Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	

CONSOLIDATED RESPONSE OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association ("TIA")[1] hereby submits this response to Petitions for Reconsideration filed with the Federal Communications Commission ("Commission") in the above-captioned proceeding. TIA strongly supports the Commission's efforts to rapidly implement the provisions of the Spectrum Act, and is generally supportive of the approach the Commission took in its landmark *Report and Order* in this proceeding.[2]

For this reason, TIA urges that most of the Petitions for Reconsideration be denied to the extent they seek a fundamental reversal of the Commission's basic approach to transitioning spectrum from television broadcast to mobile broadband use. However, TIA shares many of the concerns of Qualcomm Incorporated ("Qualcomm") regarding the Commission's decision to permit unlicensed operations in the duplex gap and the guard bands,[3] and we urge the Commission to consider interference issues based on law and upon reasoned technical analysis.

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[1] TIA is the leading trade association for the information and communications technology ("ICT") industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of policy issues affecting the ICT industry and forges consensus on industry standards.

[2] Report and Order, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 (rel. June 2, 2014) ("*Report and Order*").

[3] Petition for Reconsideration of Qualcomm Incorporated, filed Sep. 15, 2014 in GN Docket No. 12-268 ("*Qualcomm Petition*").

At the outset, TIA appreciates the Commission's desire to announce policy decisions rapidly to keep this proceeding moving forward. In general, the Commission has done an admirable job resolving many key issues even while it continues to gather technical information regarding remaining issues – including those involving potential unlicensed operations in the post-transition 600 MHz band. And of course, TIA appreciates that the Commission has very recently issued a Notice of Proposed Rulemaking addressing potential modifications to the Part 15 rules, creating a docket in which a proper record regarding the impacts of potential unlicensed operations can be addressed.[4]

Nevertheless, two clear facts remain. *First*, Congress required that the 600 MHz band be licensed, and permitted unlicensed operations only if a scenario exists in which they do not cause harmful interference to licensed operations.[5] Indeed, in the *Report and Order* the Commission itself recognized that the Spectrum Act "conditions unlicensed use of guard band spectrum on not causing harmful interference to licensed services."[6]

Second, as the Qualcomm Petition points out, significant evidence has been previously submitted which demonstrates that unlicensed operations may create interference problems.[7] In the *Report and Order*, the Commission made no attempt to grapple with this evidence, saying only that "at this juncture, we are confident that unlicensed devices can operate in the duplex gap under existing [TV white space] rules without causing such interference."[8] However, under the

[4] Notice of Proposed Rulemaking, Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37, ET Docket No. 14-165 (rel. Sep. 30, 2014) ("*Part 15 NPRM*")

[5] Middle Class Tax Relief and Job Creation Act of 2012 § 6407(e), Pub. L. No. 112-96, 126 Stat. 156, 232 ("*Spectrum Act*")

[6] *Report and Order* ¶ 268 n.805 (citing Spectrum Act).

[7] *See* Qualcomm Petition at 4-7.

[8] *Report and Order* ¶ 273.

APA, "so conclusory a statement cannot substitute for a reasoned explanation, for it provides neither assurance that the Commission considered the relevant factors nor a discernable path to which [a reviewing] court may defer."[9] Therefore, despite the Commission's acknowledgment that "a further record is necessary to establish the technical standards" for potential unlicensed uses – and its recent initiation of a separate proceeding for that purpose – its basic conclusion in the *Report and Order* was still premature as a matter of law.

As the Commission now seeks specific comments regarding proposed technical rules for potential unlicensed operations, TIA urges the agency to be mindful that it cannot simply "dismiss[] … empirical data that [is] submitted at its invitation."[10] The Commission must instead provide "reasoned justification … sufficient to indicate that it has grappled with"[11] contrary evidence – and it must be prepared to revisit its decisions in the *Report and Order* if necessary.

[9] *American Radio Relay League v. FCC*, 524 F.3d 227, 241 (D.C. Cir. 2008) (citing *AT&T Corp. v. FCC*, 236 F.3d 729, 737 (D.C. Cir. 2001) and *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 42-43 (1983)).

[10] *Id.*

[11] *Id.*

CONCLUSION

The Commission should deny Petitions for Reconsideration to the extent they seek fundamental reversals of the Commission's overall approach to the incentive auction. Furthermore, the Commission should be prepared to reconsider and reverse its premature decisions regarding unlicensed devices if the technical evidence in the record – whether previously submitted or in response to its pending NPRM – does not clearly support it.

Respectfully submitted,

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