



NEW AMERICA
FOUNDATION

April 18, 2014

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

Re: Notice of Oral *Ex Parte* Presentation

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268
Policies Regarding Mobile Spectrum Holdings, Docket No. 12-269

Dear Ms. Dortch:

On April 16, 2014, Michael Calabrese of the New America Foundation (NAF) and John Bergmayer of Public Knowledge (PK), on behalf of the Public Interest Spectrum Coalition (PISC), met with Commissioner Mike O’Rielly and his wireless Legal Advisor, Erin McGrath.

We expressed the grave concern in the public interest community that the incentive auction team’s reported recommendations, apparently designed solely to maximize auction revenue, represent an unbalanced and misguided approach that, if adopted, would constitute a decision to kill off the Commission’s longstanding goal – a goal reiterated in the NPRM – to facilitate nationwide markets for unlicensed innovation and connectivity in the low-band spectrum below 700 MHz. We opined that the public interest is best served by band plan, auction and repacking policies that strike a balance between broadcast stations, licensed mobile operators *and ensuring at least four useable channels of 6 MHz of unlicensed access in every market nationwide.*

We noted that the NPRM’s stated goal of a balanced policy that ensures unlicensed for wireless *broadband* to close coverage gaps and promote innovation will be thwarted under the auction team’s reported recommendations to a degree that is both unnecessary under the statute and actually contrary to Congressional intent. We noted the growing consensus that unlicensed spectrum is both a complement to licensed services and central to the wireless economy, generating more than \$220 billion in economic activity each year in the U.S. alone, according to an economic study released this year by the WiFiForward industry coalition.

We noted several proposals identified in PISC's incentive auction comments, filed by New America Foundation, Consumer Federation of America, Public Knowledge and the National Hispanic Media Coalition in January 2013. I stated that PISC believes that the following policies are necessary to avoid killing the anticipated benefits of a nationwide market for unlicensed broadband connectivity, chips, devices and services incorporating the now-completed 802.11af standard:

- **The Order should find that a duplex gap of least 12 MHz wide is technically reasonable.** This is clearly supported in the record and the minimum necessary to accommodate a 6 MHz unlicensed channel under current TVWS rules. Even if a narrower duplex gap is technically necessary for a particular band plan, with remainder spectrum a wider duplex gap would be technically reasonable for other band plans.
- **Restrict use of the duplex gap and lower guard band to unlicensed devices, as Congress intended,** with no ability of Part 74 wireless microphone licensees to make reservations that block use of this very limited contiguous unlicensed band. Allocating the guard bands to contiguous unlicensed use was a hard-fought compromise specifically intended by Congress in the Spectrum Reform Act of 2012.
- **Maintain one or both channels currently designated for wireless microphones** – to ensure microphone operators licensed under Part 74 have a go-to channel – and designate the channel(s) post-auction. The channel should be available for unlicensed devices where and when it's not in use, subject to protecting microphones that make reservations via the TV Bands Database.
- **Permit unlicensed access to Channel 37 subject to TV Bands Database** – enforced by exclusion areas sufficient to protect radio astronomy and WMTS.

The PISC representatives also expressed concerns with the staff's reported recommendations on spectrum holdings with respect to both an updated transaction screen and to limits imposed on bidders in the 600 MHz incentive auction. PK and NAF are concerned that adding new spectrum to the screen without apply a weight that recognizes that different frequencies have substantially different utility would be counterproductive. By including new high-band spectrum in the screen the Commission would be increasing the measured holdings of some carriers, yet their spectrum would still be less useful for actually providing service. We stated that new spectrum should not be added to the screen until the Commission adopts a weighting system. Until it does that, it should adopt a hard cap on the amount of sub-1 GHz spectrum any one carrier can hold. We also noted that as a general matter, and especially here, clear rules are preferable to "enhancement factors" and other subjective criteria.

With respect to the specific rules for the 600 MHz incentive auction, while PK and NAF recognize that the proposal to set aside "reserve" spectrum in each market for carriers without substantial holdings is intended to promote competition, it might have the unintended effect of simply locking in the status quo. Today, two carriers are dominant due to their disproportionate spectrum holdings, and the rest of the industry makes due with what's left. Under the proposal as PK and NAF understand it, in each market both AT&T and Verizon would be able to gain substantial spectrum, regardless of any screen, with less than half of the spectrum in each market reserved for competitors. For example, a 30 megahertz "reserve" in a 35-by-35 megahertz auction would permit the two dominant carriers to acquire *at least* 40 of the 70 megahertz – leaving the overall foreclosure of sub-1 GHz spectrum largely unchanged from today.

A better approach would be to ensure that all carriers can bid in each market, but to structure the auction so that the dominant carriers bid against each other – driving revenues higher while also promoting competition. To that end, the Commission should, at a minimum, designate only 20 MHz as "non-reserved" spectrum with the rest "reserved" to enhance competition.

Respectfully submitted,

/s/

Michael Calabrese

Director, Wireless Future Project

New America Foundation

1899 L Street, NW 4th Floor

Washington, DC 20036

cc: David Goldman