

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

In the Matter of	)	
	)	
Incentive Auction Task Force and	)	MB Docket No. 16-306
Media Bureau Seek Comment on	)	
Post-Incentive Auction Transition on	)	GN Docket No. 12-268
Scheduling Plan	)	
	)	

**COMMENTS OF THE E.W. SCRIPPS COMPANY**

The E.W. Scripps Company and its subsidiaries (collectively, “Scripps”), herby submit these brief comments in response to the FCC’s *Public Notice* proposing a plan for conducting the transition of full-power and Class A stations to permanent operations following the television broadcast incentive auction.<sup>1</sup>

As one of America’s largest independent television station groups, with 33 stations in 24 markets of all sizes, Scripps is deeply interested in the post-auction transition process. Scripps appreciates the FCC’s efforts to develop this plan well in advance of the close of the auction and the difficulties the FCC faces in developing a transition plan before it even knows how many or which stations will need to be relocated. Nonetheless, Scripps has significant concerns about the plan laid out in the *Public Notice* and has several initial suggestions for strengthening the transition plan and increasing its chances of success.

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<sup>1</sup> See Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan, *Public Notice*, DA 16-1095 (rel. Sept. 30, 2016) (the “*Public Notice*”).

**I. THE FCC’S 39-MONTH CONSTRUCTION TIMEFRAME SHOULD BE FLEXIBLE ENOUGH TO ACCOMMODATE STATIONS THAT ARE UNABLE TO CONSTRUCT DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.**

The plan announced in the *Public Notice* carries out the FCC policy that all post-auction transitional construction must be completed no later than 39 months from the date stations are assigned their post-auction channels. The experience of Scripps and other broadcasters during the recent DTV transition suggests that a 39-month period will not be sufficient to complete all post-auction construction. Scripps is not opposed to using the 39-month timeframe as an aspirational goal for completing as much construction as possible. Unfortunately, under current FCC rules, 39 months is not a goal, it is a hard deadline, after which stations that have not completed construction must go off the air.<sup>2</sup>

The *Public Notice* notes that as many as 1,100 full-power and Class A television stations may need to construct new facilities during the transition construction period.<sup>3</sup> The television broadcast industry has never seen a construction volume like that in its more than 70-year history. This is a first-of-its-kind project and the end result, if it doesn’t go perfectly, should not be a loss of service for viewers and a loss of stations for broadcasters.

The transition plan gives the FCC the opportunity to build some flexibility into the process so that stations unable to construct in 39 months through no fault of their own will not face going off the air. Congress directed the FCC to make all reasonable efforts to maintain existing television service throughout the auction process. Scripps believes that the current rules coupled with this transition plan fail to meet that standard.<sup>4</sup> Scripps urges the FCC to use this

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<sup>2</sup> See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, 29 FCC Rcd 6567 para. 560 (2014) (the “*Auction Order*”).

<sup>3</sup> See *Public Notice*, Appendix A at 11.

<sup>4</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(b)(2), 125 Stat. 156 (2012).

proceeding to find alternatives for accommodating stations that cannot construct within the current construction period. Full-power and Class A stations located in the post-auction wireless band should be permitted to operate on their current channel, even after the 39-month construction period, at least until wireless operators are prepared to begin using the auctioned spectrum. That is the rule for low-power stations,<sup>5</sup> and full-power and Class A stations should not have a more restrictive standard. Additionally, for all full-power and Class A stations, the FCC should entertain waivers that would permit stations to remain on the air until construction is completed. The FCC's first priority should be maintaining relied-upon TV service for all Americans, and unforeseen and unavoidable construction delays should not lead to interruptions in service.

**II. THE TRANSITION PLAN SHOULD BUILD IN SUFFICIENT FLEXIBILITY TO ACCOUNT FOR FORSEEABLE DELAYS.**

The *Public Notice* relies on optimistic assumptions about the availability of resources like antennas and tower crews and the ability of numerous television station participants to work in concert to make the transition a success. In some cases, the plan ignores factors – like weather-related delays – that are likely to play a significant part in the progress of the transition. Scripps recognizes that the FCC must make these assumptions to develop a plan, but it urges the FCC to keep in mind that its estimates regarding essential transition inputs are unproven and may diverge substantially from what happens in the real world.

In Scripps experience, delay ends up being endemic when it comes to facilities construction and tower work. Every step of the process includes the possibility for delay. Station antennas are not “one-size-fits-all” merchandise that can be easily mass produced. The need for adjustments and customization naturally leads to delay under normal circumstances;

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<sup>5</sup> See *Auction Order*, 29 FCC Rcd at 6840, para. 669-70.

delays will almost certainly occur as antenna manufacturers are required to ramp up production to unprecedented levels during the transition. Tower work also frequently causes delays because it is dangerous, highly specialized work that requires coordination between TV stations and other tenants on the towers they occupy. The FCC cannot guarantee in advance that each step of this process will be perfectly choreographed and executed. Broadcasters must be permitted to respond to events in the transition as they unfold to ensure that the transition gets done right, not straightjacketed by a schedule that forces them to cut corners to get the job done on time.

The FCC has rightly elected thus far to refrain from trying to institute a command-and-control model for the repack. But the FCC also needs to recognize that leaving the repack to the private actors – TV stations, manufacturers, engineers and tower workers – that must make it happen also means that the agency must facilitate and tolerate the private choices these interested parties make. If everyone acting in good faith and to the limit of their abilities is unable to construct every station on time, the transition plan should have fall-back mechanisms for accommodating delays that do not result in compromised TV service for viewers.

The FCC's final transition plan should permit broadcasters as much flexibility as possible to develop creative solutions to transition difficulties, and there should be a process for stations to shift stages if the initial allotted construction period ends up being insufficient. If building this flexibility into the system creates the risk that the transition may take longer than the allotted 39 months, the FCC should accept that risk to maintain the television broadcasting service as Congress intended.

### **III. CONCLUSION**

For the foregoing reasons, Scripps urges the FCC to adopt a repack plan that prioritizes TV viewers over construction deadlines and ensures that the post-auction transition does not damage the over-the-air television system that has served this country so well.

Respectfully submitted,

**THE E.W. SCRIPPS COMPANY**

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