

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

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

To: The Commission

FURTHER COMENTS OF THE NATIONAL TRANSLATOR ASSOCIATION

In our earlier Reply Comments herein, submitted March 13, 2013, the National Translator Association ("NTA") noted that the policy direction, planning, and possible Rules in this Docket had not been stated with sufficient particularity for parties to render useful comment (*see* NTA Reply Comments, pp. 5-7). We observed that the initiating document, with its broad sweep and lack of focus, read more like a Notice of Inquiry rather than a Notice of Proposed Rule Making. We suggested that the process being used by the Commission to implement Congress's mandate in the Spectrum Act (Public L. No. 112-90, Section 6402, 6403, 125 Stat. 156) violates both the spirit and the letter of the Administrative Procedure Act [5 USC 551 et seq. (1946)] ("APA").

The present Public Notice, DA-1157, issued by the Wireless Telecommunications Bureau and released on May 17, 2013 ("Notice"), compounds those deficiencies. This is not, of course, a Further Notice of Proposed Rule Making, but rather is an unsigned

staff action taken on delegated authority. It carries forward the vagueness of the original action by stating overarching and incompatible goals of "utility, certainty, interchangeability, quantity and interoperability." The Notice, at p. 2, reiterates the Commission's unsupported main goal of "maximizing the amount of spectrum we can make available for wireless broadband services in each geographic area." Given that the tradeoffs in lost or displaced service vary widely from area to area, the statement of a main goal, if it possesses definable boundaries at all, must be seen as arbitrary.

The sheer variety of approaches set forth in the Notice gives us little hope that commenting parties can bring the proceeding into a unified comprehensible path at this early stage. Here we wish to focus on those models or hypotheses in the Notice that anticipate a variable amount of spectrum recovery, for example, more recovered spectrum in "Constrained market option A," less so in "Constrained market option B," still less in "Constrained market option C," and so on. In each case, the reduced amount of spectrum for broadband is assumed to be addressed by a downward adjustment to uplink capacity, with downlink capacity left the same.

To begin with, while it is true that current broadband services offer a disproportion of downlink versus uplink capacity, the assumption that future services should follow that path is just that--an assumption. Individual users, educators, and companies are continually expanding the amount of origination, and that trend is sure to

continue. Moreover, the assumption remains unexamined that a maximum of spectrum should be recovered, wherever found. The unresolved questions in the variable market approach are unstated, but potentially huge. None of the models quantifies the desired exact amount of target spectrum to be recovered. Accordingly, the attempt to match an amount of spectrum with actual need for broadband spectrum is not even being attempted. The suggestion that spectrum could be scaled according to the variable amounts that can be extracted for repurposing raises other questions. Presumably a non-uniform amount of spectrum available nation-wide will reduce the value and therefore the amount of revenue in the forward auction, but by how much? Furthermore, if it is assumed that less (or much less) spectrum will be available in such congested urban markets as in the Northeast corridor from Boston to Norfolk, Virginia, or in Coastal California, these are precisely the areas where new broadband demand would be highest and the need for new spectrum most acute. In such a situation, it is possible that the forward auction revenue will not merely be lessened, but could be drastically reduced, even to the point of making the overall project non-viable. Where are the hard questions and research findings that will even begin to get at some answers for these tricky design issues?

The primary concern here of the National Translator Association is to ensure that free over-the-air broadcast television service is not significantly degraded or even

destroyed by this project. The current Notice offers almost no insight as to what a "constrained market" is. We find the assumption that smaller and rural market should have more spectrum harvested to be doubly dangerous. First, as discussed in our earlier comments, it is far from clear that the rural areas have plentiful spectrum to harvest and repurpose. Second, in the absence of any adequate demand analysis, it has not been shown that the disruptions attendant on larger repurposing in the smaller markets would result in actual build-out and deployment, rather than in repurposing for its own sake, followed by years and years of the worst imaginable spectrum scenario: non-use of reallocated spectrum that had previously been occupied.

Finally, we reiterate our concern that the Wireless Bureau, in its "Supplement," again chooses, as a key planning factor, to treat television translators and low power television stations as though they did not exist. NTA recognizes that this gambit makes planning a lot easier, if what has happened to date in this proceeding may be dignified with the word "planning." But we ask the Commission, in this **General** Docket, not to forget that these free over-the-air services have millions of viewers. As the wireless environment speeds toward and becomes an entrenched duopoly, and the cable TV business increasingly becomes another entrenched duopoly, the ability of only four companies to charge whatever they wish is beginning to drive more and more households

toward free over-the-air services. This is not a good time to further repurpose broadcast spectrum, so that even the modest competition it now provides is curtailed or lost.

For these reasons, once this comment cycle is complete, we urge the Commission to return to the drawing board, take what wisdom it has gained in the proceeding so far, and then lay its cards on the table with an accurate and detailed notice of proposed rule making. In that way, all stakeholders can discern what is being proposed and comment appropriately.

Respectfully submitted,

NATIONAL TRANSLATOR ASSOCIATION

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