

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

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

COMMENTS OF AT&T

AT&T Services, Inc., on behalf of its wholly-owned and controlled wireless affiliates (collectively “AT&T”), hereby responds to the National Telecommunications and Information Administration’s (“NTIA’s”) Notice of Proposed Rulemaking in which it proposes to adopt regulations governing the Technical Panel and dispute resolution boards established by Congress to facilitate the relocation of, and spectrum sharing with, Federal Government spectrum holders.¹ These proposed rules would implement portions of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96 (February 22, 2012)(the “Tax Relief Act”). The spectrum provisions of the Tax Relief Act were intended to address the shortage of spectrum available for commercial mobile wireless services by reallocating broadcast spectrum to commercial mobile use through incentive auctions, and by clearing certain federal spectrum to be reallocated and auctioned for commercial use together with other spectrum already allocated for commercial use.² To ensure that this spectrum was reallocated, auctioned and brought to bear on the spectrum crunch as quickly as possible, Congress required the Federal Communications

¹ Relocation of and Spectrum Sharing by Federal Government Stations—Technical Panel and Dispute Resolution Board, *NTIA*, 77 Fed. Reg. 41956 (July 17, 2012)(“NPRM”).

² *See, generally*, Tax Relief Act at Sections 6401-6403.

Commission to hold the first such auction and grant commercial licenses within 3 years of the date of adoption the Tax Relief Act, or by February 22, 2015.³

To improve the process of relocating federal spectrum users to clear spectrum for commercial use,⁴ Congress amended provisions intended to require federal agencies being relocated to develop transition plans,⁵ broadened the definition of relocation costs to allow for reimbursement of relocation planning costs and state of the art replacement systems,⁶ and established panels to review transition plans for sufficiency and to resolve any disputes that might arise during their implementation.⁷ All of these changes were designed to speed the availability of additional spectrum for commercial mobile services, by quickly reallocating spectrum, by putting deadlines on auctions, and by streamlining the relocation process through better planning, more transparency, more just reimbursement of an agency's reasonable relocation costs, and speedy dispute resolution.

AT&T generally supports the rules proposed by NTIA as supporting these important policy objectives. AT&T proposes, however, that NTIA either shorten the timelines associated with filing revised transition plans or require initial transition plans to be filed earlier, in order to ensure that agencies subject to relocation will not be deemed ineligible for reimbursement of

³ *Id.* at Section 6401(b).

⁴ Congress made clear that in evaluating bands for reallocation to commercial use, NTIA is to clear the band of federal users—sharing between federal and commercial users should only be considered when relocation of federal users out of the band is infeasible. *Id.* at 6701(j). Congress did, however, provide for reimbursement from the Spectrum Relocation Fund of costs associated with either relocation or spectrum sharing and refers throughout Section 6701 to “relocation or sharing.” *Id.* For the sake of simplicity, AT&T refers only to “relocation” but intends to include sharing and relocation when it refers in these comments to “relocation,” transition plans or the reallocation of federal spectrum.

⁵ *Id.* at 6701(h).

⁶ *Id.* at 6701(a).

⁷ *Id.* at 6701(h), (i).

their costs through the Spectrum Relocation Fund. Second, NTIA should make clear, as the statute does, that the decisions of dispute resolution boards are “rulings” and not mere “recommendations.” To do otherwise would frustrate the statutory purpose that the boards resolve disputes, not simply mediate. Third, the rules should make clear that membership on the Technical Panel is not limited to federal employees. The statute does not require such a restrictive approach and the purposes of the statute would be better served by not preemptively excluding all available expertise outside of federal government.

I. Only Transition Plans Found to be “Sufficient” Should be Published on the NTIA Web Site.

To allow time for review of agencies’ plans for relocation, each agency to be relocated must submit a transition plan “no later than” 240 days prior to the auction of the frequencies to be reallocated.⁸ A Technical Panel is established by the act, whose role is to review the transition plans submitted by federal agencies for sufficiency.⁹ The Technical Panel is to be made up of 3 members, one each to be appointed by the Office of Management and Budget, NTIA and the FCC, all of whom must be either radio engineers or technical experts.¹⁰ The statute allows the Technical Panel 30 days to review an agency’s transition plan and submit to the agency and the NTIA a report on the sufficiency of the plan. If the plan is insufficient, the agency has up to 90 days to submit a revised plan, which is also subject to review and a report from the Technical Panel within 30 days thereafter.¹¹

⁸ *Id.* at 6701(h)(1).

⁹ *Id.* at 6701(h)(4).

¹⁰ *Id.* at 6701(h)(3). The statute does not require than any of them be federal employees, but does permit them to be. *Id.*

¹¹ *Id.* at 6701(h)(4).

The statute also requires NTIA to publish the transition plans of the agencies no later than 120 days before the auction by uploading them to the NTIA web site.¹² In the NPRM, NTIA notes that this raises a dilemma. If an agency's initial transition plan is submitted on the last day allowed by statute (240 days prior to the auction), and the Technical Panel uses the entire 30 days it is allotted to review the plan and finds it insufficient, then the agency uses the entire 90 days it is allotted under the statute to submit a revised plan, the revised plan would not arrive before the Technical panel until 120 days prior to the auction—the day NTIA must publish all transition plans on its web site.¹³

In the NPRM, three possible options are offered for dealing with this dilemma. First, NTIA could publish only transition plans found to be sufficient. Second, “if an insufficiency finding would not substantially impact or impair the reliability and accuracy of NTIA’s compilation of agency costs and timelines,” NTIA might publish insufficient plans along with the ones deemed sufficient. The third option, which NTIA notes is not likely to be feasible in cases where an auction is scheduled under a statutory deadline, is to ask the FCC to delay the auction.¹⁴

Only the first of these options is consistent with the law and policies of the Tax Relief Act. The purpose of the spectrum provisions in the act was to ensure that additional spectrum would be made available for commercial use at the earliest possible date. The rules adopted here must serve that purpose. The act requires transition plans to be set well in advance of any auction to ensure that auction participants and federal agencies will have greater transparency, better

¹² *Id.* at 6701(h)(5).

¹³ NPRM at 41957-41959.

¹⁴ *Id.* at 14959.

coordination and predictability.¹⁵ Congress also provided incentive to ensure that federal agencies develop such plans promptly and sufficiently--OMB is not authorized to release any reimbursement from the Spectrum Relocation Fund unless the plan is developed within the statutory deadlines, found to be sufficient *and* published by the NTIA on its website at least 120 days prior to the auction.¹⁶ NTIA's rules, both here and in the NTIA manual, should be designed to ensure that federal agencies to be relocated develop transition plans and, if necessary, revised transition plans in time to have them reviewed and published no later than 120 days prior to the auction.

It is no solution to publish transition plans that are not found to be sufficient—the agency would not be eligible for reimbursement of its spectrum relocation costs in that case. Similarly, it is no answer to ask the FCC to delay the auction. As NTIA notes, in the case of an auction being scheduled to comply with a statutory deadline it would not be possible to do so, and in any other auction, it would be against Congress' purpose and the public interest to do so. The only option is to publish only those transition plans that are deemed sufficient and to do so no later than 120 days prior to the auction, as directed by statute. To ensure that the technical panel has time to review and report on a revised transition plan prior to Congress' 120 day deadline for publication, NTIA should either require that agencies submit their initial transition plans earlier than 240 days prior to the auction, or that they submit a revised transition plan no later than 60 days after the Technical Panel finds its initial plan insufficient. This would ensure that federal agencies and the Technical Panel have sufficient time to develop and review revised plans in time to have them published by NTIA within the statutory deadline.

¹⁵ *Id.* at 14957.

¹⁶ Tax Relief Act at Sec. 6702.

II. The Decisions of the Dispute Resolution Board Must be Rulings, not Recommendations.

The Tax Relief Act specifically provides that a “*decision* of the dispute resolution board may be appealed . . . not later than 30 days after the date of such decision.”¹⁷ Yet the rules proposed by NTIA would characterize the product of the board’s deliberation as merely a “writing,” “[i]n the form of a *recommendation* to NTIA, OMB, the Commission and the parties” that would bind none of them.¹⁸ This would amount to mediation of disputes, not resolution. Moreover, it is difficult to see how this mere non-binding recommendation could possibly meet Congress’ express directives that the dispute resolution board “*rule* on the dispute within 30 days” and that this ruling be appealable in federal court.¹⁹ NTIA’s proposed rules should be changed to accord with the statute. A recommendation is not a ruling.

III. Membership on the Technical Panel Should Not be Limited to Federal Employees.

Under the proposed rules, membership on the Technical Panel could be limited to federal employees.²⁰ The statute requires only that a member be “a radio engineer or a technical expert,” not that she be a federal employee. By excluding those outside of government, the Technical Panel would have fewer qualified candidates to consider, and it may be less able to fully assess an agency’s assertions with respect to issues like the reasonableness of costs and the length of timelines than it would be if one or more of its members had relevant experience in the private sector. AT&T believes that NTIA should not purposely and preemptively eliminate from consideration the abundant expertise available outside of government.

¹⁷ Tax Relief Act at Section 6701(i)(7)(emphasis added).

¹⁸ NPRM at 41966. (emphasis added)

¹⁹ Tax Relief Act at 6701(i)(4), (7)(emphasis added).

²⁰ *Id.* at 41963

Respectfully submitted,

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August 1, 2012