

**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)	

REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

The National Association of Broadcasters (“NAB”)¹ hereby replies to the Oppositions to Petitions for Reconsideration submitted in the above-referenced docket. We urge the Commission to reject the arguments of parties urging an incentive auction that seeks only to repurpose spectrum, and to protect television broadcasters and their millions of viewers.

I. THE COMMISSION SHOULD REJECT CTIA’S SMASH AND GRAB APPROACH TO THE SPECTRUM AUCTION.

CTIA’s wholehearted support for each of the Commission’s decisions harming broadcasters draws into sharp focus exactly how imbalanced the Commission’s Report and Order is.² No one expects CTIA to advocate for the rights of broadcasters and America’s over-the-air viewers. But CTIA’s cheerleading for the Commission’s decisions that abrogate the rights of broadcasters and their viewers under the Spectrum Act is Exhibit A for exactly how the Commission’s decisions will impact the two industries.

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Opposition and Reply of CTIA – The Wireless Association to Petitions for Reconsideration, GN Docket No. 12-268 (Nov. 12, 2014) (“CTIA Opposition”).

According to CTIA, the FCC's current auction rules properly elevate spectrum recovery above any other consideration – which should give the Commission pause.

Luckily for the millions of over-the-air viewers and those who seek a balanced approach to telecommunications policy, Congress, and not CTIA, prescribed the boundaries for the FCC's incentive auction. In doing so, Congress did not authorize the repurposing of spectrum at all costs. Rather, Congress created a balanced, market-driven approach, under which broadcaster participation would be truly voluntary – with express protections built into the law to ensure that it stayed that way. On reconsideration, the Commission must restore that balance, which necessarily means rejecting CTIA's "clear at all costs" auction approach.

A. The Commission Should Not Require Broadcasters to Subsidize Wireless Spectrum Demands.

Under the Commission's current, completely unconstrained approach to repacking, broadcaster relocation costs are likely to dramatically exceed the \$1.75 billion allocated to the TV Broadcaster Relocation Fund. Despite previously claiming that repacking could be completed for a fraction of the amount allocated in the fund,³ neither CTIA nor any wireless carrier themselves have disputed NAB's numbers.

Recognizing that the fund will clearly run out long before repacking is concluded, CTIA has abandoned its position that broadcasters will be made whole in repacking. Its

³ See, e.g., Comments of United States Cellular Corporation, GN Docket No. 12-268, 8-9 (filed Jan. 25, 2013) (total costs of repacking will be only \$775 million, based on average repacking costs of \$885,500 for full power stations and \$267,375 for low power stations); Reply Comments of AT&T Inc., GN Docket No. 12-268, 65 (filed Mar. 12, 2013) (citing CTIA and CEA estimate that repacking costs will amount to only \$565 million, based repacking 629 stations at a cost of \$898,000 per station).

new position is simply that it doesn't matter. Instead, CTIA now argues that it is okay for the FCC to blow through the repacking fund, because limiting repacking costs to the \$1.75 billion budget "threatens to limit the number of stations repacked and thus the amount of spectrum made available for wireless services."⁴ Once again, CTIA is supporting the notion – reflected in the Commission's Report and Order – that anything that limits the Commission's ability to make spectrum available for CTIA's members should be circumscribed. This argument completely ignores Congress's direction under the Spectrum Act.

CTIA's flippant filing ignores the dramatic scope of this problem. In particular, NAB's analysis demonstrates that, using the Commission's own Widelity Report as a basis for estimated costs, repacking more than 1300 stations to clear 84 MHz of spectrum may cost more than \$2.6 billion, leaving a shortfall of at least \$600,000 per station.⁵ Fortunately, the solution is simple. The Commission can and should commit to restricting repacking to the number of stations that can reasonably be expected to be fully reimbursed. Additionally, the Commission can and should require winning bidders in the forward auction to cover any shortfall if the FCC's estimates prove inaccurate.

B. Repacking Should Also Make Broadcasters Whole in Terms of Coverage.

CTIA's grossly misapprehends Block's request to adopt a standard of service replication for repacking to ensure that stations not participating in the auction are not harmed in the relocation process.⁶ Block merely recommends the same approach the

⁴ CTIA Opposition at 9.

⁵ Comments of the National Association of Broadcasters, GN Docket No. 12-268, 2-3 (Nov. 12, 2014).

⁶ Petition for Reconsideration of Block Communications, Inc., GN Docket 12-268, 4-6 (Sept. 15, 2014) ("Block Petition").

FCC took in creating the original DTV Table of Allotments. There, broadcasters were assigned channels based on the principle of service replication, ensuring that a station's new digital allotment provided the same coverage and service as its previous analog allotment. The Block Petition asks the Commission to reconsider its fundamental assumption that the standard by which repacking should be judged is how much service *loss* is tolerable for a relocating station.⁷ Obviously the Commission could have chosen instead to treat current coverage and population served as a *floor* during repacking, with any changes increasing, rather than decreasing coverage.

There is no technical impediment to this approach. For example, to compensate for changes in frequency, the FCC could allow stations to use higher power levels. To the extent this might "extend" a station's contour, the FCC could elect not to protect areas outside the original contour from interference. This approach would clearly not render repacking "essentially impossible," as CTIA recklessly claims.⁸

C. The Commission Should Not Force Broadcasters Off the Air Due to Circumstances Outside Their Control.

In their petition for reconsideration, the Affiliate Associations correctly point out that, according to the Commission's own data, some stations will be unable to meet the arbitrary 39-month deadline the FCC has established for vacating their old channels.⁹

CTIA responds that the FCC should reject any requests to modify this death-knell

⁷ Block Petition at 4-5.

⁸ CTIA Opposition at 9.

⁹ Petition for Reconsideration of ABC Television Affiliates Association, CBS Television Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates Association, GN Docket No. 12-268, 12-14 (Sept. 15, 2014).

deadline, and that “[t]he existing timetable is more than sufficient for broadcasters to relocate to new channels.”¹⁰ CTIA does not offer any support for this statement.

The Commission should look no further than its own data, which clearly indicates that some stations will be unable to meet the 39-month deadline for transitioning to their new channels. Specifically, the Commission’s own Widelity Report suggests that, under ideal circumstances, in a world without weather, mishaps, or unforeseen delays, it could take *41 months* or more for some broadcasters to complete their transition to their new channels.¹¹ CTIA doesn’t dispute this data; rather it merely states that broadcasters unable to relocate within that time are simply out of luck. And CTIA suggests this is the case even if the new licensees never deploy service on that spectrum.

D. The Commission Should Complete International Coordination Prior to Commencing the Auction.

CTIA opposes petitions asking the Commission to reconsider its decision not to complete international coordination prior to the start of the auction.¹² Notably, CTIA does not even address one of the central arguments supporting coordination prior to the auction – namely, that border stations may be shut out of reimbursement if the FCC is cannot complete coordination in a timely fashion.

Both the Gannett Petition and the Affiliate Associations Petition point out what should be obvious to all stakeholders: the 36-month reimbursement window for broadcasters assigned new channels begins when the Commission deems the auction

¹⁰ CTIA Opposition at 10.

¹¹ Widelity, Inc., Response to the Federal Communications Commission for the Broadcaster Transition Study Solicitation – FCC13R0003, DA 14-389A2 at 53 (Dec. 30, 2013) (“Widelity Report”).

¹² CTIA Opposition at 11.

“complete.”¹³ Until international coordination is complete, however, stations cannot complete their transition to their new channels. Any delay in completing coordination measurably increases the likelihood that stations along the border will fail to receive reimbursement for all of their relocation costs.

Consistent with its view that nothing matters but freeing spectrum, CTIA blithely asserts that “border coordination need not and should not serve as a source of delay.”¹⁴ Of course, this ignores the disconnect between the FCC’s inflexible 39-month deadline for stations to vacate their old channels and the extensive delays that can accompany coordination under existing arrangements. The Commission has stated that it will repack stations consistent with existing international arrangements if it does not complete coordination prior to the auction. If this statement means that border stations will not be forced off the air until 39 months after they receive coordinated channels, the Commission should clarify its order to make that plain. On the other hand, if the Commission, like CTIA, is simply ignoring the potential for years-long delay in coordinating channel assignments, it should promptly reconsider its decision and make clear it will complete coordination prior to the auction.

E. A Variable Band Plan Has More Drawbacks Than Advantages.

In their petition, the Affiliate Associations ask the Commission to reconsider the adoption of a variable band plan.¹⁵ CTIA acknowledges that variability is “one of the most

¹³ Affiliates Petition at 15; Petition of Reconsideration and Clarification of Gannett Co., Inc., Graham Media Group, and ICA Broadcasting, GN Docket No. 12-268, 2-5 (Sept. 15, 2014) (“Gannett Petition”).

¹⁴ CTIA Opposition at 11.

¹⁵ Affiliate Associations Petition at 15-19.

complex elements of the incentive auction.”¹⁶ However, CTIA persists in arguing that the introduction of variability is worthwhile because it avoids restricting spectrum recovery to the amount recovered in the so-called “least common denominator” markets.¹⁷

Any rational estimation of the markets that are likely to be the most constrained would include the Northeast corridor, including New York, Boston, Philadelphia, Baltimore and Washington, as well as Chicago and Los Angeles. These markets are also the markets where wireless carriers are likely to have the highest demand for new spectrum. In that case, the “least-common denominator” problem should be self-correcting – in highly constrained markets, bidding in the forward auction should, if the Commission’s assumptions about the relative value of spectrum are accurate, be sufficient to recover enough spectrum to meet demand.

CTIA attempts to sidestep this point by discussing “daisy chain” problems, as though rural markets may actually wind up being the most highly constrained markets.¹⁸ Even if this claim were credible, which it is not, it fails to address the Affiliate Associations’ central point. The Commission has long since abandoned the idea of a truly market-based auction, where bidders in the forward auction seeking licenses in, for example, New York, would buy licenses from broadcasters in New York. Instead, the Commission will collect a pool of money based on bidding in the forward auction, and use that to buy out stations on a nationwide basis. So, stations in New York may be bought out with money raised from the forward auction in markets other than just New York. The Affiliate

¹⁶ CTIA Opposition at 5.

¹⁷ *Id.* at 4-6.

¹⁸ CTIA Opposition at 5.

Associations assert that the Commission should concentrate its resources on the most highly constrained markets, wherever they are, to make the “least common denominator” *as high as possible* – and then use that amount of spectrum as the basis for a nationwide plan. NAB submits it makes significantly less sense to pursue a plan that recovers 48 MHz in New York, Los Angeles, Boston and Chicago, and 84 MHz everywhere else, instead of a plan that recovers 72 MHz nationwide. CTIA does not seriously address this request, beyond its repetitive statement that more is always better.

CTIA again misses the mark in dismissing concerns that the Commission’s decision to adopt a variable plan, where the Commission recovers more spectrum in less populated areas than in the highest demand markets, will dramatically affect viewers who rely on LPTV and translator stations.¹⁹ Because of the secondary status, CTIA believes LPTV and translator stations should be irrelevant to the Commission. CTIA predictably fervently agrees with the current approach to displace LPTV and translator stations even in markets where the demand for more wireless spectrum is low, displacing actual operating services upon which underserved Americans rely for news and entertainment is a serious concern. The Commission should reexamine this decision.²⁰ As much as CTIA might wish it, the Spectrum Act does not *require* the Commission to elevate spectrum recovery above all other considerations, and, indeed, several provisions of the Act prevent the Commission from doing so.

¹⁹ CTIA Opposition at 17-20.

²⁰ See Petition for Reconsideration of the Advanced Television Broadcasting Alliance, GN Docket No. 12-268, 9 (Sept. 15, 2014).

II. THE COMMISSION'S DECISIONS REGARDING UNLICENSED OPERATIONS SHOULD BE GUIDED BY SOUND ENGINEERING.

Qualcomm asserts that unlicensed operations in the duplex gap and guard band may cause harmful interference to licensed operations.²¹ According to Google and Microsoft, Qualcomm's concerns are fatally premature, because the FCC has not yet decided the rules for unlicensed operation in this band.²² Everything may turn out fine in the end, they reason, so Qualcomm need not worry now.

This is a curious approach to spectrum use decisions. Under this theory, the Commission should allow certain uses in certain spectrum, regardless of whether the spectrum will actually prove usable under technical parameters that prevent harmful interference to other operations. If it turns out that the technical parameters under which unlicensed users can safely operate in the duplex gap are so restrictive that the spectrum is functionally useless, would Google and Microsoft then acknowledge that the decision was in error? This is a quintessential "ready, fire, aim" approach to spectrum use. The Commission should *first* determine, as a *technical matter*, whether unlicensed users can feasibly operate in the duplex gap at parameters that are useful for the desired applications – *then* it should decide, as a *policy matter*, whether or not allowing unlicensed operations in the duplex gap is the best choice.

III. CONCLUSION.

CTIA's high-level but completely unsubstantiated endorsement of a host of Commission decisions in the Report and Order should raise red flags for the

²¹ Petition for Reconsideration of Qualcomm, Incorporated, GN Docket No. 12-268 (Sept. 15, 2014).

²² Opposition of Google Inc. and Microsoft Corporation to Petitions for Reconsideration, GN Docket No. 12-268, 3-5 (Nov. 12, 2014).

Commission. If the FCC continues on its current course, it will be expressly endorsing CTIA's view that the possibility of recovering more spectrum defeats any competing objective. The problem is that Congress created a market-driven, voluntary auction, not a process that stampedes broadcasters off a cliff.

Elevating spectrum recovery above all other considerations fails to implement the balanced approach Congress approved. It leads to warped outcomes, such as forcing broadcasters to subsidize the acquisition of spectrum by CTIA's members, disregarding substantial concerns over the failure to complete international coordination prior to the start of the auction, and the adoption of a variable band plan that makes little sense as a practical matter. It renders the auction coercive, rather than voluntary. The Commission should return to the course Congress envisioned.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1771 N Street, NW
Washington, DC 20036
(202) 429-5430

A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right from the end of the signature.

Rick Kaplan
Jerianne Timmerman
Patrick McFadden

Victor Tawil
Bruce Franca
Robert Weller

November 24, 2014

CERTIFICATE OF SERVICE

I, Susan Baurenfeind, certify that on this 24th day of November, 2014, I have caused a true and correct copy of the foregoing Reply to Oppositions to Petitions for Reconsideration to be served via first class mail, postage paid, upon:

Michael F. Altschul
Scott K. Bergmann
Krista L. Witanowski
CTIA – The Wireless Association
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036

Paul Margie
S. Roberts Carter
Paul J. Caritj
Harris Wiltshire & Grannis, LLP
1919 M Street NW, 8th Floor
Washington, DC 20036

By: /s/ Susan Baurenfeind
Susan Baurenfeind