



Competitive Carriers Association
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Competitive Carriers Association

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July 10, 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:

On July 9, 2015, Steven K. Berry, Rebecca Murphy Thompson, C. Sean Spivey and Courtney Neville of Competitive Carriers Association (“CCA”); Alison Minea of DISH Network, Inc. (“DISH”); Lawrence Krevor of Sprint Corporation (“Sprint”); Kathleen Ham and Steve Sharkey of T-Mobile USA, Inc. (“T-Mobile”); and Trey Hanbury and Roma Nandwani of Hogan Lovells US, LLP, representing CCA, met with Commissioner Mignon Clyburn and two members of her staff David Strickland and Misha Guttentag to discuss the upcoming incentive auction.

CCA and its member companies explained the importance of a robust spectrum reserve to providing a meaningful opportunity for multiple competitive providers to acquire the low-band spectrum essential for cost-effective in-building service and rural deployment.¹ The spectrum reserve is the only remaining competitive safeguard still under consideration to prevent AT&T and Verizon from using the 600 MHz auction to further consolidate their already considerable low-band spectrum holdings. In addition, AT&T or Verizon are reserve eligible in most of the country, including 74% of the nation’s geography and 40% of the pops.² For this reason, CCA supports

¹ The attached chart shows the considerable low-band spectrum holdings of AT&T and Verizon, especially when compared to the other two nationwide carriers. CCA additionally provided an article, also attached, discussing the use of wireless connectivity for livestock monitoring, which is driving increased demand in rural and remote areas.

² AT&T and Verizon are reserve eligible in 249 and 104 Partial Economic Areas, respectively; the attached map shows the markets where either AT&T or Verizon (or both) are reserve eligible.

increasing the maximum size of the spectrum reserve to 40 megahertz or 50% of the auction spectrum, while limiting opportunities for inefficient and potentially harmful bidding practices that would frustrate the pro-competitive purpose of the reserve. If the Commission declines to expand the reserve across the board, CCA would endorse the proposal by Public Knowledge and Common Cause to increase the reserve from 30 megahertz to 40 megahertz for initial clearing targets of at least 90 megahertz.³

While different members have different specific proposals regarding the spectrum reserve trigger, CCA would support any mechanism that would accelerate the trigger and avoid anticompetitive foreclosure.⁴ The currently proposed trigger for creating the spectrum reserve opens opportunities for gaming, particularly if the Commission pursues high clearing targets—with attendant high clearing costs—at the outset of the auction, but later falls back to a lower clearing target with lower clearing costs during a subsequent round. A reserve that is triggered only after competitive carriers have been foreclosed from participation would not achieve the goal of distributing spectrum licenses to a broad variety of applicants.⁵ Likewise, to ensure a fully stocked reserve, CCA noted that the spectrum reserve should be comprised of the least impaired licenses in a market. Placing relatively unimpaired spectrum in the reserve will help ensure that competitive carriers, which need this low-band spectrum to compete, have an adequate opportunity to gain access to this limited input resource.

CCA also would support any proposal that would adopt a non-monetary mechanism for assigning specific spectrum blocks during the forward auction assignment phase.⁶ Using an untested, single-round, monetary-based sealed bidding mechanism in the assignment phase of the auction would drain revenues from the clock phase of the auction and potentially prevent bidding in the forward auction from reaching levels capable of satisfying the highest clearing targets. Adopting a non-monetary mechanism to express license-assignment preferences would increase the funds available to purchase broadcast stations and potentially clear larger amounts of spectrum.

³ See *Ex Parte* Letter from Phillip Berenbroick, Counsel, Government Affairs, Public Knowledge and Todd O’Boyle, Program Director, Common Cause to Tom Wheeler, Chairman, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268 (June 30, 2015); *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (filed July 8, 2014).

⁴ See, e.g., *Ex Parte* Letter from Trey Hanbury, Counsel, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, AU Docket No. 14-252 (filed June 30, 2015); *Ex Parte* Letter from Henry A. Waxman to The Hon. Tom Wheeler, Chairman, FCC, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (filed July 9, 2015); *Ex Parte* Letter from Harold Feld, Sr. Vice-President, Public Knowledge to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 at 1-2 (filed July 9, 2015).

⁵ See 47 U.S.C. § 309(j).

⁶ See, e.g., Letter from Trey Hanbury, Counsel, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (filed June 16, 2015).

Addressing a recent development, CCA raised concerns over calls for the Commission to prohibit broadcast use of the duplex gap as part of the incentive auction's repacking process.⁷ As the Commission's models in the Initial Spectrum Clearing Target Public Notice have shown, avoiding repacking stations into the duplex gap will materially lower spectrum clearing targets and increase impairments, contrary to the legislative intent of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), the incentive auction's enabling statute.⁸ While CCA agrees that unlicensed spectrum offers economic and innovative opportunities for the development of new technologies and services, the Spectrum 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.⁹ CCA argued that this (largely theoretical) issue raised by certain parties at the eleventh hour should not be permitted to derail the incentive auction entirely.

Finally, CCA noted the urgent need for additional low-band spectrum and urged the Commission to hold the auction in early 2016. Any delay of the auction could have long-lasting anticompetitive repercussions and could result in tens or hundreds of billions of dollars in lost opportunity for consumers.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206(b)(2)(iv) of the Commission's Rules.

Regards,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel, CCA

cc: Louis Peraertz
David Strickland
Misha Guttentag

Attachments (3)

⁷ See *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (filed July 9, 2014).

⁸ *Id.* at 1-2.

⁹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6407(c), (e).