

**Testimony of David Williams
President
Taxpayers Protection Alliance
Before the
Senate Appropriations Subcommittee on Financial Services and General Government
“Oversight of the Federal Communications Commission: Spectrum Auctions Program, Part 2”**

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Thank you for the opportunity to testify today. My name is David Williams, president of the Taxpayers Protection Alliance (TPA). TPA’s mission is to serve as a rapid-response organization that keeps taxpayers and consumers informed as to what their government is, or isn’t, doing. That’s why, for the past several months, we have been closely and intently following developments regarding the “C-band” section of radio spectrum, which is valued at more than \$60 billion. First, I want to thank you on behalf of all of our members and supporters for your hard work on this issue.

As the staff of the Federal Communications Commission (FCC) and lawmakers of this subcommittee are well aware, this segment of mid-band spectrum is critical for the deployment of 5G due to its ability to carry sizable bits of data over relatively long distances. Freeing up spectrum for 5G deployment is an important issue because 5G is at least ten times faster than current 4G LTE, and 5G can make significant progress in helping close the digital divide. During months of deliberation on how best to make C-band spectrum available, all sides of the debate cited the plight of the 20 million Americans that lack ready, reliable access to high-speed internet. Closing the digital divide and protecting taxpayers have been the top two priorities for TPA in the C-band discussion.

Last month, TPA testified on the need for a public auction to ensure a fair and open process. Well, on November 18, FCC Chairman Ajit Pai listened to TPA, you, and millions of taxpayers and consumers across the country and announced a public auction. In a letter to lawmakers, Chairman Pai stated that, “With a quarter-century track record of transparent and successful auctions, I am confident that they [FCC staff] will conduct a public auction that will afford all parties a fair opportunity to compete for this 5G spectrum, while preserving the availability of the upper 200 megahertz of this band for the continued delivery of programming.” Chairman Pai, and his staff, should be commended for their hard work on this issue. Moving forward with a public auction confirms his commitment to closing the digital divide and protecting taxpayers.

This was an important decision because it not only will help close the digital divide, it reaffirms the principle that spectrum is a national asset and must be managed to best serve the citizens of the country.

TPA is confident that the FCC will be able to publicly auction C-band auction in an expedited process while providing guaranteed revenue for taxpayers. First, let’s talk about who owns the spectrum. The Communications Act of 1934, as amended by the Telecom Act of 1996, makes it clear that taxpayers are the ultimate owners of the spectrum. In fact, due to the procedure set forth in Section 304 of the

legislation, licensees must sign a waiver saying that they are simply spectrum tenants. The government is free to make modifications to leases under Section 316, provided that the FCC gives 30 days of written notice. Just as an apartment owner should behave respectfully and with reasonable predictability toward a tenant, the U.S. government should exercise caution in clearing incumbent users from spectrum even if they can bluntly do so in a short period of time. Fortunately, innovative instruments such as incentive auctions allow for such clearings to occur while ensuring that all parties are treated fairly.

In moving forward with a public auction, the FCC and lawmakers must know what to expect from previous auctions. It is also important to learn from any previous mistakes to make for a fair, expedited process.

The FCC has a stellar track-record in making spectrum available in record time once it commits to an auction. In the agency's early years of conducting public auctions, the process was often slow and unpredictable. But in recent years, the FCC has demonstrated that it is capable of learning from its previous missteps and pursuing the expedited leasing out of taxpayer spectrum assets.

In May 2014, agency staff began seeking comments on the proposed Advanced Wireless Services (AWS-3) auction. Just nine months later, the auction concluded with gross bids of nearly \$45 billion and net taxpayer proceeds totaling more than \$41 billion. Sure, there were plenty of incumbent relocation and frequency-sharing issues and FCC agency staff faced many headaches as the bidding process got underway in the last couple of months of 2014. But, the end result of 341 rounds of bidding over thirteen weeks was the public auctioning of a critical slice of spectrum at unexpectedly-high prices.

Then, a little more than a year after the successful AWS-3 auction, the FCC hit another historic milestone. In March of 2016, the agency embarked on a two-sided auction (known as the Broadcast Incentive Auction) in order to clear nearly 90 megahertz of spectrum used by incumbent broadcasters. The stakes could not have been higher, as internet providers made clear to the agency and incumbent license holders the need for flexible-use licenses to spearhead 5G deployment. This auction was a complicated balancing act: the FCC had to ensure that broadband providers and broadcasters agreed on the "right" price for spectrum reallocation, while ensuring that taxpayers were given their due as the ultimate spectrum owners. This process was a resounding success, and the auction took just over a year to complete. More than \$19 billion in revenue was generated from the process, of which \$10 billion was given to the broadcasters to vacate the spectrum and more than \$7 billion was allocated to taxpayers.

Prior to Chairman Pai's November 18 announcement that the FCC would pursue a public C-band auction, a consortium of incumbent satellite companies proposed selling spectrum on their own through an opaque, vaguely-articulated process and bequeathing a "voluntary contribution" to U.S. taxpayers. The percentage contribution to the Treasury would be based on the amount of net proceeds from sales but would at a minimum be 30 percent. Note that this is substantially less than the 37 percent of proceeds given back to taxpayers following the conclusion of the Broadcast Incentive Auction in March of 2017.

The “net proceeds” at the center of the “voluntary contribution” determination would have been calculated by estimating the costs to plan for and implement the “private sale.” If a private monopoly is given carte blanche to control that process and determine cost, they could simply make costs look high on paper and avoid compensating taxpayers for the value of spectrum. This would have been a significant problem for a “private sale” of the C-band, and it continues to be a potential issue if the FCC considers similar approaches in the future.

The government in general doesn’t have the best track-record in keeping operational costs under control, and TPA will hold the FCC and any other government agency accountable for any cost overruns. But at least the FCC has a successful track-record in making cost estimates of its auctioneering process available and compensating taxpayers in reasonable proportion to costs and total spectrum awards. Public-private partnerships in which a single private entity holds all the cards and can rig numbers to its benefit is dangerous, as TPA and other free-market groups have witnessed repeatedly via the proliferation of no-bid contracts throughout government.

Competitive and public auctions ensure that all stakeholders have a seat at the table while prices emerge organically. We tend to take this competitive, market-based process for granted, but the FCC didn’t always embrace innovative bidding procedures. Before the advent of competitive bidding, the agency adhered to a command-and-control model where bureaucrats would award spectrum haphazardly to private and public entities while keeping taxpayers in the dark as to where their holdings were headed. This unfortunate state of affairs led famous economist Ronald Coase to write a 1959 treatise excoriating the FCC for this top-down dictation of spectrum assignment, but it would take 35 years for the agency to fully listen to him and embrace spectrum auctions. And the FCC’s announcement this week rejecting the creation of an artificial, government-granted monopoly was a powerful affirmation of Coase’s vision of markets and competitive bidding.

But far more work needs to be done to ensure that FCC spectrum auctions live up to their full potential and offer taxpayers the full value of their assets.

Even from the historically-successful AWS-3 and Broadcast Incentive Auctions, there are ample lessons that the FCC can take away from these experiences for the future. For instance, there were multiple opportunities for pairing licenses within the AWS-3 spectrum, which would make the bidding process less complicated for prospective spectrum users. Prospective leasees may find value in acquiring many different licenses, but these licenses are strongly complementary and have diminished value if they are not acquired as a part of a “package deal.” Research from Dr. George Ford and Lawrence Spiwak of the Phoenix Center finds that a more thorough and complete pairing of spectrum blocks during the AWS-3 auction would have resulted in more than \$20 billion in additional revenue for taxpayers.

By some estimates, further bidding liberalization and complementary spectrum pairing could raise revenues to the Treasury by more than 30 percent above the current auction status-quo. In addition, the FCC could stand to improve its risk-management policies regarding the spectrum auctioning process. In 2018, an audit by the inspector general (IG) revealed that the agency “has weaknesses in internal controls which result in increased risk of non-compliance” with long-standing regulatory requirements.

The report found that bid monitoring could stand to be improved, and the FCC has taken important strides since then to increase monitoring over the process and ensure comprehensive oversight.

In response to the inevitable problems that will arise with the significant task of allocating spectrum, TPA and other taxpayer advocacy groups will continue to sound the alarm and press for reforms. But regular oversight by the IG and efficiency-minded reforms will only happen if spectrum auctions remain firmly in the public arena. By way of analogy, the owner of an apartment condo may find it acceptable if a tenant attempts to transfer some of their lease to another tenant, but not without the owner doing his or her due diligence, assessing relevant costs, and being adequately compensated.

The process for the clearing of C-band is particularly high stakes, given the significant promise of 5G in bridging the digital divide and delivering cutting-edge technological services across the country. In recognition of these benefits, I'm pleased that the FCC has chosen to move ahead with a public auction to make mid-band spectrum available for 5G deployment. The FCC and lawmakers should work together to make sure this is an expedient process that works for everybody, including taxpayers and consumers.

Finally, I want to thank you for your leadership on this issue. Without your hard work and follow through, the country would not be on the verge of closing the digital divide without spending taxpayer dollars. In fact, we are on the verge of closing the digital divide while also saving taxpayer dollars.

I am happy to answer any questions at this time.