



July 9, 2015

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

Re: Notice of Ex Parte Communications,

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268;
Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, AU Docket No. 14-252

Dear Ms. Dortch:

On July 7, 2015, I spoke with Jessica Almond of Chairman Wheeler's Office with regard to the above captioned proceeding.

With regard to the proposed double trigger for the spectrum reserve, I argued that the Commission should simplify the bidding rules by adopting a single trigger for the reserve (and only the reserve) of \$2 MHz/pop in the top 40 PEAs.

At the time the Commission adopted the "double trigger," there was considerable uncertainty as to whether broadcaster closing costs would be high enough to ensure a reasonable return to the public for use of the public spectrum asset in accordance with Section 309(j). Accordingly, the Commission adopted a "double trigger" of \$1.25 MHz/pop in addition to meeting the closing costs of the auction, in the event that closing costs did not exceed \$1.25 MHz/pop. In the post AWS-3 world, the expectation is now reversed. There is widespread consensus that the closing costs will well exceed the \$1.25 MHz/pop trigger. As a result, as T-Mobile and others have warned, it is likely that the reserve will trigger sufficiently late in the auction that competitive carriers may be priced out entirely.

A single, simple trigger of \$2 MHz/pop would avoid confusion, minimize opportunity for strategic bidding, and adequately protect the public in accordance with Section 309(j). The increase in the trigger from \$1.25 MHz/pop to \$2 MHz/pop would reflect the consensus surrounding the likely increase in value post-AWS-3. Simplifying the trigger would be consistent with the recent filing by the Department of Justice urging the Commission to take careful precautions to ensure against the possibility of foreclosure bidding. The results from the AWS-3

auction, where AT&T and Verizon simply poured money into the auction until nearly every other carrier was forced out of the major markets, provide further evidence both for the importance of the reserve and the need to protect competition by simplifying the trigger.

With regard to the proposal to relocate broadcasters in the Duplex Gap, I made the following arguments.

Placing broadcasters in the Duplex Gap would significantly impact the ability to develop next generation Wi-Fi using the TVWS. As the Commission noted in the 2014 Framework Order, the certainty of three usable channels in every market nationally for TVWS will encourage investment and deployment in the band. Even if the total number of markets impacted is relatively low, this will deprive millions of Americans of the full benefits of next generation Wi-Fi devices that will exploit this band. The loss of this market may also reduce investment and delay deployment, contrary to the public interest.

Therefore, if the Commission must relocate broadcasters in the 600 MHz band to meet the impairment clearing target, it should do so by relocating a broadcaster in the uplink, in accordance with the tentative conclusion of the NPRM and consistent with the 2014 Framework Order.

The staff model underestimates the impact of downlink impairment caused by locating broadcasters in the duplex gap. The Staff Study which prompted the Commission to reconsider its preliminary intention to relocate broadcasters in the duplex gap assumes that impairment to the uplink and to the downlink are of equivalent value. The record, particularly the strong negative reaction to relocating broadcasters in the duplex gap from the vast majority of wireless carriers and trade associations, suggests that this assumption significantly under-estimates the way in which the market will value impairment to the downlink v. impairment to the uplink.

Indeed, the negative reaction to the possibility of impairing the downlink by placing broadcasters in the duplex gap strongly suggests that doing so will depress wireless carrier bidding, placing the clearing target at risk from the other direction. The current proposal may allow the Commission to meet the clearing target by avoiding an overabundance of impaired spectrum, but may fail to meet the clearing target because impairment to the downlink devalues the spectrum from the perspective of wireless carriers bidding on the licenses.

Other factors in the model may overestimate the advantage of placing a broadcaster in the duplex gap. Additionally, other factors in the model – while individually reasonable – appear to cause the model to overestimate the advantage of placing a broadcaster in the duplex gap. For example, the Public Notice observed that the Auction Team lacked sufficient data on impairment

from Mexico to include it in the projections. If the level of impairment from Mexican broadcasters is sufficiently high, it will entirely negate the benefit of placing a broadcaster in the duplex gap.

This is important because, as noted above, placing a broadcaster in the duplex gap has a significant cost to the public interest both in the loss of utility to unlicensed capacity and to the ability of mobile news crews to cover live news events effectively. Additionally, it has a cost to wireless carriers by creating impairment in the downlink. If the Commission is going to pay that cost, then it should do so only if the return justifies it.

If the Commission does adopt the proposal, it should limit placement and otherwise mitigate the damage to the greatest extent possible. To be clear, Public Knowledge in no way supports placing a broadcaster in the duplex gap. If the Commission does determine to do so, however, it should not do so simply to achieve marginal returns. It should do everything possible to avoid doing so unless absolutely necessary, and should seek to mitigate the cost to the public interest of locating a broadcaster in the duplex gap.

For example, the staff report projections show that at the highest level of broadcaster participation (Scenario 3), the clearing target will be met under both the “protect duplex gap” scenario and the “don’t protect duplex gap” scenario. Accordingly, if broadcaster participation is sufficiently high that the auction will meet the clearing target, then the Commission should not place any broadcasters in the duplex gap, even if doing so would increase the number of Category 1 licenses.

Similarly, to the extent the placement of the broadcaster within the duplex gap (either wholly or partially) could preserve the availability of the duplex gap for unlicensed use and wireless microphone use. Again, Public Knowledge does not recommend this course, and strongly urges the Commission not to place broadcasters in the duplex gap under any circumstances. However, if the Commission adopts the proposal, it should make every effort to preserve whatever availability in the duplex gap it can.

The Commission should consider how to expand available space for unlicensed use in markets where the Commission places a full power broadcaster in the duplex gap. The question for those seeking to invest in unlicensed spectrum in the broadcast band is the likely availability of capacity in every market. If the Commission eliminates the ability of unlicensed devices to operate in the duplex gap, it can mitigate this by expanding available capacity elsewhere in the market.

For example, the Commission could expressly adopt a policy to double the size of the “vacant channel” in every market where the Commission places a broadcaster in the duplex gap. The availability of a “replacement channel” for the lost capacity in the duplex gap would provide the same level of certainty to developers and investors.

Public Knowledge stresses that, given the uncertainty and difficulty the Commission would face in expanding the capacity of the vacant channels in the relevant markets, the potential for future increase in capacity cannot justify eliminating use of the duplex gap. To paraphrase the old adage about birds, a duplex gap in the hand is better than 2 vacant channels in the bush. For the same reason, while Public Knowledge supports the effort of the Commission to find more spectrum for wireless microphones, Public Knowledge does not believe that a commitment to finding replacement spectrum is an adequate substitute for permitting licensed wireless microphones in the duplex gap for electronic news gathering.

In accordance with Section 1.1206(b) of the Commission’s rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Harold Feld
Senior Vice President
PUBLIC KNOWLEDGE

cc: Jessica Almond