

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ replies to comments submitted in response to the Public Notice seeking comment on the definition of “commencement of operations” in the 600 MHz band.² The Commission’s proposals to tie commencement of operations to site commissioning testing, and to limit displacement of LPTV and TV Translator stations to the area served by a 600 MHz wireless licensee’s commercial service infrastructure deployment, are well-founded. Those commenters opposing the FCC’s proposals would risk needlessly displacing incumbent operations and allowing spectrum to lie fallow.

I. THE COMMISSION SHOULD REJECT PROPOSALS TO TIE “COMMENCEMENT OF OPERATIONS” TO ARBITRARY OR PREMATURE NOTIFICATIONS

The aftermath of the incentive auction will present a novel spectrum policy challenge for the Commission. Winning auction bidders will have been awarded licenses to use spectrum that, in many cases, will be in use by incumbent LPTV and translator stations

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Comment Sought on Defining Commencement of Operations in the 600 MHz Band*, Public Notice, GN Docket No. 12-268, FCC 15-38 (March 26, 2015) (“Public Notice”).

serving millions of viewers. The Commission has proposed an approach that will allow these stations to continue to serve viewers until a wireless licensee actually intends to deploy commercial service using spectrum occupied by those stations. This proposal, which allows wireless carriers to displace incumbents only when they have made significant capital investments and are reasonably close to providing service, will help avoid spectrum lying fallow because an incumbent was needlessly displaced before a carrier is prepared to provide service to customers in a given area.

By contrast, CTIA proposes to allow wireless carriers to displace incumbent operations at virtually any time, based only on a notification that a carrier intends to begin using certain spectrum for preliminary testing.³ That is not a balanced approach to the complex challenge the Commission faces. Wireless carriers should have to do more than merely say so to displace incumbents.

CTIA attempts to confuse this issue by portraying it as interfering with wireless carriers' "rights," asserting that the "Commission's chosen definition of 'commencement of operations' will have a significant impact on the rights and obligations of both primary and secondary licensees."⁴ CTIA doubles down on this argument, claiming that "the operations to be cleared upon commencement of service are secondary operators who did not purchase their spectrum rights."⁵

This is a red herring. In fact, many LPTV and translator station owners purchased their spectrum rights when they purchased licenses on the secondary market. Moreover, the

³ Comments of CTIA – The Wireless Association at 6, GN Docket No. 12-268 (filed May 1, 2015) (CTIA Comments).

⁴ *Id.* at 3.

⁵ *Id.*

question is not whether wireless carriers ultimately have the right to use the spectrum licenses they acquire at auction – obviously, they do. The question, rather, is when incumbent operators providing valuable services to their communities should be forced off the air, depriving viewers of their desired stations. CTIA apparently takes the position that, once a carrier wins licenses at auction, it has dominion over that spectrum and the ability to displace incumbents at will. This is inconsistent with the transition plan the Commission adopted⁶ as well as with the public interest in spectrum not lying fallow. The Commission’s proposal is a reasonable compromise that puts consumers first by refusing to displace incumbents based merely on the notification of a new 600 MHz licensee.

AT&T proposes that the Commission adopt a hard deadline requiring incumbents to cease operating at the end of the post-auction transition period.⁷ There are two problems with AT&T’s proposal. First, in many markets, particularly in some rural and Western communities where LPTV and translator stations provide vital services, wireless carriers will not be in a position to deploy service by the end of the post-auction transition period. Despite holding licenses for years, many carriers have still not built out spectrum in rural areas due to economic infeasibility. Forcing stations off the air before wireless carriers are prepared to deploy service will result in spectrum lying fallow. Second, AT&T’s proposal is not truly a comment, it is a request for reconsideration. The Commission has already determined that LPTV and translator stations will be permitted to continue using repurposed spectrum until a wireless carrier “commences operations” using that spectrum.⁸ AT&T’s request that the

⁶ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶¶ 655-672 (2014) (Incentive Auction Order).

⁷ Comments of AT&T at 2, GN Docket No. 12-268 (filed May 1, 2015) (AT&T Comments).

⁸ Incentive Auction Order at ¶¶ 655-672.

Commission abandon this decision and replace it with the same deadline the Commission adopted for full power stations is an untimely request for reconsideration which the Commission must deny.

II. THE COMMISSION SHOULD REJECT PROPOSALS FOR BLANKET NOTIFICATIONS COVERING ENTIRE PEAS

CTIA and AT&T also take issue with the Commission's proposal to displace incumbent operations only from the areas served by a 600 MHz wireless licensee's commercial service infrastructure deployment.⁹ According to CTIA, "Wireless operators have purchased rights to use all spectrum in their licensed area without impingement from ongoing secondary operations."¹⁰ Again, CTIA presents a red herring. Wireless operators certainly have the right to use all of their spectrum in their licensed area *once those wireless operators actually commence operations*. Displacing LPTV and translators prior to that point will prematurely deprive millions of Americans of service upon which they currently rely, with no commensurate benefit whatsoever.

Consider, for example, regions in the American West that rely heavily on translator stations to provide service to distant communities. Should a translator on one end of a PEA be forced off the air merely because a wireless carrier commences limited operations in the opposite corner of that PEA? Such an approach is senseless and wasteful. The Commission's guiding principle for the transition of the band should be to avoid displacing incumbent operations until new wireless licensees are actually going to use the specific repurposed spectrum at issue and continued incumbent operations would create interference with new wireless operations.

⁹ CTIA Comments at 7-9; AT&T Comments at 8-9.

¹⁰ CTIA Comments at 7-8.

III. CONCLUSION

The Commission should reject calls to adopt a radical displacement of incumbent operators based solely on any initial transmission by a wireless carrier on one of its frequencies in any part of a market. We urge the Commission to adopt its proposals for the commencement of operations without dilution or alteration.

Respectfully submitted,

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BROADCASTERS**

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right from the end of the signature.

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Patrick McFadden

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May 18, 2015