



Competitive Carriers Association
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July 14, 2015

EX PARTE VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

The incentive auction will not clear enough spectrum to satisfy consumer demand for wireless broadband services unless the FCC retains the flexibility to use the 600 MHz duplex gap for broadcast relocation.¹ The FCC can secure alternative spectrum to support unlicensed operations in the handful of instances where the duplex gap proves unavailable for unlicensed use by reserving an additional channel in the broadcast band or by using any one of the other methods described below. Just as important, the FCC should trigger the incentive auction spectrum reserve early enough in the auction to avoid foreclosure pricing and to ensure the auction serves a pro-competitive purpose. Finally, the FCC should not delay its vote on the items scheduled for decision Thursday, July 16, 2015. Timely decision-making and a timely auction will accelerate investment, innovation and wireless broadband deployment.

Making More Spectrum Available for Licensed and Unlicensed Uses

Unlicensed advocates have long sought access to three, six-megahertz channels within the 600 MHz band to promote economies of scale and investment in 600 MHz unlicensed equipment.² In the 600 MHz band, unlicensed users can likely access: (i) one non-broadcast channel, Channel 37;

¹ See Letter of Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 at 1 (July 9, 2015) (“CCA Duplex Gap Letter”).

² See, e.g., Comments of Microsoft Corporation, ET Docket No. 14-165, GN Docket No. 12-268 at 2 (Feb. 4, 2015) (“[I]nnovators, manufacturers, and network operators need access to three or more 40 mW, 6 MHz channels in every market for personal/portable WSD use in order for an unlicensed ecosystem to flourish in the 600 MHz band.”).

(ii) one vacant broadcast channel in the post-auction broadcast band; and, where available, (iii) one former broadcast channel within the post-auction 600 MHz duplex gap.

Recently, broadcast incumbents and some unlicensed advocates supported a prohibition on placing any broadcast operations within the 600 MHz duplex gap.³ As CCA previously noted, licensed operators most in need of low-band spectrum to compete opposed this proposal because it would limit the prospects for clearing 600 MHz spectrum for licensed broadband use.⁴ Without the ability to place broadcast stations in the duplex gap, the licensed broadband operators explained, the FCC simply could not reclaim as much spectrum for licensed broadband deployment.⁵

The FCC subsequently identified the specific markets where its models showed the duplex gap would not be available for unlicensed use.⁶ The affected markets were very few in number – just six out of a total of 416 markets at 84 megahertz of spectrum clearing. The FCC’s analysis showed that a flat prohibition on permitting broadcast operations in the duplex gap would frustrate attempts to expand access to wireless broadband services in the United States by failing to clear 84 megahertz of spectrum for licensed broadband services. By comparison, not prohibiting broadcast operations in the duplex gap would allow nationwide clearing of 84 megahertz for broadband use at the expense of just one of the three channels available to unlicensed advocates in one large market and five considerably less populous markets.⁷

The FCC should not sacrifice large nationwide broadband spectrum-clearing targets for modest gains in unlicensed spectrum availability when reasonable alternatives exist to achieve the objectives of both licensed and unlicensed advocates. Fortunately, alternatives abound.⁸

³ Letter of National Association of Broadcasters, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, AU Docket No. 14-252 at 1-2

⁴ See CCA Duplex Gap Letter at 1 (repacking broadcasters in the duplex gap is “necessary to achieve high clearing targets with the least impaired spectrum”).

⁵ *Id.* at 2 (*citing Incentive Auction Task Force Releases Initial Clearing Target Optimization Simulations*, Public Notice, 30 FCC Rcd 4854, 4856 ¶ 6 (WTB 2015)).

⁶ Letter of Gary M. Epstein, Chair, Incentive Auction Task Force, Federal Communications Commission to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, Appendix at 3 (July 10, 2015).

⁷ The largest market was Los Angeles, California (Rank 2). The other five markets were much less populous including Harrisburg, Pennsylvania (Rank 48); Madison, Wisconsin (Rank 122); Buffalo, New York (Rank 54); Milwaukee, Wisconsin (Rank 38); and greater Flint, Michigan (Rank 81).

⁸ See Letter from Henry A. Waxman, Chairman, Waxman Strategies, to Hon. Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (July 9, 2015) (“*Waxman Proposal*”); Letter from Harold Feld, Senior Vice President, Public Knowledge to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, AU Docket No. 14-252 (July 9, 2015) (“*Public Knowledge Proposal*”).

In light of newly available evidence, perhaps the best alternative is to identify one additional channel for unlicensed use in the post-auction broadcast segment in those markets where the duplex gap is unavailable. This “replacement channel” would provide developers and manufacturers the certainty they need to invest in the band by making up for the capacity lost as a result of permitting broadcast operations in the duplex gap.⁹ Thus, if 84 megahertz of spectrum or less were cleared, the Commission could permit unlicensed operations in the following locations: (1) in the one non-broadcast channel, Channel 37; (2) in the broadband duplex gap, if available; and (3) in either one vacant television channel in the broadcast band segment (assuming the duplex gap is available, as will generally be the case), or in two vacant television channels in the broadcast band segment, if the duplex gap proves unavailable in a particular market.

Alternatively, the Commission could adopt the model offered by former Representative Waxman, who proposed protecting the duplex gap for unlicensed operations above 84 megahertz, but not at 84 megahertz or below, where licensed spectrum access is critical for licensed broadband services.¹⁰ At spectrum-clearing targets of more than 84 megahertz, Representative Waxman suggests reserving the 600 MHz duplex gap for unlicensed operations.¹¹ In markets where the Commission clears 84 megahertz or less, however, Representative Waxman’s model would prioritize the needs of licensed carriers to secure the spectrum necessary to satisfy burgeoning consumer demand for licensed wireless services.

The Commission could also adopt other tools that would clear more broadcasters from the spectrum and decrease wireless broadband impairments across the board.¹²

Whether adopted individually or in combination, these proposals provide a sound foundation for a reasonable compromise that protects the level of nationwide spectrum clearing necessary to promote licensed broadband deployment, while ensuring unlicensed devices always have access to three channels in which to operate to ensure sufficient scale economies to allow for the development of a robust unlicensed ecosystem.

Triggering the Pro-Consumer Spectrum Reserve Early Enough to Make a Difference

The Waxman Proposal also addresses the important issue of protecting the utility of the 600 MHz incentive auction’s spectrum reserve. The spectrum reserve represents the only competitive safeguard still under consideration that can prevent the two dominant carriers from foreclosing

⁹ *Public Knowledge Proposal* at 4. An additional broadcast channel would not always be available for unlicensed use in every possible market, but should prove accessible in most markets.

¹⁰ *Waxman Proposal* at 2. The 84 megahertz clearing target includes: (i) 70 megahertz for licensed broadband use, which is divided into seven, ten-megahertz blocks; (ii) 11 megahertz for the “duplex gap”; and (iii) three megahertz for guard band to protect incompatible adjacent-channel services.

¹¹ *Id.*

¹² Several commenters most interested in clearing low-band spectrum for broadband deployment support mechanisms to meet the challenge of setting opening bids in the reverse auction in a way that maximizes both broadcaster participation and spectrum-clearing for broadband. *See, e.g.*, Reply Comments of Competitive Carriers Association, AU Docket 14-252, GN Docket 12-268 at 30-31 (Mar. 13, 2015).

access to all low-band spectrum offered in the incentive auction. As hundreds of interested parties and thousands of concerned individuals have explained in filings to the FCC, the proposed 30 megahertz or smaller reserve does not go far enough to promote competition. But even the competitive benefits of the 30 megahertz reserve will be completely undone if the spectrum reserve only comes into existence after the bidding on spectrum by dominant carriers has reached its foreclosure value, and competitive carriers have dropped out.

The Waxman Proposal offers a simple solution: for clearing targets of more than 84 megahertz, when the broadcaster clearing costs are at their highest, the reserve would be triggered when bids exceed an average of \$2.00 per MHz-POP in the Top 40 markets.¹³ When spectrum-clearing targets are high, triggering the reserve earlier in the auction is critical for effective competition to take hold. As Waxman explained, “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.”¹⁴

Moving Critical Low-Band Spectrum to Market Quickly

Regardless of party, policymakers have long recognized the urgent need for more spectrum to meet the explosive growth in consumer demand for mobile broadband services. In adopting the Middle Class Tax Relief and Job Creation Act of 2012, Congress acted clearly and on a bipartisan basis to increase the amount of wireless broadband spectrum available in the wireless market. The FCC now has the urgent responsibility of satisfying the critical need for additional wireless broadband spectrum resources, especially with respect to low-band spectrum where those resources are the most concentrated and in the shortest supply. The FCC must act swiftly and decisively to adopt rules for the 600 MHz incentive auction and fulfill its statutory mandate under the Communications Act to “promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants.”¹⁵

* * * *

By focusing on the importance of licensed operations at lower clearing targets while prioritizing unlicensed and accelerating the reserve trigger at higher clearing targets, the Commission can support both licensed and unlicensed broadband operations while advancing wireless broadband competition for the benefit of consumers.

This *ex parte* notification is being filed electronically pursuant to Section 1.1206 of the Commission’s rules.

Regards,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel, CCA

¹³ *Id.*

¹⁴ *Id.* at 3.

¹⁵ 47 U.S.C. §309(j)(3).