

Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, D.C.

In the Matter of)
)
Relocation of and Spectrum Sharing by Federal) Docket No. 110627357-2209-03
Government Stations – Technical Panel and)
Dispute Resolution Board)

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”)¹ hereby submits these comments on the National Telecommunications and Information Association (“NTIA”) Notice of Proposed Rulemaking (“NPRM”) proposing to implement amendments to the Commercial Spectrum Enhancement Act (“CSEA”).² While CTIA believes that the transition plans contemplated by the Tax Relief Act have important benefits, certain of the rules proposed by NTIA in the NPRM run counter to the intent of the Tax Relief Act.

CTIA submits the following:

- Technical Panels should include members from the commercial sector, not just federal employees as contemplated by NTIA.

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *Relocation of and Spectrum Sharing by Federal Government Stations – Technical Panel and Dispute Resolution Board*, Notice of Proposed Rulemaking, 77 Fed. Reg. 41956 (2012). (“NPRM”). Note these amendments were adopted in connection with the Middle Class Tax Relief and Job Creation Act of 2012 (“Tax Relief Act”), which specified the content of transition plans for Federal spectrum, established a mechanism to review the sufficiency of transition plans, and proposed a dispute resolution process regarding transition plans. See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).

- A Dispute Resolution Board should be able to rely on a Technical Panel's expertise.
- NTIA should establish procedures to ensure sufficient and accurate information on transition plans, with delay of spectrum auctions occurring only as a last resort.
- Technical Panel reports should contain detailed information applicable to all stakeholders in the incumbent relocation process.
- Decisions of the Dispute Resolution Board should be binding upon the parties if the Board is to be effective.

CTIA has been a strong advocate for policies that make additional spectrum available for wireless broadband and facilitate efficient spectrum allocation and deployment. The amendments to the will help effectuate the goal of rapidly transitioning spectrum to commercial use without impacting critical Federal systems. In particular, CTIA believes that the transition plans contemplated by the Tax Relief Act will go a long way towards addressing CTIA's previously-articulated concerns regarding transparency in the spectrum transition process. CTIA looks forward to working with NTIA on this proceeding and ultimately in an effort to implement the President's wireless memorandum.

I. AN EFFECTIVE TRANSITION PLAN WILL PLAY AN IMPORTANT ROLE IN ENABLING WIRELESS BROADBAND SPECTRUM ALLOCATION.

In previous proceedings, CTIA and its members have highlighted the important role of transparency in the CSEA transition process. As CTIA has noted, “[t]he more bidders are educated about the existence and nature of incumbent operations, the more realistic they can be

about valuing the spectrum and planning their build-out schedule.”³ CTIA and several wireless industry stakeholders have previously stated that a lack of transparency in the CSEA process created significant challenges. For this reason, CTIA is pleased with the Tax Relief Act’s focus on thorough, substantive transition plans, and believes that these plans will help facilitate an efficient relocation.

In NTIA’s previous proceeding regarding implementation of the CSEA, numerous parties highlighted lack of information sharing as a detriment to transition efforts. Cricket, for example, reported that it “had difficulty obtaining information necessary to identify challenges and propose solutions in order to facilitate commercial deployment,” noting that “more accurate information would reduce uncertainty, promote greater participation in future auctions, and ultimately yield better auction results.”⁴ Similarly, T-Mobile stated that “[b]ecause several agencies underestimated the cost and time involved in the relocation, prospective bidders, including T-Mobile, received inaccurate projections about when the spectrum would be commercially available.”⁵ T-Mobile also reported that the data provided to bidders “were insufficient to determine whether agencies could share AWS spectrum in particular geographic areas without causing harmful interference.”⁶ Conversely, “[w]hen federal agencies accurately forecasted costs, received sufficient relocation funding, and readily shared their technical

³ Comments of CTIA – The Wireless Association®, Docket No. 0906231085-91085-01, at 7 (Aug. 21, 2009) (“CTIA CSEA Comments”).

⁴ Comments of Cricket Communications, Inc., Docket No. 0906231085-91085-01, at 4 (Aug. 1, 2009).

⁵ Comments of T-Mobile USA, Inc., Docket No. 0906231085-91085-01, at 8 (Aug. 21, 2009).

⁶ Id. at 9.

specifications, T-Mobile was able to coordinate relocation and spectrum access with few difficulties.”⁷

CTIA has been a consistent supporter of transparency regarding incumbent operations, as this will enable bidders to be educated about the nature of incumbent operations and to plan their actions accordingly. As CTIA noted in 2009, “the more information that is available, the less likely licenses are to be discounted, resulting in a greater recovery for the public of the value of the spectrum. It is also self-evident that the more educated bidders are about the existence and nature of incumbent operations, the more realistic they can be in crafting deployment plans.”⁸ The Tax Relief Act calls for the development of transition plans for incumbent users that contain information on the current use by the Federal entity of the spectrum, including the frequencies involved and the geographic location of facilities. CTIA believes that these amendments to the CSEA will promote effective transition plans that will enable an efficient transition of spectrum to commercial use.

Further, transparency of information is critical in light of the Tax Relief Act’s mandate that Federal spectrum be reallocated for exclusive use rather than sharing, unless the various options for use of the spectrum indicate that relocation of a government incumbent is not feasible due to technical or cost constraints.⁹ Transparency regarding current uses of Federal spectrum is therefore the only way to evaluate all options regarding Federal spectrum and to comply with Congress’s directive that solutions for relocation be fully explored.

⁷ Id. at 5.

⁸ CTIA CSEA Comments at 7.

⁹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6701(j), 126 Stat. 156, 252 (2012) (“Tax Relief Act”).

II. SEVERAL OF NTIA'S PROPOSALS ARE INCONSISTENT WITH THE TAX RELIEF ACT'S SPECTRUM RELOCATION PROVISIONS.

As stated above, CTIA stands ready to support the processes dictated by the CSEA and believes that a smooth incumbent transition process is critical to wireless spectrum deployment. However, CTIA is concerned that certain of NTIA's proposals run counter to the intent – and in some cases, the plain text – of the Tax Relief Act. Specifically, CTIA has concerns regarding the composition of the Technical Panels as proposed by NTIA, issues relating to the timing of the transition plan process, the content of the Technical Panel's reports, and NTIA's proposal that the decisions of the Dispute Resolution Board be non-binding.

Technical Panel Composition. CTIA submits that Technical Panels must include members from the commercial sector and should, at a minimum, be available as a resource to the Dispute Resolution Board. NTIA has proposed that all three members of the Technical Panel be federal employees.¹⁰ CTIA finds this proposal problematic for a number of reasons. First, there is no requirement in the Tax Relief Act that members of the Technical Panel be federal employees, and such an outcome would result in the Panel not having any expertise outside of the agencies' perspective.¹¹ Second, the statute requires all panelists to be "radio engineer[s] or technical expert[s]."¹² CTIA believes that for the Panel to fulfill its mandate, *at least* one member of the panel should have experience with commercial networks, and ideally this should be operational experience.¹² Third, NTIA's proposed rules would prevent an individual who has served on a Technical Panel from participating on a Dispute Resolution Board. However, the

¹⁰ NPRM at 41958-59.

¹¹ Even if there was no actual bias, such a panel would create the appearance of bias and thus undermine the credibility of a Technical Panel's report and recommendations.

¹² Indeed, the initial version of the spectrum legislation introduced in Congress required that all three Technical Panel members have private sector experience with commercial networks.

Dispute Resolution Board should be able to rely on the Technical Panel for expertise in resolving a dispute, and at a minimum the panelists should be available as a resource.

Delays Caused by Insufficient Transition Plans. NTIA should establish procedures to ensure sufficient and accurate information on transition plans, with delay of spectrum auctions an extraordinary remedy to be considered only where absolutely necessary. Delay of a FCC auction should be thought of and treated as a last resort to be avoided if at all possible, rather than an “option” for dealing with complications in the transition plan creation process.

One simple and effective way NTIA can address this issue would be to require agencies to submit their transition plans no later than 270 days before the commencement of any auction of eligible frequencies. While the Tax Relief Act specifies timetables for the submission of transition plans, it does not prohibit NTIA from establishing deadlines that are earlier than those contemplated by the Tax Relief Act.¹³ By requiring agencies to submit their plans earlier, NTIA will be better equipped to allow deficient transition plans to be corrected without delaying the auction process.

The NPRM correctly observes that if a transition plan is found to be insufficient, there will be a revision process that could result in a delay of an auction start date. CTIA recognizes that a circumstance may arise where a transition plan requires additional review by the Technical Panel or revision by the submitting agency. However, CTIA stresses that in these situations, a priority should be placed on trying to resolve issues in a way that does not delay an auction unless such delay is absolutely necessary.

¹³ Tax Relief Act at § 6701(h) (“Not later than 240 days before the commencement of any auction of eligible frequencies . . . a Federal entity authorized to use any such frequency shall submit to NTIA and to the Technical Panel established by paragraph (3) a transition plan for the implementation by such entity of the relocation or sharing arrangement.”).

On related a note, NTIA has proffered that if a transition plan is insufficient, NTIA could nonetheless determine that its flaws “would not substantially impact or impair the reliability or accuracy of NTIA compilation of agency costs and timelines” and submit the information from the insufficient plans.¹⁴ By establishing a requirement that agencies submit their transition plans earlier, NTIA need not approach the dangerous determination that there would be no impact regarding the accuracy of information. To prevent this issue, CTIA notes that NTIA can and should require any agency that submits an insufficient transition plan to resubmit the plan on an extremely expedited basis to meet the 240 day requirement under the Tax Relief Act.

Content of Technical Panel Reports. NTIA seeks comment on whether the scope and content of a Technical Panel’s initial report should be limited “to those assessments and findings most relevant to NTIA’s ability to compile estimated relocation costs and timelines.”¹⁵ CTIA believes that the Technical Panel’s reports should contain detailed information applicable to *all* stakeholders. In fact, the Tax Relief Act requires a greater level of detail to be included in an agency’s transition plan. NTIA should adopt rules that are consistent with the statute and require as much detail as possible, and not just those details that are “most relevant to NTIA.” Indeed, for commercial parties, technical information such as transmitter power, receiver performance, antennas used, beamwidth of antenna and other technical parameters will allow the wireless industry to determine the effect that Federal operations may have on commercial operations and will help for determination of potential interim sharing between services.

¹⁴ NPRM at 41959.

¹⁵ NPRM at 41959.

Dispute Resolution Board Decisions. The proposed regulations state that the decision of the Dispute Resolution Board should be in the “form of a recommendation to NTIA, OMB, the Commission and the parties” and that it is non-binding on the parties.¹⁶ CTIA submits that the proper course would be for the Dispute Resolution Board’s findings to be binding upon the parties, and that to do otherwise would dilute the effectiveness of the Board. While the NPRM suggests that the Board’s decisions be non-binding “[b]ecause the new law does not confer independent authority on the board to bind the parties,”¹⁷ the statute in fact states that the Board’s decision may be appealed to the U.S. Court of Appeals for the D.C. Circuit.¹⁸ As such, treatment of the Board’s decisions as non-binding appears inconsistent with the intent of the Spectrum Act, as the U.S. Court of Appeals typically does not review non-binding recommendations.

¹⁶ NPRM at 41966.

¹⁷ NPRM at 41961.

¹⁸ Tax Relief Act at § 6701(i)(7).

III. CONCLUSION

CTIA and its members look forward to future collaboration with Federal entities to enable the sharing or reallocation of Federal spectrum. By adopting rules consistent with CTIA's proposals herein, NTIA will best facilitate an efficient transition process.

Respectfully submitted,

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