

**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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)	
Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan)	MB Docket No. 16-306
)	
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**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

October 28, 2016

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SUMMARY

Transitioning television stations to new television channels following the successful close of the broadcast spectrum incentive auction will be a uniquely complex undertaking. The sheer number of stations that must move, the interference interdependencies between these stations, and the highly individualized nature of broadcast transmission facilities will make this the most challenging transition the Commission has ever overseen. Unlike the DTV transition, stations and their viewers will not have the safety net of alternate television channels for an extended period of simulcast operation to smooth the transition. In this case, more than one thousand television stations will essentially need to “flash cut” directly to their new channels.

The Commission’s proposal for adopting a schedule is a productive and critical step in the development of a successful transition plan. The Commission has clearly devoted significant time and energy to understanding and seeking to untangle daisy chains of interdependent stations. Assigning broadcasters to staggered phases for construction is a reasonable approach to spreading out work to attempt to avoid bottlenecks in the vendor and service provider supply chain. With certain modifications, the proposal can serve as a roadmap to an efficient repack that appropriately balances the interests of affected stakeholders.

There are two principles that should guide the Commission as it finalizes a plan for a successful transition. First, the Commission should minimize disruption for viewers. No plan can eliminate disruption entirely, as repacking the television band will inevitably require viewers to rescan their televisions sets and set-top boxes to continue to receive their favorite channels. Indeed, viewers may need to rescan multiple times depending on how the transition unfolds in their market. If stations must operate on temporary facilities as they complete their

moves to new channels, some viewers may lose over-the-air service. Given that there is no threat to wireless consumers during this process, the Commission should make protecting television viewers its top priority wherever possible.

Second, while the Commission is entirely correct to begin planning for the transition now, its final plan should be flexible and capable of rapid adjustment in response to changing facts. Weather conditions, delayed zoning approvals, supply chain issues, and unanticipated engineering complexity for some stations can and will create delays that will have cascading effects for other stations. The Commission and all stakeholders should plan for foreseeable and unforeseeable developments, and the Commission should build flexibility for addressing those developments into its plan at the outset. If, for example, a station assigned to an early transition phase finds that it will need substantial tower work that will delay its transition, should that station be assigned to a subsequent phase? If that station is blocking other stations from moving, should those stations also be assigned to a later phase? Will the Commission allow some stations to move earlier if they can do so without disrupting other stations?

Unfortunately, while there is much promise in the proposed scheduling plan, the Commission's continued insistence that the transition can be completed in 39 months has painted the Commission into a succession of unnecessary corners that ultimately threaten the transition's viability. The 39-month deadline has compelled the Commission to establish a three-month period for stations to submit construction permit applications and cost estimates. This will lead to rushed, potentially incomplete applications that will inevitably need to be amended. The 39-month deadline has also led to the development of a scheduling plan that will involve assigning stations to construction phases before the Commission or the stations themselves even know the scope of work involved with their transition. This will

create inefficiencies and conflicts at the outset. Finally, the need to develop a scheduling plan that gives the appearance of achievability within the Commission's artificial 39-month deadline has forced the Commission to make unrealistic modeling assumptions that will likely be invalidated in practice.

While all five Commissioners have publicly stated that no station will be forced off the air if it is unable to meet the FCC's arbitrary 39-month cutoff, that is precisely what the current rules provide. The analysis reflected in the Public Notice setting forth the proposed scheduling plan confirms that the Commission anticipates more than 1,100 U.S. stations will need to move to new channels at an 84 MHz clearing target. While broadcasters have every incentive to move as quickly as possible, there is no reason for the Commission to make television stations and their viewers unnecessary victims of a deadline that has little chance of being met and only risks creating inefficiency and delay. At a minimum, the Commission should set forth a clear and predictable waiver standard in the event its deadline proves unachievable.

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**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 a proposal for developing a schedule to transition repacked television stations to new channels following the close of the broadcast spectrum incentive auction.²

I. THE COMMISSION SHOULD RECONSIDER ITS ARBITRARY AND INFLEXIBLE 39-MONTH DEADLINE

In its 2014 Report and Order laying out the framework for the broadcast spectrum incentive auction, the Commission determined that no repacked station would be allowed to operate on its pre-auction channel more than 39 months after the close of the auction,

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 Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, DA 16-1095 (Sept. 30, 2016) (Public Notice).

regardless of whether it has completed construction of facilities for operation on its post-auction channel.³ Thus, all repacked stations must move to their new channels within 39 months – or go off the air. The Commission’s rules provide no exceptions, and do not acknowledge that circumstances outside a station’s control may leave that station simply unable to move to its new channel, despite the station’s best efforts.⁴

Given the passage of time and the evolving record in this proceeding, it is worth re-examining the origins of this rigid and inflexible deadline. The only explanations the Commission offered for this deadline were: (1) some commenters suggested that such a deadline was reasonable; and (2) the Commission’s rules allow stations 36 months to construct new facilities.⁵ Neither one of these justifications withstands scrutiny in light of developments in this proceeding.

First, commenters based their support of such a timeframe on an assumption that perhaps 400-500 television stations would be repacked following the auction.⁶ In fact, well over twice that number of stations are likely to be repacked. The Public Notice indicates that, at a clearing target of 84 MHz, over 1,100 U.S. television stations will need to move to new channels.⁷

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Public Notice, 29 FCC Rcd 6567, ¶ 560 (2014) (Auction R&O).

⁴ As NAB has previously noted, the Commission’s own expert report on repacking concluded that it could take 41 months for some stations to complete the transition, even assuming perfect conditions and without factoring in the pressure of over a thousand other stations moving at the same time. Widelity, Inc., Response to the Federal Communications Commission for the Broadcaster Transition Study Solicitation – FCC13R0003, DA 14-389A2 at 44 (Dec. 30, 2013). Remarkably, the Commission continues to insist that 39 months is an achievable deadline.

⁵ *Id.* at ¶ 568.

⁶ See, e.g., Comments of the National Association of Broadcasters at 50, GN Docket No. 12-268 (Jan. 25, 2013).

⁷ Public Notice, Appendix A at 11.

Second, no station in television history has ever attempted to construct new facilities while more than one thousand other television stations are doing so simultaneously. While the record of this proceeding reflects disagreement concerning the level of resources available to complete the transition of repacked broadcasters to new channels, the scope of repacking should at least give the FCC pause in presuming that the time allowed for a single station to construct new facilities will prove adequate to move more than a thousand stations at once. In any event, a single station constructing new facilities does not face a death sentence if it is unable to complete work in 36 months – it can readily get an extension of time. By contrast, under the Commission’s existing and unyielding incentive auction rule, a station must cease operation on its pre-auction channel after 39 months, no matter what.

That is a remarkably unfair outcome for stations that are being involuntarily repacked. These stations have gained nothing from the Commission’s auction. Broadcasters understand that an involuntary repacking of the television band is a vital, and unavoidable, component of a successful auction. But it is reasonable for those stations to expect that Congress’s direction of “do not harm” will be respected and implemented by the Commission.

The Commission’s rule is even more unfair for viewers – particularly for viewers in areas where wireless carriers may choose not to deploy 600 MHz facilities for years after the Commission’s arbitrary deadline passes. These viewers, many of whom cannot afford or choose not to subscribe to expensive cable or satellite service, are at risk of losing over-the-air television service solely due to the Commission’s unwillingness to amend a misguided rule. This also begs the question as to why the Commission has yet to provide full-power stations with the same rights as low power TV and translator stations by permitting them leeway to

keep operating on their pre-auction channels unless a wireless licensee has commenced building out the spectrum those stations currently use.⁸

The Commission's ongoing insistence that its 39-month deadline is reasonable strains credulity. The Commission's position is that two and a half years ago, without knowing how many stations would need to move and without undertaking any study of how long it would take to move different numbers of stations in different periods of time, the Commission correctly predicted how long it would take to complete the post-auction transition. It appears that, in reality, the Commission is working backward from the 39-month timeframe it selected without regard to the feasibility of this deadline in light of new information.

Beyond the question of fundamental fairness, leaving the current deadline in place risks unnecessary delay and complication of the post-auction transition. The Commission's commitment to an unreasonable 39-month deadline has forced it into a number of additional unreasonable decisions.

For example, to maintain the appearance that the 39-month deadline is achievable, the Commission adopted a three-month deadline for the submission of construction permit applications and cost estimates that will force stations to make estimates and assumptions that will likely prove inaccurate. This may have the unintended consequence of encouraging stations to overestimate the funds their transition will require. This, in turn, may jeopardize the transition if the fund is exhausted and stations are unable to raise needed capital in time to cover the shortfall in funding needed to complete their move to a new channel. The Public Notice also makes the mistake of assigning stations to transition phases before the Commission, or the stations themselves, fully understand the scope of work needed to

⁸ Auction R&O at ¶ 670.

complete their transition – all so the Commission can claim that work can commence as quickly as possible in pursuit of its deadline.

Finally, the 39-month deadline has pushed the Commission to make unreasonably optimistic assumptions regarding scheduling, again to maintain the appearance that 39 months is a reasonable estimate of time. Among other things, the Public Notice assumes that competing broadcaster groups all trying to move to their new channels will form a neat, orderly queue for constrained resources– despite the fact that stations at the end of that queue may find themselves forced to go off the air. In other words, the Commission is assuming that some broadcasters will willingly put themselves at risk of severe economic harm to benefit their competitors. That is not a reasonable assumption. A successful and timely transition depends on organization and cooperation. In practice, an arbitrary deadline and a threat that stations will be forced off the air makes that organization and cooperation less likely.

Further, it is not at all clear that vendors will be willing or able to queue orders in such a fashion. In many cases vendors will process orders on a first-come, first-served basis, regardless of a station's assigned phase. Some vendors also have preferred-customer arrangements with broadcasters that will be far more important to those vendors than the Commission's phase assignments. Even if all of the assumptions the Commission makes regarding orderly scheduling turn out to be true, adherence to this unrealistic deadline will force choices that will ultimately increase the cost and time to complete the transition. Stations will be required to construct temporary facilities to meet deadlines, leading to more expense and more total work to be done by an already overextended set of vendors and suppliers. The increased overtime and expanded staffing that will be necessary to even attempt to meet these deadlines will lead to inevitable mistakes and accidents that will

require more re-work. Taking all of these factors together, it is clear that working backwards from the 39-month deadline is a false economy at best and dangerous at worst.

Critically, the Commission's arbitrary deadline may encourage vendors to take undue risks in an effort to speed progress. NAB has previously reminded the Commission of the tragic consequences of the wireless industry's experience with crash programs of antenna installation using unqualified personnel.⁹ During the industry's 3G rollout, carriers turned to contractors with insufficient training to speed deployment, leading to a spike in tower worker fatalities.¹⁰ No one – broadcasters, wireless carriers or the Commission itself – should be eager to repeat this experiment in a futile effort to comply with an arbitrary and unrealistic deadline.

NAB appreciates the willingness of Commission staff to work with stations to try to stay on the air in the event they are unable to comply with their deadlines for moving to new channels.¹¹ It is critical, however, that the Commission reform its underlying rule. If the Commission chooses not to lift its 39-month deadline it should, at a minimum, delegate authority to the Media Bureau to waive that deadline, on a case-by-case or group basis, for stations that are unable to comply. The Media Bureau, in turn, should establish a clear and predictable waiver standard under which a station will not be forced off the air in the event it is unable to transition to its new channel despite diligent efforts.

⁹ See Letter from Rick Kaplan to Marlene H. Dortch at 4, GN Docket No. 12-268 (Jan. 11, 2016).

¹⁰ Ryan Knutson, PBS Frontline, and Liz Day, ProPublica "In Race for Better Cell Service, Men Who Climb Towers Pay With Their Lives" (May 22, 2012) available at: <https://www.propublica.org/article/cell-tower-fatalities>.

¹¹ Public Notice at ¶ 27.

II. THE COMMISSION'S TRANSITION PLAN MUST BE FLEXIBLE AND AGILE

NAB generally supports many aspects of the Commission's proposed plan for developing an initial schedule for the transition. In practice, because no schedule developed in advance will be perfect, the success of the transition will depend on the Commission's ability to adjust its plan in response to real-world developments.

A. The Commission Should Adopt a Process for Reassigning Stations to Different Phases

As an initial matter, NAB has no objection to the proposal to divide stations into ten transition phases with staggered deadlines for testing and the completion of construction. These initial assignments, however, will be made before the Commission has received construction permit applications and cost estimates from repacked stations. In other words, stations will be assigned to phases before the stations themselves, let alone the Commission, have even an approximate understanding of the scope of work that their channel move will require. This can easily lead to an inefficient project schedule. For example, the Commission could find that dozens of stations assigned to phases one or two will need major tower work, and it may be more realistic to assign those stations to later phases. On the other hand, the Commission could well find that it has assigned several stations that could, in fact, move to their new channels relatively quickly, to one of the last phases. Reordering these stations to move easier transitions to earlier phases and more complex transitions to later phases could allow for a more efficient process that clears spectrum for successful forward auction bidders more quickly while better protecting viewers.

Accordingly, it would be most efficient for the Commission to wait until stations have completed necessary structural and engineering studies before assigning stations to phases. If the Commission chooses to make assignments of stations to phases on a preliminary basis prior to the close of the auction, NAB urges the Commission to make this process dynamic

and flexible, and to re-evaluate phase assignments once stations have submitted construction permit applications and cost estimates and it is clearer what will actually be required for repacked stations to move to their new channels.

The Commission should also adopt a process under which stations themselves can request reassignment to different phases. For example, the scheduling proposal makes no effort to spread stations owned by a single station group across more than one phase. It is thus possible that a group owner might have a concentration of stations assigned to a single phase, which could unreasonably strain that group's internal and vendor resources.

B. The Commission Should Adopt a Systematic Approach for Adjusting the Scheduling Plan Based on Facts on the Ground

Beyond maintaining the flexibility to assign stations to different phases, the Commission should also be willing to adjust the deadlines for testing and completion within each phase based on real-world conditions. While NAB does not object to the Commission's proposal to assign stations to up to ten different transition phases as a first approximation, in practice, this schedule is unlikely to avoid substantial modification. With over 1,100 stations assigned to new channels, each phase will, on average, have approximately 110 stations. These stations will all need to move by the same completion date, and will only be allowed to conduct testing during a designated testing period that may be as short as four weeks. Assuming that 110 stations will all be prepared to begin operation on their new channels within this tight pre-determined window is unreasonably optimistic. Accordingly, the FCC should treat its initial phase assignments and phase deadlines as tentative, and subject to adjustment as the transition unfolds.

While we appreciate and support the Commission's efforts to minimize the number of transitions that will take place in any market, the reality is that there may be multiple transitions as stations proceed according to different schedules. If it becomes apparent that a

station or a group of stations will not be prepared to transition to their new channel by their assigned phase completion date, the Commission should have a systematic approach for addressing this problem.

For example, if a number of stations in a linked station set will be unable to move by their deadline, the Commission should inform stakeholders now how it plans to address that problem – perhaps by moving the entire linked station set to a subsequent phase. On the other hand, if all stations in a linked station set, or several stations in a market that are not part of a linked station set, anticipate being able to move to their new channels early, the Commission should consider giving them the flexibility to do so by allowing them to conduct testing prior to the scheduled testing period for their assigned phase, or even assigning them to an earlier phase if doing so will not interfere with the transition of other stations.

Among other things, the Commission's proposed scheduling plan makes no accommodation for predictable weather events, including heavy snowpack in some areas, hurricane season and tornado season, all of which may cause delays. The Commission's proposed scheduling plan also does not take into account programming complications, such as ratings periods and the mid-term political window. Forcing stations to change channels during such periods could be disastrous for those stations, and the Commission should make reasonable accommodations in adjusting its deadlines to avoid serious and unnecessary economic harm to involuntarily repacked stations, just as it did during the DTV transition.

C. The Commission Should Take a Proactive Role in Facilitating the Exchange of Information Between Stations During the Transition

The FCC can only make adjustments to the transition schedule, such as the ones recommended above, if it understands how stations are progressing. Further, the transition will be expedited if all stations in a linked station set are aware of the estimated completion dates for other stations in the set and can coordinate testing and transition dates. In addition

to making the transition more efficient, this will help minimize viewer confusion by allowing stations in the same market to coordinate viewer education efforts to ensure that viewers are aware of the need to rescan once stations move.

Accordingly, the FCC should play an active role in facilitating the exchange of information between stations. In particular, when a station has made sufficient progress in its project to provide a reasonably firm estimate for when it can complete the cutover to its new channel, that station should report that date to the FCC, and the Commission, in turn, should make that information available to all other stations in the same market and linked station set. The Commission should encourage stations to use this information to coordinate the most efficient and viewer-friendly cutover possible. In the unlikely event of disagreement among affected stations, the Commission should be prepared to serve as a backstop to resolve disputes.

D. The Commission Should Allow Stations to Use Creative Solutions to Address Transition Challenges

As a general matter, the Commission should allow stations to work together to come up with creative solutions to speed the transition and minimize the impact on viewers. The Commission should be open to voluntary arrangements between stations to manage difficult transitions. The Commission should also assure broadcasters that any costs associated with such efforts will be eligible for reimbursement from the relocation fund. For example, if a station uses temporary facilities that prevent it from delivering a good quality signal to an MVPD, because the station is operating at reduced power, costs associated with providing an alternative means for delivering the station's signal should be reimbursable.

As another example, there may be instances where it is feasible for a station to engage in temporary channel sharing with another station to allow stations to manage unanticipated delays while still attempting to comply with the Commission's assigned

deadlines. Such agreements should be wholly voluntary and, in the event stations enter into such agreements, stations participating in those agreements should maintain their must-carry and retransmission consent rights, just as they would in channel sharing arrangements entered into as part of participation in the incentive auction.

The Commission could provide certainty with respect to the rights that stations would maintain in such voluntary channel sharing by promptly concluding its outstanding proceeding regarding post-incentive auction channel sharing arrangements.¹² The Commission's proposed rules would allow voluntary and flexible channel sharing, which could include temporary channel-sharing arrangements during the post-auction transition. The Commission tentatively concluded that the carriage rights of stations engaged in voluntary channel sharing would be protected under the Communications Act, without regard to their relationship to channel sharing agreements entered into for purposes of participation in the incentive auction.¹³ Further, if stations do volunteer to engage in temporary channel sharing, the Commission should clarify that expenses associated with such sharing are eligible for reimbursement from the broadcaster relocation fund.

Such temporary channel sharing arrangements would not be a silver bullet for repacking 1,100 or more stations. Many stations might be unable to find willing channel sharing partners, because potential partners are unwilling to sacrifice capacity to accommodate a channel sharing station (and competitor). In other cases, stations might not elect to engage in such sharing because it would require viewers to perform additional

¹² *In the Matter of Expanding the Economic & Innovation Opportunities of Spectrum Through Incentive Auctions*, First Order on Reconsideration and Notice of Proposed Rulemaking, 30 FCC Rcd 6668, ¶¶ 30-60 (2015) (proposing voluntary channel sharing arrangements outside the incentive auction context).

¹³ *Id.* at ¶¶ 33-45.

channel rescans during the transition. Nevertheless, the Commission should allow such temporary channel sharing, on a wholly voluntary basis, as one potential tool for assisting in the transition.

The Commission should also allow stations to accept, on a temporary and wholly voluntary basis, additional interference from other stations if necessary to allow them to change phase assignments, break daisy chains consistent with such changes or alter or expand their facilities beyond those assigned by the Commission. Such flexibility could allow some stations to adjust their transition schedules to better serve their viewers, while speeding the transition.

E. The Commission Should Waive its Prohibited Communications Rules for Reverse Auction Participants Once the Incentive Auction's Final Stage Rule Is Satisfied

NAB supports the Commission's constructive proposal to notify repacked stations of their new channel assignments once the final stage rule is satisfied, but before the incentive auction is complete. This will provide repacked stations with a valuable head start in preparing cost estimates and construction permit applications. However, this information will be dramatically more useful if stations are also informed of the new channel assignments of neighboring stations, which will allow stations to begin planning with a better understanding of their new interference environment.

The Commission may feel constrained from publicly releasing the new channel assignments of all repacked stations prior to the close of the incentive auction due to the confidentiality provisions of the Spectrum Act. At a minimum, however, the Commission should allow stations to share their new channel assignments with one another, and with their vendors, to expedite the transition. The Commission can do this by waiving its prohibited

communications rules for reverse auction participants once the final stage rule is satisfied in the incentive auction.

The Commission's prohibited communications rules are intended to protect the integrity of the auction process by preventing auction participants from exchanging information concerning their bids and bidding strategies during the auction. However, once the final stage rule is satisfied during the incentive auction, there will be no further bidding by reverse auction participants, even as the forward auction continues. There is thus no potential for harm to the integrity of the auction from allowing stations to communicate regarding any aspect of their auction participation, let alone their post-auction channel assignments.

If the Commission were to provide a blanket waiver of the prohibited communications rules, it might be possible for a third party, such as NAB, to potentially serve as a clearinghouse for this information, allowing repacked stations the opportunity to easily exchange information concerning their post-auction channels with other stations in their market.

III. THE COMMISSION SHOULD MODIFY ITS PROPOSAL TO BETTER PROTECT VIEWERS

Relocating over a thousand television stations to new channels is a complex task that will require the Commission to balance the interests of winning forward auction bidders and involuntarily repacked television stations and their viewers. In many cases, NAB believes the Commission's proposals strike an appropriate balance between these interests. In other cases, however, the Commission appears to discount the interests of television viewers who rely on free over-the-air signals for news and entertainment, needlessly putting these viewers at risk. There is no reason to put viewers at risk when not a single wireless consumer will be affected by new spectrum coming on line at any particular date. Any wireless consumer harm is speculative at best.

A. Many of the Public Notice’s Proposals Strike an Acceptable Balance of Interests

The phase assignment tool makes a number of reasonable compromises in pursuit of a successful post-auction transition, and NAB supports the majority of the Commission’s proposals, as described below.

Temporary Interference

NAB does not object to the Public Notice’s proposal to allow increased interference of up to two percent during the transition. While any permitted increases in interference will result in some service losses to viewers, a two percent limit on a temporary basis will allow the Commission to reduce repacking interdependencies and make the transition more manageable.

The Commission should adopt two additional safeguards to protect viewers during the transition. First, the Commission should combine this two percent limit with an aggregate limit of five percent to limit potential service losses. The analysis described in the Public Notice suggests that aggregate interference to any single station should be no more than 2.96 percent, so a five percent limit should in no way prove unduly restrictive.¹⁴ If computational limits restrict the ability to incorporate such an aggregate cap in the Commission’s software tool, the Commission should conduct an analysis after running its phase assignment tool to confirm that no station is subject to more than five percent aggregate interference and make appropriate adjustments in the event any station is subject to such excessive interference. Second, in the event the increased temporary interference to which a station is subject prevents a station from delivering a good-quality signal to an MVPD, the Commission should

¹⁴ Public Notice, Appendix A at ¶ 28.

clarify that temporary alternative delivery systems, such as a fiber feed or a microwave link, are eligible for reimbursement from the broadcaster relocation fund.

Temporary Channels

NAB strongly supports the tentative conclusion not to assign repacked stations to temporary channels. The use of temporary channels would only complicate an already complex and disruptive process. It would further strain limited resources by requiring stations to engage in multiple channel moves. It would also harm viewers by requiring multiple channel rescans for the same station. There may be some circumstances where individual stations consider voluntarily proposing the use of temporary channels to ease the transition in a particular market, but in no case should the Commission mandate the use of temporary channels or build the use of such channels into its software tools.

Canadian and Mexican Stations

NAB supports the proposal that no station in Canada be assigned to transition before the third phase for U.S. stations, as well as the proposal that no station in Canada should be assigned a temporary channel. NAB notes that Canadian stations still lack a funding mechanism for transitioning to new channels, and it is not clear that they will be able to accomplish their transition in a synchronized fashion with U.S. stations. The Commission should clarify how it will address the transition of U.S. stations where that transition would impact Canadian stations that have not yet changed channel.

Additionally, a number of Mexican DTV stations above TV Channel 37 are broadcasting in the border area. As with Canada, there is no funding mechanism in place to move Mexican stations to new channels. The Commission should clarify how it intends to address cross-border interference in the 600 MHz band and other issues resulting from the delayed transition of Mexican TV stations.

Other Issues

NAB supports the proposed constraint that there be no more than ten transition phases. Planning for more than ten phases would plainly be overly complex and would further complicate the transition. NAB also supports the proposed constraint that every station should be assigned to a single transition phase, and the proposed constraint that no complicated station should be assigned to phase 1. As discussed above, however, the Commission should treat initial phase assignments as tentative, and subject to adjustment based on additional information as it becomes available. For example, if the Commission assigns a station to phase 1 because that station does not meet the Commission's criteria for "complicated" transitions, but the station learns in the course of preparing its cost estimate that it will need major tower work, it may be reasonable to treat that station as complicated and assign it to a later phase.

Further, NAB also supports the proposed objectives of minimizing, over all DMAs, the number of rescans in a DMA, minimizing the total number of linked stations, and minimizing the differences between the smallest and largest phases.

B. Certain Aspects of the Public Notice Should Be Revised

Phase Scheduling Tool

As discussed above, NAB believes the phase scheduling tool, used to estimate how long the transition will take in each phase, makes unrealistically optimistic assumptions concerning the pace of the transition. In particular, the phase scheduling tool does not take into account factors such as weather and ratings periods that may make it unreasonable for a station to transition by its deadline. The phase scheduling tool also assumes flawlessly perfect levels of coordination among vendors in service of an arbitrary deadline for completing the transition, and incorporates little or no margin for error.

Limiting the Number of Transitions in Each Market

NAB shares the Commission's goal of limiting consumer disruption by limiting the number of transitions for each market, and commends the Commission for taking this goal into consideration in developing a scheduling plan. However, as discussed above, in reality, repacking will far more complex and challenging than the Commission assumes, and the Commission's goal of two transitions per market is unlikely to be met. Unforeseen delays will prevent some stations from completing their transition and, in some cases, it may be more efficient to allow stations to transition earlier or later than their scheduled completion date. Because the number of transitions will inevitably expand beyond the number which the Commission builds into its plan, we urge the Commission to seek to minimize viewer disruption by planning for the fewest number possible. Thus, the Commission should modify its proposed constraint to limit the number of transitions for each market to a single transition.

Again, this is unlikely to be achievable in practice. But at the outset, the Commission's goal should be to minimize viewer disruption by planning for consumers in every market to need to rescan just once to continue to receive signals from stations in their market. This transition will already be enormously complex and disruptive for viewers, with no associated benefits. The Commission should attempt to cabin the disruption as much as possible.

No More Than 30 Stations Difference Between Largest and Smallest Phases

NAB supports the Commission's goal of seeking to spread work reasonably evenly over the ten transition phases to avoid bottlenecks. In practice, however, strictly using the number of stations as a means of accomplishing this goal is unlikely to be effective. The Commission's goal of managing limited resources by seeking to spread them relatively evenly across phases is more likely to be met if the Commission treats its initial assignments as tentative and

subject to adjustment once the Commission knows more about what stations will actually need to do to complete their transitions. We would thus suggest the Commission treat this as an objective, not a constraint in its Phase Assignment Tool.

Limiting Linked Station Sets

NAB supports the Commission's goal of limiting the dependencies created by interference constraints, and has no objection to the proposed limit of no more than 125 linked stations in any given phase. However, the Commission should treat this as an objective, not a constraint, in assigning stations to transition phases. In the event a larger number of linked stations are assigned to a given phase, the Commission can address this simply by adjusting the completion date for that phase, if necessary.

Clearing the 600 MHz Band

NAB supports the Commission's objective of clearing the 600 MHz band as promptly as possible, as long as this objective can be achieved without unreasonable disruption for viewers. Broadly speaking, the Commission's goal in the repack should be to clear the 600 MHz band as quickly as possible for winning forward auction bidders while avoiding loss of service to viewers. Accordingly, while we support this objective, it should be the final priority among the objectives in the Phase Assignment Tool, not the first.

Low Power and Translator Stations

Finally, the Public Notice makes no mention whatsoever of displaced Low Power Television or television translator stations and how they will transition to new channels, if available, following the close of the auction. While NAB understands that many LPTV and translator stations may be displaced by repacked full power stations, failing to address how LPTV and translator stations will operate during the transition will result in significant service losses for viewers who rely on these stations. For example, some LPTV or translator stations

may be forced off the air before the Commission resolves mutually exclusive applications filed during the window for displaced stations seeking new channels. In this or another proceeding, the Commission should consider how it will address such situations, and whether, for example, the use of temporary channels, if available, may be allowed. The Commission should also consider how the transition can be coordinated to minimize service losses from displaced LPTV and translator stations. This will be particularly important in some Western areas, including the Salt Lake City, Albuquerque, Phoenix, Boise and Denver markets, where translators play an indispensable role in extending signals to viewers who would not otherwise be served.

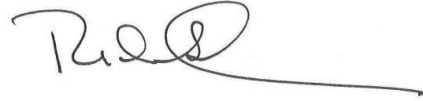
IV. CONCLUSION

NAB commends the Commission for taking the first steps in planning for the repack of the television band following the successful close of the incentive auction. Many aspects of the proposed scheduling plan are promising. Going forward, the Commission's job only becomes more challenging. It will need to monitor the transition, facilitate the exchange of information between affected stations, resolve disputes as needed and provide stations with as much flexibility as possible to continue to serve their viewers. It will also need to plan now for how it will address inevitable delays and potential complications from uncompleted Canadian and Mexican transitions. Most importantly, the Commission will, at some point, need to protect viewers by providing a safety valve for its arbitrary and unattainable 39-month deadline.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

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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
Alison Neplokh
Robert Weller

October 28, 2016