



July 15, 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 14, 2015, Harold Feld and Phillip Berenbroick, Public Knowledge, Michael Calabrese, New America's Open Technology Institute, and Matt Wood, Free Press (collectively "Public Interest Spectrum Coalition" or "PISC" representatives) spoke with Gary Epstein and Sasha Javid of the Federal Communications Commission's ("Commission") Incentive Auction Team.

PISC continues to oppose placement of a broadcaster in the duplex gap. However, PISC also stated general agreement with the Competitive Carrier Association ("CCA") letter of July 14, 2015, with respect to the importance of enhancing competition by providing non-dominant carriers with a meaningful opportunity to acquire sufficient amounts of desperately needed low-band spectrum.¹ PISC also agreed with CCA that because higher clearing targets raise concerns as to whether eligible carriers will be able to take advantage of the spectrum reserve, the Commission should adjust the trigger mechanism.

As an initial matter, PISC continues to question whether in fact the simulation scenarios released by the Auction Team last Friday actually indicate a problem so severe that it would require placing a broadcaster in the Duplex Gap, to the detriment of next generation Wi-Fi use and broadcast news microphones. For example, the 84 MHz Clearing Target simulation shows that there could be six markets where the FCC would need to locate a TV station in the Duplex

¹ Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268 and AU Docket No. 14-252 (filed July 14, 2015) ("*CCA Letter*").

Gap in order to avoid an increase in the “nationwide impairment” level from 13.1% to 16.7%.² A 16.7% impairment level would exceed the threshold set by the Auction Team and, as a result, “the initial clearing target would be lowered.” However, we note that this increase in the overall impairment level includes 100% of the pops in the small number of blocks that could not be auctioned in these six markets. Since the purpose of the national clearing target is to maintain a high ratio of Category 1 licenses to Category 2 licenses, this seems unnecessary. Licenses impaired by 50% or more will not be sold, and therefore do not impact the ratio of Category 1 to Category 2.

In other words, maintaining last year’s decision to avoid relocating TV stations in the Duplex Gap in every market does not require that the auction step down to a lower clearing target; it means that there may be one less uplink block auctioned in those six or so constrained markets.

The PISC representatives suggested several options to avoid placing a broadcaster in the Duplex Gap; or, in the alternative, ways to mitigate the impact of any placement of a broadcaster in the Duplex Gap so as to preserve adequate spectrum for unlicensed operation and wireless microphone operation in the impacted markets. Specifically:

Buy out an additional broadcaster rather than repack in the Duplex Gap. The Commission’s own projections show that it will only need to place a broadcaster in the Duplex Gap in a handful of markets. The Commission should explore whether it can create a mechanism similar to the “extended round” mechanism in the Forward Auction, so that if the auction fails to meet the national average impairment threshold due to the need to relocate one additional TV station in a handful of markets, the Commission or the carriers bidding in the impacted markets would have the opportunity to clear one more station in order to avoid placing a broadcaster in the Duplex Gap or impairing an uplink block. This might include offering to pay the last TV station to drop out of the Reverse Auction, providing an opportunity for that station to accept a bid at a level it had previously been willing to accept.

Expand the vacant channel capacity. As noted by CCA, the Commission should consider replacing the lost 6 megahertz unlicensed channel capacity in all markets in which it places a broadcaster in the Duplex Gap by making a second locally vacant 6 megahertz channel available for unlicensed use.³ The PISC representatives explained that any such additional channels created by repacking or other means would need to be above existing Channel 7 to

² Letter from Gary M. Epstein, Chair, Incentive Auction Task Force to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, Data PN Runs, at 3 (filed July 10, 2015).

³ CCA Letter at 3.

work with existing TVWS specifications and thus genuinely compensate unlicensed users for the loss of the Duplex Gap.

Opening impaired licenses for unlicensed use. The Commission's projections show that, even with a broadcaster in the Duplex Gap, several license blocks will exceed the impairment standard of 50% or more impairment and thus will not be auctioned. While these blocks may be impaired for operation of full power LTE, all or part of these blocks may be usable by unlicensed TVWS devices at low power (e.g., 40 milliwatts). Because the Commission has previously determined that unlicensed devices may operate in border areas (because cross-border stations can register in the database and protect themselves from potential interference), TVWS devices can operate in the border markets likely to be impacted. Similarly, because TVWS operates at significantly lower power than LTE, the likelihood of interference with either broadcast operations or LTE operations is substantially reduced.

PISC noted this is similar to the logic that led the Department of Defense to reduce the size of the exclusion zones in the small cell 3.5 GHz band.⁴ The Commission should therefore explore this option. Additionally, such an approach is consistent with the Commission's stated intent to allow unlicensed users and wireless microphone operators to continue to operate until operations commence in the re-assigned blocks. If a block is not sold due to impairment, operations will never commence and unlicensed operators may continue to operate on the unsold blocks consistent with existing rules to protect broadcasters and LTE providers. The Commission could simply clarify this in this Order or the pending Part 15 Order without need for further notice.

PISC noted agreement as well with National Association of Broadcasters recent explanations on the importance of wireless microphone operations in the Duplex Gap under the framework proposed by the Commission last year.⁵ Any solution for unlicensed operation should also work to resolve the problems of wireless microphone users. For example, if TVWS users can migrate out of the Duplex Gap in the impacted markets, the Commission should either permit wireless microphones to operate in the remaining Duplex Gap (as this would leave 5 MHz for wireless microphones and associated guard bands) or find additional spectrum in the reallocated spectrum or the surviving broadcast bands (compatible with sharing with unlicensed operations, as with the Duplex Gap). While PISC supports the efforts to find alternative spectrum for wireless microphones in other bands, any such long-term solution does not adequately address the needs of newsgathering operations in the impacted markets.

⁴ See Letter of Paige R. Atkins, Associate Administrator, Office of Spectrum Management, NTIA, to Julius Knap, Chief, OET, GN Docket No. 12-354, at 5-6 (filed March 24, 2014).

⁵ See e.g., National Association Broadcasters *Notice of Ex Parte*, GN Docket No. 12-268 and AU Docket No. 14-252 (filed July 8, 2015).

PISC urged the Commission to consider delaying the proposed item until the August meeting to allow the Commission and stakeholders to more thoroughly explore all of these options and determine their feasibility. This additional time would allow the Commission to develop consensus around difficult and contentious technical issues that impact all stakeholders. The PISC representatives stated that while the Commission should continue seeking to hold the auction as quickly as practical, the brief delay of three weeks between the July meeting and the August meeting for this one item will not substantially delay the auction.

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: Gary Epstein
Sasha Javid