



Spectrum Exchange Group, LLC
Peter Cramton, Chairman

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The Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 - 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Re: *Ex Parte Communication*
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

Dear Mr. Chairman:

As the Commission considers the issues raised on reconsideration of the *First Report and Order* in the above-referenced proceeding, Spectrum Exchange Group, LLC ("Spectrum Exchange") respectfully urges that you and your colleagues consider the following views on the crucial issue of clearing the 746-806 MHz band (the "700 MHz band") so that new competitive wireless services can be speedily introduced.

The record in this proceeding clearly demonstrates that the potential for new wireless services in the 700 MHz band to produce benefits for consumers is enormous. Its location in the electromagnetic spectrum and its excellent propagation characteristics make this band ideally suited for next generation (3G) mobile or high-speed broadband services. Once deployed, these services will intensify competition for all communication services and yield tremendous benefit to the public. This potential can only be realized in the foreseeable future, however, if the band can be cleared of television broadcast stations that now operate on channels 59-69 (740-806 MHz) in most of the major markets.¹ These stations are slated to move to lower channels in the transition to DTV, but the date for that transition is uncertain. Absent some arrangement wherein the incumbent broadcasters in the 700 MHz band agree either to transition to DTV early or to relocate to other spectrum, new wireless services in this band will be forestalled indefinitely.

¹ Because of adjacent channel interference protections, Channel 59 also must be cleared if the 700 MHz band is to realize its full potential. Most of the broadcast operations on channels 59-69 are analog stations. The Commission also has made several interim digital television (DTV) allotments in the 700 MHz band that must be cleared to enable new wireless licensees to provide service in this band.

As you are well aware, prospective bidders in the upcoming auctions of licenses to use the 700 MHz band, as well as public safety agencies entitled to operate in the band and the manufacturers of equipment that would operate in the band, are having difficulty making operational plans in the face of the enormous uncertainty created by the indefinite presence of the incumbent broadcasters.

In the *First Report and Order*, the Commission recognized the importance of clearing the 700 MHz band of incumbent broadcast operations and stated that it would “consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees” for clearing in the 700 MHz bands. The Commission set forth some general standards that it would apply in considering whether the public interest would be served by approving specific requests.² In order to maximize the opportunity for incumbent licensees and new licensees to reach such voluntary agreements, however, the Commission must provide greater regulatory certainty.

First, the Commission must make it clear that analog television stations that elect to transition early to DTV-only transmissions will not be disadvantaged in terms of their rights to carriage on cable television systems. Any such station should be afforded the same cable carriage rights as stations that elect to continue analog transmissions until the end of the statutory transition period. This result is in accord with long-standing Commission policy to encourage the DTV transition, and indeed would help to spur the production of DTV programming and, ultimately, contribute to the success of DTV.

Second, the Commission must expand on these general standards applicable to “regulatory requests” and give more detailed guidance as to the conditions that would likely cause it to look favorably on such requests.

To this end, Spectrum Exchange suggests that the Commission include the following principles in its order on reconsideration of the *First Report and Order*:

- (1) A broadcast station’s request for regulatory approval for an early transition to DTV-only broadcasting will carry a strong presumption in favor of grant if:
 - (a) the station is located in a television market (Designated Market Area, or DMA) in which the number of cable television households is at least 60% the number of television households; and
 - (b) the station certifies that, when it transitions to DTV-only transmissions, it will broadcast a DTV signal for at least 80% of the number of hours per week that it broadcast an analog signal on average in 1999.

² “[W]e 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).” *First Report and Order*, FCC 00-05 (rel. January 7, 2000) at para. 145.

(2) A television station transitioning early to DTV-only transmissions may elect to have cable operators required to carry its television signal pre-transition continue to carry its programming in analog format if:

- (a) the television station makes an analog feed of its television signal available to the cable operator at its headend; and
- (b) 15 percent or more of the television households in the station's Television Market:
 - (i) do not subscribe to a multichannel video programming distributor (as defined in Section 602 of the Communications Act) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and
 - (ii) do not have either:
 - (a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or
 - (b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.

(3) A strong presumption will exist in favor of granting applications requesting authorization for television stations operating on analog channels 59-69 to voluntarily relocate to lower analog allocations that have been cleared by early transitioning stations. The Commission will allow a relocating station to continue broadcasting at its existing antenna site on the lower channel, as long as such operations would not require waiver of the spacing requirements or increase interference with any other television station.

(4) A television broadcast station with an interim DTV allocation on channels 59-69 will be permitted to relocate to a cleared analog allocation below channel 59 or to share another station's DTV allocation during the transition period.

Including these principles in the order on reconsideration in WT Docket No. 99-168 will further several important Commission objectives. It will create conditions that will facilitate the clearing of the 700 MHz band, allowing for the speedier initiation of new wireless services in this band. It also will help stations find additional capital needed for them to make the transition to DTV, thus advancing the Commission's DTV policies, which seeks to preserve a free, universal broadcasting service, foster an expeditious and orderly transition to digital television, manage the spectrum to permit the recovery of contiguous blocks of spectrum so as to promote spectrum efficiency and to allow the public the full benefit of its spectrum, and ensure that the spectrum is used in a manner that best serves the public interest. *See Advance Television Systems and Their Impact Upon Existing Television Systems*, MM Docket No. 87-268, *Fifth Report and Order*, FCC 97-116 (rel. April 21, 1997), at para. 4.

We appreciate your efforts to resolve these difficult issues, and hope that you and your colleagues will incorporate the views expressed herein in your decisions in the 700 MHz rule making proceeding.

Sincerely yours,

SPECTRUM EXCHANGE GROUP, LLC



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Larry Ausubel, Co-President
Paul Milgrom, Co-President

cc: The Honorable Susan Ness
The Honorable Michael K. Powell
The Honorable Harold W. Furchtgott-Roth
The Honorable Gloria Tristani
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