



May 6, 2013

William T. Lake  
Chief, Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Media Bureau Freeze on Filing and Processing Full Power and Class A  
Television Station Modification Applications*; GN Docket 12-268

Dear Bill:

NAB hereby requests that the Media Bureau lift its freeze on the Filing and Processing of Full Power and Class A Television Station Modification Applications.<sup>1</sup> As discussed in detail below, this freeze is not justified and is having unintended deleterious impacts on the broadcasting industry. The notice establishing the freeze failed to provide a convincing rationale for bringing the broadcast business to a standstill, and, to date, it still remains uncertain to whom exactly the freeze applies. There clearly has not yet been an adequate examination of the true costs and benefits of such a freeze, including its impact on related industries beyond broadcasters and their viewers. The Bureau accordingly should immediately lift its imposition of this freeze.

The April 5, 2013, Public Notice announcing the freeze on the filing and processing of full power and Class A station modification applications came as a

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<sup>1</sup> *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, DA 13-618 (Apr. 5, 2013) ("Freeze Public Notice" or "Public Notice").

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surprise to the broadcast industry<sup>2</sup> and offered no compelling rationale for its imposition. NAB observes that, at the outset, the Public Notice justified the freeze, in part, “to avoid frustrating” what it called the incentive auction rulemaking’s “central goal of ‘repurpos[ing] the maximum amount of UHF band spectrum for flexible licensed and unlicensed use.’”<sup>3</sup> The Public Notice, however, declined to acknowledge that in the same breath, the Incentive Auction NPRM set forth a second and equal “central goal,” namely to “preserv[e] a healthy, diverse broadcast television service.”<sup>4</sup> The freeze instituted on April 5 actually frustrates the Commission’s ability to achieve these twin aims.

According to the Freeze Public Notice, the main purpose of the freeze is to provide “a stable database” of full power and Class A facilities for analyzing repacking methodologies.<sup>5</sup> The Public Notice, however, did not, and the Media Bureau subsequently has been unable to, identify which and how many applications and stations are likely to be impacted by the freeze. For example, if only a small number of stations are affected, then the overall stability of the database would not be materially affected and thus imposing a freeze would be unnecessary. This is especially true with respect to pending applications, which represent a finite and limited group, particularly in comparison to the total number of full power and Class A stations currently in operation.

The Public Notice also gave no indication that the Media Bureau weighed the costs and benefits of its action. Most notably, broadcasters with pending applications have already invested heavily to meet the Commission’s requirements for station

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<sup>2</sup> We note that the incentive auction rulemaking notice asked numerous questions related to these very issues. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, ¶¶ 113-117 (2012) (“Incentive Auction NPRM”). Broadcasters therefore assumed that these questions would be resolved in the FCC’s eventual order in the incentive auction proceeding, not by a premature Bureau public notice.

<sup>3</sup> Freeze Public Notice at 1-2, *quoting* Incentive Auction NPRM at ¶ 10.

<sup>4</sup> Incentive Auction NPRM at ¶ 10 (“Our central goals are to repurpose the maximum amount of UHF band spectrum for flexible licensed and unlicensed use in order to unleash investment and innovation, benefit consumers, drive economic growth, and enhance our global competitiveness, while at the same time preserving a healthy, diverse broadcast television service.”).

<sup>5</sup> Freeze Public Notice at 1.

modifications. The Bureau made no discernible attempt to quantify the monetary investment made by those stations or the actual relative value or benefit of instituting a freeze at this point in time. Similarly, stations that have been preparing modification applications to improve service to their viewers and that have completed, or virtually completed, the required and costly engineering studies now have nothing to show for their time and expense.

At the very least, therefore, NAB urges the Bureau to lift the freeze with respect to pending applications filed in accordance with Commission rules and procedures. As NAB explained in its comments in the incentive auction proceeding, broadcasters have worked and are continuing to work diligently to improve their digital television (“DTV”) service to viewers – and in some cases to restore local television service to viewers that they lost during the DTV transition.<sup>6</sup> We note, moreover, that during the DTV transition, the Media Bureau determined that a freeze was necessary “to ensure a stable television database” prior to channel elections, and consequently “[p]rohibit[ed] the filing of *new* applications” (including certain modification applications) and “petitions requesting *new* channels or service areas.”<sup>7</sup> The Bureau, however, did not freeze pending applications. Similarly, the Bureau here should lift the freeze and continue to process and grant, as appropriate, at least the pending modification applications.

Even beyond the negative impacts on individual stations and their viewers, the freeze additionally may have already had broader consequences on related industries. The Freeze Public Notice appears to have helped precipitate the demise of Dielectric, the U.S. broadcast industry’s largest supplier of transmission antennas and a major supplier of television transmission lines, mask filters, combiners and related equipment.<sup>8</sup> The implications of Dielectric’s decision to exit the marketplace should not

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<sup>6</sup> See Reply Comments of NAB in GN Docket No. 12-268 (Mar. 12, 2013), at 52. In particular, NAB and other parties urged the FCC to act on the 10 outstanding VHF-to-UHF petitions that were timely filed before the May 31, 2011 freeze on such requests. In these cases, allowing stations to move from a VHF to UHF channel will provide improved television service to local viewers and is consistent with congressional intent. *Id.* at 53.

<sup>7</sup> *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, DA 04-2446 (Aug. 3, 2004), at 2 (emphases added).

<sup>8</sup> See, e.g., *Dielectric Demise Raises Repacking Alarm*, TVTechnology (Apr. 23, 2013), available at <http://www.tvtechnology.com/prntarticle.aspx?articleid=219066>

be underestimated. Dielectric was one of only a handful of companies that the broadcast industry not only relies on to keep its transmission facilities up and running, but also would be needed to complete a timely repacking. At this point, and perhaps as a result of the freeze, the timeframe set forth in the incentive auction legislation no longer appears to be possible.

For these reasons, we request the Media Bureau to lift its freeze until it is able to examine, evaluate and explain the freeze's impact on all pending and impending station modification applications and on viewers and the television industry more broadly. The Public Notice neglected to do this, and as outgoing Chairman Julius Genachowski has made clear repeatedly,<sup>9</sup> each Commission action should be subject to a rigorous cost-benefit analysis to determine whether it is in the public interest. NAB is eager to work with the Media Bureau to help determine the scope and potential consequences of a freeze of modification applications to ensure that any such freeze, if it should occur, will be beneficial for the impending auction and the broadcast industry.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Rick Kaplan', with a long horizontal flourish extending to the right.

Rick Kaplan  
Executive Vice President, Strategic Planning  
National Association of Broadcasters

cc: Gary Epstein, Ruth Milkman, Rebecca Hanson, Barbara Kreisman

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<sup>9</sup> See, e.g., Remarks of FCC Chairman Julius Genachowski at the U.S. Chamber of Commerce (Oct. 14, 2011) (observing that the FCC was “the first agency to announce that it would abide by the President’s request that independent agencies employ cost-benefit analysis,” and stating that “[i]t is a routine part of our decision-making.”); Statement of FCC Chairman Julius Genachowski, Hearing on FCC Process Reform, Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives (July 7, 2011) (testifying that “it is common practice for FCC rulemaking decisions to analyze the costs and benefits of proposed regulations” and describing his “particular focus” on this issue).