



NEW AMERICA
FOUNDATION

November 21, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation
WT Docket No. 12-70 (Service Rules for AWS-4 in 2000-2020 and 2180-2200)
WT Docket No. 12-69 (Promoting Interoperability in 700 MHz Spectrum)
Docket 12-268 (Expanding Opportunities of Spectrum Through Incentive Auctions)

Dear Ms. Dortch:

On November 19, 2012, Michael Calabrese of the Open Technology Institute at the New America Foundation and Harold Feld of Public Knowledge met as representatives of the Public Interest Spectrum Coalition (PISC) with Commissioner Ajit Pai and Courtney Reinhard, Senior Legal Advisor for Wireless to Commissioner Pai. Several of the nonprofit organizations affiliated with PISC filed jointly in the proceedings referenced above.

Concerning the TV Band incentive auctions NPRM, the public interest representatives described why they believe that maintaining and enhancing robust and nationwide access to unlicensed spectrum in the TV band below 700 MHz is vital to enhancing consumer welfare, mobile market competition and innovation. The representatives emphasized that in addition to the benefits of unlicensed use of the TV White Spaces for rural broadband, for emerging machine-to-machine applications, for carrier offload and other unforeseen innovations, perhaps the most important policy innovation at stake is establishing the functionality of a geolocation database to govern shared use of very underutilized spectrum, particularly certain Federal bands, as recommended in the recent report of the President's Council of Advisors on Science and Technology (PCAST).

The representatives noted that the Commission's proposed designation of the guard bands between broadcasting and LTE for low-power, unlicensed use would be critical to ensure that at

least two or three channels of TV band spectrum remain available for unlicensed devices and services in every market nationwide. We noted that the compromise language adopted by Congress in the spectrum legislation enacted last February explicitly rejected earlier language requiring that the guard bands be “technically necessary” and instead left the question of what is “technically reasonable” to the Commission. One of the representatives noted that testing may ultimately be necessary to determine the width of a guard band sufficient to protect television reception from high-power LTE transmitters.

With respect to the Commission’s proposed assignment of new AWS-4 terrestrial mobile service licenses to the incumbent 2 GHz MSS licensee, which incorporates a permanent waiver of the ATC “integrated services” rule that has restricted flexible use of MSS spectrum (both the S band and the L band) for terrestrial-only deployments, we reiterated arguments in the Comments of the Public Interest Organizations in support of public interest obligations that should be imposed in exchange for the multi-billion dollar value of this flexible, terrestrial spectrum grant.¹ The Commission should follow the precedent it set in granting substantively similar MSS license transfers and limited waivers of the integrated service rules granted to LightSquared Subsidiary LLC (“LightSquared”) in 2009 and 2010, respectively. LightSquared compensated the public for the grant of valuable spectrum rights by agreeing to a series of compelling public interest obligations that included deployment of a wholesale-only LTE network, rapid buildout requirements, and a requirement to seek Commission approval for any sale or leasing of more than 25 percent of the network’s capacity in an economic market area to one of the two largest terrestrial carriers by market share.

The public interest group representatives asserted that without obligations that deter or at least condition the sale of AWS-4 licenses, the Commission may end up conferring a \$4 to \$6 billion subsidy while actually making the market *less* competitive if one of the two dominant carriers ends up with the AWS-4 spectrum unconditioned by wholesale access or other pro-competitive conditions. As our comments in the proceeding describe in more detail, we continue to urge that the assignment of these valuable AWS-4 licenses without an auction should be subject to specific public interest conditions that could recoup value for the public, while also promoting wireless industry competition, innovation and spectrum efficiency.

The public interest representatives asserted that the most important and practical condition that should be imposed in return for the enormous public subsidy conferred by the AWS-4 licenses would be to augment the buildout requirements with a “use it or share it” license condition that would permit other parties to make use of unused AWS-4 spectrum on a localized basis until such time as the licensee actually deploys and commences service to consumers. There appears to be no reason to limit use of the TV Bands Databases to the TV band alone, as

¹ See Comments of New America Foundation, Consumers Union, Public Knowledge, WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356 (filed May 17, 2012) (“Public Interest Organizations’ Comments”).

such databases likewise could be used to regulate contingent access to fallow portions of other bands, including the S Band.² The Commission's ongoing certification of geolocation databases to govern opportunistic and conditional access by frequency-hopping radios to vacant TV channels makes this entirely feasible.

At a minimum, the 20 MHz being acquired from DBSD is fallow spectrum and is likely to remain so for many years under the modest, population-based buildout requirements proposed in the Commission's NPRM. There would be absolutely no diminution of the licensee's rights or ability to buildout in any area at any time – the only 'burden' on the licensee would be the need to notify the Commission and/or a certified TV Bands Database administrator of the date on which the AWS-4 licensee would commence service in a particular local area.

The public interest representatives also focused on a proposed condition requiring that for the duration of the initial license period, the AWS-4 licensee should make up to 50 percent of its capacity available in each Economic Area for open wholesale leasing, or for roaming by other carriers, on a non-discriminatory basis at fair and reasonable rates. We noted that even if the AWS-4 licenses do not result in a new market entrant, or if the AWS-4 incumbent "flips" the spectrum to another national carrier, a wholesale access condition would continue to promote mobile market competition by building in a requirement that any operator allow roaming by competitive carriers and the wholesale purchase of mobile connectivity on fair and reasonable terms. The public interest representatives noted the potential benefits of this policy for innovation and consumer welfare in the adjacent markets for devices, applications and mobile data services, since device makers, big box retailers and other non-carrier companies would have the option to purchase wholesale access to mobile data connectivity.

Finally, with respect to proposals that would impose lower power and stringent out-of-band emission requirements on the lower boundary of the AWS-4 band at 2000-2020 MHz, the public interest representatives reiterated their previously expressed view that hobbling the AWS-4 licensee as a potential new market competitor seems far more likely to harm than to serve the public interest. The benefits of enhancing the value of the adjoining 5 MHz of H Band spectrum at 1995-2000 MHz, for the purpose of a future auction, appear remote and hypothetical in comparison to the immediate delay and possible loss of a market entrant. The representatives noted that although Congress has mandated an H Block auction, that auction could be for low-power use more consistent with likely limitations on the lower H Block; whereas designing service rules to maximize auction revenue appears to violate at least the spirit of Section 309(j)'s maxim that auction revenue should be secondary to broader public interest considerations.

² See Comments of the Public Interest Spectrum Coalition, In the Matter of Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies, ET Docket No. 10-237 (Feb. 28, 2011). See also Michael Calabrese, "Use it or Share it: Unlocking the Vast Wasteland of Fallow Spectrum," Working Paper, presented at 39th Research Conference on Communication, Information and Internet Policy (TPRC), September 25, 2011.

The PISC representatives maintained that the public interest is best served by *both expediting and conditioning the buildout of the entire 40 MHz* that is the subject of this proceeding in a manner that will promote more wireless competition with minimal delay. Extensive delay in the buildout and market entry of a new competitive wireless service provider would undermine the Commission's justification for awarding terrestrial broadband rights without an auction just as surely as would the Commission's failure to impose public interest conditions that at least increase the likelihood that the AWS-4 grantee will become a competitive market entrant – and not a vendor of spectrum to one of the dominant wireless carriers.

With respect to the Lower 700 MHz interoperability proceeding, we urged a rapid completion of the proceeding, noting the arguments PISC groups made in Comments and Reply Comments concerning the importance of interoperability for promoting competition and consumer choice in mobile broadband markets. Without interoperability, competitive carriers that are A Block licensees would face enormous additional obstacles to deploying LTE and acquiring popular devices in an economic fashion.

Respectfully submitted,

/s/

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