



July 14, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268; Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269; Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, AU Docket No. 14-252, Notice of *Ex Parte* Communication

Dear Ms. Dortch:

On July 13, 2015, Bruce Franca, Robert Weller, Patrick McFadden, and the undersigned, all of the National Association of Broadcasters, participated in separate telephone conferences with Matthew Berry and Brendan Carr of Commissioner Pai's office, Chanelle Hardy and David Strickland of Commissioner Clyburn's office, Robin Colwell and Erin McGrath of Commissioner O'Rielly's office, Valery Galasso of Commissioner Rosenworcel's office, and Howard Symons of the Incentive Auction Task Force. During these calls, NAB discussed the additional information the Task Force has released regarding certain clearing target determination simulations the staff has performed.¹ The additional information is unavailing and raises more questions than it answers.

First, the FCC released only two simulations for each of three spectrum clearing targets. There is little to be gained from analyzing a mere six simulations. By contrast, last summer the FCC released 100 repacking simulations.² This information enabled outside parties, including NAB, to draw meaningful conclusions concerning, for example, the likelihood of certain outcomes. In this instance, releasing only two simulations per clearing target is akin

¹ Letter from Gary M. Epstein to Marlene H. Dortch, GN Docket No. 12-268, GN Docket No. 12-269, AU Docket No. 14-252 (July 10, 2015).

² Letter from Gary M. Epstein to Rick Kaplan, GN Docket No. 12-268, ET Docket No. 13-26 (June 30, 2014).

1771 N Street NW
Washington DC 20036 2800
Phone 202 429 5300

to asking a person to accurately predict the National League pennant winner by watching only two games from the 162-game Major League Baseball schedule.

To make matters worse, according to FCC staff, those are the only simulations they have performed. It is almost incomprehensible how, with the incentive auction just months away, FCC staff has not conducted more than a pair of simulations for each clearing target. If this is true, then how does the Commission have any confidence the auction will work? How can the agency possibly make sound policy choices without understanding the impact of its decisions?

Second, the assumptions made in these handful of simulations are unclear, and to the extent they are understood, are way off base. For example, the simulations assume that no station with an enterprise value of more than \$100 million will participate in the auction, a crippling assumption flatly inconsistent with the Commission's laudable efforts at broadcaster outreach. In Los Angeles, one of the markets where the duplex gap is impaired in the 84 MHz clearing target simulation, the Commission has proposed a median opening bid price of approximately \$560 million, and median anticipated compensation of \$340 million.³ Given these values, it is unrealistic to assume that no station with an enterprise value of more than \$100 million will choose to participate in the auction. Does the Commission actually assume in any other context that stations with enterprise values of \$100 million or more will not participate in the auction?

The staff also should analyze the effect of putting stations in the duplex gap against other interference proposals. For example, the leading stakeholder proposal recommends that the FCC allow unlimited impairments from international sources, but cap domestic impairments at three percent. Not only is the stakeholder proposal consistent with the Commission's stated intent to have a near-nationwide band plan (unlike the current 20 percent limit), but it would be helpful to see the simulations measured against this alternative approach. The results may ultimately be no different, but providing enough information to make these assessments would be useful and ultimately help the auction succeed.

Third, looking at last Friday's five-page document, it is striking how few stations are causing such enormous problems. This appears to reveal a serious flaw in the current auction design. Stations that otherwise should have been purchased should not be forced into the wireless band. For example, if the auction yields \$20-30 billion for the U.S. Treasury (after covering all auction costs), the FCC should have paid those handful of additional broadcasters left stranded some small percentage of that to eliminate variability. But

³ See Incentive Auction Opportunities for Broadcasters, Prepared for the Federal Communications Commission by Greenhill (October 2014), available at: <http://wireless.fcc.gov/incentiveauctions/learn-program/docs/ia-opportunities-book.pdf>; see also Incentive Auction Opportunities for Broadcasters, Prepared for the Federal Communications Commission by Greenhill (February 2015), available at: <http://wireless.fcc.gov/incentiveauctions/learn-program/docs/ia-opportunities-book1.pdf>.

apparently, the current design could leave a mere dozen stations on the table in the wireless band, harming licensed wireless operations, unlicensed operations and broadcast operations. That simply makes no sense.

Ultimately, the information released late Friday night suggests deep problems with the auction or a significant lack of transparency, or both. If there is more information to provide, the FCC should do it, and do it expeditiously so as to avoid any delay. If what was released is the extent of the information available, stakeholders should be wary of what is to follow. It is critical that the FCC makes reasoned, well-informed decisions. That can only happen from testing its systems and soliciting public input. This is nowhere truer than where, as here, the Chairman is asking his colleagues eschew a prior commitment and place TV stations in the duplex gap.

Respectfully Submitted

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

Rick Kaplan
General Counsel and Executive Vice President,
Legal and Regulatory Affairs
National Association of Broadcasters

cc: David Strickland
Chanelle Hardy
Valery Galasso
Matthew Berry
Brendan Carr
Robin Colwell
Erin McGrath
Howard Symons