

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

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
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)	
Post-Incentive Auction Transition)	MB Docket No. 16-306
)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ submits these comments in response to the Commission’s Public Notice seeking comment on requirements for repacked television stations to report progress on their new channels following the close of the broadcast spectrum incentive auction.²

I. INTRODUCTION

Repacking a thousand or more television stations following the successful close of the broadcast spectrum incentive auction will present unprecedented challenges. The sheer number of stations moving to new channels, complex interference dependencies and the

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 *Incentive Auction Task Force and Media Bureau Release Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund and Seek Comment on the Filing of the Report by Non-Reimbursable Stations*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, DA 17-34 (Jan. 10, 2017) (Public Notice).

need for specialized expertise will combine to make this transition the most complex the Commission has ever overseen.

To protect viewers from service losses while successfully managing this transition in a manner that is fair and transparent to all stakeholders, the Commission must maintain a clear understanding of the progress broadcasters are making in moving to new channels. Without this information, the Commission will be unable to make adjustments to its transition plan, such as re-assigning broadcasters to different transition phases or adjusting the deadlines for particular phases, to ensure that the transition proceeds as efficiently as possible with minimal disruption to viewers. Further, progress reports will provide greater transparency for winning forward auction bidders and will aid in coordinating the transition in specific markets.

Accordingly, the Commission determined it will require repacked broadcasters to periodically report to the Commission on their progress in moving to new channels.³ The Commission directed the Media Bureau to develop a form for progress reports and to “seek public comment on these forms prior to the commencement of the reimbursement process.”⁴ NAB supports this decision and appreciates the opportunity to submit comments on the proposed form released by the Media Bureau and Incentive Auction Task Force. With the news that the auction is in its final stage, the release of the proposed reporting form is particularly timely. The proposed form represents a good start to developing a reasonable reporting program. Below, NAB provides specific recommendations to make broadcaster reports more accurate and less burdensome.

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 634 (2014).

⁴ *Id.* at ¶ 634, n. 1768.

II. THE COMMISSION SHOULD MAKE MINOR MODIFICATIONS TO THE PROPOSED FORM AND REPORTING REQUIREMENTS

A. The Reporting Form Should Allow Broadcasters Additional Options to Provide Accurate Responses

The proposed reporting form the Media Bureau and Incentive Auction Task Force have released sets forth 14 questions, some with subparts, and requests a yes or no answer to each question. While NAB generally believes the questions are substantively appropriate, many questions simply are not amenable to yes or no responses. Throughout the repacking process, broadcasters will face numerous uncertainties, and forcing a yes or no response in these circumstances will materially lessen the accuracy of the information the Commission collects and makes available to stakeholders.

For example, proposed question 8 asks if a station's post-auction facility will require tower construction or modification work.⁵ Many broadcasters will be wholly unable to provide any meaningful response to this question until tower studies have been completed. Similarly, question 1 asks whether a station will require FAA approval to construct its new facility, and question 2 asks whether a station will require permits or environmental impact reviews.⁶ Until tower studies have been completed and a station understands the scope of tower construction or modification work that may be required, a station may have no way of knowing whether FAA approval, permits or reviews will be required. For that matter, a station may not be able to state whether structural tower studies are required (question 4)⁷ until it receives engineering analysis of the station's new channel and determines whether it needs a new antenna and, if so, the size and weight of that antenna.

⁵ Public Notice, Appendix A at 7.

⁶ *Id.*

⁷ *Id.*

Question 6 asks a licensee to state whether or not it will receive all necessary equipment in time to meet the construction deadline for the station's main facility.⁸ Particularly during the early stages of the repack, stations may not even have had the opportunity to secure firm quotes from their chosen vendors. The Commission's decision to adopt a universal requirement that all repacked stations submit construction permit applications and cost estimates within three months will inevitably result in incomplete estimates that may not have been confirmed by vendors.

Indeed, virtually every question on the proposed form may be subject to uncertainty. Forcing licensees to guess in response to such questions places them in the uncomfortable position of potentially providing inaccurate information to the Commission and, just as importantly, may mislead the Commission and stakeholders as to the pace and progress of the transition. The Commission can readily address this issue by simply incorporating a response of "unknown at this time" into the reporting form for every question. Licensees submitting such an "unknown" answer should submit an explanation briefly describing why the facts are unknown to ensure the Commission has the most accurate information possible. Further, the form should be flexible enough to allow licensees to provide additional information not covered by the 14 proposed questions.

B. Non-Reimbursable Stations Should Also Submit Progress Reports

NAB supports the tentative conclusion that non-reimbursable stations should also submit reports on progress towards meeting their construction deadlines.⁹ These stations will in many cases be drawing on the same limited pool of resources as reimbursable stations as they seek to move to new channels. Further, their progress is no less important than that of

⁸ *Id.*

⁹ *Id.* at ¶ 11.

reimbursable stations when it comes to clearing the new wireless band for forward auction winners.

For the same reasons, NAB also supports the conclusion that non-reimbursable stations should submit progress reports on the same schedule as reimbursable stations. The Commission and other stakeholders will only have a complete picture of the progress of repacking – including the ability to identify resource bottlenecks and adjust phase assignments and phase deadlines – if it collects information from all stations that are moving to new channels, regardless of whether or not those stations are eligible for reimbursement.

C. The Commission Should Adjust the Requirements for the Submission of Progress Reports

The Public Notice proposes to require the filing of progress reports on a quarterly basis, with additional reports filed 10 weeks prior to a station’s assigned construction deadline, 10 days after construction of post-auction facilities is complete, and five days after the station ceases operation on its pre-auction channel.¹⁰ While NAB agrees that stations should be required to submit regular progress reports, the frequency proposed by the Public Notice is unnecessarily burdensome.

Rather than quarterly reports, the Commission should require the submission of reports every six months, and require that those reports be supplemented with reports at major milestones, including the receipt of all necessary government permits and approvals, a report 10 weeks prior to the station’s construction deadline and a report when the station has ceased operation on its pre-auction channel.¹¹ The Commission should also permit, but not

¹⁰ *Id.* at ¶ 8.

¹¹ If the Commission insists on maintaining quarterly reports, the first report should be due three months after stations’ deadlines for submitting construction permit applications and cost estimates, which themselves are due three months after the release of the Closing and

require, stations to provide updates prior to the next six month deadline if events occur that materially change any of their previous answers. This level of reporting will provide the Commission with regular updates, including the achievement of significant milestones, while also allowing stations to focus on repacking rather than reporting.

NAB also respectfully requests that the Commission consider allowing group station owners to file a single unified report, with information on the progress made by every station held by the group, rather than individual forms for every station. Alternatively, NAB requests that the Commission consider providing staggered reporting deadlines for stations so that no group owner is forced to file dozens of individual progress reports on the same day.

D. The Commission Must Seek to Preserve Service During the Repack

As noted above, NAB believes the majority of the questions on the proposed form are reasonable and will provide useful information to the Commission and stakeholders regarding the progress of repacking. The exception is proposed question 10(d). This question asks a station whether it has completed testing on its auxiliary antenna system such that it may cease broadcasting on its pre-auction channel.¹²

Auxiliary antenna systems will play a critical role during the repack by allowing stations to stay on the air for a period of days or weeks as they switch from permanent facilities on their pre-auction channel to permanent facilities on their post-auction channel. However, a station's completion of construction of its auxiliary antenna system in no way means that the station is ready to cease operation on its pre-auction channels. An auxiliary antenna system will, in most cases, allow a television station to cover only a portion of its coverage area. If a

Reassignment Public Notice. Requiring stations will need to submit progress reports at the same time they are submitting applications and estimates will prove burdensome and duplicative.

¹² *Id.*, Appendix A at 8.

station has completed its auxiliary antenna system, but construction of its new permanent facilities are delayed by factors outside the station's control, proposed Question 10(d) suggests that a station may be forced to operate with significantly diminished coverage, resulting in loss of service to viewers, for an indefinite period of time until its permanent facilities are completed.

This outcome would contravene the express provisions of the Spectrum Act. Section 6403(b)(2) of the Spectrum Act requires the Commission to make all reasonable efforts to preserve the coverage area and population served of repacked broadcast television stations.¹³ If the Commission seeks to force stations to operate with significantly diminished coverage for months or years while they await the completion of their main facilities on their new channels, it will surely not be making all reasonable efforts to preserve those stations' coverage area and population served.

Further, forcing stations to reduce service indefinitely during repacking would be profoundly unfair to both broadcasters and their viewers and would only exacerbate burdens the Commission has already elected to impose on broadcasters during the transition. The only thing broadcasters have asked in repacking is to be made whole. Unfortunately, the Commission has made a number of decisions that will make the transition more challenging and disruptive than it otherwise could have been. Among other things, the Commission refused to use the \$1.75 billion TV Broadcaster Relocation Fund as a budget for repacking, which could have limited the number of stations assigned to new channels.¹⁴ The Commission

¹³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6403(b)(2) (Feb. 22, 2012) (codified at 47 U.S.C. § 1452(b)(2)).

¹⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6831-6832 ¶¶ 646-648 (2014); see also *id.*

also refused to optimize repacking results during the auction, which might have ensured that the ultimate repacking plan is as efficient as possible and requires the fewest number of stations to move to clear required spectrum.¹⁵ Instead, the Commission will optimize its repacking results only after the auction is complete, at which point the Commission may already be locked into an inefficient repacking plan with limited ability to find alternative channels that would break daisy chains and provide for an easier and less costly repack.

The Commission should not compound these errors and risk creating even more disruption for viewers by requiring stations to operate on diminished facilities while they await completion of construction on their primary facilities. No station should be required to cease operation on its pre-auction channel until construction on its primary facilities is complete.

In any event, a decision this substantial, with potential ramifications for large numbers of viewers, should certainly be decided by the Commission itself, rather than the Media Bureau and the Incentive Auction Task Force. It should, at a minimum, not be effectively decided in a form for reporting repacking progress. Question 10(d) should be revised to ask whether a station has completed testing on its new permanent facilities. Question 10 should also be revised to include an additional subpart, 10(e), that asks whether the station is now prepared to cease broadcasting on its pre-auction channel.

III. CONCLUSION

NAB commends the Media Bureau and Incentive Auction Task force for releasing a proposed form for reporting repacking progress and seeking comment on that form in

at 7041-7042 (Commissioner Pai, dissenting, stating “the Commission should have adopted a \$1.75 billion budget for any repack.”)

¹⁵ NAB proposed that the Commission optimize repacking results after every round during the auction or at other intervals. Letter from Rick Kaplan to Marlene H. Dortch, Attachment at 5, GN Docket No. 12-268 (April 23, 2014).

accordance with the express directives of the Commission. Regular progress reports will provide critical information to the Commission as it manages an incredibly complex transition. We urge the Commission to adjust the proposed reporting requirement to make it less repetitive and burdensome for broadcasters, and to incorporate more flexible options for responding to the proposed questions. Most importantly, the Commission must not seek to compel broadcasters to operate with significantly diminished facilities solely to maintain the fiction that its arbitrary 39-month deadline for the completion of repacking is achievable.

Respectfully submitted,

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

Rick Kaplan
Patrick McFadden

Bruce Franca
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