

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Innovation in the Broadcast Television) ET Docket No. 10-235
Bands: Allocations, Channel Sharing and)
Improvements to VHF)
)

REPLY COMMENTS OF THE CONSUMER ELECTRONICS ASSOCIATION

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I. INTRODUCTION AND SUMMARY

The Consumer Electronics Association (“CEA”) respectfully submits these Reply Comments in further support of the Commission’s Notice of Proposed Rulemaking (“Notice”) in the above referenced proceeding.¹ The initial comments received in response to the Notice validate and support the Commission’s preliminary actions to enable the repurposing of a portion of the UHF and VHF frequency bands that are currently used by the broadcast television service for flexible use by fixed and mobile wireless communications services. Specifically, the Notice proposes to: (1) provide flexibility within UHF and VHF frequency bands that are currently used by the broadcast television service by adding a spectrum allocation for fixed and mobile wireless communications services, including mobile broadband; (2) develop an appropriate regulatory structure for voluntary television channel sharing that will benefit licensees and free up additional spectrum; and (3) improve the technical operating characteristics of the TV VHF spectrum.²

¹ *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing, and Improvements to VHF*, Notice of Proposed Rulemaking, FCC 10-196, ET Docket No. 10-235, ¶ 1 (2010) (“Notice”).

² *Id.*

The compiled record, representing the views of over 75 commenters from the broadcast industry, wireless broadband industry, public safety communications users, private individuals, and various other groups that include representatives of the consumer electronics, information technology, research, and public interest communities, demonstrates the clear need for the Commission's proposed actions and the feasibility of the course outlined in the Notice. The wireless broadband community and a number of other commenters have come forward with compelling evidence that there is a clear need for additional spectrum for unlicensed and licensed mobile broadband services. Moreover, these entities offer sufficient assurances to give the Commission confidence that its proposals in the Notice will address America's growing demand for wireless broadband services, spur ongoing innovation and investment in mobile, and ensure that America keeps pace with the global wireless revolution. Commenters also identify voluntary incentive auctions as a significant opportunity to identify and reallocate existing spectrum for mobile broadband use by creating a cooperative, "win-win" process that benefits both broadcasters and the wireless broadband industry.

It should come as no surprise, however, that a number of broadcast stakeholders are reluctant to endorse the Commission's proposals. This reluctance seems to be based on a misapprehension that the Commission's proposed reallocation will not leave sufficient spectrum to satisfy broadcast needs. CEA believes these commenters are misinformed and have not rebutted the valid public interest rationale expressed by the Commission and the other commenters concerning the Notice proposals. In fact, several broadcast entities are not entirely dismissive toward the Commission's proposals in the

Notice and in fact support voluntary mechanisms to reallocate spectrum for mobile broadband use.

Finally, the record is incontrovertible on the point that the Commission should not impose regulations on indoor antennas. Commenters across the board reflect serious concern about the Commission's authority to promulgate such rules and question the wisdom behind indoor antenna regulation from a policy standpoint.

II. THE RECORD SUPPORTS THAT THERE IS A PRESSING NEED FOR ADDITIONAL SPECTRUM FOR UNLICENSED AND LICENSED MOBILE BROADBAND SERVICES

Commenters stress that the increasing demand for ubiquitous broadband access has created a spectrum crisis, with demand for bandwidth-intensive mobile Internet access outpacing the capacity of existing wireless broadband networks.³ As CEA explains in its initial comments, the growth of wireless broadband will be severely constrained if more spectrum is not made available to the wireless industry. T-Mobile aptly points out that “this is just the beginning of the mobile broadband revolution.”⁴ Indeed, as more consumers purchase smartphones, tablet PCs, laptops, e-readers, and other mobile devices, the demand for mobile broadband will continue to rise

³ See, e.g., Comments of AT&T, Inc., ET Docket No. 10-235, at 1-2 (filed Mar. 18, 2011) (“AT&T Comments”); Comments of CTIA – The Wireless Association, ET Docket No. 10-235, at 3-9 (filed Mar. 18, 2011) (“CTIA Comments”); Comments of High Tech Spectrum Coalition, ET Docket No. 10-235, at 2-3 (filed Mar. 18, 2011) (“High Tech Spectrum Coalition Comments”); Comments of Qualcomm Incorporated, ET Docket No. 10-235, at 1-2 (filed Mar. 18, 2011); Comments of T-Mobile USA, Inc., ET Docket No. 10-235, at 7-8 (filed Mar. 18, 2011) (“T-Mobile Comments”); Comments of Telecommunications Industry Association, ET Docket No. 10-235, at 3 (filed Mar. 18, 2011); Comments of The Consumer Electronics Association, ET Docket No. 10-235, at 2-7 (filed Mar. 18, 2011) (“CEA Comments”).

⁴ T-Mobile Comments at 5.

dramatically.⁵ CTIA submits that by 2015, “North American networks will carry nearly one million terabytes per month.”⁶

Despite the claims of a limited number of broadcast entities that there is no looming spectrum crisis,⁷ the Commission continues to recognize the need for additional spectrum for mobile broadband. In the words of Chairman Genachowski, “the data couldn’t be clearer.”⁸ Indeed, the recent hearing of the House Subcommittee on Communications and Technology on “Using Spectrum to Advance Public Safety, Promote Broadband, Create Jobs and Reduce the Deficit” recognizes the need for “an additional 100 MHz and 300 MHz in the short term...to meet the exploding consumer and economic demand for wireless broadband.”⁹ Testimonies presented during the hearing further highlight predictions that mobile data traffic will increase 25 to 40 times

⁵ In 2010, smartphones accounted for 35 percent of all handset connections. Smartphone sales are expected to increase by 42 percent this year alone. Tablets, the fastest growing category of devices, average about 122 times the mobile data traffic of a basic handset, and are projected to have sales of 55 million this year. *See* Statement of Mary N. Dillon, President and CEO of United States Cellular Corporation, Hearing of the House Subcommittee on Communications and Technology on “Using Spectrum to Advance Public Safety, Promote Broadband, Create Jobs, and Reduce the Deficit,” (April 12, 2011) (“Dillon Statement”).

⁶ CTIA Comments at 5.

⁷ *See, e.g.*, Comments of Capitol Broadcasting Company, ET Docket No. 10-235, at 2 (filed Mar. 18, 2011) (“Capitol Broadcasting Company Comments”) (arguing that the underlying facts of the National Broadband Plan do not support the idea of a spectrum crisis); Comments of LeSea Broadcasting Corporation, ET Docket No. 10-235, at 2 (filed Mar. 18, 2011) (“LeSea Broadcasting Comments”) (stating that the NPRM is a premature “spectrum grab”); Comments of Daniel Brown, ET Docket No. 10-235, (filed Mar. 18, 2011) (arguing that the spectrum crisis is overstated).

⁸ Julius Genachowski, Chairman, Federal Communications Commission, Remarks at NAB Show 2011 at 7 (April 12, 2011) (“Genachowski NAB Remarks”).

⁹ Statement of the Honorable Greg Walden, Chairman, Subcommittee on Communications and Technology, Hearing on Using Spectrum to Advance Public Safety, Promote Broadband, Create Jobs, and Reduce the Deficit,” (April 12, 2011), *available at* <http://republicans.energycommerce.house.gov/Media/file/Hearings/Telecom/041211/Walden.pdf>

in the next four years.¹⁰ Accordingly, Chairman Genachowski noted most recently during his keynote speech at the 2011 CTIA IT & Entertainment Show that “the explosion in demand for spectrum is putting strain on the limited supply available for mobile broadband”¹¹ and that “the coming spectrum crunch threatens American leadership in mobile and the benefits it can deliver to our country.”¹² He reiterated these remarks just last week at the 2011 NAB Show.¹³

A recently released TIA white paper echoes the Chairman’s concerns, arguing that the spectrum crisis “jeopardizes economic productivity, job growth, innovation, and societal gains.”¹⁴ TIA prefaces its argument by showing that the demand for mobile connectivity in the U.S. is growing exponentially. Indeed, the White Paper shows that smartphones have increased their share of wireless handset unit sales by 37.5 percent in 2010.¹⁵ TIA predicts this number to reach 54.9 percent by 2014.¹⁶ The White Paper

¹⁰ Statement of Peter K. Pitsch, Associate General Counsel and Executive Director, Communications Policy, for Intel Corporation, Hearing on Using Spectrum to Advance Public Safety, Promote Broadband, Create Jobs, and Reduce the Deficit,” (April 12, 2011).

¹¹ Julius Genachowski, Chairman, Federal Communications Commission, Remarks at CTIA Wireless IT & Entertainment: America’s Mobile Broadband Future at 5 (March 22, 2011) (“Genachowski CTIA Remarks”); *see also* Julius Genachowski, Chairman, Federal Communications Commission, Remarks at 2011 International CES (January 7, 2011).

¹² *Id.* at 6.

¹³ Genachowski NAB Remarks at 5.

¹⁴ Telecommunications Industry Alliance White Paper, “Broadband Spectrum: The Engine for Innovation, Job Growth, and Advancement of Social Priorities,” at 1 (March 2011) (“TIA White Paper”).

¹⁵ *Id.* at 1.

¹⁶ *Id.*

further predicts a 224% growth in the tablet market in 2011¹⁷ and a growth rate of 92 percent in mobile data traffic between 2010 and 2015.¹⁸

This growth, fueled by consumer demand, cannot be sustained without adequate spectrum. Repurposing spectrum to wireless broadband will not merely satisfy consumer demands, however, it will also offer significant economic and public interest benefits.

The TIA White Paper notes that “the spectrum reallocations between 1994 and 2000 led to a 250% increase in investment and a 300% increase in jobs in the mobile market.”¹⁹

The White Paper also predicts that accelerated deployment of wireless broadband technologies and applications will “generate productivity gains of almost \$860 million by 2016” and result in a number of public safety, personal security, healthcare, and education benefits.²⁰

CEA agrees with TIA and other commenters that mechanisms should be established to encourage fast and flexible spectrum allocations. The record is clear that given the rapidly increasing demand for bandwidth-intensive applications and services, the Commission should proceed expeditiously in making additional spectrum available for unlicensed and licensed mobile broadband use. CEA reiterates that failure to make additional spectrum available now would not only be inconsistent with the stated goals of

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.* at 3-7. There are numerous wireless broadband applications that are currently being deployed which have significant societal benefits in areas such as public safety and personal security, healthcare, and education. The continued success of these deployments will be tied to the continued availability of additional spectrum resources. *Id.*

the National Broadband Plan and the Obama Administration, it will severely constrain the growth of wireless and risk American leadership in broadband abroad.²¹

Accordingly, CEA urges the Commission to disregard calls by a limited number of commenters for a spectrum inventory before the Commission proceeds with its proposals in the Notice.²² Most notably, The Commission has already undertaken and completed a baseline spectrum inventory. As Chairman Genachowski explains, this baseline inventory “is one of the most substantial and comprehensive evaluations of spectrum in the Commission’s history.”²³ The Commission’s steps in creating and maintaining a spectrum inventory have already provided the necessary information to determine how best to unleash significant additional spectrum for wireless broadband. Moreover, this inventory was carried out by an independent agency – the Commission. A more exhaustive inventory is not only unnecessary to identify the primary opportunities for additional commercial spectrum, it will delay the Commission’s actions by years and increase costs substantially, with no concomitant benefits.²⁴

²¹ See CEA Comments at 7. Indeed, while the U.S. struggles to make significant additional spectrum available for wireless broadband services, in recent years, Japan has identified 400 MHz of new spectrum for auction; Germany 350 MHz; the UK 355 MHz; and each of France, Italy, Canada, and Spain more than 250 MHz. See Dillon Statement at 6.

²² See, e.g., Comments of Belo Corp., ET Docket No. 10-235, at 3 (filed Mar. 18, 2011) (“Belo Corp. Comments”); Comments of Broadcaster Coalition, ET Docket No. 10-235, at 2 (filed Mar. 18, 2011) (“Broadcaster Coalition Comments”); Comments of Sinclair Broadcasting Group, Inc., ET Docket No. 10-235, at 6 (filed Mar. 18, 2011); Comments of University of North Carolina, ET Docket No. 10-235, at 6-7, 13 (filed Mar. 18, 2011) (“UNC Comments”); Capitol Broadcasting Company Comments at 3;

²³ See Letter from Julius Genachowski to The Honorable Olympia J. Snowe, at 1 (March 8, 2011) (“Genachowski Letter”).

²⁴ *Id.* at 2-3 (“The challenge we face, however, is determining whether the incremental value of use measurement is worth the cost – a minimum of tens of millions of dollars – and the time it requires – at least several years – to complete”).

III. THERE IS BROAD AGREEMENT IN THE RECORD ABOUT THE USE OF INCENTIVE AUCTIONS FOR THE BROADCAST TELEVISION SPECTRUM

Chairman Genachowski recently reiterated his goal of freeing up 500 MHz of spectrum for broadband, and argued that a “vital way to recover a significant amount of spectrum toward that goal is our proposal for voluntary incentive auctions.”²⁵ Indeed, the Commission’s incentive auction proposal enjoys broad support in the opening round of comments.²⁶ The High Tech Spectrum Coalition, for example, argues that voluntary incentive spectrum auctions are the best means to meet our nation’s demand for more spectrum for wireless broadband.²⁷ Likewise, CTIA “welcomes the initiative supported by the White House and the Commission to establish voluntary incentive auctions to clear TV broadcast spectrum for licensed mobile broadband use.”²⁸ Qualcomm urges that “the actions set out in the NPRM need to be taken now so that the Commission can quickly plan and conduct voluntary incentive auctions of the television broadcast spectrum once such authority is provided by Congress and the President.”²⁹

Some commenters criticize the Commission’s proposal to use voluntary incentive auctions, worrying that the Commission will sacrifice the economic and societal benefits

²⁵ Genachowski CTIA Remarks at 6.

²⁶ *See, e.g.*, Comments of Ion Media, ET Docket No. 10-235, at 8 (filed Mar. 19, 2011) (“Ion Media Comments”); Comments of MetroTV, ET Docket No. 10-235, at 5 (filed Mar. 18, 2011) (“MetroTV Comments”); Comments of the National Association of Broadcasters, ET Docket No. 10-235, at 15-16 (filed Mar. 19, 2011) (“NAB Comments”); CTIA Comments at 9-11; High Tech Spectrum Comments at 1-5; Qualcomm Comments at 2-3; T-Mobile Comments at 8-9; TIA Comments at 2; CEA Comments at 7-10.

²⁷ High Tech Comments at 2.

²⁸ CTIA Comments at 9.

²⁹ Qualcomm Comments at 3.

of broadcasting by “auctioning off an American resource to multinational companies.”³⁰

It is clear, however, that incentive auctions will enable a highly efficient, cooperative, and productive reallocation of underutilized TV broadcast spectrum that will benefit all parties involved.³¹ As Chairman Genachowski recently explained, voluntary incentive auctions “[i]n short, [are] a win-win for broadband and broadcasters. And a slam dunk for the public.”³² 112 of the nation’s leading economists endorsed voluntary incentive auctions, explaining that voluntary transactions in free markets ensure that trades “happen only when the buyer and seller both benefit.”³³ Moreover, when spectrum is used inefficiently, “the potential buyers and sellers will be encouraged to find terms that capture and share the benefits of transitioning spectrum to higher valued uses.”³⁴

Recognizing that voluntary incentive auctions create a “win-win” process that will enable the timely and equitable reallocation of spectrum from broadcast television bands to mobile broadband, a number of broadcast entities even join the broadband industry in supporting the use of voluntary mechanisms to reallocate spectrum.³⁵

³⁰ See, e.g., Comments of Block Communications, Inc., ET Docket No. 10-235, at 5-6 (filed Mar. 18, 2011) (“Block Communications Comments”); Comments of the Broadcaster Coalition, ET Docket No. 10-235 (filed Mar. 18, 2011) (“Broadcaster Coalition Comments”); Comments of the National Religious Broadcasters, ET Docket No. 10-235 (filed Mar. 18, 2011).

³¹ In its Comments, Ericsson shows that the current method of television transmission is underutilized and no longer a spectrally efficient arrangement. See Comments of Ericsson, ET Docket No. 10-235, at 4 (filed Mar. 18, 2011) (“Ericsson Comments”).

³² Genachowski NAB Remarks at 7.

³³ See Letter from Paul Milgrom, Gregory Rosston, and Andrzej Skrzypacz to President Barack Obama (April 6, 2011) (letter signed by 112 economists that specialize in telecommunications, auction theory and design, and/or competition policy encouraging the use of voluntary incentive auctions to reallocate spectrum to mobile broadband).

³⁴ *Id.*

³⁵ See Ion Media Comments”; MetroTV Comments; NAB Comments.

Additionally, CEA reiterates that voluntary incentive auctions recognize the important public interest benefits served by television broadcasters. Only a small percentage of the nation's broadcast stations would need to participate in a voluntary incentive auction to address the nation's spectrum shortage.³⁶ An incentive auction allows broadcasters themselves to decide what to do with their license by designing a mechanism to repurpose spectrum on a voluntary, market-based system. Above all, a voluntary incentive auction promises to produce over \$33 billion in net proceeds for the U.S. Treasury.³⁷

IV. COMMENTERS BROADLY SUPPORT THE COMMISSION'S PROPOSALS TO JUMP START BROADCAST TELEVISION SPECTRUM REALLOCATION EXCEPT FOR PROMULGATION OF ANTENNA STANDARDS

The three proposals in the Notice enjoyed a great deal of support with one exception: parties overwhelmingly opposed regulation of TV antenna performance. CEA recommends that the Commission move forward with the other Notice proposals but refrain from any unnecessary and unjustified requirements for TV antennas.

Fixed and Mobile Allocation. CEA and several other commenters applaud the Commission's preliminary steps outlined in the Notice to repurpose a portion of the UHF and VHF frequency bands that are currently used by the television service for flexible use by fixed and mobile communications services. Indeed, commenters recognize that modifying the Table of Allocations to allow broadband use in the UHF TV bands is a

³⁶ CEA Comments at 9.

³⁷ CEA Comments at 10. *See also* CTIA – The Wireless Association and Consumer Electronics Association White Paper, “Broadcast Spectrum Incentive Auctions,” (February 15, 2011).

necessary first step to allocating the spectrum to fixed and mobile broadband use.³⁸

AT&T, for example, explains that the Commission’s proposal “presents the best opportunity for the Commission to put the TV Bands to their most productive and valuable use.”³⁹

Channel Sharing Proposal. Several commenters also support the Commission’s voluntary channel sharing proposal and agree that such arrangements will minimize the impact of reallocation on broadcast services.⁴⁰ The record confirms that channel sharing will benefit licensees, particularly those that wish to save on their operating costs or minimize the amount of their investment in spectrum or transmission facilities.⁴¹ CEA further agrees with TIA that allowing television broadcasters the option of sharing one 6 MHz channel will “provide strong incentives for current licensees to participate in voluntary incentive auctions, while enabling new business opportunities for broadcasters.”⁴²

VHF Optimization and Antenna Standards. While commenters across the board support the Commission’s third and final proposal in the Notice to increase the utility of

³⁸ See Comments of SmartComm, L.L.C., ET Docket No. 10-235, at 1-2 (filed Mar. 18, 2011) (“SmartComm Comments”); AT&T Comments at 3-5; CTIA Comments at 12-13; Ericsson Comments at 1; High Tech Spectrum Coalition Comments at 4; T-Mobile Comments at 7-8; TIA Comments at 6; CEA Comments at 11.

³⁹ AT&T Comments at 3.

⁴⁰ See, e.g., Comments of Minority Media & Telecommunications Council, ET Docket No. 10-235, at 14 (filed Mar. 18, 2011) (“Minority Media & Telecommunications Council Comments”); Comments of Cox Media Group, Inc., ET Docket No. 10-235, at 4 (filed Mar. 18, 2011) (“Cox Comments”); Comments of Harris Corporation, ET Docket No. 10-235, at 4 (filed Mar. 18, 2011) (“Harris Comments”); Comments of Wireless Internet Service Providers Association, ET Docket No. 10-235 at 5 (filed Mar. 18, 2011) (“WISPA Comments”); AT&T Comments at 5-6; CTIA Comments at 13-15; High Tech Spectrum Coalition at 4; T-Mobile Comments at 13-14; TIA Comments at 8; CEA Comments at 12-13.

⁴¹ See *id.*

⁴² TIA Comments at 8.

VHF spectrum for broadcast television, the initial record confirms overwhelming opposition to the Commission’s proposal to impose regulations on indoor antenna performance standards.⁴³ MetroTV pointedly notes that requiring indoor VHF receiving antennas to have minimum performance standards is “absurd.”⁴⁴ Commenters provide that the Commission not only lacks appropriate authority to regulate indoor antennas, it has not established a need to do so. Even if the Commission had appropriate authority, commenters largely agree that regulating indoor antennas would represent a poor policy choice.⁴⁵ At most, CEA reiterates that the Commission should only require that antennas state their performance per CEA-774-B measurement procedures.

RadioShack argues convincingly that the Commission lacks statutory authority to mandate a single antenna standard.⁴⁶ As an initial matter, the All Channel Receiver Act, codified in Section 303(s) of the Communications Act of 1934, as amended, is not a sufficient basis to justify the imposition of standards for the performance of indoor antennas by the Commission. As RadioShack explains, “Congress sought to ensure that all television broadcast receivers...would be able to receive the UHF channels. In this case, however, the Commission’s proposed rules would apply not to television receivers, but to antennas...”⁴⁷ CEA further reiterates that the legislative history of the Act

⁴³ See, e.g., Comments of RadioShack Corporation, ET Docket No. 10-235, at 3 (filed Mar. 18, 2011) (“RadioShack Comments”); MetroTV Comments at 6; CEA Comments at 14; NAB Comments at 21-23.

⁴⁴ MetroTV Comments at 6.

⁴⁵ See RadioShack Comments at 5; CEA Comments at 17;

⁴⁶ RadioShack Comments at 3.

⁴⁷ *Id.*

precludes an interpretation that gives the Commission authority set minimum performance standards on indoor antennas.⁴⁸

Moreover, mandatory antenna standards are not in the public interest. Indoor antenna regulations will result in a “one size fits all” requirement on antennas that fails to consider different needs of different localities. As RadioShack argues, “the Commission should not force consumers to pay more for antennas that provide capabilities consumers may not need or want.”⁴⁹ Government intervention and regulation of antenna performance will only result in inefficiencies and unnecessary burdens on consumers and manufacturers. Again, the market will provide the best solution for improving the performance of indoor antennas.⁵⁰

CEA joins with those commenters that propose that at most, the Commission should impose labeling requirements on indoor antennas.⁵¹ Requiring that antennas state their performance per CEA-774-B, for example, will provide transparency and disclosure to consumers concerning how a particular antenna will perform. CEA reiterates that the Commission should also make information available that will allow for more efficient use of antennas. The Commission will accomplish this by encouraging voluntary campaigns

⁴⁸ CEA Comments at 14-16. *See also* RadioShack Comments at 3-5. While the original version of the All Channel Receiver Act would have given the Commission the authority to set “minimum performance standards” for all television receivers shipped in interstate commerce, that language was dropped out of fear that it would provide too broad authority to the Commission to extend regulation far beyond Congress’s objective of ensuring all-channel tuners on all TV receivers.

⁴⁹ RadioShack Comments at 5.

⁵⁰ CEA Comments at 17.

⁵¹ *See* CEA Comments at 17-18; NAB Comments at 21-23.

or package inserts by broadcasters and manufacturers that will educate the public on proper antenna use.⁵²

V. CONCLUSION

The initial record compiled in response to the Commission's Notice offers strong support and justification for the Commission's proposed actions to repurpose a portion of the UHF and VHF frequency bands that are currently used by broadcast television service. The record is equally clear, however, that the Commission should not regulate the performance of indoor antennas in an effort to increase the utility of VHF spectrum for television broadcasting.

Respectfully submitted,

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⁵² CEA Comments at 17.