

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

In the Matter of)	
)	
Service Rules for the Advanced Wireless)	WT Docket No. 12-357
Services H Block—Implementing Section)	
6401 of the Middle Class Tax Relief and Job)	
Creation Act of 2012 Related to the 1915-)	
1920 MHz and 1995-2000 MHz Bands)	
)	

COMMENTS OF AT&T INC.

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AT&T Inc., on behalf of itself and its operating company affiliates (collectively, “AT&T”), hereby submits the following comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“Notice”) in the above-captioned proceeding.¹

I. INTRODUCTION & SUMMARY.

AT&T welcomes all efforts by the Commission to bring new mobile broadband spectrum to market, including the 1915-1920 MHz/1995-2000 MHz Advanced Wireless Services (“AWS”) H Block, to meet the unprecedented and dramatic increase in consumer demand for wireless services. As a general matter, AT&T supports the commercial use of spectrum with full flexibility and as few regulatory restrictions as possible. In advancing this objective, however, the Commission should ensure that use of the H Block for mobile broadband does not interfere

¹ Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, WT Docket No. 12-357, *Notice of Proposed Rulemaking*, FCC 12-152 (rel. Dec. 17, 2012).

with existing use of the PCS band. Indeed, Congress, through the Spectrum Act, made ensuring protection of PCS a prerequisite to moving forward with an H Block auction.²

Congress's concerns about commercial mobile use of the H Block are well-justified. When the Commission last explored licensing the H Block, industry-sponsored testing suggested a significant risk of harmful interference to existing PCS operations posed by H Block mobile devices. This interference came primarily in the forms of receiver overload and third order intermodulation, and testing revealed that mitigation of these risks necessitated transmitter power and out-of-band emission ("OOBE") restrictions that would limit the utility of the H Block for commercial mobile services.

Making 10 megahertz of additional spectrum available for mobile wireless service would serve the public interest and further the Commission's objective of making 300 megahertz of new mobile spectrum available by 2015.³ As the Notice suggests, technology has changed significantly since the Commission last evaluated use of the H Block. Given the record, however, and the Congressional directive to protect existing PCS operations, it is not possible to auction the H Block without a full understanding of the effects of these developments. Accordingly, new testing is required to determine whether the adoption of new technologies like Long Term Evolution ("LTE") and advancements in mitigation techniques would allow use of the H Block for commercial mobile broadband without harming PCS. Testing will enable the Commission to set appropriate power and OOBE limits for H Block operations, and ensure that

² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6401, 126 Stat. 156 (2012) ("Spectrum Act") (requiring Commission to license and auction the H Block unless the Commission determines it "cannot be used without causing harmful interference to commercial mobile service licensees in the frequencies between 1930 megahertz and 1995 megahertz").

³ See Connecting America: The National Broadband Plan, Recommendation 5.8.4, pp. 87-88 (2010).

existing PCS mobile receivers using the GSM, CDMA, EV-DO, UMTS, HSPA, and LTE air-interfaces are protected from harmful interference.

With respect to the non-technical auction and service rule issues raised in the Notice, the Commission should adopt rules, as proposed herein, that promote simplicity and consistency with comparable bands. In particular, the service area and performance requirements should be based on the established policies employed in the PCS and 700 MHz bands. In any future H Block auction, the Commission should emphasize open eligibility and simplicity in design to maximize participation, minimize opportunities for gamesmanship, and obtain the full market value of the H Block spectrum for the benefit of the public. The Commission should also ensure that any reimbursement policies developed for the H Block preclude the possibility of a windfall to Sprint Nextel Corporation (“Sprint”).

II. BECAUSE THE EXISTING RECORD SUGGESTS A LIKELIHOOD OF HARMFUL INTERFERENCE TO PCS, NEW TESTING SHOULD BE CONDUCTED PRIOR TO AUCTIONING THE H BLOCK.

Ensuring protection of PCS from harmful interference is a legal prerequisite to an H Block auction. Congress, through the Spectrum Act, instructed the Commission to auction H Block licenses unless the Commission determines it “cannot be used without causing harmful interference to commercial mobile service licensees in the frequencies between 1930 megahertz and 1995 megahertz.”⁴ Congress’s concern was well-founded. As the Commission recognizes, it does not begin from a clean slate with respect to the H Block. The available record—which would benefit from updating, including with new test data—demonstrates a great potential for harmful interference to PCS from H Block mobile operations.

⁴ Spectrum Act § 6401.

In the absence of new testing, the Commission could not, consistent with its Congressional directive, maximize the value of the H Block for mobile broadband while preserving and protecting mobile broadband operations in the PCS band. Because it is directly adjacent to the Broadband PCS band, the H Block could serve as a PCS extension band. But the available evidence suggests that operations in the H Block could impair existing mobile broadband operations. PCS is among the most intensively used mobile broadband spectrum allocations in the United States. Indeed, an overwhelming majority of mobile devices in U.S. consumers' hands today communicate over PCS band frequencies with regularity. Accordingly, if licensing the H Block impairs PCS operations, rather than "help[ing] ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service,"⁵ it could actually hinder the Commission's broadband goals.

The Commission sought comment on service rules for commercial mobile use of the H Block in a 2004 Notice of Proposed Rulemaking and in a 2008 Further Notice.⁶ Although there were differences among the parties with respect to the specific technical rules that should be applied, there was near uniformity regarding likely interference to PCS resulting from CMRS operations in the H Block and the need for transmitter power and OOB limits. As AT&T

⁵ Notice at ¶ 2.

⁶ Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356, *Notice of Proposed Rulemaking*, 19 FCC Rcd 19263 (2004); Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket Nos. 07-195, 04-356, *Further Notice of Proposed Rulemaking*, 23 FCC Rcd 9859, 9861 (2008). AT&T notes that, although a new docket has been created for the instant Notice, it is, in reality, the latest in a series of inquiries directly traceable at least as far back as 2004. Because of the volumes of relevant technical and policy discussion that precedes this Notice, the Commission should explicitly incorporate the existing record of WT Docket 04-356 into any future decision it makes with respect to the H Block.

explained in 2004, there are three sources of potential interference to PCS mobile devices from H Block transmitters: out-of-band emissions, receiver overload, and intermodulation.⁷ These sources of interference were demonstrated by independent laboratory tests conducted by PCTest and WINLAB for CTIA,⁸ which showed that: (1) overload interference would be a serious problem for GSM, CDMA, and UMTS handsets located near an H Block device; (2) intermodulation interference would be a serious problem for CDMA and UMTS handsets located near an H Block device; and (3) OOBE interference could be addressed through technical limits consistent with industry standards.⁹ Testing further demonstrated that because the characteristics of duplexers in PCS phones vary dramatically over their normal operating temperature range, PCS phones may be subject to overload interference and third order intermodulation interference from devices transmitting in any part of the H Block.¹⁰

In light of this record, various proposals were offered by wireless providers and manufacturers for appropriate technical limits to allow mobile use of the H Block. For its part, AT&T proposed that if the Commission were intent on introducing CMRS operations into the H Block, the following OOBE and power limits should be adopted:

- OOBE level allowed into the 1930-1990 MHz band of -66 dBm/MHz;

⁷ Reply Comments of Cingular Wireless at 2-3, WT Docket No. 04-356 (Feb. 8, 2005) (“Cingular Reply Comments”); *see also* Comments of AT&T Inc. at 2-4, WT Docket Nos. 07-195, 04-356 (filed July 25, 2008) (“AT&T 2008 H Block Comments”).

⁸ *See* Comments of CTIA, WT Docket No. 04-356 (filed Dec. 8, 2004) at Attachments B (“WINLAB Report”) and C (“PCTest Report”).

⁹ *See* Cingular Reply Comments at 5; AT&T 2008 H Block Comments at 5-6.

¹⁰ Cingular Reply Comments at 5; AT&T 2008 H Block Comments at 6.

- +13 dBm mobile transmit power limit across the entire H Block.¹¹

AT&T and others recognized that such rigorous limitations had the potential to undermine the utility of the H Block, but balanced that risk against the strong possibility of harmful interference to millions of PCS users in the absence of such restrictions.

The Notice correctly points out that there have been significant technological advancements since the Commission last evaluated the possibility of CMRS in the H Block.¹² In 2004 and 2008, the discussion focused on use of 2G and 3G technologies in the H Block and PCS bands. Today, the industry has coalesced around LTE as the emerging mobile broadband standard. As such, the heavily-used PCS band is home to a wide variety of technologies. Additionally, filter manufacturing and other mechanisms for interference mitigation continue to advance rapidly. These changes undoubtedly affect the interference environment, but testing would be needed before the Commission could conclude that the H Block could be used for commercial mobile broadband without harming PCS operations.¹³

III. IN ADOPTING LICENSING AND AUCTION RULES FOR THE H BLOCK, THE COMMISSION SHOULD PROMOTE SIMPLICITY AND CONSISTENCY WITH COMPARABLE BANDS.

To maximize the utility of the H Block and ensure expeditious deployment, the Commission should adopt licensing and auction rules that promote simplicity and consistency

¹¹ AT&T 2008 H Block Comments at 11; *see also* Cingular Reply Comments at 13-19. AT&T notes that the Commission mistakenly states in the Notice that AT&T supported a “13 dBm/MHz power limit on the Lower H Block.” Notice at ¶ 43. In reality, AT&T’s proposal was for a 13 dBm limit on total transmit power across the entire five megahertz H Block (+13 dBm/5 MHz). The equivalent in power spectral density terms would be a value of approximately +6 dBm/MHz.

¹² Notice at ¶ 44.

¹³ AT&T understands that other parties may include new testing data with their initial comments.

with comparable bands. Specifically, the Commission should license the H Block on an economic area (“EA”) basis, adopt standard build-out requirements based on the upper 700 MHz C block, and implement open eligibility and simultaneous multiple-round bidding for an H Block auction.

A. In Licensing the H Block, the Commission Should Seek to Promote Compatibility with Comparable Bands.

AT&T supports the Commission’s proposal to license the H Block on an economic area (“EA”) basis.¹⁴ Licensing on an EA basis is consistent with the Commission’s recent trend in licensing spectrum made available for mobile broadband use and also will support the industry’s evolution to LTE. Most recently, the Commission licensed the AWS-4 band on an EA basis.¹⁵ Moreover, the Commission’s recent trend is to license spectrum made available for mobile broadband service on an EA basis,¹⁶ and it has proposed to license spectrum made available through the broadcast incentive auctions on an EA basis as well.¹⁷ Wireless industry players are either deploying LTE or have announced plans to deploy LTE in these newly available bands.¹⁸

¹⁴ Notice at ¶¶ 26-31.

¹⁵ Notice at ¶ 29.

¹⁶ Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket No. 12-70, *Report and Order and Order of Proposed Modification*, FCC 12-151 ¶ 50 (rel. Dec. 17, 2012) (“AWS-4 Order”) (“AWS-1 Blocks B and C spectrum is licensed on an EA basis.”).

¹⁷ Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions, WT Docket No. 12-268, *Notice of Proposed Rulemaking*, 27 FCC Rcd 12357 ¶ 148 (2012) (“Incentive Auctions NPRM”).

¹⁸ Phil Goldstein, “DISH Still Searching for Wireless Partner But Seems to Rule Out Sprint,” *Fierce Wireless* (Jan. 2 2013), *available at* <http://www.fiercewireless.com/story/dish-still-searching-wireless-partner-seems-rule-out-sprint/2013-01-02> (noting DISH’s plans to deploy LTE over its AWS-4 spectrum); Press Release, Sprint Nextel Corp., “Sprint to Acquire Spectrum and Customers in the Midwest from U.S. Cellular for \$480 Million,” (Nov. 7, 2012), *available at* http://newsroom.sprint.com/article_display.cfm?article_id=2452 (noting Sprint’s

As the H Block likely will be used for LTE as well, it should be licensed in a comparable manner with other LTE bands.

Similarly, when licensing the Gulf of Mexico,¹⁹ the Commission should follow past precedent and promote compatibility with other mobile broadband spectrum bands. Specifically, the Commission should follow the precedent of the 700 MHz band and other Part 27 services and issue a separate license for the Gulf of Mexico.²⁰ As has been Commission practice, the Gulf of Mexico license should begin 12 nautical miles off shore to enable coastal licensees to cover the shoreline while allowing adequate space for signal roll-off.²¹ Such consistent handling of the H Block will promote compatibility among the LTE bands, thereby facilitating LTE deployment.

B. The Commission Should Adopt Standard Build-out Requirements Based on the 700 MHz Band.

In the interest of efficiency, the Commission should move toward standard build-out requirements for allocations that will be used in the provision of mobile broadband service, rather than a patchwork of band-specific build-out requirements. By adopting standard build-out requirements, the Commission will reduce uncertainty for potential licensees and streamline its own regulatory process, expediting deployment and service to the public.

proposed acquisition of PCS spectrum would enable it to continue its 4G LTE rollout); Press Release, T-Mobile USA, “T-Mobile USA Signs Spectrum Agreement with Verizon,” (Jun. 25, 2012), *available at* <http://newsroom.t-mobile.com/articles/VerizonSpectrumAgreement> (noting AWS spectrum licenses acquired from Verizon Wireless would be used in LTE rollout).

¹⁹ Notice at ¶ 32.

²⁰ *See* Service Rules for the 746-764 and 776-794 MHz Bands, WT Docket No. 06-150, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8085, ¶ 49 (2007) (“700 MHz First Report and Order”).

²¹ *Id.*

AT&T proposes the Upper 700 MHz C Block build-out requirements as the default standard.²² Under such a proposal, H Block licensees would be required to cover 40% of the total population of each EA within 4 years, and then 75% of the total population of each EA by the end of the license term. These build-out requirements will ensure a rapid deployment of mobile broadband services while affording licensees adequate flexibility to deploy service. Furthermore, while the interim requirement is the same as that proposed by the Commission in its NPRM,²³ the final performance benchmark would increase the required population coverage by five percent,²⁴ bringing more mobile broadband service to the public.

AT&T opposes the Commission’s proposal to automatically terminate the H Block license where a licensee fails to meet the final build-out requirement.²⁵ The Commission proposes to terminate the license for an entire service area automatically for even a *de minimis* failure to meet the final benchmark. This proposed penalty is too draconian and inconsistent with the requirements applicable to other comparable services. Terminating a license for failure to meet the final benchmark would cut off service to users, strand investment, and disserve the public interest. Consistent with the practice in other commercial mobile bands—including other Part 27 bands geographically licensed by EA service areas—H Block licensees should be subject to a “keep-what-you-use” rule at the build-out deadline.²⁶ Under such a rule, if an H Block licensee were to miss its final construction benchmark in a particular service area, its

²² See 47 C.F.R. § 27.14(h).

²³ Compare Notice at ¶ 81 with 47 C.F.R. § 27.14(h).

²⁴ Compare Notice at ¶ 81 (70% coverage) with 47 C.F.R. § 27.14(h) (75% coverage).

²⁵ Notice at ¶ 85.

²⁶ See, e.g. 27.14(g)(2), (h)(2), (i)(2).

authorization would be revoked only in the portions of the service area that it did not cover. A “keep-what-you-use” rule would provide sufficient incentive to H Block licensees to meet the performance requirements but would not risk depriving consumers of service they rely upon.

C. The H Block Auction Should Feature Open Participation and Simplicity in Design.

AT&T supports the Commission’s proposal to adopt an open eligibility standard for the H Block. As the Commission recognizes, open eligibility is consistent with past practice for mobile wireless spectrum allocations,²⁷ as well as with the Spectrum Act.²⁸ Open eligibility will serve the public interest by reducing complexity and opportunities for gaming while also ensuring that the Commission recovers the full value of the H Block for the public. There is no record-basis for *ex ante* eligibility restrictions.²⁹ On the contrary, limiting participation in an H Block auction would significantly increase the chance that the auction does not recover the full market value of the H Block licenses. Accordingly, the Commission should adopt auction rules permitting open participation. The Commission may make a determination regarding whether any further competitive review is necessary at the long-form stage.

²⁷ Notice at ¶ 74 (citing AWS-4 Order at ¶ 242; Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, 22 FCC Rcd 15289, 15381-84 ¶¶ 253, 256 & n.573 (2007)).

²⁸ Notice at ¶ 74 (citing Spectrum Act § 6404).

²⁹ AT&T’s comments in the *Mobile Spectrum Holdings NPRM* proceeding, Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710 (2012), further explain why it would be anticompetitive and unlawful for the Commission to adopt *ex ante* restrictions on participation in auction proceedings. See Reply Comments of AT&T Inc. at 38-42, WT Docket No. 12-269 (filed Jan. 7, 2013); Comments of AT&T Inc. at 59, WT Docket No. 12-269 (filed Nov. 28, 2012). AT&T agrees with the Commission that, “[d]uring the pendency of the *Mobile Spectrum Holdings NPRM*, the Commission [should] continu[e] to apply its current case-by-case approach to evaluate mobile spectrum holdings during the consideration of . . . initial spectrum licensing after auctions.” Notice at n.163.

AT&T supports the adoption of a simultaneous multiple-round design for the H Block auction. Under such a design, every H Block license available for bid will be offered at the same time and bidders will place bids on individual licenses through successive bidding rounds. The Commission and the industry have experience with simultaneous, multiple-round auctions and the Commission repeatedly has executed such auctions without significant problems.³⁰ This design is a proven model of success. For simplicity's sake, there is no need to depart from the Commission's standard auction format.³¹

IV. THE COMMISSION SHOULD ADOPT REIMBURSEMENT RULES THAT PRECLUDE THE POSSIBILITY OF A SPRINT WINDFALL.

The Commission should ensure that any reimbursement rules adopted for the H Block account for the fact that Sprint may have been fully compensated for its BAS re-banding costs by the time of the H Block auction. Specifically, as recognized in the *800 MHz Order*, if the 800 MHz re-banding "true-up" occurs before the H Block auction, Sprint will be due no further compensation.³² Any additional reimbursement after the true-up could create the potential for a windfall to Sprint, at the expense of the public.

³⁰ See, e.g., Public Notice, *Auction of 700 MHz Band Licenses Scheduled for July 19, 2011*, AU Docket No. 10-248, 26 FCC Rcd 3342, ¶¶ 124-25 (WTB 2011) (adopting a simultaneous multiple-round auction design for the auction of 700 MHz A and B block licenses in Auction 92); Public Notice, *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006*, AU Docket No. 06-30, 21 FCC Rcd 4562, ¶ 133 (2006) (adopting a simultaneous multiple-round auction design for the auction of AWS-1 licenses in Auction 66).

³¹ See Public Notice, *Auction of 700 MHz Band Licenses Scheduled for July 19, 2011*, AU Docket No. 10-248, 26 FCC Rcd 3342, ¶ 125 (2011) (referring to simultaneous multiple-round design as the standard auction format).

³² Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, ¶ 261 (2004) ("800 MHz Order").

Sprint’s obligation to clear incumbents from the H Block was borne out of the 800 MHz re-banding proceeding. Through that proceeding, Sprint agreed to give up certain spectrum holdings in the 700, 800, and 900 MHz bands, and to assume responsibility for clearing and relocating incumbent users of a portion of the 800 MHz band and the 1.9 GHz Broadcast Auxiliary Service—including the H Block.³³ In exchange for these obligations, Sprint was issued exclusive nationwide rights to the PCS G Block. Upon finalization of the re-banding of the 800 MHz band, the Commission will hold a “true-up” process that will determine whether the consideration provided by Sprint—including the spectrum it gave up and the unreimbursed rebanding costs incurred—meet the value of the G Block license it received. If the Commission determines that Sprint’s total costs are less than the value of the G Block, Sprint will be required to make a windfall payment to the United States Treasury.

The Spectrum Act requires the Commission to hold an H Block auction by February, 2015,³⁴ although the Commission has expressed a desire to hold the auction by the end of 2013.³⁵ Currently, the true-up is scheduled for July 31, 2013, but this deadline has been extended before.³⁶ Provided the H Block auction occurs before the “true up,” Sprint will be entitled to reimbursement, on a pro rata basis, from the new H Block licensees for its H Block BAS clearance costs. Having been reimbursed, Sprint will not be credited with the H Block BAS

³³ See *800 MHz Order*.

³⁴ Spectrum Act § 6401(b)(1) (requiring the Commission to auction the H Block no later than 3 years after the date of enactment of the Spectrum Act, which occurred February 22, 2012).

³⁵ Notice ¶ 2.

³⁶ See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Order*, DA 12-0270 (PSHSB rel. Dec. 21, 2012) (postponing the 800 MHz true-up until July 1, 2013).

clearance costs as part of the consideration provided in exchange for the G Block at the 800 MHz “true-up.”

If, however, the “true-up” occurs as scheduled, and before an H Block auction, the “true up” will fully address Sprint’s BAS clearing expenses and eliminate the need for reimbursement. Sprint will be credited for its H Block BAS clearing expenses as part of the consideration it provided in exchange for the G Block. Any future reimbursement for Sprint after the “true-up” could constitute windfall. The Commission addressed this very concern in the *800 MHz Order* when it made clear that “[Sprint] would no longer be entitled to reimbursement from other entrants to the band after receiving credit for its relocation costs at the 800 MHz true-up.”³⁷ In keeping with this conclusion, any reimbursement rules adopted for the Upper H Block should preclude the possibility of a Sprint windfall by clarifying that Sprint’s entitlement to reimbursement for H Block BAS clearance costs terminates upon occurrence of the 800 MHz rebanding “true-up.”

V. CONCLUSION

AT&T supports fully the Commission’s efforts to make available additional spectrum resources to address the growing demand for mobile broadband. Congress instructed the Commission to auction and license the H Block for this purpose, but only if it can do so without causing harmful interference to existing broadband PCS operations. In light of the serious concerns about harmful interference on the record, the Commission should proceed with an H Block auction only if and when new interference testing data submitted in the record clearly shows that no harm to PCS operations would result. If the Commission does determine that the H Block can be licensed and auctioned, it should adopt service and auction rules that emphasize

³⁷ *800 MHz Order* ¶ 261.

simplicity and consistency with other commercial mobile broadband allocations. Finally, any reimbursement policies adopted should be fair and designed to prevent the possibility of a windfall.

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