

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

In the Matter of)	
)	
Association of Local Television Stations, Inc. and National Association of Broadcasters)	DA 00-397
)	
Petitions for Reconsideration of First Report and Order)	
)	
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
)	

**OPPOSITION OF SPECTRUM EXCHANGE GROUP, LLC
TO PETITIONS FOR RECONSIDERATION**

Spectrum Exchange Group, LLC (“Spectrum Exchange”) hereby submits this opposition in the above captioned proceeding.¹ Spectrum Exchange opposes petitions submitted by the Association of Local Television Stations, Inc. (“ALTV”) and National Association of Broadcasters (“NAB”) requesting the Commission to reconsider its decision to “consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees” in the 700 MHz band.² NAB believes that “such agreements would likely involve incumbent broadcasters (i) converting to DTV-only transmission before the end of the statutory transition period; (ii) accepting higher levels of interference than allowed by the Commission’s established protection standards; or (iii) otherwise accommodating the operations of the new licensees.”³ ALTV believes “there is some indication that the Commission may be trying to force early eviction of free over-the-air broadcast stations operating on these channels.”⁴

¹ Public Notice, Wireless Telecommunications Bureau Sets Comment Schedule for Petitions for Reconsideration of First Report and Order in WT Docket No. 99-168, Establishing Commercial Service Rules for 700 MHz Band, DA 00-397, WT Docket No. 99-168 (rel. Feb. 25, 2000).

² Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, First Report and Order, WT Docket No. 99-168, FCC 00-5, paragraph 145 (rel. Jan. 7, 2000).

³ National Association of Broadcasters Petition for Reconsideration of First Report and Order, Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, at footnote 3 (filed February 22, 2000).

⁴ Association of Local Television Stations, Inc. Petition for Reconsideration of First Report and Order, Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, at p. 4 (filed February 22, 2000).

Spectrum Exchange will conduct a private auction, shortly before the Commission's 700 MHz auction, for the purpose of clearing the encumbered spectrum. The voluntary agreements produced by our auction—if allowed by the Commission to be implemented—will enable the promise of the 700 MHz spectrum to be realized. Thus, the Commission should deny ALTV's and NAB's petitions and, indeed, it should exercise its regulatory authority in the ways that ALTV and NAB fear. If a broadcaster in channels 59–69 wishes to end its over-the-air analog broadcasting before the end of the statutory transition period and if the broadcaster satisfies the Commission's criteria for clearing, the Commission should approve the broadcaster's request.⁵ If a broadcaster in channels 59–69 does not wish to clear, but if a comparable station below channel 59 is willing to clear in its place, then the broadcaster in channels 59–69 should be obliged to relocate to the cleared lower channel. By setting such rules expeditiously, the Commission can create a “win-win” situation, yielding tremendous benefit to the public, to the Treasury, to the new licensees, and to the incumbent broadcasters.

1 The importance of clearing

The 700 MHz band has a potential of tantalizing proportions. Because of its location on the spectrum and its excellent propagation characteristics, it is ideally suited for next generation (3G) mobile or high-speed Internet services. Once deployed, these services will intensify competition for all communication services and yield tremendous benefit to the public.

Unfortunately, this potential can only be realized if the 700 MHz band is cleared of incumbent television broadcasters on channels 59–69. Currently, there are over 100 channels that must be cleared for this spectrum to be used throughout the nation. Without clearing the incumbent broadcasters, most of the major markets are unusable. The 700 MHz band includes 30 MHz of spectrum for commercial use (the C and D licenses), 24 MHz for public safety use, and 6 MHz for a restricted guard band use. The 30 MHz of commercial spectrum alone, if clear, likely would have a value in excess of \$10 billion. The encumbered spectrum has a value that is probably only a small fraction of \$10 billion.

Ironically, this spectrum, so well suited for new uses, is rather badly suited for the television transmissions encumbering it. As a consequence, most viewers of channels 59–69 broadcasting today receive the signals through cable systems or direct broadcast satellite (DBS), not by over-the-air transmissions; the over-the-air signal quality is simply too poor. Thus, early clearing of the spectrum would have little impact on television viewers. Moreover, television viewers will likely receive new opportunities to receive these stations' signals. Each television licensee has been allocated a matching digital television (DTV) license, and private clearing arrangements are likely to hasten the transition to DTV.

Without clearing, the 700 MHz band will remain unusable until at least the scheduled end of the transition period to DTV of December 31, 2006. Both ALTV and NAB petitioners anticipate that the

⁵ In the First Report and Order at 145, the Commission set the following criteria: “In considering whether the public interest would be served by approving specific requests, we would, for example, consider the benefits to consumers of the provision of new wireless services, such as next generation mobile services or Internet fixed access services. We would also consider whether such agreements would help clear spectrum for public safety use in these bands and could result in the provision of new wireless service in rural and other relatively underserved communities. On the other hand, we would also consider loss of service to the broadcast community of the licensee. For example, we would consider the availability of the licensee's former analog programming within the service area, through simulcast of that programming on the licensee's DTV channel or distribution of the programming on cable or DBS, or the availability of similar broadcast services within the service area, (e.g., whether the lost service is the only network service, the only source for local service, or the only source for otherwise unique broadcast service).”

broadcasters will be permitted to keep their channels for analog television service a good deal longer. Bidders in the 700 MHz auction in May 2000 will need to be extremely patient in order to attach significant values to the licenses, absent clearing. Consumers awaiting the new services will need to be similarly patient.

The First Report and Order in WT Docket No. 99–168 established commercial service rules for the 700 MHz band. These rules recognize the importance of clearing the incumbent broadcasters (para. 145). The report envisions a process of voluntary negotiation between the auction winners and the incumbent broadcasters. Upon agreement, the incumbent broadcaster will request a regulatory waiver to clear, and if the Commission’s criteria are satisfied, approval to clear will be granted. Such an approach will yield some amount of clearance, and is an obvious improvement over continued encumbrance.

At the same time, the approach is problematic, mainly because of the well-known holdout problem. Many incumbent broadcasters are in positions to block the wireless service in its area. Due to co-channel and adjacent channel protection, each station in Channels 59, 60, 61, 64, 65 and 66 obstructs one-half of the C license. Each station in Channels 61, 62, 66 and 67 obstructs one-half of the D license, while each station in Channels 60, 63, 65 and 68 obstructs one-quarter of the D license. Moreover, if the new licensee intends to operate a paired service, the amount of blockage is doubled. Hence, rather than agree to clear at a price that approximates its clearing cost, each incumbent broadcaster is likely to hold out for a significant fraction of the total value of the clear spectrum in its market. Negotiations with incumbent broadcasters are further complicated by the fact that, in each market, several parties benefit from the clearing. The end result is that the clearing, if it occurs at all, will occur after substantial delay. Moreover, there is little reason to suspect that the channels that can clear at least cost will be the ones to do so. Incumbent broadcasters are likely to receive windfall gains; the public and the Treasury will suffer.

2 Mandatory channel relocation

The Commission can drastically improve the situation by adopting a rule of mandatory channel relocation. Under this rule, if a comparable station below channel 59 is willing to clear, then a station in channels 59–69 is obliged to relocate to the cleared lower channel. This rule effectively eliminates the holdout problem. Rather, than give each broadcaster in channels 59–69 the unilateral power to block wireless service, all comparable channels can compete to be cleared. The incumbent broadcaster in channels 59–69 is not harmed relative to the status quo; the incumbent merely loses its ability to extract windfall gains. Each broadcaster in channels 59–69 gets to decide whether it wishes to be paid for clearing early, or whether it prefers to be relocated to a comparable lower channel. The broadcaster in channels 59–69 is put on equal footing as any other comparable station. If no comparable station is willing to clear at a price that the new licensees are willing to pay, then the market will have demonstrated that the incumbent broadcasters should remain.

Mandatory channel relocation includes the possibility of a DTV station being moved to the slot of a comparable analog station. For example, the DTV counterpart of the most heavily viewed station in a metropolitan area may have been assigned to channel 60. An analog UHF station below channel 59 that is primarily viewed over cable might agree to be cleared, so that DTV-60 can be relocated to the lower slot. Mandatory channel relocation also includes the possibility of a DTV station being moved to the slot of another comparable DTV station.

Against a backdrop of mandatory channel relocation, we anticipate that most relocations and all clearings will in fact occur voluntarily. In many instances, the Commission should expect to receive a waiver request by one station to clear early, in conjunction with a waiver request by a second station to relocate to the cleared slot as soon as the first station clears. The Commission should respond to such requests on an expedited and favorable basis, provided that the Commission’s criteria for clearing are satisfied.

3 A clearing auction

One of the main benefits of mandatory channel relocation is that it makes it possible to resolve the clearing problem efficiently even before the Commission's 700 MHz auction. This is accomplished by conducting a clearing auction that will identify the least-cost clearing approach in each broadcast market. Spectrum Exchange will conduct such a clearing auction shortly before the 700 MHz auction.

The clearing auction works as follows. In each market where one or more stations in channels 59–69 encumber the 700 MHz licenses, the set of comparable UHF stations is determined. These are the eligible bidders in the clearing auction for that market. For example, in the Atlanta Designated Market Area, there are two stations in channels 59–69, but there is a field of seven comparable stations (including the two stations in 59–69).⁶ The auction identifies the two stations among the seven that are willing to clear at least cost. In the Chicago Designated Market Area, there are four stations in channels 59–69, but there is a field of nine comparable stations (including the four stations in 59–69).⁷ The auction identifies the four stations among the nine that are willing to clear at least cost. The stations that win this auction would be cleared approximately one year after the 700 MHz licenses are awarded, provided that the stations satisfy the Commission's criteria for clearing and provided that the clearing cost is sufficiently low that the new spectrum users prefer to clear. The winners in the clearing auction would receive payments as determined by the auction. These payments would enable the clearing stations to minimize the loss of service by making early conversions to DTV. The clearing stations would also retain their must-carry rights on cable. Loss of service would be minimized by the clearing auction process, since the stations willing to clear at least cost would likely be those with the fewest over-the-air viewers, perhaps because their programming is already seen primarily over cable and DBS.

The clearing itself is entirely voluntary. Every station that clears does so because it prefers the clearing payment to continuing over-the-air transmissions.

Mandatory channel relocation makes the clearing auction possible. By putting all comparable channels on the same footing, the stations can compete for the clearing payment. In this way, the least-cost clearing solution is found. Rapid deployment of 3G mobile and high-speed data services is made possible, and loss of broadcast service is minimized.

Participation in the clearing auction by the broadcasters is stimulated if the new licensees commit in advance to honor the results of the clearing auction. Such a commitment is a voluntary decision of each bidder in the FCC auction. The benefit to the potential license buyer is that the clearing problem is resolved. The buyer can bid in the 700 MHz auction for clear spectrum, knowing in advance what the clearing cost will be. The bidder can then simply subtract the clearing cost from the value of clear spectrum to determine its maximum bid. This reduction in uncertainty dramatically improves the efficiency of the auction outcome. The winner of the 700 MHz license is the company that values the cleared spectrum the most, rather than the company that is the most optimistic about the cost of clearing.

4 How the Commission can create value by promoting efficient clearing

The Commission needs to move quickly to accomplish efficient clearing in the 700 MHz band. Specifically, we urge the Commission to:

⁶ The seven comparable stations in Atlanta are 30 WPBA, 34 WHOTTV, 36 WATL, 46 WGNX, 57 WATC, 63 WHSG, 69 WUPA.

⁷ The nine comparable stations in Chicago are 20 WYCC, 26 WCIU, 32 WFLD, 38 WCPX, 44 WSNS, 50 WPWR, 60 WEHS, 62 WJYS, and 66 WGBO.

- Further define the rules governing clearing of channels 59–69.
- Adopt mandatory channel relocation, and thereby permit least-cost clearing of the television stations in the 700 MHz band.
- Establish the criteria determining comparable stations in a broadcast market.
- Rule that an analog station that moves to DTV early retains its must-carry cable status throughout the transitional period to DTV.
- Elaborate on the criteria determining whether a channel can clear early.

Time is short given the May 10th auction date. These issues are of critical importance to bidders in the 700 MHz auction. If the issues are not resolved (at least in principle), then the success of the auction will be undermined. The FCC should solicit comment on proposed clearing rules, outlining in as much detail as possible, a plan for efficient clearing. If the clearing rules cannot be clarified by mid-April, then we urge that the auction be postponed by one month to promote an auction outcome consistent with public policy.

5 Conclusion

Voluntary clearing coupled with mandatory channel relocation is excellent public policy. It promotes rapid, efficient, and voluntary clearing of the broadcast stations to create clear spectrum in the 700 MHz band, making that spectrum available to provide the next generation of wireless services. Consumers benefit from the improved wireless services, and public safety benefits from clear spectrum. The loss in UHF broadcast service is minimized, since only those that can clear at least cost are asked to clear. The cleared stations will continue to broadcast over cable and DBS, and make a rapid transition to DTV.

Adoption of mandatory channel relocation makes it possible to conduct a clearing auction before the FCC auction. This clearing auction identifies the least-cost approach to clearing the 700 MHz spectrum. This permits bidders in the FCC auction to bid for clear spectrum. The reduction in uncertainty makes for a more competitive and efficient 700 MHz auction.

6 Who we are

Spectrum Exchange Group, LLC, has a simple mission: to create value for the public by promoting the efficient exchange of spectrum. Our auction to clear the 700 MHz band is an important early step in this process. Spectrum Exchange, www.spectrum-exchange.com, was formed by the principals of Market Design Inc, www.market-design.com. Since 1995, Market Design Inc. has advised governments and businesses on the design of high-stake auction markets. We have designed and conducted numerous high-stake auctions in the telecommunication, energy, and e-commerce industries. For further information, contact:

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Respectfully submitted,
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