

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	GN Docket No. 13-185
with Regard to Commercial Operations in	)	
the 1695-1710 MHz, 1755-1780 MHz,	)	
and 2155-2180 MHz Bands	)	
	)	
Service Rules for Advanced Wireless	)	WT Docket No. 07-195
Services in the 2155-2175 MHz Band	)	(Proceeding Terminated)
	)	
Service Rules for Advanced Wireless	)	WT Docket No. 04-356
Services in the 1915-1920 MHz, 1995-	)	(Proceeding Terminated)
2000 MHz, 2020-2025 MHz, and 2175-	)	
2180 MHz Bands	)	
	)	
Applications for License and Authority to	)	WT Docket No. 07-16
Operate in the 2155-2175 MHz Band	)	(Proceeding Terminated)
	)	
Petitions for Forbearance Under 47	)	WT Docket No. 07-30
U.S.C. § 160	)	(Proceeding Terminated)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ hereby responds to the above-referenced Notice of Proposed Rulemaking (*Notice* or *NPRM*) regarding the Federal Communications Commission's (FCC or Commission) proposed rules for spectrum in the 1695-1710 MHz, 1755-1780 MHz, 2020-2025 MHz and 2155-2180 MHz bands.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

The *NPRM* in part implements certain provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act or Act),² including the Act's directive to the FCC to identify and auction fifteen megahertz of contiguous spectrum.

I. Introduction and Summary

The overarching purpose of the *NPRM* is to “propose rules for spectrum in the 1695-1710 MHz, 1755-1780 MHz, 2020-2025 MHz, and 2155-2180 MHz bands that would make available significantly more commercial spectrum for Advanced Wireless Services.”³ NAB does not take a position on the rules proposed for the bands expressly identified above. We do recognize, however, that the Commission has expressed a strong desire to pair 1755-1780 MHz with 2155-2180 MHz as part of a more comprehensive program to reallocate an unprecedented amount of spectrum to the commercial wireless industry.⁴

In addition to the primary bands noted above, the *NPRM* also briefly seeks comment on a proposal developed by CTIA—The Wireless Association (CTIA) “to designate spectrum currently used for Broadcast Auxiliary Service . . . at 2095-2110 MHz as the fifteen megahertz of contiguous spectrum required to be identified by . . . [the] Spectrum Act.”⁵ CTIA's proposal in essence would remove 15 MHz of spectrum

² See The Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, at § 6401.

³ Notice of Proposed Rulemaking and Order on Reconsideration, *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, GN Docket No. 13-185 (rel. July, 23, 2013), at ¶ 1.

⁴ See CONNECTING AMERICA: NATIONAL BROADBAND PLAN (2010), at 96-97 (National Broadband Plan).

⁵ CTIA Letter to FCC Chairman Julius Genachowski, et al., in GN Docket No. 09-51 (March 13, 2013) (CTIA Letter), at 1.

currently dedicated to Broadcast Auxiliary Service (BAS) operations, and reallocate it to the wireless industry.

NAB strongly opposes CTIA's proposal. Contrary to CTIA's assertions that no other swath of spectrum appropriately meets the requirements under the Spectrum Act, the instant proceeding identifies twenty-five megahertz of prime spectrum that does. Further, the current BAS allocation is essential to broadcasters' ability to provide critical, real-time news and information and has already been reduced by 35 MHz or almost 30 percent, while the U.S. wireless industry is currently flush with spectrum and poised to get more. Thus, as detailed below, CTIA's proposal is unnecessary, misguided and has the potential to significantly harm the American public.

II. The Commission Is Fulfilling Its Statutory Duty to Auction 15 MHz of Contiguous Spectrum by Licensing the 1755-1780 MHz Band

Section 6401 of the Spectrum Act obligates the Commission, among other things, to auction for "flexible-use . . . [f]ifteen megahertz of contiguous spectrum to be identified by the Commission."⁶ The *NPRM* identifies not only fifteen, but *twenty-five* megahertz of contiguous spectrum at 1755-1780 MHz that meets the Commission's statutory obligation under section 6401. Thus, by auctioning 1755-1780 MHz for "flexible use," the Commission will, in fact, exceed Congress's direction and otherwise accomplish the overarching goals of the statute.

Despite the Commission fulfilling (and even exceeding) its obligation through the *NPRM*'s proposed rules, CTIA has forwarded its own plan for further spectrum reallocation. In a letter (and associated white paper) filed with the Commission on March 13, 2013, CTIA proposed that the FCC should meet the Spectrum Act's 15 MHz

⁶ Spectrum Act at § 6401(b)(2)(E).

obligation by reallocating away from broadcasters and to the wireless industry the upper portion of the broadcasters' BAS band (*i.e.*, 2095-2110 MHz). Therefore, CTIA is not only seeking the 25 MHz at 1755-1780 MHz; but rather, a total of 40 additional megahertz by also eliminating broadcasters' use of the upper BAS band.

CTIA offers three reasons why BAS is appropriate spectrum for reallocation: (1) it is "below 3 GHz"; (2) "is contiguous and adjacent to current allocations"; and (3) "would allow pairing in a readily achievable fashion."⁷ CTIA asserts that it "is not aware of any other spectrum bands as well-positioned as this band to meet all the key principles for mobile broadband spectrum that could be paired with the specific 15 MHz identified by NTIA, and that could be put to timely use and generate significant revenues through a competitive bidding process."⁸

CTIA's assertion that no other spectrum is so "well-positioned" is belied by the FCC's plan in this very proceeding to license 1755-1780 MHz for commercial wireless use. Like BAS spectrum, the 1755-1780 MHz spectrum is below 3 GHz, contiguous and adjacent to current allocations and allows for prime pairing. Thus, the current FCC proposal meets (and exceeds, given the amount of spectrum due to be auctioned) CTIA's identified goals.

But even beyond the fact that the Commission's proposed auction of 1755-1780 MHz clearly meets its obligations under the Spectrum Act, CTIA's proposal should be rejected for a number of important reasons. This proposal: (1) ignores the value and existing congestion of the BAS band; (2) would, for the first time since completion of the National Broadband Plan, eliminate one active use in favor – and favoring – another;

⁷ CTIA Letter at 2.

⁸ *Id.*

and (3) the U.S. wireless industry already has vast and vastly unused and likely underutilized spectrum resources.

III. Broadcasters' Priority Access to the Entire 2025-2110 MHz Band is Essential to Provide Real-Time, Reliable and Critical News, Information and Entertainment Services to the American Public

A. BAS Serves an Essential Function for Broadcasters

The 15 MHz allotment that CTIA proposes for reallocation sits at the top of the BAS band. Broadcasters actively use this spectrum for electronic newsgathering (ENG) services, transmitting live, on location news reports to local studios. BAS is also used to transmit point-of-view camera shots that enhance coverage of breaking news and special events, such as video from a helicopter or blimp. In addition, studio-to-transmitter and inter-city fixed links in the 2 GHz BAS band enable stations in rural areas to relay programming from the station's main studio to the transmitter facility or to deliver signals to remote communities. This spectrum is also used for Cable Antenna Relay Services (CARS), Local Television Transmission Services (LTTS) and for the transmission of satellite telemetry data.

In the last few years, broadcasters completed a mandated transition that reduced their BAS allocation from 120 MHz to the current 85 MHz allocation. That transition, initiated by the Sprint-Nextel move into the lower BAS band, cost more than \$750 million and took more than five years to complete. Broadcasters now operate on seven 12 MHz channels.

Because of its recent reduction, the BAS band is now extremely crowded. According to the FCC's Spectrum Dashboard, more than 10,000 licenses operate in the band, and careful coordination is required among the many licensees to ensure they

can each use the spectrum without interference. This is especially true during emergencies and other breaking news events. The recent tragedy during the Boston Marathon and subsequent manhunt is a prime example. Local and national news crews used the entirety of the BAS spectrum to transmit live, up-to-the-minute updates from the scene, while helicopters overhead provided live video seen by millions of viewers. That video was used not just in local newscasts, but also on national broadcast news programs and cable news channels. In fact, the band became so congested that broadcasters were forced to use the much less reliable and less efficient wireless networks for additional news traffic no longer able to be served in the BAS band.

In its myopically focused 14-page white paper, CTIA never addresses what would happen to the vibrant BAS operations currently in the 2095-2110 band, or acknowledges their value (or even their existence). Rather, CTIA's gold-rush mentality to stockpile spectrum has left its proposal and corresponding analysis lacking any perspective on the value of the current use of the 2095-2110 MHz band to the American public.

B. CTIA's Proposal Would Require the Commission, for the First Time Since the Release of the National Broadband Plan, to Allocate Spectrum to the Wireless Industry at the Involuntary Expense of Another Service

CTIA's proposal to reallocate fifteen megahertz away from BAS operations is quietly its boldest to date. Every other recent Commission allocation to provide the wireless industry with additional spectrum has involved either taking essentially unoccupied spectrum and converting it for mobile broadband use or employing a market-based mechanism to do so. For example, the Commission's work to free up 30 MHz of WCS spectrum and 40 MHz of AWS-4 spectrum used rule changes to convert

spectrum essentially laying fallow into useful spectrum for CTIA's members. And while the broadcast incentive auction is focused, in part, on spectrum currently being used, it is premised on a *voluntary* relinquishment of spectrum to be converted to mobile broadband service.

In contrast, if CTIA's proposal was adopted, it would be the first time since release of the National Broadband Plan that the Commission would be forcibly eliminating a current vibrant operation to give the commercial wireless industry – an industry that has far more spectrum than any other – exclusive access to even more. Especially in light of the *NPRM's* proposal to license the 1755-1780 MHz band, CTIA's brazen attempt to forcibly strip broadcasters of yet more spectrum should be rebuffed.

C. The U.S. Wireless Industry Has Remarkable Spectrum Depth and Continues to Be Allocated New Spectrum at a Rapid Rate

One of the most interesting aspects of the CTIA Letter is its statement that “[t]he wireless industry is at a critical crossroads – the long warned spectrum shortage is at an inflection point.”⁹ Essentially, CTIA claims that, not only has it been warning us about impending spectrum doom, but the apocalypse has arrived. That statement is completely divorced from current reality. Not only has the Commission been working as fast as possible to allocate enormous spectrum reserves to the commercial wireless industry, but also the industry itself has become more efficient through secondary market transactions. Thus, if anything, any initial fears about a spectrum shortage should have rationally abated, not accelerated over the last few years.

There are several reasons why there is no “inflection point” about which the Commission or the American public needs to panic. First and foremost, according to

⁹ CTIA Letter at 2.

the FCC, the U.S. has allocated more spectrum to its domestic wireless industry than has almost every other country in the world.¹⁰ Moreover, with the upcoming incentive auction of broadcast TV spectrum and the spectrum reallocations contemplated in this proceeding and others, the U.S. will continue to far outpace the rest of the world in that category.¹¹ The Administration just recently echoed this fact: “In comparison to other nations, the United States ranks among the top countries in current licensed spectrum available for mobile broadband, and [the spectrum already in the pipeline is] likely to keep the United States well atop other nations in mobile broadband allocation.”¹²

Second, CTIA’s claim ignores the rationalization of its own industry through secondary market transactions. As the wireless industry has matured in the last year alone, it has become more spectrally efficient. A brief look at the recent major wireless industry transactions illustrates this important development:

- In 2012, AT&T acquired most of the 2.3 GHz WCS band that it did not already own.¹³ Also, in both 2012 and 2013, AT&T entered into a variety of transactions to obtain spectrum in the 700 MHz band, including a recent \$1.9 billion

¹⁰ See *The Mobile Broadband Spectrum Challenge: International Comparisons*, Wireless Telecommunications Bureau, Office of Engineering and Technology, Federal Communications Commission, (Feb. 26, 2013) at 8, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-318485A1.pdf.

¹¹ *Id.*

¹² See *Four Years of Broadband Growth*, at 19, available at http://www.whitehouse.gov/sites/default/files/broadband_report_final.pdf.

¹³ Applications of AT&T Mobility Spectrum LLC, Triad 700, LLC, CenturyTel Broadband Wireless, LLC, 700 MHz, LLC, Cavalier Wireless, LLC, Ponderosa Telephone Co., David L. Miller, Comsouth Tellular, Inc., Farmers Telephone Company, Inc., and McBride Spectrum Partners, LLC for Consent to Assign Licenses, *Memorandum Opinion & Order*, 27 FCC Rcd 15,831 (2012).

acquisition from Verizon Wireless.¹⁴ AT&T has also agreed to acquire both Leap Wireless and Atlantic Tele-Network.¹⁵

- In 2012, Verizon Wireless purchased a substantial amount of nationwide AWS spectrum from SpectrumCo (consisting of Comcast and other major cable companies), Cox and Leap Wireless, adding to Verizon Wireless's already robust AWS and overall spectrum holdings. Because of this acquisition, Verizon Wireless is actively seeking to unload a significant amount of surplus spectrum it holds in the 700 MHz band.¹⁶
- Sprint has purchased Clearwire, now making it the market leader in spectrum assets.¹⁷ Sprint also recently acquired part of U.S. Cellular's spectrum portfolio (including in Chicago and St. Louis).¹⁸
- T-Mobile acquired AWS spectrum from both AT&T and Verizon Wireless in 2012,¹⁹ and has merged with MetroPCS.²⁰

¹⁴ Chloe Albanesius, "AT&T Buys Verizon Spectrum for \$1.9 Billion," PCMag.com (Jan. 25, 2013, 12:04 p.m.) *available at* <http://www.pcmag.com/article2/0,2817,2414702,00.asp>.

¹⁵ William Alden and Michael J. De La Merced, "AT&T to Buy Leap Wireless for \$1.2 Billion," New York Times (July 12, 2013), *available at* <http://dealbook.nytimes.com/2013/07/12/att-to-buy-leap-wireless-for-1-2-billion>.

¹⁶ See *In The Matter Of Applications Of Cello Partnerships D/B/A Verizon Wireless and Spectrumco LLC and Cox TMI Applications of Verizon Wireless and Leap for Consent to Exchange Lower 700 MHz, AWS-1, and PCS Licenses Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses*, 27 FCC Rcd 10125 (2012).

¹⁷ Danny Yadron and Thomas Gryta, "SoftBank Gets Green Light for Merger with Sprint, Clearwire," The Wall Street Journal (July 3, 2013), *available at* <http://online.wsj.com/article/SB10001424127887324399404578584030625540420.html>.

¹⁸ Jon Fingas, "Sprint Closes Deal to Buy US Cellular Spectrum, Adds 420,000 Customers," Engadget.com (May 18, 2013) *available at* <http://www.engadget.com/2013/05/18/sprint-closes-deal-to-buy-us-cellular-spectrum/>.

¹⁹ Brad Molen, "FCC Approves Transfer of AWS Spectrum from AT&T to T-Mobile," Engadget.com (April 25, 2012), *available at* <http://www.engadget.com/2012/04/25/fcc-approves-aws-spectrum-att-t-mobile/>.

²⁰ Michael J. De La Merced, "T-Mobile Seals Deal with MetroPCS," The New York Times (Oct. 3, 2012), *available at* <http://dealbook.nytimes.com/2012/10/03/t-mobile-seals-deal-with-metropcs/>.

And none of the above transactions account for the fact that DISH currently owns 40 MHz of AWS-4 spectrum, which is lying fallow but is immediately available for mobile broadband should the need arise.

Third, given the fact that the FCC has already allocated and reallocated a world-leading amount of spectrum to the U.S. commercial wireless industry, and that the wireless industry has reorganized itself to make better overall use of its spectrum, the time has arrived for the FCC to inquire about whether, and to what degree, the wireless industry is using its vast spectrum holdings efficiently. If the industry continues to demand more spectrum, especially to the detriment of other industries, the FCC must determine to what degree the wireless industry is making good and full use of the spectrum it controls today. Currently, the FCC collects *no* data allowing it to assess exactly how the spectrum allocated to the wireless industry is actually used. The Commission does not have the information it needs to ascertain where, when and how spectrum is being used, if at all, by any particular carrier.

An accounting of spectrum use is one of the few National Broadband Plan recommendations that somehow got lost in the shuffle. Specifically, the National Broadband Plan recommended:

To assist in understanding how, where and when spectrum resources are being used, the FCC and NTIA should develop scientific, statistically valid methods to measure and report the utilization of spectrum bands between 225 MHz and 3.7 GHz. . . . More systematic measurement methods would help to provide a fact base that can inform policymaking, when combined with other forms of analysis.²¹

²¹ The National Broadband Plan at 80.

CTIA has recognized the importance of a “comprehensive inventory of spectrum,” but unsurprisingly its version focuses entirely on an analysis of everyone else’s use of spectrum, rather than on its own industry.²²

Good spectrum policy demands that the Commission gather appropriate information and evaluate all the relevant factors affecting the public interest. This includes obtaining the data necessary to make allocation evaluations, by putting allocations in the context of how much spectrum is dedicated to any one service and what other services may be compromised through reductions in their allocations. In this instance, broadcasters (and others that currently use the band) rely heavily on the BAS band to provide valuable services and should not be displaced as a result of the wireless industry’s seemingly endless appetite for more spectrum.

IV. Conclusion

The best and most logical way to meet the Spectrum Act’s requirement to auction fifteen megahertz of contiguous spectrum is to allocate the 25 MHz between 1755-1780 MHz, as proposed in this very rulemaking. That is the pairing of greatest interest to the wireless industry, gives it a major spectrum windfall and exceeds Congress’s direction to auction fifteen additional non-specified megahertz of spectrum for mobile broadband use.

²² See Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, to Julius Genachowski, Chairman, Federal Communications Commission, *et al.*, GN Docket No. 09-51 (filed Sept. 29, 2009) (supporting an inventory of spectrum insofar as it would “identify new allocations for licensed mobile wireless services”).

Respectfully submitted,

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

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