

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ submits these comments in response to the Public Notice seeking comment on the definition of “commencement of operations” in the 600 MHz band.² NAB generally supports the Commission’s proposed definition of commencement of operations the proposals set forth in the Public Notice. In particular, we agree that LPTV and TV Translator stations should not be displaced before a 600 MHz licensee begins site commissioning testing throughout the area. We remain concerned, however, that the Commission continues to take an imbalanced and unwise approach to post-auction clearing of spectrum allocated for wireless use.

**I. SITE COMMISSIONING TESTING IS AN APPROPRIATE BENCHMARK FOR
“COMMENCEMENT OF OPERATIONS”**

In its Incentive Auction Order, the Commission set forth a transition plan under which certain operations could continue in repurposed spectrum in the 600 MHz band until a

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 *Comment Sought on Defining Commencement of Operations in the 600 MHz Band*, Public Notice, GN Docket No. 12-268, FCC 15-38 (March 26, 2015) (“Public Notice”).

wireless licensee commences operations using that spectrum.³ In particular, the Commission proposed that LPTV and TV Translator stations should not be required to vacate their channels until they were notified by a wireless licensee that the licensee intended to commence operations in the area, and that fixed broadcast auxiliary service (BAS) operations must vacate the band by the end of the post-auction transition period or earlier if notified by a 600 MHz licensee in an area in which the licensee intends to commence operations. The Commission did not, however, define “commence operations.” In its Public Notice, the Commission proposes that a licensee will be deemed to commence operations when it “begins site activation and commissioning tests, using permanent base station equipment and permanent antenna or tower locations.”⁴

NAB agrees that site commissioning tests are the appropriate trigger for the commencement of operations. Such testing, using permanent base station equipment and antenna or tower locations, reflects a significant capital investment consistent with a 600 MHz licensee’s intent actually to begin providing commercial service in the immediate term. An alternative approach where, for example, a 600 MHz licensee could displace incumbents merely by notification that it intends to commence initial testing, or some other similarly preliminary step, would be inappropriate. It would needlessly displace incumbent low power stations currently serving viewers well before a wireless licensee was even close to commercial deployment.

For similar reasons, we also support the FCC’s proposal that a 600 MHz band licensee’s notification would be limited to cover only the area served by the licensee’s

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶¶ 655-672 (2014) (Incentive Auction Order).

⁴ Public Notice at 1.

commercial service infrastructure deployment.⁵ Allowing a notification to cover a broader area would needlessly displace incumbent LPTV and translator operations with no commensurate benefit. The Commission's guiding principle for the transition of the band should be to avoid displacing incumbent operations until new wireless licensees are actually going to use the specific repurposed spectrum at issue and continued incumbent operations would create interference with new wireless operations.

II. OTHER ASPECTS OF THE COMMISSION'S TRANSITION PLAN ARE IMBALANCED AND WILL RESULT IN SPECTRUM LYING FALLOW

While NAB supports the reasonable approach the FCC has proposed for defining the commencement of operations in a given area, we are perplexed that the Commission did not extend this same level of protection to full power and class A stations by allowing them to remain on the air under the same conditions after the current 39-month deadline set forth in the Incentive Auction Order. There is no reason to force full power and class A stations that have been unable to transition to their new channels off the air before a wireless licensee commences operations in the area. Similarly, the FCC's decision to displace LPTV and TV Translator stations from guard bands and the duplex gap *before* a wireless licensee is prepared to commence operations is fundamentally unfair.⁶

While those decisions are outside the scope of this proceeding, they underscore what we believe to be an unfounded favoritism for wireless and unlicensed operations over TV broadcasting in this proceeding. First, the Commission's repacking approach effectively treats full power stations as mere obstacles to be cleared out of the way as soon as possible after the auction, regardless of the feasibility of transitioning to a new channel or even whether a

⁵ *Id.* at 4.

⁶ Incentive Auction Order at ¶ 672.

wireless licensee even needs the spectrum. Second, the Commission continues a disturbing and unprecedented trend of elevating unlicensed operations, in this case unlicensed operations in the duplex gap and guard bands, over licensed LPTV and TV Translator stations.

NAB appreciates the FCC's focus on increasing opportunities for unlicensed use of spectrum, but this decision should be placed in context. There are currently fewer than 600 TV White Spaces devices operating nationwide, even five years after the adoption of the current white spaces rules. Displacing a licensed operation, currently serving viewers, merely to allow unlicensed operation in spectrum designated as guard bands or the duplex gap, is wholly unwarranted and contrary to the basis of unlicensed operations outlined in Part 15 of the Commission's rules, namely that unlicensed operations must not cause harmful interference to licensed services. Given the fact that it is unclear whether the promise of TV White Space devices will ever be realized, the Commission's approach could easily result in rendering fallow spectrum that is currently used to provide LPTV and translator service to otherwise underserved Americans while White Space devices continue to remain a wonderful theory in the offices of certain D.C. interest groups.

III. CONCLUSION

NAB supports the Commission's proposals for the commencement of operations that will trigger displacement in a given area. These proposals reflect a balance between the understandable desire of new 600 MHz wireless licensees to have certainty that they can deploy service to recover their investment in the auction and the ability of incumbent licensees to continue to provide service until carriers are actually close to deployment using repurposed spectrum. It is unfortunate that the Commission's plans for the transition of full power and Class A stations, and LPTV and translator stations operating in the guard bands, do not reflect a similarly balanced approach.

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 flourish extending to the right.

Rick Kaplan
Patrick McFadden

Bruce Franca
Robert Weller

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