



Competitive Carriers Association
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July 9, 2015

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: EX PARTE NOTICE

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

WT Docket No. 12-269: *Policies Regarding Mobile Spectrum Holdings;*

AU Docket No. 14-252: *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*

Ms. Dortch:

Competitive Carriers Association (CCA) strongly urges the Commission to permit repacking of broadcasters in the duplex gap as necessary to achieve high clearing targets with the least impaired spectrum and thereby satisfy the increasing demand for competitive wireless commercial broadband service.¹ As the Commission itself has found, excluding broadcast stations from the duplex gap will significantly reduce spectrum clearing targets and significantly increase broadband impairments. Smaller spectrum-clearing targets comprised of more impaired spectrum also have the potential to slash billions of dollars from the funds available to pay broadcasters to clear the band and could close the door on broadcasters who had hoped to exit their businesses with a sizeable financial gain. Rather than prohibiting broadcast use of the duplex gap based on hypothetical concerns in a handful of markets, the Commission should follow the intent of Congress and adopt rules to provide consumers with greater access to broadband spectrum.

First, failing to repack broadcasters in the duplex gap undoubtedly will dramatically and irrevocably reduce the amount of spectrum available in the forward auction. The Commission's models in the *Initial Spectrum Clearing Target Public Notice* showed materially lower spectrum-clearing targets and increased impairments when staff ran simulations that avoided repacking stations into

¹ Accordingly, CCA opposes the proposal recently offered by the National Association of Broadcasters and others on this issue. See *Ex Parte* Letter from Nat'l Ass'n of Broadcasters, *et al.* to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (filed July 8, 2015).

the duplex gap.² The Commission found that, without using the duplex gap, the auction would fail to clear 114 megahertz of spectrum even if 50-60% of all broadcasters participated; worse still, the auction would fail to clear even 84 megahertz³ of spectrum without using the duplex gap should “only” 40-50% of all broadcaster participate.⁴

Second, deliberately reducing the quantity of cleared spectrum to protect unlicensed users would violate Congress’s intent in establishing the incentive auction. Congress authorized the Commission to conduct the 600 MHz incentive auction to clear broadcast spectrum for use by licensed operations, not unlicensed devices.⁵ The Middle Class Tax Relief and Job Creation Act of 2012 expressly provides that the Commission “*may permit* the use of...guard bands for unlicensed use,” but the Act simply does not allow the Commission to preserve the duplex gap for unlicensed uses at the cost of giving rise to harmful interference to licensed services.⁶

Third, there is no need to prohibit the repacking of broadcast stations in the duplex gap. Unlicensed advocates concede that locating broadcast encumbrances will “possibly” occur and only in a handful of markets where the broadcast band is fully occupied.⁷ Unlicensed interests also have an easy fix to their need for spectrum following the incentive auction: they can purchase or partner with the broadcast interests occupying the duplex gap following the auction. Licensed operators have no such luxury. Licensed operators have one shot – the incentive auction – to identify a uniform band plan and, through their collective bidding, clear the largest possible amount of spectrum for licensed *and* unlicensed use.

The Commission has one and only one opportunity to clear broadband spectrum for licensed and unlicensed use. The incentive auction is the one and only mechanism to achieve that goal. Trying to address possible unlicensed spectrum limitations in a handful of markets at the expense of the broadband spectrum objectives identified by the U.S. Congress, the Administration, and the Commission as codified in the Middle Class Tax Relief and Job Creation Act of 2012 is

² *Incentive Auction Task Force Releases Initial Clearing Target Optimization Simulations*, Public Notice, 30 FCC Rcd 4854, 4856 ¶ 6 (WTB 2015) (*Clearing Target Public Notice*) (finding that “excluding stations altogether from the duplex gap would increase the number of Category 2 licenses and heavily impaired licenses that the Commission proposed not to offer in the incentive auction”). The internal analysis of CCA and its member companies supports the FCC’s analysis.

³ This level of clearing equates to less than seven licenses for mobile broadband use for the entire wireless industry.

⁴ *Clearing Target Public Notice* at App. Table I.

⁵ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6403(c)(1)(A) (requiring the Commission to “assign[] licenses” for the use of reallocated spectrum during the forward auction).

⁶ See *id.* §§ 6407(c), (e) (emphasis added).

⁷ See, e.g., Letter from Michael Calabrese, New America, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed June 28, 2015) (expressing concern about the “relocate[ing] broadcast stations in the Duplex Gap in certain key markets, including quite possibly Los Angeles, Philadelphia and Baltimore, among others possibly”).

contrary to both law and policy. The Commission must retain the flexibility to place broadcast operations into the duplex gap where circumstances require.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

Regards,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel, CCA