



NEW AMERICA
FOUNDATION

April 21, 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 17, 2014, on behalf of the nonprofit groups affiliated with the Public Interest Spectrum Coalition (PISC), Michael Calabrese of the New America Foundation's Open Technology Institute (OTI), John Bergmayer of Public Knowledge (PK), and Matt Wood of Free Press met with Renee Gregory, Legal Advisor to Chairman Tom Wheeler, Diane Cornell, Special Counsel to the Chairman, and other members of his staff and of the incentive auction team staff.¹

The PISC representatives expressed the grave concern in the public interest community that the incentive auction team's reported recommendations, apparently designed to maximize auction revenue, represent an unbalanced approach that, if adopted, is likely 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.*

¹ FCC staff attending included Julius Knapp, head of the Office of Engineering and Technology; Gary Epstein, Chair of the Incentive Auctions Task Force and Special Advisor to the Chairman; Howard Symons, Vice Chair of the Incentive Auctions Task Force; and Gigi Sohn, Special Counsel for External Affairs.

The public interest advocates noted that the NPRM's stated goal to adopt 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. Although the Middle Class Tax and Job Relief and Job Creation Act of 2012 restricts the Commission's discretion with respect to allocating spectrum cleared by the purchase of spectrum rights from TV broadcasters through the reverse auction (Section 6402), the statute explicitly does not limit the Commission's authority or discretion with respect to the assignment or reallocation of spectrum that is currently not assigned to broadcast stations or spectrum that remains within the TV band allocation post-auction (Section 6403). We clarified that we are not asking the Commission to use the incentive auction to clear a contiguous channel for reallocation to unlicensed use, but that we are asking the Commission to respect Congressional intent by assigning sufficient and technically reasonable guard bands *only* for unlicensed use.

The PISC representatives stated that a balanced policy more in keeping with the intent of the statute and compromise it represents would include the following policies 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 11-12 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 reported recommendations concerning both an updated transaction screen on spectrum holdings and limits on bidders in the 600 MHz incentive auction. PK and OTI believe it would be counterproductive to add new spectrum to the screen without applying a weight that recognizes that different frequencies have substantially different utility and impacts on competition. We stated that new spectrum should not be added to the screen until the Commission adopts a weighting system. We also stated that the Commission 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 we acknowledged that the proposal to set aside "reserve" spectrum in each market for carriers without substantial holdings is intended to promote competition, we warned that it might have the unintended effect of simply locking in the status quo. Today, two carriers are dominant due in part to the advantage of disproportionate holdings of low-band spectrum. Under the proposal as we 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/

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