved channel in the ongoing TV band (shared with unlicensed wireless microphones), the Report and Order’s allocation of the Duplex Gap for unlicensed TVWS technologies a *nationwide* basis would provide the minimum three channels that are essential for investment and widespread deployment so useful to consumers.

² *Id.* at ¶ 271 (emphasis added). The Duplex Gap is the “guard band between 600 MHz uplinks and downlinks.” *Id.* at ¶ 270. The Report and Order further states: “Under the band plan we adopt in this Order, between 14 and 28 megahertz of spectrum in the 600 MHz Band guard bands *will be available for unlicensed use nationwide*, depending on the amount of spectrum recovered in the auction, *including in major markets where today and post-auction few if any vacant television channels may be available.*” *Id.* at ¶ 266 (emphasis added).

³ *Id.* at ¶ 271, n. 815 (emphasis added).

The advocates noted the strong opposition of the broadcast industry and licensed microphone users to locating any broadcast station in the Duplex Gap,⁴ as well as the fact that the wireless industry has stated in previous filings that locating a broadcast station in the Duplex Gap would create unacceptable levels of harmful interference to LTE downlink operations in the auctioned channels adjacent to the Duplex Gap.⁵

The public interest advocates concluded by stating that PISC and the unlicensed community believe that a bare minimum of three six-megahertz channels in every market nationwide remain essential to achieving the enormous public interest benefits of making low-band Wi-Fi over TVWS available in mobile (personal/portable) devices. Although fixed wireless broadband services by WISPs using unlicensed TVWS would likely continue in rural and small town markets, even those offerings will not be as affordable or available as they should be – or provide a direct air interface with consumer devices – unless the Commission once again amends the incentive auction staff’s recommendation and enacts a balanced policy that is not solely focused on maximizing auction revenue.

Respectfully submitted,

/s/

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cc: Louis Peraertz

⁴ Comments of the National Association of Broadcasters, *Incentive Auction Task Force Releases Initial Clearing Target Optimization Simulations*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, at 6-7 (June 3, 2015).

⁵ See, e.g., Comments of CTIA – The Wireless Association at 5, AU Docket No. 14-252, GN Docket No. 12-268 (filed Feb. 20, 2015); Comments of Verizon, AU Docket No. 14-252, GN Docket No. 12-268, at 4-8 (filed Feb. 20, 2015).