

**Before the
Federal Communications Commission
Washington, D.C. 20544**

In the Matter of)	
)	
Fostering Innovation and Investment In the Wireless Communications Market)	GN Docket No. 09-157
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51

**EX PARTE COMMENTS OF PUBLIC KNOWLEDGE
NATIONAL BROADBAND PLAN
PUBLIC NOTICE #6**

Public Knowledge (PK) submits these additional written *ex parte* comments in the above captioned proceeding to highlight the importance of federal, state, and local government spectrum management and the need to promote new thinking and new ways of doing business throughout the wireless ecosystem. A sustainable approach to spectrum management must recognize these legitimate federal and local government interests while simultaneously providing enhanced spectrum access for increased commercial need and fostering a diverse and competitive commercial wireless sector. As related in separate comments, this approach includes both a focus on opportunistic sharing and a vigorous effort to ensure competition in all aspects of the commercial wireless market.¹ However, the comprehensive approach required to build our digital future requires significant changes in our approach to management of spectrum by federal and local governments as well.

SUMMARY

The current debate over spectrum access and the looming “spectrum crisis” contains numerous parallels to the ongoing debate over the national energy crisis. Everyone agrees that, under current business models, current technology, and current assumptions, our national policies cannot meet the

¹ See, e.g., Testimony of Gigi Sohn, President, Public Knowledge, at FCC Field Hearing on Mobile Applications and Spectrum, San Diego, California (October 8, 2009). Available at: <http://www.publicknowledge.org/node/2684>

increasing needs of commercial users, federal users, and state and local governments. Also paralleling the energy crises, most of the solutions proposed focus on traditional solutions of finding “more” spectrum rather than what could be called “spectrum conservation,” using technology and changing patterns of consumption to stretch existing resources further.

Nowhere is this “drill, baby, drill” mentality more prevalent than in the proposed approaches to federal, state and local spectrum access. The predominant proposals with regard to federal use revolve around clearing federal users and auctioning the cleared bands. Commercial interests generally display the same shortsighted and unsustainable attitudes toward state and municipal government. Most comments from commercial operators regard state and local governments as obstacles requiring federal preemption rather than as potential partners in developing innovative solutions.

Such proposals, while attractive in the short term, are unsustainable in the long term. Like commercial demand, federal and local government demand for spectrum access to handle the increasing demand for new services continues to rise as technology improves and the capacity to innovate in the wireless space increases. Federal and state users continue to enhance our national security, public safety, and the services provided to all Americans by upgrading and improving their wireless networks. In addition, while commercial providers may regard the efforts of local government to manage their resources as unduly slow and intrusive, they must also recognize that local governments face many provider requests and must balance all of these with the concerns of local residents over legitimate quality of life concerns. Our national policy cannot provide for the wireless needs of the 21st century by depriving federal and local governments of the tools they need to provide needed services to us all.

In any event, such an approach merely delays the inevitable. Just as increasing crude oil production capacity can only meet increasing demand for energy until we reach “peak oil” and pay increasingly higher costs to extract less and less, so too will cannibalizing federal and local government

spectrum use provide only short term relief for the ever increasing need. A sustainable approach to spectrum access requires a policy that shifts the behaviors of all users – commercial, federal, and local – to a more cooperative approach that focuses on spectrum *access* rather than spectrum *allocation*. Such an approach rewards federal users for enhanced efficiency by providing incentives rather than punishing them by reallocating spectrum. It fosters cooperation between local governments and commercial interests rather encouraging confrontation by acting as arbiter and referee.

With regard to federal spectrum, PK recommends that the federal government:

- Increase mixed use through opportunistic sharing and secondary markets in ways that do not interfere with existing federal use or prevent future auctions of spectrum.
- Combine the allocations of all federal agencies into a single “federal pool” managed by NTIA in consultation with the Federal Chief Technology Officer (CTO).
- Streamline the process of private applications for “mixed federal use” and approval of opportunistic sharing technologies within 1 year as provided for by law.
- Increase the frequency and quality of FCC/NTIA coordination, and improve transparency in the management of federal spectrum.

As described below, existing statutes provide sufficient authority to implement these recommendations.

With regard to state and local government, the FCC should:

- Take steps to encourage state and local government use of secondary markets and opportunistic sharing.
- Facilitate the development of “best practices” and alternate dispute resolution between local government and commercial users, employing federal preemption only in those rare cases where a national rule appears justified. In particular, a handful of anecdotal incidents should not justify preemption of the ability of all state and local governments to respond flexibly to the needs of their citizens.

PK anticipates that although commercial licensees have come to accept the idea of spectrum conservation and reuse, many will resist federal or local secondary markets as a substitute for auctions. In considering these objections, such as the willingness of providers to invest in infrastructure, the

Commission should consider to what extent these objections flow from the unfamiliarity with secondary markets. At one time, no one believed that people would entrust communications to a “best efforts” network such as the internet, or would use unlicensed spectrum for broadband because of the fear of interference. As these networks proved themselves, and became ubiquitous and more familiar, these objections faded. Concerns that providers cannot finance networks based on access to secondary markets or that secondary markets cannot substitute for “owning” spectrum will also fade once stakeholders become more familiar with secondary markets.

In addition, the FCC must also consider the enormous value of providing alternative spectrum to alleviate the pressure on existing PCS providers. The looming “spectrum crisis” flows from projected need. While PCS providers may prefer to “own” spectrum, numerous other users of spectrum access find secondary markets more efficient and convenient. Providing alternative for these users than either bidding on spectrum at auction or subscribing to networks optimized for consumer use will relieve the demand on commercial networks and reduce the need for new licensed spectrum. Profitable use of federal secondary markets would also have the further advantage of demonstrating the value of secondary markets to non-federal licensees, further increasing efficient spectrum use.

Finally, if after a time it appears that the benefits of federal secondary markets have not materialized, the federal government can always clear spectrum for auction. Indeed, given the tremendous length of time that often attends the identification of a federal band for auction, the Commission and NTIA should permit secondary market and opportunistic use of spectrum even in bands ultimately designated for auction until these auction actually occur. This will both enhance efficiency and federal revenue.

ARGUMENT

I. EFFICIENT MANAGEMENT OF FEDERAL SPECTRUM WILL IMPROVE WIRELESS BROADBAND FOR NON-FEDERAL AND FEDERAL USERS ALIKE.

A. The Role of The FCC With Regard To Federal Spectrum As Defined By Statute.

It is important to clarify the authority of the FCC with regard to “federal spectrum ,” as well as to fully understand the role of the NTIA and other federal agencies. Whatever understandings exist between agencies, whatever policies have arisen as useful or practical, the formulation of proper policy must begin with an understanding of statutory authority.

As a statutory matter, there is no such thing as “federal spectrum” distinct from “commercial” spectrum. Bands may be allocated “on a primary basis for Federal Government use,” 47 U.S.C. § 927(b), but this does not restrict the FCC’s ability to authorize additional, non-interfering uses. Under the Communications Act, and as modified National Telecommunications and Information Agency Organization Act (NTIA Act), the FCC grants *licenses* to non-federal users. 47 U.S.C. §301. By contrast, the Communications Act assigns the power to authorize use of spectrum for “government owned stations” (*i.e.* federal users) to the President. 47 U.S.C. §305(a). In 1992, Congress ratified delegation of this authority to the Assistant Secretary of NTIA, 47 U.S.C. § 902(b). The Commission may, therefore, authorize non-interfering use of “federal spectrum” under its own authority, and may even authorize interfering uses subject to certain conditions. *See* 47 U.S.C. § 323, § 903(e).

Congress, however, has expressed a desire for the FCC to coordinate with the NTIA rather than proceed by unilateral action. Indeed, 47 U.S.C. § 922 requires the Chairman of the FCC and the Assistant Secretary to meet “at least biannually” to discuss “actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access.” § 922(4).

Congress further demonstrated a desire to expand mixed use of frequencies primarily allocated for federal use through coordination between the Department of Commerce and the Commission by authorizing the Secretary of Commerce to, “at any time allow frequencies allocated on a primary basis for Federal Government use to be used by non-Federal licensees on a mixed-use basis for the purpose of facilitating the prompt implementation of new technologies or services or for other purposes.” §927(2). Congress explicitly instructed NTIA to modify its regulations to facilitate the “prompt and impartial consideration of such requests,” §903(b)(5), subject to rules and procedures developed by the FCC. §903(e).²

B. Role of the NTIA and Other Federal Agencies In Management of Federal Spectrum.

Although the Communications Act centralizes authority for federal assignment in the President, delegated to the Assistant Secretary for the NTIA, management of federal spectrum requires a complex balancing between the current needs of federal agencies, and their possible future needs. Further, although the NTIA has general coordination responsibility, generally exercised by its hosting the Interdepartmental Radio Advisory Committee (IRAC), the NTIA does not have direct authority over the agencies it authorizes to use particular allocated frequencies. To make matters more complicated, agencies are not entirely forthcoming to the NTIA as to the nature of their needs. Often agencies site

² Although Section 903(e) states that an entity must obtain a “license” as a precondition of operating a “radio station utilizing a frequency authorized for the use of government stations,” the Commission has previously found that the term “license” is sufficiently broad so as to include operation of properly certified Part 15 “unlicensed” devices pursuant to rules and limitations adopted by the Commission. *See In re Revision of Part 15 of the Commission’s Rules Regarding Ultra-Wideband Transmission Systems, Second Report and Order and Second Memorandum Opinion and Order*, 19 F.C.C.R. 24,558 at ¶¶ 75–76. (2004) *See also* 47 U.S.C. § 3(42) (2000) (defining “license”). Likewise, the Administrative Procedures Act defines license as “the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission.” 5 U.S.C. § 551(8) (2000).

inability to predict future needs with precision, or security considerations, or both. This makes it difficult for the NTIA to convey a full picture of federal spectrum use or estimate future federal spectrum need.

This lack of transparency in federal use creates enormous frustration for those trying to expand non-federal access to spectrum allocated on a primary basis to federal users. As a result, non-federal users often cite a culture of obstruction, bureaucratic inertia, and refusal to adopt more efficient technologies as evidence that vast swaths of federal spectrum could be cleared and made available for non-federal use.

But the truth is not so simple. Federal agencies are properly security conscious and risk averse in the areas of national security and public safety. As a nation, we want military defense radar to look like empty, unused space. Creating a regime that too easily allows hostile powers or terrorists to “fill in the lines” and identify national security assets does not serve the national interest.

Nor does it serve the national interest to freeze federal use of spectrum at existing levels. In assessing the need for federal spectrum and the ability of agencies to operate more efficiently, NTIA and other federal agencies must remain mindful that demand for wireless capacity is increasing among federal agencies for the same reason it is increasing for non-federal users. Requiring the federal government to contract for future spectrum use after clearing and auctioning spectrum would be both more and less efficient expensive and less efficient in the long run. Moreover, it would discourage federal agencies from being genuinely innovative in spectrum use, since any increased reliance on wireless would require that agencies expand their budgets for spectrum access fees.

At the same time, however, spectrum access has grown to important simply to trust that federal agencies accurately report their needs to NTIA, and that NTIA, in turn, accurately assesses these needs in coordinating allocations. Even assuming good faith and complete information, shutting non-federal interests out of the decisions on federal spectrum access forecloses NTIA and federal agencies from the

benefit of alternative perspectives. Lack of transparency also fosters an insular and defensive approach to spectrum management, where federal agencies seek to preserve their spectrum from private sector “poaching.” This perspective is only reinforced by the current system where honesty about future spectrum needs and efficiency in existing use is rewarded by clearing and transferring spectrum to the private sector. For these reasons, Congress explicitly instructed NTIA to take steps to increase transparency in federal decisions on spectrum management. 47 U.S.C. §903(a)-(b). Although the NTIA has complied with the minimum obligations under the statute, it could, and should, do more to enhance transparency in federal spectrum management without compromising national security.³

The NTIA is not entirely without tools at its disposal to compel agencies to accurately report existing spectrum use and require realistic assessments of future need. The Secretary of Commerce is explicitly authorized to “withhold or refuse to assign” spectrum allocations to federal users “to further the goal of making efficient and cost effective use of the spectrum.” 47 U.S.C. §903(d)(2). In addition, NTIA may alter or eliminate an existing allocation to a federal user, subject to an appeal to the Office of Management and Budget. 47 U.S.C. §103(b)(2)(A); §104(d)(2). This creates the possibility that the Administration could “zero base” the federal spectrum budget. That is to say, all federal agencies could be required to apply on a regular basis for spectrum allocations and justify those allocations.

Sound policy argues against using this approach too frequently. The burden on agencies and the difficulty in reallocating spectrum from federal users with constant and consistent needs weigh against creating uncertainty by requiring “annual spectrum budgets.” Such an approach would also create an adversarial relationship between NTIA and agencies rather than a collaborative one. Nevertheless, the availability of such a tool to create a baseline of federal use has value in the context of the national broadband plan.

³ PK discusses steps to enhance transparency in Section II below.

Finally, it is important to note that Section 305 of the Communications Act assigns authority to the President to allocate spectrum for federal users. NTIA operates on delegated authority ratified by Congress. Congress did not, however, in any way alter this fundamental authority of the President. The President could therefore, arguably, vest complementary powers for spectrum allocation and administration in other officers, provided these delegations of authority were not inconsistent with existing law. For example, the President could authorize the Chief Technology Officer to standardize certain aspects of federal spectrum management or use, so as to achieve consistency with other goals or to maximize the ability of the federal government to purchase services in the marketplace. While PK does not suggest any reason to assign responsibility for federal spectrum outside NTIA, PK notes that this flexibility exists if it should prove useful.

II. RECOMMENDATIONS FOR FEDERAL SPECTRUM MANAGEMENT

Given the legal authority discussed above, Public Knowledge makes the following specific initial recommendations. These recommendations focus on process reforms rather than on “finding” new spectrum or recommending specific proceedings. Once implemented, these recommendations will permit the FCC and the NTIA to manage spectrum access in a manner that provides for all users, public and private.

A. Increase Mixed Use Through Opportunistic Sharing and Secondary Markets In Ways That Do Not Interfere With Existing Federal Use Or Prevent Future Auctions of Spectrum.

As noted above, Congress has instructed the FCC and NTIA to promote mixed use of federal spectrum by non-federal entities. In previous comments in this proceeding, Public Knowledge and others described the advantages of opportunistic sharing of federal spectrum. *See* Reply Comments of the Public Interest Spectrum Coalition (filed November 5, 2009). Using a database approach similar to that used in the broadcast television white spaces, the federal government could aggregate a broad swath

of spectrum tailored to the geography of the user. Because only the device needs to know the frequencies to access, and because these are assigned on a dynamic basis, the federal government can preserve classified allocation information. All the user would know is that the device is accessing spectrum in some range, say between 500 MHz and 3,650 MHz, and has a throughput rate set by the federal database.

Although the FCC is prohibited from considering the financial return to the federal government when determining how to allocate spectrum access, 47 U.S.C. §309(j)(7)(A), the NTIA is required to consider how its spectrum allocation policies will increase federal revenue. 47 U.S.C. §922(1). Accordingly, PK attaches a study by Dr. Gregory Rose. The Study examines a typical band reserved for exclusive use for the National Oceanic Atmospheric Administration and assumes 45 MHz could be cleared for auction or leasing. For reasons discussed in the study, leasing would yield greater revenue over time than a single auction.

PK fully does not propose this as conclusive evidence that leasing would always yield greater revenue than auctions. Nor should a determination on what better serves the public interest rest on what would produce the greatest federal revenue. Even if auctions might yield more revenue in some cases, the enormous advantages of leasing or other forms of opportunistic sharing, such as enhanced spectrum access for non-federal users without creating interference for existing federal users, would justify the development of federal secondary markets. In addition, leasing offers other advantages – such as enhanced flexibility for federal users and commercial users, elimination of the costs of band clearance, and stimulation of technological development in “smart” spectrum technology.

Most notably, the ability of the federal government to reclaim leased spectrum, either on an emergency dynamic basis such as proposed for the 700 MHz “D Block” or when lease terms end, should encourage federal users to make spectrum available. Federal users predict that their need for wireless

will grow as will the need of all other wireless users. Because spectrum reallocated by auction is permanently reallocated from federal use to exclusive commercial use, this creates a strong disincentive on the part of agencies to release spectrum.⁴

Federal policy should reward agencies that operate in a more efficient manner and increase the available pool of spectrum for secondary market use. Although the Miscellaneous Receipts Act, 31 USC 3302(b), requires that all such revenue go directly to the Treasury, the General Services Administration (GSA) and the Office of Management and Budget (OMB) should reward agencies that contribute their spectrum allocation by reducing federal accounting charges, such as the cost of rent of federal buildings, deducted from agency budgets. Furthermore, 47 U.S.C. §923(g) explicitly creates an exception to the Miscellaneous Receipts Act by allowing private entities to compensate federal agencies for reallocation costs following an auction. Where an agency makes spectrum available via real-time secondary market auctions, this provision provides a means of compensating the agency for any expense associated with permitting shared use of the spectrum.

B. Combine the Allocations of All Federal Agencies Into A Single “Federal Pool” Managed By NTIA In Consultation With the Federal Chief Technology Officer (CTO).

Dynamic assignment of spectrum access need not be limited to commercial access. Rather than provide permanent allocations to federal agencies, NTIA could maintain a single “federal pool” from which agencies would draw in real time on the basis of need and efficiency of use. This would permit agencies to maintain existing uses while having ready access to necessary spectrum in numerous bands on an as needed basis. Such an approach would vastly enhance the access of all federal agencies to

⁴ Federal users also express concern that lessees will create a commercial dependence that will make it effectively impossible to reclaim spectrum. Use of a database to aggregate federal spectrum, as discussed above, would eliminate this concern. Even if an agency reclaimed its spectrum, devices would continue to function on remaining spectrum. Further, because users would not know which federal agency had reclaimed spectrum, commercial users would find it difficult to apply political pressure against needed federal reallocation.

spectrum and eliminate the current fragmented system that starves some agencies while simultaneously leaving vast swaths of spectrum unused in many sections of the country.

This step would also, over time, permit greater standardization among federal users, which would both enhance efficiency of spectrum use and allow the federal government to use its purchasing power more effectively. NTIA already has the authority to set federal policy to facilitate “interoperability, privacy, security, spectrum use and emergency readiness,” 47 U.S.C. §902(H), as well as authority to make recommendations with regard to federal procurement, §902(E). Given the establishment of a new Federal Chief Technology Officer, restructuring federal spectrum access to provide for a single pool of spectrum allocated in real time would and coordinated with the new CTO would vastly improve the efficiency of federal spectrum use and reduce the cost to the federal government by permitting greater efficiency and economies of scale.

Finally, this approach will also make it much easier for the FCC and NTIA to accurately assess federal need and strike a proper balance between federal and commercial allocation. As noted above, the NTIA could begin this process by “zero-basing” federal spectrum allocations and requiring federal users to submit new allocation requests.

C. Streamline the process of private applications for “mixed federal use” and approval of opportunistic sharing technologies within 1 year as provided for by law.

Federal law already favors mixed use of bands “primarily allocated for federal use” and requires the NTIA and the FCC to resolve applications for such use as expeditiously as possible, but “in no event later than the date required by Section 7 of the 1934 Act.” 47 U.S.C. §927(b)(2). Unfortunately, no procedure exists to give meaning to this provision. It is the stated policy of NTIA to simply forward all such applications to the Federal Communications Commission.⁵ But the Commission has no process for

⁵ See <http://www.ntia.doc.gov/osmhome/redbook/redbook.html>.

identifying these applications, let alone complying with the Congressional mandate to process such applications in one year.

The Commission and NTIA should begin a joint proceeding examining the process for mixed use applications. In particular, use of a federal database as described above, either on a secondary market basis or on an opportunistic basis, would satisfy this statutory requirement. But at a minimum, the Commission and the NTIA have a statutory obligation to devise a system that will resolve individual applications for mixed use. This process should encourage individual applications for geographically delineated licenses which could be decided easily, as well as requests for nationwide service rules.

D. Increase the frequency and quality of FCC/NTIA coordination, and improve transparency in the management of federal spectrum.

Existing law already requires that the FCC and NTIA engage in regular planning and coordination on how to best manage federal spectrum to enhance overall spectrum access and efficiency. 47 U.S.C. §922. The law also already requires greater openness and transparency on the part of NTIA. 47 U.S.C. §903(b) requires that the NTIA: (1) provide the public with “meaningful opportunities” to engage the Interdepartmental Radio Advisory Committee (IRAC) on spectrum matters; (2) publish “major policy proposals” for spectrum management in the federal register, and provide opportunity for meaningful comment; (3) publish non-classified decisions on spectrum management in the Federal Register; and, (4) “require that nonclassified spectrum management information be made available to the public, including access to electronic databases.” While NTIA’s existing rules arguably comply with these provisions, the agency could do much to improve its transparency on spectrum management and its outreach to the public. Indeed, given the importance placed on managing spectrum as a public asset, the NTIA and the FCC should at all times seek to provide the maximum information and accountability to the public on issues of spectrum management.

The National Broadband Plan should propose concrete steps to improve the implementation of these statutory provisions. As an initial matter, the FCC and NTIA could begin making the time and date of the meetings between the Chairman of the FCC and the Assistant Secretary for NTIA public. If national security requires holding these meetings in private, the agencies should jointly publish non-classified minutes of the meetings. Further, as Public Knowledge and numerous others have said in multiple comments in this proceeding, the FCC and the NTIA should provide a “spectrum map” maintained in an electronic database that would allow interested parties to know what federal agencies have what spectrum allocations, the nature and intensity of the use, and the same for non-federal spectrum managed by the FCC.

III. REFORM OF THE ROLE OF STATE AND LOCAL GOVERNMENTS.

The National Broadband Plan requires the FCC to consider the role of all stakeholders. State and local governments have important roles both as users of spectrum to provide needed services for their citizens and as protectors of local consumer interest. Unfortunately, the Commission has too often considered the role of state and local government either through the narrow lens of public safety or at the behest of industry participants seeking preemption of local authority. Rarely has the Commission considered the role of local government as entities holding licenses and requiring spectrum access to provide vital services to constituents outside of the realm of public safety. Yet state and local governments hold numerous licenses for coordination of such services as garbage collection, construction work, transportation management, educational services, mobile broadband for public entities as well as potentially for private citizens, and for any other project requiring radio communication for which state and local governments have specific needs unsuited to CMRS providers or which they wish to provision themselves.

The Commission should consider how to encourage state and local governments to use their spectrum in the most efficient way possible, facilitating non-government access while assuring that state and local governments have the resources to meet their increasing responsibilities to their citizens. By the same token, the Commission should encourage state and local governments to develop best practices and work together, rather than act as arbitrator when private sector entities petition for preemption.

A. The FCC Should Take Steps To Encourage State and Local Government Use of Secondary Markets and Opportunistic Sharing.

Aside from public safety, state and local governments hold numerous licenses. With proper coordination and using new, more efficient technology, local governments can meet these needs with a portion of existing capacity and put the remainder into productive use via secondary markets. For example, a town which combined its Part 90 licenses for its garbage truck fleet, its school buses, and its construction crews could theoretically achieve significant spectrum savings and make the remainder of the capacity available either for additional public uses or for commercial use.

As with management of federal spectrum, secondary market allocation of state and local spectrum allows these public entities to reclaim their spectrum on a real time basis as needed, while allowing other entities to make efficient use of available wireless capacity. The same tools proposed above for efficient management of federal spectrum, such as management through a common spectrum pool, could work equally well on a local level.

The FCC should commence a proceeding to determine how to encourage use of secondary markets by state and local governments, including consideration of possible funding mechanisms for such a transition. This proceeding should also explore how state and local governments could kick-start the development of “private commons” identified by the Commission in the *Second Secondary Market Order*. See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, 18 FCC Rcd 20604 (2003). Finding new ways in which state and local governments

could voluntarily facilitate opportunistic sharing would provide new opportunities for technological and service innovation.

To avoid concern that these models provide too much risk for public safety spectrum, PK would not initially include consideration of public safety spectrum for secondary market use. At the same time, however, PK notes that the Commission approved, and the public safety community has now embraced, the idea of spectrum secondary markets in the context of the 700 MHz D Block. Accordingly, the Commission may well wish to give local governments leeway to experiment in this area, particularly where it could facilitate further build out of needed public safety networks.

B. Facilitate the development of “best practices” and alternate dispute resolution between local government and commercial users.

The availability of federal preemption has unfortunately created a culture of confrontation at the Commission between commercial interests and local government. Private sector entities come to the Commission seeking broad preemption of local authority, usually based only on a handful of questionable anecdotes. Even accepting these stories at face value, the Commission should hesitate before upsetting the balance between local industry participants, local regulators, and the citizen interests they protect. While local governments can certainly become the tools of parochial interests or favor incumbents against new entrants, they also play an important role in maintaining the quality of life in their communities and protecting local consumer interests.

Rather than accept the role of arbiter striving to “strike a balance” between local and commercial need, the Commission should in the first instance encourage a more cooperative approach. By creating a neutral forum, the Commission should encourage the development of “best practices” guides by organizations representing local governments (such as NATOA and NARUC) and wireless users (such as CTIA and WISPA) on issues such as tower siting and use of local facilities. These best practices

should include proposals for alternate dispute resolution in a timely and affordable fashion to resolve the conflicts that will emerge even when all parties negotiate in good faith and the spirit of cooperation.

In cases where local authorities do behave with intransigence, the Commission would be better served to set up a “rocket docket” type process to resolve complaints and mediate between parties rather than broadly preempt all state and local authorities. This process could provide greater balance, permitting the Commission to act in cases where local government has genuinely become a bottleneck without eliminating the ability of local governments to respond to local needs and unique circumstances. At the end of the day, local governments accountable to local citizens often sit in a better position to judge how to balance among conflicting needs than distant federal authorities. Certainly creation of, in the words of Section 1 of the Communications Act, “a rapid, efficient, Nation-wide and world-wide wire and radio communications service” that is “available, so far as possible, to all people of the United States” requires federal policy and federal oversight. At the same time, however, the history of telecommunications and cable service in this country demonstrates that this federal oversight works best when state and local government are permitted to play their traditional role as protectors of local consumer interest.

CONCLUSION

The National Broadband Plan provides a unique opportunity to rethink management of federal, state and local spectrum access. The proposals set forth above provide a means of addressing our growing spectrum access crisis in a sustainable way, mindful of the needs of all stakeholders. While additional spectrum auctions will no doubt also play a role in meeting the demands of the commercial sector, these will provide only short-term relief unless accompanied by substantive changes in how we manage spectrum access. If we continue to rely on spectrum *allocation* instead of developing new

methods of spectrum *access*, we will eventually run out of possible sources of spectrum and face the same “spectrum crisis” the FCC now hopes to avoid.

Respectfully Submitted,

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