



November 9, 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, Notice of *Ex Parte* Communication

Dear Ms. Dortch:

We write to urge the Commission to reconsider its prior determination that all broadcasters designated for repacking following the incentive auction must relocate within 39 months or be forced off the air. Commission officials have noted on many occasions that the Commission will not know how many broadcasters will be required to relocate until the auction is complete. In light of this fact, the Commission's one-size-fits-all deadline is manifestly unreasonable; clearly, the deadline for repacking 200 stations should not be the same as the deadline for repacking 1,200 stations. The draconian consequences for failing to repack within the Commission's deadline only compound this problem. The Commission should therefore establish the deadline immediately following the auction, at which point it will know exactly how many and which stations must relocate. This will allow the Commission to oversee an expeditious and successful transition in the 600 MHz band.

In May 2014, the Commission determined in its Incentive Auction Framework Order that every broadcaster required to relocate as a consequence of the auction must do so within 39 months following the auction's completion.¹ The consequences of failing to meet that deadline – regardless of whether the circumstances were within the broadcaster's control – would be to force the offending broadcaster off the air, and deprive its viewers of free and over-the-air service. The FCC provided no flexibility in this rule; *i.e.*, the Commission did not develop a formal waiver process to address the circumstance where a broadcaster was unable to complete its move due to no fault of its own.

The Commission established its 39-month deadline based on the Spectrum Act, which permits the Commission to reimburse broadcasters for costs associated with repacking up

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶¶ 11, 34, 655 (2014).

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to 36 months following the conclusion of the forward auction.² It did not ground the 39-month timeline in any data analyzing how long it might take to repack a large number of broadcasters across the entire country. While NAB understands the relationship between the reimbursement and physical repacking timelines, the Commission has expressly provided for broadcasters to receive a “final allocation” of costs based on actual and remaining estimated costs prior to the end of the three-year reimbursement window.³ Indeed, in declining to require that international coordination be completed before the auction, the Commission itself noted that this would *not* put border stations at risk for non-reimbursement because those stations could receive such final allocations for outstanding costs.⁴ Plainly, regardless of the statutory reimbursement deadline, the Commission has the discretion to develop its repacking timeline based on the facts once they are definitively known, rather than an arbitrary deadline divorced from the task at hand.

Depending on the number of stations that ultimately must move to new channels, the current deadline of 39 months may not be achievable. In a report commissioned by NAB, Digital Tech Consulting, Inc. concluded that, under ideal conditions, as many as 445 stations can be relocated to new channels within 39 months.⁵ However, if the transition requires more stations to repack, there is simply no way additional stations will be able to meet the current hard deadline. This is not a reasonable approach.

Rather than simply establishing a new arbitrary deadline, NAB urges the Commission to wait until the conclusion of the auction to set a transition deadline based on the scope of the nationwide repack. This would allow it to, for example, shorten the deadline should fewer stations than expected need to repack. It would also allow the Commission the flexibility to extend the deadline should the Commission need to repack as many as 850 to 1,150 stations, as previously released Commission data has suggested.⁶ Under any circumstances, NAB believes that the deadlines should be aggressive but reasonable, designed to achieve a transition that enables successful forward auction bidders to begin operation while also ensuring a seamless transition for broadcasters and their viewers.

Repacking the broadcast television band will play a critical role in a successful broadcast spectrum incentive auction. The spectrum the Commission can offer wireless carriers in the forward auction will come not only from broadcasters’ voluntary relinquishment, but also

² *Id.* at ¶ 568.

³ *Id.* at ¶ 607.

⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 6746, ¶ 90 (2015).

⁵ Letter from Myra Moore to Marlene H. Dortch, GN Docket No. 12-268, Attachment at 43 (Nov. 6, 2015).

⁶ *Id.*, Attachment at 6; see also Letter from Gary Epstein to Rick Kaplan, GN Docket No. 12-268 (June 30, 2014).

from reorganizing the television band. It is critical that this process go smoothly to ensure that wireless carriers can commence operations in a timely fashion and broadcasters can successfully relocate to new channels with only minimal disruption to their viewers.

The Commission should eliminate the current, hard 39-month deadline, and instead work with stakeholders to develop a regional transition plan that will allow for the most expeditious, efficient repack possible once the auction is complete. At that point, it will be clear how many stations must actually move. The Media Bureau, which already has delegated authority to assign individual station construction deadlines, should assign those deadlines based on an ambitious, yet attainable, schedule that will ensure that no station is forced off the air due to circumstances outside its control. In any event, the Commission should establish a well-defined waiver process to address stations that are unable, despite diligent efforts, to complete the transition by their assigned deadline.

Respectfully Submitted,

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

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

cc: Jessica Almond
Chanelle Hardy
Louis Peraertz
Valery Galasso
Johanna Thomas
Matthew Berry
Brendan Carr
Robin Colwell
Erin McGrath
Gary Epstein
Howard Symons