



February 8, 2013

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

Re: Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software, ET Docket No. 13-26, GN Docket No. 12-268, Notice of Ex Parte Communication

Dear Ms. Dortch,

On Thursday, February 7, 2013, Rick Kaplan, Jane Mago, Victor Tawil, and Bruce Franca of the National Association of Broadcasters ("NAB") met with the following individuals at the Federal Communications Commission ("FCC" or the "Commission"): Renee Gregory of the Office of the Chairman; Julie Knapp, Robert Weller and Jamison Prime of the Office of Engineering and Technology ("OET"); Gary Epstein and Edward Smith of the Incentive Auctions Task Force; William Scher of the Office of General Counsel; and Brett Tarnutzer of the Wireless Telecommunications Bureau. Alan Stilwell of OET participated by phone.

The purpose of the meeting was to express NAB's serious reservations with OET's Public Notice DA 13-138, released on February 4, 2013, which recommends a number of material changes to OET Bulletin No. 69 ("OET-69").¹ NAB emphasized that its primary goal is to see the Spectrum Act faithfully implemented and the Commission successfully conduct the world's first-ever incentive auction. To that end, NAB stated that it would work with the Commission to identify ways to ensure an

¹ OET Bulletin No. 69, "Longley-Rice Methodology for Evaluating TV Coverage and Interference," Feb. 6, 2004, *available at* http://transition.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf. OET Bulletin 69 describes how to use the Longley-Rice methodology to evaluate TV coverage and interference in accordance with Sections 73.622, 73.623 and 74.704 of the FCC rules.

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accurate and timely repacking process that would not involve modifying OET-69 at this time.

By making substantive alterations to OET-69 at this stage of the process, NAB explained that the Commission was inviting unnecessary delay into the process and would cause widespread uncertainty for broadcasters who may be deciding whether to participate in the auction and how to go about protecting their viewers in the event they do not. The incentive auction proceeding is not the time or place to make this suite of proposed changes. Quite simply, the Commission does not have the time or resources for it to be a thorough and useful exercise when there are countless more pressing issues that must be resolved before the auction commences.

More specifically, NAB raised three central issues in urging the Commission to shelve its plan to overhaul OET-69 at this juncture. *First*, NAB expressed its surprise that the Public Notice pursues a number of changes that modify the methodology used in OET-69. These changes appear to violate Congress's clear direction in the Spectrum Act. Section 6403(b)(2) of the Act states:

In making any reassignments or reallocations . . . , the Commission shall make all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast television licensee, *as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology* of the Commission.²

Congress plainly intended the Commission to apply OET-69 *as it existed at the time of the legislation's enactment*. There are very good reasons for this. Congress wisely sought to avoid any unnecessary disputes over how the Commission would calculate the coverage area and population served and aimed to create for broadcasters certainty about exactly what areas they cover prior to deciding whether to participate in the auction, and if not, exactly what they have the right to preserve during the

² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(b)(2), 125 Stat. 156 (2012) ("Spectrum Act").

relocation process. While some of the eight changes described in the Public Notice may not be viewed by some as altering “the methodology” of OET-69, some number plainly do. NAB discussed the most prominent example, which involves revisiting how “flagged” cells in Longley-Rice are addressed, which could affect the coverage area and population served for some stations by 25-30%. The plan to change the treatment of these areas can only be described as a change in methodology, and thus a strong case could be made that they violate the express language in the Spectrum Act.³

Second, NAB questioned whether the proposed changes should be Commission level decisions. The Commission has, in the past, made comparable changes at the Commission and not staff level.⁴ Furthermore, one of the same changes proposed in the Public Notice – regarding “flagged” cells – has been addressed twice previously by the Commission and rejected both times.⁵ Given the high-profile nature of the incentive auction and the high-stakes consequences of its execution, it makes better sense to explore such changes, if at all, in the sunlight of the full Commission, where it can be fully vetted by the Commissioners and the public.

Third, NAB expressed concern that such a fraught series of changes will yield little benefit for the auction and will create significant uncertainty for broadcasters. NAB made clear that it does not, in any way, disagree that it would be fruitful to have a

³ Indeed, the Commission previously noted that such a change would alter the “methodology” of OET-69. *See Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946, 5972 (2001) (“*Review of Commission’s Rules*”) (finding that the “assumption of service was appropriate” and further stating that “reconciling calculations using a new methodology with the table calculations based on different methodology is difficult and likely to result in uncertainty in the results and contested decisions”); *see also Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 23 FCC Rcd 2994, 3067 (2007) (“*Third Periodic Review*”) (“We will revise the OET 69 interference analysis methodology Specifically, we adopt the use of 2000 census data for use in all applications”).

⁴ *See, e.g., Third Periodic Review*, 23 FCC Rcd 2994, 3067 (changing census data used in OET-69).

⁵ *See Review of Commission’s Rules*, 16 FCC Rcd 5946, 5972; *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 13 FCC Rcd 7418, 7489 (1998).

thorough review of OET-69 sometime in the future. NAB stated, however, that such a reexamination is not appropriate – even beyond the statutory and administrative law barriers – in the middle of an extremely complex proceeding in its own right. Pursuing changes to OET-69 now creates substantial uncertainty for broadcasters and the wireless industry. Whereas prior to the Public Notice, broadcasters understood how their coverage area and population served would be calculated in the auction, as a result of these changes, no broadcaster could know what it would be auctioning or preserving. The changes could yield a greater protected area for some and less for others. It creates instability in the process that can only serve to undermine the auction that NAB and other industry players are working extremely hard to make work as Congress intended.

NAB concluded by urging the Commission to put aside its desired changes to OET-69, and instead focus on the various areas that the opening comments made clear need immediate and focused attention. Among other things, NAB urged the Commission to focus its engineering resources on working with Canada and Mexico to expeditiously develop a plan to relocate stations in the border regions in order to facilitate the development of nationwide bands of spectrum for mobile broadband. NAB also expressed its strong desire that the Commission finish its never-before used repacking software (and make it publicly available for testing) that is seen as the engine of the auction process.

In closing, NAB does not oppose an in-depth examination of improving coverage and interference prediction methodologies, such as those in OET-69. NAB believes strongly, however, that such a review must take place apart from the incentive auction process, and as part of a notice-and-comment rulemaking. A proper review of OET-69 requires the surfacing of dozens of difficult engineering issues, their discussion and debate, and conducting serious engineering analysis. This proceeding is not an appropriate forum because, beyond speeding up the processing of the nationwide repack – which can be done through other means – the package of changes contemplated are highly unlikely to yield any appreciable benefit for stakeholders in the auction. Rather, as the Commission has previously found in addressing this area, they will result in uncertainty and disruption.

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NAB stands ready to work through these challenging issues with the Commission and will continue to do so with all outside stakeholders.

Respectfully Submitted,

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

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

cc: Renee Gregory, Julie Knapp, Alan Stillwell, Robert Weller, Jamison Prime,
Gary Epstein, Edward Smith, William Scher, Brett Tarnutzer