

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
)	
)	
Policies Regarding Mobile Spectrum Holdings)	WT Docket No. 12-269
)	
Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 And 1002)	AU Docket No. 14-252
)	
)	
Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Spaces Devices and Wireless Microphones)	MB Docket No. 15-146
)	

**PETITION FOR CLARIFICATION OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION

The National Association of Broadcasters (NAB)¹ hereby seeks clarification of a limited aspect of the Commission's Public Notice in the above-captioned proceedings.² Portions of the Procedures PN could be read to suggest that the Commission is planning to relocate in the 600 MHz band only those television stations that do not participate in the reverse auction or do not participate in a particular manner. Especially in light of the Commission's failure to

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 *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, MB Docket No. 15-146, FCC 15-78 (Aug. 11, 2015) (Procedures PN).

adopt NAB's modified duplex gap proposal,³ NAB requests that the Commission clarify that all broadcasters will receive equal treatment in repacking, regardless of whether and how they participate in the auction (if their bids are not ultimately accepted). Notwithstanding the protections the Commission asserts it will extend to stations placed in the wireless band, for a variety of reasons no broadcaster would voluntarily choose to be relocated outside of the broadcast band. Congress instructed that the auction remain voluntary, meaning that no station should feel obligated to participate in the auction and its decision whether and at what level to participate should be motivated solely by the economic opportunity presented.

II. THE COMMISSION SHOULD CLARIFY THAT THE AUCTION REMAINS ENTIRELY VOLUNTARY

With the Spectrum Act, Congress authorized the Commission to hold an auction in which broadcasters may voluntarily agree to relinquish some or all of their spectrum usage rights.⁴ The incentive for broadcasters to participate, and to agree to relinquish their spectrum rights, is the Commission's ability to share proceeds from a forward auction of repurposed spectrum with volunteering broadcasters.⁵ Congress built protections for broadcasters into the Spectrum Act, such as the preservation of the coverage area and population served of broadcasters that remain on the air and the reimbursement of relocation expenses, to ensure

³ Letter from Rick Kaplan to Marlene H. Dortch, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (July 21, 2015).

⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6403(a)(1) (Feb. 22, 2012) (codified at 47 U.S.C. § 1452(a)(1)) ("The Commission shall conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights.") (Spectrum Act).

⁵ *Id.* at § 6402 ("the Commission may encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights...by sharing with such licensee a portion...of the proceeds...from the use of a competitive bidding system.") (codified at 47 U.S.C. § 309(j)(8)(G)(i)).

that the auction remained voluntary. In implementing the Spectrum Act, the Commission itself has repeatedly confirmed that broadcaster participation in the auction is strictly voluntary.⁶

The Procedures PN states that, “For each clearing target, the plan must include a feasible channel assignment . . . in its pre-auction band for every eligible station that does not participate in the reverse auction and in the VHF band for every applicant designated to move to a VHF relinquishment option.”⁷ The Procedures PN further explains that, “[o]nce the forward auction satisfies the final stage rule, no additional stages will be required: at that time it will be possible to finalize the provisional television channel assignment plan for the remaining television bands.”⁸ The Commission states that the auction system will use optimization techniques to determine a final television channel assignment plan in order to maximize the number of channel stays, minimize aggregate new interference experienced by any one station, avoid reassignment of stations with high relocation costs, and prioritize assignments to channel 5 in the low-VHF band and off of channel 14 in the UHF band.⁹ These sections suggest that all non-participating stations will be assigned channels in their pre-auction bands, and that the Commission will subject all channel assignments to optimization in an effort to minimize the burden of repacking on stations that must relocate.

⁶ See, e.g., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 2 (“The auction affords a unique opportunity for broadcasters who wish to relinquish some or all of their spectrum rights, but we emphasize that a broadcaster’s decision to participate in the reverse auction is wholly voluntary.”) (2014); *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, FCC 14-191, ¶ 2 (“The incentive auction will include a ‘reverse auction’ in which broadcasters will offer to voluntarily relinquish some or all of their spectrum usage rights...”) (Dec. 17, 2014) (Comment PN).

⁷ Procedures PN at ¶ 14.

⁸ *Id.* at ¶ 271.

⁹ *Id.* at ¶ 273.

Yet, elsewhere, the Procedures PN also describes only two specific categories of stations that may be subject to repacking in the new wireless band:

1. Stations that do not participate, whether because they did not submit an application, did not perfect an application or their bid option couldn't be accommodated at the outset (e.g., no VHF channels available); or
2. If the auction goes past the initial stage, stations that drop out in a previous stage of the auction.¹⁰

Thus, from this passage, it appears that at the opening stage (i.e., the opening clearing target), the only TV stations that can be placed in the 600 MHz band are those stations that do not participate in the auction. If the auction fails to close after the first stage, the only stations added to the initial group are those stations that dropped out of the auction because their asking price was too high.

Repacking only non-participants in the 600 MHz band in the opening stage, and not making their channel assignments subject to optimization, would mark a significant departure from the Commission's position in the Comment Public Notice. There, the Commission stated that, "Stations will be treated the same in the repacking process whether or not they participate in the auction."¹¹ Were the Commission to take a different approach, it would be violating both the letter and spirit of the Spectrum Act and the fundamental voluntary nature of the auction.

We understand that the Commission rejects the assertion that "stations assigned to the 600 MHz Band will be disadvantaged in comparison to stations located in the remaining

¹⁰ Procedures PN at ¶ 136.

¹¹ Comment PN at ¶ 3.

TV bands.”¹² According to the FCC, stations assigned to the 600 MHz band will receive the same “robust” protections in the repacking process as other stations, including preservation of coverage area and population served, reimbursement for relocation costs, and protection from inter-service interference.

Nonetheless, regardless of these assurances, no broadcaster would voluntarily choose to be relocated in the 600 MHz band. The Commission has determined that television stations operating co- or adjacent channel to 600 MHz licensees will be extremely limited in their ability to expand their facilities after the auction.¹³ These stations will be prohibited from increasing their noise-limited contours if doing so will increase interference to a 600 MHz licensee.¹⁴ As a practical matter, this may constrain stations’ ability to relocate, increase their service area or innovate based on a new transmission standard.

Further, broadcasters, as well as the Commission itself, are all too familiar with the uncertainty and disputes surrounding television stations operating on channel 51. These stations are protected by the Commission’s rules, just as the Commission is now promising to protect stations stranded in the 600 MHz band. Those protections, however, have not prevented costly and time-consuming disputes with wireless carriers operating in the 700 MHz Lower A Block. Similarly, a broadcaster forced to relocate a station in the 600 MHz band will have to factor the prospect of ongoing inter-service interference issues into its business plans.

A broadcaster placed in the wireless band will be surrounded by wireless operations that are incompatible with, and hostile to, the broadcaster’s continued operations. It would be

¹² Procedures PN at ¶ 34.

¹³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 87 (2014).

¹⁴ *Id.*

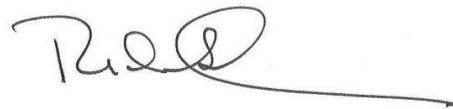
as if one's home was relocated to a commercially-zoned neighborhood; the home might be identical, but it would not be as comfortable, and certainly not as valuable.

III. CONCLUSION

We assume the Commission intends to treat all stations equally in the repacking process, as it stated it would in the Comment PN. To avoid unnecessary confusion on this point, and to reassure broadcasters that the Commission intends to treat them fairly in all aspects of the incentive auction, we respectfully request that the Commission promptly clarify that stations not participating in the auction will not be treated differently than participating stations. In particular, the Commission should clarify that its software will not assign to the 600 MHz band only stations that do not participate or do not participate in a certain manner.

Respectfully submitted,

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

Rick Kaplan
Patrick McFadden

Bruce Franca
Robert Weller

September 11, 2015