

July 9, 2015

Via ECFS

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **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*

Dear Chairman Wheeler:

I served as the Ranking Member of the House Committee on Energy and Commerce that adopted, with strong bipartisan support, the Middle Class Tax Relief and Job Creation Act of 2012, better known as the Spectrum Act. I care deeply about the broadcast incentive auction and its ability to increase competition, repurpose spectrum for use by mobile broadband providers, and promote unlicensed uses of low-band spectrum. As a result, I am writing not only in my capacity as a strategic advisor to T-Mobile USA, Inc., but also out of my deep-seated and long-standing conviction that this country needs both more wireless broadband competition and more unlicensed spectrum.

I have long championed both of these policy goals. As an original co-author of the Spectrum Act, I fought, alongside my former colleague Rep. Anna Eshoo, to promote both the long-term potential of unlicensed spectrum and to enhance the ability of competitive carriers to succeed in bringing substantial benefits to consumers. But as with all telecommunications policy issues, there are always many competing demands and interests that must be balanced.

In a flurry of recent filings, there is currently dispute and division facing the Commission regarding how to balance the competing priorities of the many stakeholders in this proceeding. In my view, the Commission faces at least two sets of equally desirable, but seemingly incompatible ends.

First, advocates of licensed wireless broadband services, especially those with access to little or no low-band spectrum, want on the one hand to ensure the 600 MHz incentive auction clears enough spectrum to satisfy burgeoning consumer demand for affordable and innovative wireless products and services. On the other hand, advocates of unlicensed services want to expand the amount of unlicensed spectrum to increase the opportunity for the unlicensed economy to drive economic growth and innovation.

Second, smaller competitors and would-be rivals to Verizon and AT&T want to ensure the spectrum reserve that the Commission adopted comes into effect before the two dominant incumbents can purchase the lion's share of available low-band spectrum. At the same time, the two dominant incumbents want to delay the spectrum reserve from coming into effect as long as possible to promote their business interests, which may be driven in part by anticompetitive motivations that prompted repeated expressions of concern from the Antitrust Division of the U.S. Department of Justice.

The Commission thus faces a challenging task. The Communications Act directs the agency to satisfy multiple competing objectives while conducting what will arguably be the most complicated spectrum auction ever in a manner that will maximize the public interest.

While the tug-of-war between unlicensed and licensed uses and between competitive and dominant carriers may seem like a zero-sum game, I believe it is not and propose a reasonable compromise to resolve both issues. Put simply, the Commission should adopt a balanced approach to resolving these competing priorities, but *alter the balance depending on whether the ultimate spectrum-clearing target falls above or below 84 megahertz*.

At spectrum-clearing targets of more than 84 megahertz, the Commission will have more options to address competing priorities. The higher-clearing targets will allow the Commission greater latitude to expand opportunities for unlicensed operations in the duplex gap. It will also allow the Commission to do more to protect competitive carriers against a lengthy delay in activating the spectrum reserve that is necessary to prevent foreclosure pricing. At these spectrum-clearing levels, the Commission could:

- *Prohibit* the relocation of broadcast stations into the 600 MHz duplex gap; and
- *Adopt* a simple, single spectrum-reserve trigger of \$2 per MHz-POP for the Top 40 markets.

At spectrum-clearing targets of 84 megahertz or less, however, the Commission must, by necessity, focus on low-band spectrum availability. While competitive carriers rightly want the spectrum reserve to be triggered early in the bidding process, securing public access to a reasonably well developed block of less impaired licensed frequencies may be more desirable for all spectrum users – the dominant incumbents, the non-dominant competitors, and the unlicensed community – than having little or no additional low-band spectrum available at all. At spectrum-clearing levels of 84 megahertz or less, therefore, the Commission could:

- *Permit* the relocation of broadcast stations into the 600 MHz duplex gap; and
- *Preserve* the status quo spectrum-reserve trigger of both an average price of \$1.25 per MHz-POP for the Top 40 markets, and generating the actual costs necessary to close the auction.

I believe this approach reasonably ties both competing auction priorities to the amount of spectrum cleared. Moreover, the proposed 84 megahertz break-point is based firmly in the record of this proceeding. The Commission and most parties have long regarded 84 megahertz of spectrum clearing as the most likely, if not the optimum, target for the incentive auction.

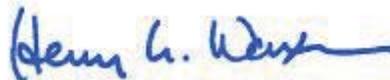
More spectrum is always better, of course. But a band larger than 84 megahertz is expected to carry more than a proportional increase in overhead costs. At the same time, a band smaller than 84 megahertz would offer less spectrum than wireless carriers likely need to provide competitive services to meet the exploding consumer demand for mobile broadband services. The 84 megahertz spectrum-clearing target thus provides a useful point for reconsidering the proper balance among various competing priorities.

Taken together, the proposed compromise approach I outline here offers something for everyone, but gives everything to no one. Nationwide, unlicensed access to spectrum will enable innovation and promote investment in new unlicensed technologies, and I believe the Commission should make every effort to promote unlicensed interests at higher clearing targets. If no more than 84 megahertz of spectrum is available, however, the Commission should prioritize the needs of licensed spectrum holders whose bids will enable the auction to satisfy its revenue goals and encourage robust broadcaster participation. At the same time, when clearing targets are high, the Commission can afford to accelerate activation of the spectrum reserve to ensure consumers enjoy the same or better competitive choices than they have today. If clearing targets fall too low, however, the Commission should prioritize securing the most spectrum for licensed and unlicensed uses alike.

This compromise proposal is not perfect. Truly balanced approaches rarely are. But this solution would do more than any other to offer expanded spectrum access where it is feasible, simplicity where it is practical and competitive safeguards where they are most needed to protect consumers.

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

Regards,



Henry A. Waxman
Chairman
Waxman Strategies

cc: Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly