



Competitive Carriers Association
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November 13, 2015

VIA ECFS

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

Re: EX PARTE NOTIFICATION

GN Docket No. 12-268: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions;*

MB Docket No. 15-146: *Amendment of Parts 15, 73, and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by the White Space Devices and Wireless Microphones*

Dear Ms. Dortch:

In its *Vacant Channel NPRM*, the Commission proposes to preserve at least one and sometimes two channels in the UHF television band for the operation of TV white space devices and wireless microphones.¹ A broad and diverse set of commenters supports this policy, including Competitive Carriers Association (CCA), as a sensible exercise of the Commission's broad authority to make available a wide variety of wireless communications services to the American public.²

In its reply comments, however, the National Association of Broadcasters (NAB), contrary to evidence in the record, questions the need for wireless broadband spectrum opportunities and proposes to locate the one or more vacant channels for unlicensed users in the 600 MHz broadband spectrum rather than the UHF television bands.³ NAB's proposal contradicts the Spectrum Act,

¹ *Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Televisions Band for Use by White Space Devices and Wireless Microphones*, Notice of Proposed Rulemaking, 30 FCC Rcd 6711 (2015) ("*Vacant Channel NPRM*").

² *See, e.g.*, Comments of Competitive Carriers Association, GN Docket No. 12-268, MB Docket No. 15-146, at 1-5 (filed Sept. 30, 2015); Comments of Google Inc., GN Docket No. 12-268, MB Docket No. 15-146, at 1-3, 7-13 (filed Sept. 30, 2015); Comments of Microsoft Corporation, GN Docket No. 12-268, MB Docket No. 15-146, at 1-10 (filed Sept. 30, 2015); Comments of T-Mobile USA, Inc., GN Docket No. 12-268, MB Docket No. 15-146, at 1, 3-5 (filed Sept. 30, 2015); Comments of The Wireless Internet Service Providers Association, GN Docket No. 12-268, MB Docket No. 15-146, at 4-5 (filed Sept. 30, 2015).

³ Reply Comments of National Association of Broadcasters, AU Docket No. 14-252, GN Docket No. 12-268, at 16 (filed Oct. 30, 2015) ("*NAB Reply Comments*") (stating that the Commission "can best accommodate its desire to preserve white spaces spectrum by reserving spectrum in the new wireless band following the auction").

disregards competitive carriers' dire need for low-band spectrum and the likely robust competition for reserve spectrum, and ignores the agency's consistent public interest findings regarding the 600 MHz band plan. The Commission should reject NAB's proposal.

The Spectrum Act Prohibits NAB's Proposal

The Spectrum Act limits the range of permissible service allocations for spectrum acquired through an incentive auction.⁴ Section 6402 of the Act requires the Commission to use spectrum acquired through an incentive auction "in order to permit the assignment of new initial licenses subject to flexible-use service rules [. . .]"⁵ Service allocations that do not require the assignment of new licenses – namely, unlicensed services – are prohibited, subject to one exception. The Commission may authorize unlicensed allocations within the guard band spectrum that licensed spectrum allocations need to prevent inter- and intra-service interference.⁶ But, even in those cases, the Spectrum Act requires the guard band spectrum to remain "no larger than technically reasonable to prevent harmful interference between licensed services outside the guard bands."⁷ NAB's recent proposal flies in the face of these carefully crafted statutory limitations. NAB proposes to create an unlicensed service allocation within 600 MHz broadband spectrum that the Commission will secure through an incentive auction. The Spectrum Act flatly prohibits such an approach.

NAB's proposal also contradicts one of the fundamental premises of the 600 MHz incentive auction, which is that forward-auction revenues must exceed reverse-auction expenses.⁸ If guard band spectrum were to consume too much of the spectrum otherwise available for licensing, forward auction revenues could fall short of reverse auction expenses and the auction would identify too little wireless broadband spectrum for commercial use.⁹

In addition, NAB's proposal runs counter to the public interest in vigorous wireless broadband competition. The Commission has documented how important spectrum below 1 GHz is to consumers.¹⁰ These bands can penetrate inside buildings, where the majority of data consumption occurs today, and can cover vast expanses of rural areas, where many parts of the country remain unserved and underserved. These bands are also highly concentrated, and too few wireless competitors have access to critical low-band spectrum. The contingent, market-based 600 MHz spectrum reserve represents one of the most significant competitive safeguards preventing dominant wireless providers from acquiring all or nearly all of the low-band spectrum available in the 600

⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6402, 126 Stat. 156 (2012) ("Spectrum Act").

⁵ *Id.* § 6402; see also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 6746, 6752 ¶14 (2015) (acknowledging the limitation by noting that "[t]he fact that the Spectrum Act allows us to make guard bands available for unlicensed use does not mean that we are reallocating spectrum from licensed services to unlicensed use").

⁶ *Id.* § 6407(a) ("Nothing in subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402, or in section 6403 shall be construed to prevent the Commission from using relinquished or other spectrum to implement band plans with guard bands.").

⁷ *Id.* § 6407(b).

⁸ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6609 ¶ 91 (2014) (citing Spectrum Act § 6403(c)(2)).

⁹ See *id.*

¹⁰ *Vacant Channel NPRM*, 30 FCC Rcd at 6712, 6715-16 ¶¶ 1, 8, 10.

MHz auction. NAB's proposal to replace the 600 MHz spectrum reserve with vacant channels would eradicate the promise these bands hold to accelerate investment, increase innovation, and enhance consumer choice.

A Contingent, Market-Based Reserve Promises Robust Bidding

The Commission adopted the 600 MHz spectrum reserve to ensure consumers, especially those living in rural areas, benefit from wireless broadband competition. CCA and spectrum analysts¹¹ anticipate the spectrum reserve to generate robust bidding by encouraging greater participation in the incentive auction than might not otherwise exist.¹² Contrary to NAB's claims,¹³ moreover, the Commission has set sizeable minimum pricing levels for the reserve blocks and, even once those threshold are met, competition for the spectrum reserve is likely to be fierce.

First, the reserve does not come into existence until the final stage of forward-auction bidding – *after* satisfying all broadcast exit costs and *after* satisfying a meaningful price per unit requirement – and is only available to the extent reserve-eligible bidders demand it.¹⁴ Second, both of the dominant carriers remain reserve eligible for the majority of licenses available in the incentive auction, which will make the outcome in those markets indistinguishable from an auction without the competitive safeguard that the reserve provides.¹⁵ Third, a host of non-traditional providers, including Google, Comcast Corporation, Charter Communications, and DISH Network, are reportedly considering bidding for 600 MHz licenses, which would increase upward pricing pressure on the reserve even further.¹⁶ The combination of a contingent, market-based reserve with extensive, broad-based interest¹⁷ in low-band 600 MHz spectrum strongly supports the Commission's decision to use a spectrum reserve to promote the rapid and competitive deployment of mobile broadband services to the public.

¹¹ Letter from Trey Hanbury, Counsel, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-269, GN Docket No. 12-268 (Dec. 6, 2013) (attaching Professor Peter Cramton's study *The Revenue Impact of Competition Policy in the FCC Incentive Auction*); see also Comments of Competitive Carriers Association, GN Docket No. 12-268, AU Docket No. 14-252, at 32 (filed Feb. 20, 2015).

¹² See *Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, ¶ 162 (2014) (“*Mobile Spectrum Holdings Order*”) (“[O]ur market-based spectrum reserve, particularly in the amounts and under the rules we adopt today, is unlikely to reduce competition among bidders and in fact, will encourage competition among bidders wanting at least 20 megahertz of spectrum, as compared to other potential approaches to mobile spectrum holdings limits that could be applied to the Incentive Auction.”).

¹³ See NAB Reply Comments at i-ii.

¹⁴ See, e.g., *Mobile Spectrum Holdings Order*, 29 FCC Rcd at 6211 ¶ 194.

¹⁵ See Letter from Non-Nationwide Wireless Carriers, to Tom Wheeler, Chairman, FCC, GN Docket No. 12-268, WT Docket No. 12-269 (Apr. 22, 2015).

¹⁶ See Phil Goldstein, *Comcast, Charter may participate in 600 MHz auction, while Time Warner Cable plans to stay home*, FIERCEWIRELESS (Oct. 29, 2015), <http://www.fiercewireless.com/story/comcast-charter-considering-taking-part-600-mhz-auction-while-time-warner-c/2015-10-29>; Phil Goldstein, *Analysts: Comcast, Charter, Dish and Google might bid in 600 MHz auction – but won't be building out networks*, FIERCEWIRELESS (Nov. 6, 2015), <http://www.fiercewireless.com/story/analysts-comcast-charter-dish-and-google-might-bid-600-mhz-auction-wont-be/2015-11-06>.

¹⁷ See, e.g., Ina Fried, *Chamath Palihapitiya Is Raising Billions to Take On AT&T and Verizon*, RE/CODE (Nov. 10, 2015), <http://recode.net/2015/11/10/chamath-palihapitiya-is-raising-billions-to-take-on-att-and-verizon/>.

The Commission Has Ample Legal Authority to Establish Spectrum Policy

The Commission has ample legal authority to adopt the rules proposed in the *Vacant Channel Notice*.¹⁸ Contrary to NAB's claims, the Spectrum Act does not undercut the Commission's broad spectrum management authority. Title III of the Communications Act of 1934, as amended, "endow[s] the Commission with 'expansive powers,'" including "broad authority to manage spectrum . . . in the public interest."¹⁹ Similarly, section 6403(b)(1) of the Spectrum Act authorizes the Commission to reassign TV channels and reallocate portions of the television bands for wireless broadband use.²⁰ The Commission has correctly acknowledged that nothing in the Spectrum Act lessens the Commission's power under Title III to manage spectrum in the public interest.²¹ The Commission's decision to preserve vacant channels in the UHF television band is justified and well within its authority.

* * * *

The 600 MHz incentive auction promises to help meet the ever-growing demand of consumers and businesses for wireless broadband services.²² As CCA has consistently advocated, preserving at least one channel in the UHF television band for the operation of TV white space devices and wireless microphones strikes a reasonable balance of interests among all users of the limited spectrum available to the public.

Regards,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel, CCA

¹⁸ See, e.g., Comments of Microsoft Corporation, GN Docket No. 12-268, MB Docket No. 15-146, at 6-9 (filed Sept. 30, 2015); Comments of T-Mobile USA, Inc., GN Docket No. 12-268, MB Docket No. 15-146, at 4-5 (filed Sept. 30, 2015); Comments of Competitive Carriers Association, GN Docket No. 12-268, MB Docket No. 15-146, at 3 (filed Sept. 30, 2015).

¹⁹ *Cellco P'ship v. FCC*, 700 F.3d 534, 541-42 (D.C. Cir. 2012); see also 47 U.S.C. § 303.

²⁰ Spectrum Act § 6403(b)(1).

²¹ *Vacant Channel NPRM*, 30 FCC Rcd at 6719-20 ¶ 18.

²² Comments of Competitive Carriers Association, GN Docket No. 12-268, MB Docket No. 15-146, at 1 (filed Sept. 30, 2015).