

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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Executive Summary

Upon review of the initial comments in this proceeding, one point is very clear: there are many hard questions about the incentive auction and television broadcaster repacking still left unanswered. NAB remains fully committed to doing its part to assist the Commission in answering these questions and developing and executing a successful auction and repacking that meets the overall objectives set forth by Congress. To that end, NAB remains engaged with many stakeholders to share information and ideas, address emerging challenges and forge consensus, wherever possible. We also urge the Commission to continue and enhance its dialogue with industry and the public at large, as this proceeding raises so many important and challenging technical questions that require thorough vetting and balanced treatment.

NAB appreciates that the Commission has hired some of the best academic minds – including Nobel Prize winning economists – and they have produced some extremely thoughtful and interesting work with respect to the auction design. The overall approach, however, is unnecessarily complex, appears to ignore important engineering considerations and overlooks more basic and straightforward solutions. Rather than designing an economist's academic ideal of a reverse auction untethered from engineering realities, the auction should be designed with an eye towards achieving a viable nationwide band plan driven in part by the realistic repacking of broadcast stations.

A simpler and more effective approach first identifies repacking scenarios nationwide for various realistic amounts of cleared spectrum. This will help the Commission determine in what markets it needs volunteers, and how many of them, to produce a workable and efficient nationwide plan. The Commission should then project

generally what proceeds it expects to raise in the forward auction. Finally, the Commission should maximize its anticipated financial resources by using them to offer a sufficient incentive to stations in the markets where it truly requires volunteers. This approach will allow the Commission to free up spectrum where the wireless carriers assert they really need it (the top 25 markets). From those auctioned markets, the Commission can create nationwide bands of spectrum that avoid the widespread harmful interference that the *Notice's* current variable plan would produce by attempting to clear different amounts of spectrum in markets across the country.

No matter what approach the Commission employs, it simply cannot adopt a split or variable band plan. Every commenter who addressed the *Notice's* lead proposed band plan made clear that a split plan – interspersing broadcasters between wireless uplink and downlink operations – does not work. Commenters also expressed concern with the *Notice's* proposal to incorporate variability into the plan – *i.e.*, permitting broadcasters and wireless carriers to operate co-channel (or adjacent channel) in adjacent markets. NAB's initial comments make clear that a variable plan would create either widespread harmful interference for both broadcasters and wireless carriers or would require substantial wireless exclusion zones, where wireless license holders could not operate on the spectrum they won at auction. In these reply comments, NAB offers a more detailed technical analysis to explain why a variable plan is spectrally inefficient and likely fatally flawed. This is a substantial stumbling block, and the Commission must undertake a serious and rigorous analysis of the effects of a variable plan on broadcast and wireless operations before adopting a band plan.

NAB is also concerned about comments raising the possibility that the Commission would repack broadcasters beyond the goal of creating nationwide bands of spectrum for commercial wireless services. Whereas Congress clearly intended this process to be driven by market dynamics, some commenters appear to suggest that the Commission should use this repacking opportunity as a pretext for a straight, government-directed reallocation. The infeasibility of variability alone should make this plan a non-starter. Sound public policy also dictates that the Commission should not undertake a reallocation beyond what it needs to create nationwide bands of spectrum for mobile broadband consistent with a voluntary, market-based auction. Apart from contravening Congressional intent, reallocating spectrum beyond the auction through repacking will, among other things: (1) disproportionately hurt Western states by wiping out low power television stations and translators; (2) undercut attempts to diversify the broadcast industry and opportunities for broadcasters to innovate; and (3) eliminate unlicensed use of TV white spaces, which just recently appeared to be a top Commission priority.

These reply comments also reaffirm that the Commission must hold harmless those broadcasters who do not participate in the auction. A “voluntary” auction means that no harm should come to a broadcaster who does not sell its station(s). Broadly speaking, this means three things. First, the Commission must treat the TV Broadcaster Relocation Fund as its repacking budget. Anything else erroneously assumes that Congress intended only to partially compensate broadcasters who did not volunteer in the auction. Second, the Commission must do all it can to preserve the coverage area and population served of those broadcasters that remain on the air.

These two elements are the core of a broadcaster's business. To redefine, reduce or change either the coverage area or viewers actually served by stations will inflict serious damage on our members' ability to compete in the marketplace and serve their local audiences.¹ Third, the Commission should respect the rights of broadcasters who were following existing rules and procedures to procure new stations or maximize the service provided by their current ones. Changing the rules for broadcasters mid-stream undercuts the Commission's goals of making the process fair to all stakeholders and preserving a healthy and vibrant broadcast industry.

Finally, NAB below catalogues the importance of free, over-the-air television, and identifies those who stand to lose the most if the Commission repacks too aggressively. There is no escaping the reality that traditionally underserved communities – people of color, foreign language speakers and lower income Americans – rely more heavily than others on free, over-the-air television. As a result of the auction, these groups are likely to lose stations upon which they rely. If the Commission fails to minimize repacking – as well as the amount of interference it adds during repacking to the stations that remain on the air – then these same viewers also stand to lose access even to the stations that actually remain on the air.

¹ In addition to proposals in the FCC's rulemaking notice to redefine, reduce or change the coverage area and population currently served by broadcasters, the FCC's Office of Engineering and Technology (OET) recently announced that it was changing the methodology it employs in OET Bulletin 69. See FCC Public Notice, "Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software," DA 13-138 (rel. Feb 4, 2013).