

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

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In the Matter of)	
)	
Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules)	WT Docket No. 99-168
)	
Carriage of the Transmissions of Digital Television Broadcast Stations)	CS Docket No. 98-120
)	
Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television)	MM Docket No. 00-83
)	
To: The Commission		

REPLY COMMENTS OF SPECTRUM EXCHANGE GROUP, LLC

Spectrum Exchange Group, LLC (“Spectrum Exchange”) hereby submits these reply comments in the above-captioned proceeding. Spectrum Exchange, together with Allen & Company Incorporated (“Allen”), encourage the Commission to further solidify its rules facilitating the private voluntary resolution of interference issues in the 700 MHz band. After doing so, the Commission should provide regulatory certainty and make clear that there will be no further changes in the auction date or clearing regime. Such a course of action will promote certainty in the minds of all participants, facilitating the introduction of next generation (3G) mobile or other wireless broadband services as well as accelerating the transition to DTV, and thereby doubly serving the public interest.

I. BACKGROUND

As the record in this proceeding clearly demonstrates, the potential of the 700 MHz band to produce benefits for consumers is enormous. Because of its location in the electromagnetic spectrum and its excellent propagation characteristics, this band is ideally suited for next generation (3G) mobile or high-speed broadband services. These services will intensify competition for all communication services and yield tremendous benefit to the public, particularly if the services are speedily deployed to their highest value uses.

Spectrum Exchange, www.spectrum-exchange.com, was established with the mission to create value for the public by promoting the efficient exchange of spectrum. Spectrum Exchange was formed by principals of Market Design Inc., www.market-design.com, which since 1995 has designed and conducted numerous high-stake auctions in the telecommunication, energy, and e-commerce industries—in the U.S. and internationally.

Allen & Company is a New York investment bank with special expertise in advising companies in the broadcasting, media and telecommunications industries. Allen is experienced at bringing together and negotiating complex financial transactions between parties in these and other industries. In addition, Allen has advised participants in FCC auctions.

We are pursuing our plans for the 700 MHz band in partnership with Allen. Together, and in close contact with broadcasters, telecommunications firms and the FCC, we are attempting to craft a private market mechanism that resolves the spectrum interference issues while receiving all parties' voluntary participation.

Spectrum Exchange has already commented numerous times in the 700 MHz proceeding. We have presented preliminary versions of our plans for a private band-clearing auction,¹ recommended

¹ See "Opposition of Spectrum Exchange Group LLC to Petitions for Reconsideration," in WT Docket No. 99–168, filed March 10, 2000; *see also* Letters dated December 17 and December 29, 1999 from Kathleen Q. Abernathy and letters dated April 3, April 7 and April 11, 2000 in WT Docket No. 99–168 from Jonathan V. Cohen, counsel to

that the Commission promulgate various rules and language facilitating private market transactions,² advocated that the Commission adopt package bidding for its upcoming sale of 700 MHz licenses,³ and filed comments in connection with the current *Further NPRM*.⁴ We are grateful to the Commission for its responsiveness to our earlier comments, including its discussion of secondary auctions in the *Further NPRM*,⁵ its language facilitating private transactions in the *Memorandum Opinion and Order*,⁶ and its adoption of package bidding.⁷

II. ELABORATION OF OUR PLANS FOR A SECONDARY AUCTION

In our August 16 comments, we outlined the plans of Spectrum Exchange and Allen (hereafter “Spectrum Exchange/Allen”) to administer a secondary auction for clearing rights.⁸ The response that we have received from interested parties has been positive, and we believe there is an increasing likelihood that the key parties will participate. Our purpose in these reply comments will be to elaborate on the rationale behind our proposed structure for a secondary auction, and to answer some of the most-frequently-asked questions that we have received.

Spectrum Exchange, to Magalie Roman Salas, FCC Secretary, regarding *ex parte* presentations made by Spectrum Exchange.

² See “Opposition of Spectrum Exchange Group LLC to Petitions for Reconsideration,” in WT Docket No. 99–168, filed March 10, 2000; “Petition for Rule Making by Spectrum Exchange Group LLC Concerning Rules To Facilitate Clearing of the 746–806 MHz Band,” in WT Docket No. 99–168, filed April 24, 2000; and *ex parte* letter dated May 3, 2000 in WT Docket No. 99–168 from Peter C. Cramton to the Honorable William E. Kennard, FCC Chairman.

³ See CRA–MDI Reports on Combinatorial Bidding; “FCC–SIEPR–NSF Wye Woods Conference: Lessons plus a Simple Proposal,” presented by Paul R. Milgrom on May 7, 2000; “Comments of Spectrum Exchange Group, LLC,” DA 00–1075, June 9, 2000; “Reply Comments of Paul R. Milgrom,” DA 00–1075, June 16, 2000; and *ex parte* communications of Paul R. Milgrom, DA 00–1075.

⁴ See “Comments of Spectrum Exchange Group, LLC,” in WT Docket No. 99–168, filed August 16, 2000.

⁵ *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00–224, WT Docket No. 99–168, CS Docket No. 98–120, MM Docket No. 00–83 (rel. June 30, 2000), ¶93–103.

⁶ *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00–224, WT Docket No. 99–168, CS Docket No. 98–120, MM Docket No. 00–83 (rel. June 30, 2000), ¶35–68.

⁷ Public Notice, “Comment Sought on Modifying the Simultaneous Multiple Round Auction Design to Allow Combinatorial (Package) Bidding,” DA 00–1075, WT Docket No. 99–168 (rel. May 18, 2000), and Public Notice, “Procedures Implementing Package Bidding for Auction No. 31,” DA 00–1486, WT Docket No. 99–168 (rel. July 3, 2000).

⁸ See “Comments of Spectrum Exchange Group, LLC,” in WT Docket No. 99–168, filed August 16, 2000.

A. RATIONALE FOR A LINKED AUCTION

As we already emphasized in our August 16 comments, the 700 MHz auction presents a fundamental economic problem. A company wishing to provide new wireless broadband services in the 700 MHz band needs two things: a license from the FCC; and the corresponding clearing rights from the incumbent broadcasters. The license and the clearing rights are thus *strong complements*; each is worth much less without the other. One can think of the license as a left shoe and the associated clearing rights as a right shoe. What a company needs is a pair of shoes. The problem is that the government only owns left shoes, while the right shoes are privately owned by incumbent broadcasters.

When strong complements are to be sold by auction, the received economic wisdom is that they are best auctioned simultaneously. Oftentimes, the pattern of those complementarities may be different for different bidders, i.e., different packages of items may go together for different bidders. For example, in the 700 MHz band, some bidders may find strong synergies between different geographic regions (e.g., between the Northeast and Mid-Atlantic licenses), while other bidders may find strong synergies within a geographic region (e.g., between the Northeast 20 MHz and the Northeast 10 MHz licenses). This is the rationale behind the FCC’s traditional use of the simultaneous multiple round auction, and the FCC’s recent adoption of package bidding for the 700 MHz licenses. Package bidding is appropriate “when (1) there are strong complementarities among licenses for some bidders, and (2) the pattern of those complementarities varies for different bidders.”⁹

However, in the case of the FCC licenses and the clearing rights, the pattern of complementarities is the same across bidders. A license for the Great Lakes region and the clearing rights associated with a Chicago-area television station go together. The clearing rights associated with Aurora, IL Channel 60 and Joliet, IL Channel 66 go together. A license for the Pacific region and the clearing rights associated with a Chicago-area television station do *not* go together. The situation is akin

⁹ Public Notice, “Procedures Implementing Package Bidding for Auction No. 31,” DA 00–1486, WT Docket No. 99–168 (rel. July 3, 2000), p. 1.

to the left shoe / right shoe analogy. In this case, received economic wisdom says that the sale of the complementary items should be linked together, which is what our linked auction neatly accomplishes.

B. DETERMINATION OF THE LINKAGE RATIO

The determination of the right “linkage ratio” is a delicate balancing act, but fortunately, in a clearing auction where participation is voluntary, all parties possess the right incentives to select an appropriate number. The “linkage ratio”, R , defines a fixed relationship between money committed to the clearing incumbents and money committed to the government. R may be either less than or greater than one.¹⁰

At first glance, it might appear that the bidders in the secondary auction (i.e., telcos and other participants bidding in the FCC auction) would have every incentive to set the linkage ratio as low as possible, while the incumbent broadcasters would have every incentive to set the linkage ratio as high as possible. But parties also possess strong countervailing incentives. The incentives are not as simple as they may superficially appear, facilitating reasonable agreement.

The fact of voluntary participation by FCC bidders effectively disciplines the incumbent broadcasters from trying to set the linkage ratio too high. The linkage ratio drives a wedge between the price effectively paid in the FCC auction by a participating telco versus a nonparticipating telco. If the wedge is set excessively large, any given telecommunications company or other bidder will find it preferable to avoid participating in the secondary auction: with too large a wedge, purchase of the FCC license without the associated clearing rights is a better deal. Thus, an excessively high linkage ratio discourages telcos from participating in the secondary auction and increases the likelihood that nonparticipants win FCC licenses, undercutting the incumbent broadcasters’ objectives.

¹⁰ There will also be some form of a minimum price or reserve price, for example, a fixed minimum, M . With a fixed minimum, the “clearing fund” (the total pool of money generated by the secondary auction) to compensate incumbent broadcasters is calculated by the formula $(R*X+M)$, where R is the linkage ratio, X is the amount paid to the government, and M is the fixed minimum. See Section IIB of our August 16 comments.

The fact of voluntary participation by incumbent broadcasters effectively disciplines the telcos from trying to set the linkage ratio too low. For suppose that the telcos insist on making the “clearing fund” (the pool of money generated by the secondary auction to compensate incumbent broadcasters) too small. Then many of the incumbent broadcasters will refuse to participate in the clearing arrangement and many of the major markets will not be cleared, undercutting the telcos’ objectives. Meanwhile, each bidder should not have a problem with agreeing in advance to a linkage ratio that adequately compensates the incumbents. With a predetermined cost to clearing, the bidder can simply subtract the cost of clearing from its value for clear spectrum, and bid accordingly. With each bidder subject to the same linkage ratio, there is a level playing field on clearing terms, and the bidder is neither advantaged nor disadvantaged.

Together, these countervailing incentives strike an appropriate balance. It does not serve the telcos’ objectives to demand a linkage ratio that is too low. It does not serve the broadcasters’ objectives to demand a linkage ratio that is too high. When the initial posturing by both sides is over and they get down to serious business, there is reasonable hope for settlement on a suitable linkage ratio.

C. MINIMAL COMMISSION ACTION REQUIRED

In the process we advocate, Spectrum Exchange/Allen will privately conduct the secondary auction, and so minimal Commission action is required. It would be extremely helpful for the Commission to rule that participation by parties in a secondary auction linked with the FCC auction in the manner we have outlined is fully consistent with FCC auction rules. However, there is no need for the FCC to endorse our secondary auction in any way.

III. NO FURTHER DELAY

Spectrum Exchange/Allen reiterates its strong recommendation against any further delay in the 700 MHz auction, and finds considerable support in the comments filed by diverse other parties. First, delay of the auction will delay the rollout of new services. Second, delay will likely reduce the

competitiveness of the ultimate auction. Third, delay will hamper the negotiation of clearing arrangements.

A. DELAY OF THE AUCTION WILL DELAY THE ROLLOUT OF NEW SERVICES

As Verizon Wireless has forcefully argued in its recent comments:

The 700 MHz band represents a crucial opportunity for the United States to advance in the global race to deploy new and innovative mobile and high-speed Internet services. Though nations around the world have followed this country's lead in adopting competitive bidding as the preferred means for awarding spectrum licenses, as far as deploying new spectrum is concerned, the United States is playing catch-up. There is an undeniable spectrum shortage here at home, and as a result, the United States risks falling further behind in wireless innovation and in the development of next generation wireless services. It is therefore crucial that the Commission do whatever it can to make the 700 MHz band usable at the earliest possible date for advanced new wireless services.¹¹

We emphatically agree. There must be a strong sense of urgency about making the 700 MHz spectrum available, so as to bring wireless broadband to the United States at the soonest possible date.

B. DELAY WILL LIKELY REDUCE THE COMPETITIVENESS OF THE FCC AUCTION

The major European UMTS auctions held to date have witnessed a trend toward industry consolidation and a declining number of bidders. The United Kingdom auction (March 2000) attracted thirteen bidders, whereas the Netherlands auction (July 2000) had only six bidders, the German auction (July 2000) had only seven bidders, and the Italian auction (scheduled for October 2000) will have seven or fewer bidders. There has been broad concern in European capitals that the consolidation of bidders may lead to diminished competition in the auction and sharply reduced government revenues.

While these fears have thus far only been borne out in the Netherlands—where the license prices, per MHz pop, were only about 25% of those in the UK—the lack of competitiveness caused by

¹¹ See “Comments of Verizon Wireless,” in WT Docket No. 99–168, filed August 16, 2000, p. 1.

consolidation should be of serious concern to the Commission. Every extra month of delay in the auction is another month in which potential competitors may band together, possibly reducing the auction revenues.

At the same time, delay by itself may reduce auction participation. If potential bidders believe that the March 6 auction date may slide further—or that the rules of the game may change—they may postpone formulating business plans and making other preparations, ultimately reducing the likelihood that they will seriously bid in the auction. Conversely, clarity that there will be no further delays or changes will encourage potential bidders to seriously investigate possible plans for the 700 MHz. In conclusion, a firm auction date of March 6 will be good for competition in the auction and, hence, good for the American taxpayer.

C. DELAY WILL HAMPER THE NEGOTIATION OF CLEARING ARRANGEMENTS

Up until now (and with good reason), the start date of the Commission's 700 MHz auction has been a moving target. The auction was scheduled first for May 10, 2000; then moved to June 7, 2000; then deferred to September 6, 2000; and now set for March 6, 2001. The past delays have been necessary and appropriate, given the absence of and need for regulatory rules conducive to clearing arrangements. However, with the *Memorandum Opinion and Order*, and with an expeditious rulemaking following the *Further NPRM*, the Commission will have established the necessary regulatory foundation for clearing arrangements in time for the March 6 date. If there are further delays going forward, there develops a growing danger that the relevant parties will no longer take any auction date seriously. This has potentially serious consequences for resolving the interference issues, since parties to the clearing arrangements may well negotiate right up to a perceived deadline. Without a firm auction date, no firm deadline may be perceived.

Thus, we urge the Commission to unambiguously commit to adhering to the March 6, 2001 auction date. The March date gives the FCC, the bidders, and the incumbent broadcasters ample time

to establish procedures and resolve uncertainties in the 700 MHz band. Indeed, the *Memorandum Opinion and Order* already goes a long way toward clarifying a set of rules under which voluntary clearing arrangements can be settled. The Commission should now issue rules emanating from the current *Further NPRM* expeditiously—certainly before the end of October—and then make clear that no further changes will be made to either the clearing rules or the auction date.

IV. OTHER ISSUES CONCERNING BAND CLEARING

A. WAIVER APPLICATIONS

As in our August 16 comment and all earlier filings, we fully support and encourage voluntary transition agreements, and believe that the Commission should generally approve waiver applications by incumbent broadcasters to do early transitions to DTV-only transmissions. We do not understand why the National Association of Broadcasters (NAB) accuses us of “baldly stat[ing], citing no factual support, that most viewers of channels 59–69 receive the signals through cable systems or direct broadcast satellite.”¹² We take notice of the widely accepted facts that the cable television penetration rate in the United States has reached 67% and that the over-the-air propagation characteristics of channels deteriorate as one goes up the television dial. We also advise the NAB to ask the member broadcasters it serves and represents.

Specifically, we continue to urge the Commission to establish a schedule for pre-approval of waivers to end over-the-air analog transmissions. For example, analog stations that anticipate an early transition to digital may apply by January 1, 2001, for pre-approval for clearing. Requests for pre-approval will be acted on by March 1, 2001. Thus, in many cases, the parties will know with certainty, before the auction begins, that substantial clearing will be possible.

¹² See “Comments of the National Association of Broadcasters on the Further Notice of Proposed Rulemaking,” in WT Docket No. 99–168, filed August 16, 2000, p. 5.

In order to facilitate voluntary arrangements for the transfer of clearing rights, we also continue to recommend that the Commission establish a procedure whereby an incumbent broadcaster can effect a formal transfer of its property rights in Channels 59–69 to the owner(s) of the corresponding 700 MHz license(s).

B. THREE-WAY VOLUNTARY TRANSITION AGREEMENTS

As in our August 16 comment and all earlier filings, we fully support and encourage three-way voluntary transition agreements. Three-way agreements are needed whenever the incumbent broadcaster is willing to leave the 700 MHz band, but only if it can obtain a replacement channel below 59. In particular, the TV Exchange described in our August 16 comment presents a market-based approach for stations to identify the least-cost way to clear the 700 MHz band. By finding the least-cost clearing solution, the TV Exchange minimizes any temporary loss in over-the-air broadcast. The FCC should establish rules and procedures that facilitate voluntary three-way agreements.

We disagree with the comments made by the NAB in this regard. NAB asserts: “These three-way relocation plans raise technical problems because DTV and analog stations are not comparable and DTV stations cannot easily be relocated to the allotment of an analog station.”¹³ We see no basis for this assertion. Indeed, under the present rules, a television station whose analog assignment is inside the core (channel 51 or below) and whose DTV assignment is outside the core (channel 52 or above) is required to complete the DTV transition by converting its current analog slot to DTV and returning its current DTV slot to the government. We believe that it is usually feasible to move DTV stations to analog slots. The Commission would be advised to operate under a rebuttable presumption that such moves are feasible.

¹³ See “Comments of the National Association of Broadcasters on the Further Notice of Proposed Rulemaking,” in WT Docket No. 99–168, filed August 16, 2000, p. 6.

C. CHANNELS 52 – 59

We believe that it is good policy for the Commission to adopt the clearing rules established for channels 60–69 as a starting point for setting rules concerning channels 52–59. (Noting, in addition, that channel 51 may pose the same interference issues relative to the channel 52 spectrum that channel 59 poses to the channel 60 spectrum.) Further refinements will surely be necessary in the future, but the clearing rules established for channels 60–69 are undoubtedly superior to the status quo.

Further, “NAB questions the utility of allowing incumbents on channels 59–69 to relocate temporarily on channels vacated by broadcasters on channels 52–58.”¹⁴ We disagree and would argue from first principles that any voluntary three-party arrangement should be presumed to be beneficial.

D. REOPENING CONSIDERATION OF “MANDATORY RELOCATION” WOULD BE COUNTERPRODUCTIVE

Verizon Wireless has asked the Commission to adopt procedures that it says would increase the certainty that bidders will bid on clear spectrum in the 700 MHz band. Specifically, Verizon suggests the framework of “a voluntary negotiation period, with mandatory relocation to follow,” similar to that used in the context of broadband PCS and 2GHz mobile satellite services. It proposes to give 700 MHz licensees “the right to impose involuntary clearing of [the] channels in conjunction with a technically feasible relocation proposal.”¹⁵

The Commission closed the door on mandatory relocation in its *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*.¹⁶ The *Further NPRM* specifically solicited comments only on “additional *voluntary* band clearing mechanisms,” including “‘three-way’ agreements,” “secondary auctions,” and “other alternatives for facilitating the *voluntary* clearing of TV

¹⁴ See “Comments of the National Association of Broadcasters on the Further Notice of Proposed Rulemaking,” in WT Docket No. 99–168, filed August 16, 2000, p. 7.

¹⁵ See “Comments of Verizon Wireless,” in WT Docket No. 99–168, filed August 16, 2000, p. 6.

¹⁶ *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00–224, WT Docket No. 99–168, CS Docket No. 98–120, MM Docket No. 00–83 (rel. June 30, 2000).

Channels 59–69” (emphasis added).¹⁷ The separate statements of three commissioners further highlight the Commission’s decision in June not to impose mandatory relocation of broadcast operations.¹⁸

Based on many months of discussions with parties from all sides, Spectrum Exchange/Allen believes that any attempt to reopen consideration of mandatory relocation would drive the two sides apart and immeasurably delay a satisfactory solution. Spectrum Exchange/Allen supports Verizon’s stated intent to clear spectrum in an efficient and market-driven manner. However, we continue to believe that the secondary auction proposal outlined in our August 16 filing is a mechanism that will achieve this end *through consensus* and in advance of the March 6 auction, providing bidders with some certainty.

Renewing consideration of mandatory relocation would destabilize an already difficult situation. Whatever the legal merits of Verizon’s proposal, the possibility that the Commission might even consider it would likely inject uncertainty and further delay into the clearing process. The Commission therefore should look to other avenues.

E. THERE MAY BE CONSENSUAL OPPORTUNITIES FOR TECHNICALLY FEASIBLE DTV REALLOTMENTS

Verizon Wireless’s notion of pursuing “technically feasible relocation proposals” might more profitably be applied to the DTV allotments in Channels 59–69. Unlike the analog stations in the 700 MHz band, the DTV stations do not currently have significant numbers of viewers. Thus, reallocations of the DTV stations to lower channels might be accomplished by the Commission, without significant disruption to television viewers, broadcasters, customer goodwill or advertising revenues. Indeed,

¹⁷ ¶81 of *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00–224, WT Docket No. 99–168, CS Docket No. 98–120, MM Docket No. 00–83 (rel. June 30, 2000).

¹⁸ “I support the ‘voluntary’ approach we have taken to agreements between licensees, including our decision not to impose mandatory relocation of broadcast operations.” (Separate Statement of Commissioner Susan Ness.) “I want to be clear that our efforts should only be aimed at clearing away regulatory barriers to privately negotiated agreements, not at creating new regulatory structures that force one licensee’s deals upon unwilling parties. ... It is for the marketplace, not the Commission, to determine when and how these transactions occur.” (Separate Statement of Commissioner Harold Furchtgott-Roth.) “Further, I strongly oppose any possibility of mandatory relocation of an incumbent broadcaster.” (Separate Statement of Commissioner Gloria Tristani.)

Paxson Communications has invited the Commission to explore the feasibility of reallocating DTV stations to lower channels, taking the view that “the use of some or all of these channels would significantly free up the 700 MHz band and have a positive impact on the spectrum auction.”¹⁹

The DTV allotments in Channels 59–69 constitute a rather significant component of the interference issue in the 700 MHz band. If one takes the population or number of households within the respective grade B contours of individual stations and calculates the sum over all stations, one finds that the DTV stations account for more than 40% of the total in Channels 59–69. Moreover, the DTV allocations are the dominant part of the interference issue in the important Los Angeles market.

This appears to be an area where incumbent broadcasters and potential new licensees share a common ground. The Commission should pursue consensual opportunities for technically feasible DTV reallocations.

F. COST SHARING

We continue to advocate that the FCC adopt cost sharing among new licensees. As Verizon Wireless has stated: “It is only reasonable that when multiple parties benefit from a TV station being cleared that all parties share the costs of clearing. The Commission should craft an equitable framework ...”²⁰

In our August 16 filing, we suggested the following rule: In the event that the winner of the 20 MHz license in a given region is able to enter into a comprehensive clearing arrangement with the incumbent broadcasters in that region, the winner of the 20 MHz license shall be able to require the winner of the 10 MHz license in that region to contribute one-third of the clearing cost. This rule prevents the possibility that the winner of the 10 MHz license would attempt to free-ride on the band-clearing efforts of the winner of the 20 MHz license. We would also support simple improvements upon this simple rule, that maintain the same spirit.

¹⁹ See “Comments of Paxson Communications Corporation,” in WT Docket No. 99–168, filed August 16, 2000, p. 13.

²⁰ See “Comments of Verizon Wireless,” in WT Docket No. 99–168, filed August 16, 2000, p. 8.

Under our plan the cost of clearing channels 59–69 can be borne entirely by the winners of the commercial spectrum, without any efficiency loss, and without any loss to the winners of the commercial spectrum. This is because the clearing cost is determined during the 700 MHz auction, allowing the commercial bidders to effectively subtract the clearing cost from their values. Our global solution clears the commercial spectrum, the public safety bands, and the guard bands. It is neither necessary, nor desirable, for public safety or the guard band managers to share in the cost of clearing. Resolving the clearing issue before and during the 700 MHz auction greatly simplifies the debate over who pays the cost of clearing.

V. OTHER DIGITAL TELEVISION ISSUES

A. OUR SECONDARY AUCTION WILL BENEFIT THE DTV TRANSITION

Resolution of the interference issues in the 700 MHz band will help to jumpstart the faltering transition to digital television. To a significant degree, the slow DTV transition can be explained by a “chicken-and-egg” problem: consumers are in no hurry to buy DTV receivers, since there is minimal digital broadcasting; whereas broadcasters are in no hurry to buy DTV transmitters, since there are few digital viewers. In one fell swoop, clearing the 700 MHz band will create a critical mass of some 100 television stations that are seriously committed to reaching their viewers by DTV. This could go a long way toward getting the transition back on track.

Equally importantly, the clearing arrangements will bring significant resources to many of the broadcasters who can least afford to undertake the DTV transition. Too much concern is being expressed about analog TV becoming unavailable to over-the-air viewers before the transition (due to the clearing of channels 59–69). Too little concern is being expressed about digital TV being unavailable to over-the-air viewers after the transition (due to an inability for broadcasters to afford the DTV equipment and programming). There is already a reasonably good match between the broadcasters who would receive compensation for clearing and the broadcasters who lack the funds to do the DTV

transition. To the extent that three-way voluntary transition agreements become possible, the match will further improve, since it is the broadcasters most in need of the transition funds who will be the most eager to enter into three-way transition arrangements.

B. DIGITAL MUST-CARRY

Based on discussions with numerous broadcasters and on the various comments filed on August 16, Spectrum Exchange/Allen continues to believe that the chances of meaningfully clearing analog broadcasters from the 700 MHz spectrum will be further enhanced if the FCC affirms full digital must-carry rights, including DTV multicast channels.

C. EXPEDITING THE ISSUANCE OF DTV CONSTRUCTION PERMITS

In our August 16 comments, we suggested a clearing date for incumbent broadcasters in Channels 59–69 of: “May 1, 2002 or 18 months after receiving their final DTV construction permit, whichever is later.” Our intention was not to provide broadcasters with a loophole for delaying their clearing and, indeed, the contract language would be written to require the broadcasters to make good-faith efforts to obtain such construction permits. Rather, we attempted to recognize that a broadcaster would be unable to do the DTV transition without a valid construction permit (and with sufficient lead time). We reiterate our recommendation that the FCC should adopt an expedited approval process (within 60 days) of all applications filed by incumbent broadcasters participating in the plan. The expedited processing would cover all applications necessary to make an early transition to DTV. To be precise, this would include not only waiver applications but construction permits as well.

VI. CONCLUSION

The 700 MHz band holds enormous promise. However, this promise can only be realized with a rational plan to facilitate clearing. In the plan we advocate, Spectrum Exchange/Allen will privately conduct the secondary auction, and so minimal Commission action is required. However, the following steps would be helpful. First, we ask the Commission to rule that participation by parties in a secondary

auction linked with the FCC auction in the manner we have outlined is fully consistent with FCC auction rules. Second, we ask the Commission to establish expedited approval processes for incumbent broadcasters and procedures whereby the formal transfer of property rights in Channels 59–69 can be effected. Third, we ask the Commission to declare the validity of three-way voluntary transition agreements. Fourth, we ask the Commission to affirm full digital must-carry rights, including DTV multicast channels, in order to increase the willingness of incumbent broadcasters to accelerate the DTV transition out of the 700 MHz band. Finally, we reiterate our request that the Commission provide regulatory certainty and commit to no further delays. The issues of a secondary auction, expedited approval and transfer procedures, three-way voluntary transition agreements, digital must-carry, and no further delay were all properly commented in ours and others' August 16 filings, and are ripe for action.

WHEREFORE, Spectrum Exchange respectfully requests that the Commission act in accordance with our recommendations above.

Respectfully submitted,

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