

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

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

**JOINT COMMENTS OF CALIFORNIA OREGON BROADCASTING, INC.; CNZ
COMMUNICATIONS, LLC; GRAY TELEVISION, INC.; LOCAL MEDIA HOLDINGS,
LLC; MEDIA GENERAL, INC.; NEXSTAR BROADCASTING GROUP, INC.; AND
VENTURE TECHNOLOGIES GROUP, LLC**

California Oregon Broadcasting, Inc.
CNZ Communications, LLC
Gray Television, Inc.
Local Media Holdings, LLC
Media General, Inc.
Nexstar Broadcasting Group, Inc.
Venture Technologies Group, LLC

Dated: October 31, 2016

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California Oregon Broadcasting, Inc.; CNZ Communications, LLC; Gray Television, Inc. (“Gray”); Local Media Holdings, LLC; Media General, Inc. (“Media General”); Nexstar Broadcasting Group, Inc. (“Nexstar”); and Venture Technologies Group, LLC (together, “Joint Commenters”) respectfully submit these Comments in response to the September 30, 2016 Public Notice issued by the Media Bureau in consultation with the Incentive Auction Task Force regarding the post-incentive auction transition scheduling plan (the “TSPPN”).¹ Collectively, the Joint Commenters represent approximately 240 full power and Class A television stations in more than 135 markets large and small, ranging from Los Angeles, California (DMA number 2) to North Platte, Nebraska (DMA number 209).

¹ Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan, *Public Notice*, GN Docket No. 12-268, DA 16-1095 (rel. Sept. 30, 2016).

I. INTRODUCTION AND SUMMARY

In the TSPPN, the Federal Communications Commission (“FCC” or “Commission”)² proposes a “phased” schedule to facilitate broadcasters’ transition to their post-auction channel assignments within the 39 month post-auction transition window. The Joint Commenters applaud the FCC for developing a thoughtful, phased approach that attempts to tackle the gargantuan task of scheduling an orderly transition for nearly 1,400 television stations to new channels over a 39 month period. Nevertheless, the Joint Commenters are concerned that the proposed transition schedule is overly optimistic about a number of factors that must come together for the transition to succeed (*e.g.*, manufacturing capacity, availability of tower crews, weather, permitting requirements, etc.) and leaves no margin for error, however slight. Even worse, the proposal holds broadcasters accountable for the success of the Commission’s overly aggressive schedule, potentially forcing them off the air if they cannot construct their post-auction facilities by their designated phase completion date—even if through no fault of their own.

If the Commission’s plan to move well over a thousand broadcasters to new channel assignments in 39 months is to have any chance to succeed, it is critical for the Commission to provide broadcasters with every opportunity to begin planning as soon as possible. While the Joint Commenters appreciate the Commission’s efforts to provide individual stations with the details of their post-auction channel assignments shortly after they are determined, that alone is not enough. Broadcasters must have the unfettered ability to coordinate with their engineers, equipment manufacturers, attorneys, and other stations without the fear of adverse consequences. Accordingly, the Commission must terminate its anti-collusion rules for broadcasters after the

² The TSPPN was issued by the Media Bureau pursuant to delegated authority from the FCC. For ease of reference, we refer to the FCC or Commission throughout these Joint Comments.

final stage rule is satisfied. The Joint Commenters further urge the Commission to *publicly* release preliminary channel reassignments prior to the conclusion of the forward auction. Elimination of the anti-collusion rules and public release of preliminary channel reassignments will greatly facilitate broadcasters' ability to transition to their post-auction channels.

The Commission must also modify the assumptions in its Phase Assignment and Scheduling Tools to account for all of the factors that could derail an orderly transition and to preserve the coverage areas and populations served by broadcasters throughout the course of the transition. The Phase Assignment Tool must account for several important constraints that could affect the ability of broadcasters to construct their post-auction facilities, such as regional weather, local zoning restrictions, and the number of stations a single broadcast group can have in any one phase of the transition. The Phase Scheduling Tool must both account for these additional factors and revise its overly optimistic assumptions regarding manufacturing capacity and availability of tower crews.

The FCC must also revise the transition scheduling plan to ensure that it complies with the letter and intent of the Spectrum Act. By proposing to subject broadcasters to expanded levels of pairwise interference and uncapped aggregate interference during the transition process, the transition scheduling plan ignores Congress's directive to use "all reasonable efforts" to preserve broadcasters' coverage area and population served.³ The 0.5% interference threshold that the Commission already has adopted should be maintained throughout the transition period.

Finally, the Commission should make clear that broadcasters unable to meet the FCC's aggressive schedule through no fault of their own will not be forced to go dark, which will have deleterious effects on over-the-air and MVPD viewers alike.

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6403(b)(2) (Feb. 22, 2012) (codified at 47 U.S.C. § 1452(b)(2))("Spectrum Act").

Although no plan to repack this number of stations in this short a timeframe can be perfect, taking these steps will maximize the likelihood of a successful transition while also minimizing viewer disruptions.

II. THE COMMISSION SHOULD TERMINATE ITS TELEVISION “ANTI-COLLUSION RULES” AND ENCOURAGE COLLABORATION AMONG BROADCASTERS AS SOON AS THE FINAL STAGE RULE IS SATISFIED

A. To Allow Broadcasters to Prepare for the Transition, the FCC Must Terminate the Confidentiality Rules for Broadcasters As Soon As the Final Stage Rule is Met

The Joint Commenters support the Commission’s goal of “providing broadcasters with as much time as possible to prepare for the transition” by informing broadcasters of their post-auction channels soon after the final stage rule is satisfied.⁴ However, for this information to be useful, the Commission must also terminate its anti-collusion rules for television stations as soon as the final stage rule is satisfied. Doing so is paramount to the success of the transition plan. A channel change is no simple endeavor. It is a highly complex, time-consuming process that requires the input of many individuals working on different aspects of a common goal. For example, a single channel change may require a broadcaster to work with (i) its consulting engineer to identify an appropriate antenna pattern, (ii) its antenna manufacturer to design an antenna that can replicate the desired pattern, (iii) the tower owner to determine whether the tower can accommodate the antenna, (iv) a tower crew to schedule the installation of the new antenna, and (v) other broadcasters to coordinate shared equipment and timing. Broadcasters must be able to freely communicate with their consulting engineers, equipment vendors, attorneys, and other broadcasters as early as possible to facilitate the transition process.

Indeed, being permitted to communicate with other broadcasters as soon as possible on a

⁴ TSPN ¶ 7.

variety of topics, including shared towers, shared antennas, landowner restrictions and other similar issues, will be critical to achieving the Commission's goal. Broadcasters across the United States are interconnected in myriad ways, for example:

- Gray leases space for two television stations on a tower owned by Nexstar in Panama City, Florida;
- Media General leases space for one of its Buffalo stations from Western NY Public Broadcasting Association, the licensee of WNED-TV;
- Nexstar and Hubbard Broadcasting, Inc. co-own a tower in Rochester, New York;
- Every television station in the Burlington-Plattsburgh DMA has its antennas located on towers on Mt. Mansfield (along with radio stations and various public safety entities) under a highly structured, heavily negotiated colocation plan;
- Nearly every television station in Utah is a party to a DTV Utah, LLC consortium overseeing the stations' digital facilities on Farnsworth Peak; and
- Nexstar and Mission Broadcasting, Inc. utilize shared antennas for their stations in several markets, including Amarillo, Abilene and Wilkes-Barre-Scranton.

The Commission must also consider that in several large markets, different broadcasters share transmission facilities and equipment through a tower company. For example, Sutro Tower, Inc. (itself owned by a consortium of four broadcasters including Media General's KRON-TV), owns Sutro Tower in San Francisco. At that tower alone, KRON-TV shares a primary antenna with KPIX-TV and KTVU, and all share tower infrastructure with KQED, KCNS, KCSM-TV, KMTP-TV, KOFY-TV, and KBCW. *See, e.g.*, LMS File Nos. 0000002206, 0000003219, and 0000003219. Similarly, in Portland, Sylvan Tower LLC owns a structure where Media General's KOIN shares an antenna with Sinclair's KATU and Tribune's KRCW-TV. *See* LMS

File Nos. 0000001936, 0000002488, and 0000003752. These are just a few of the numerous shared facilities across the country about which broadcasters will need to be able to freely discuss to meet the FCC's aggressive 39 month repacking timeline.⁵ If stations are prohibited from sharing channel assignments, the significant coordination, planning, and engineering work necessary to ensure that all participating stations are accommodated cannot begin.

As long as the anti-collusion rules remain in effect, broadcasters will be restricted in their ability to coordinate regarding the transition out of fear that the FCC could deem any of these necessary communications a prohibited communication. The Commission has interpreted its prohibition on communicating "bids and bidding strategies" broadly to encompass not only "direct" statements, but also statements that leave "little doubt" as to a station's bids.⁶ Consequently, the FCC could find that telling a consulting engineer, lawyer, or another broadcaster (who may already know whether the station applied to participate in the incentive auction) that a station is being repacked communicates information about that station's bids or bidding strategies.

The TSPPN does not go far enough to assuage broadcasters' concerns. In the TSPPN, the Commission counsels that "[s]tatements of general applicability, not related to a particular broadcaster's circumstances or a forward auction applicant's plans, generally should not disclose any incentive auction applicant's bids or bidding strategies."⁷ In the context of transition planning, determining where to draw the line between "statements of general applicability" and statements that leave "little doubt" as to a broadcaster's bids will, in practice, be fraught with

⁵ Other examples include the New York television stations that share space atop the Empire State Building and the Freedom Tower and Denver television stations that operate from highly regulated Lookout Mountain.

⁶ TSPPN ¶ 31; *see also Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015) ("Prohibited Communications PN").

⁷ TSPPN ¶ 31.

difficulty and uncertainty. For example, a station that submitted a successful bid in the auction would not be repacked in its existing band, so knowing that a station that registered to participate in the auction is being repacked seemingly leaves “little doubt” regarding its bids. Similarly, if a station currently in the UHF band is assigned to a VHF channel, there is “little doubt” that the station submitted a successful move-to-VHF bid. Given the potential penalties for violating the Commission’s anti-collusion rules, broadcasters (and their engineers, vendors, and attorneys) would be justified in their reluctance to engage in the robust planning and coordination that must be undertaken for the Commission’s transition plan to succeed as long as the anti-collusion rules remain in effect.⁸

There is no reasonable justification to retain the anti-collusion rules for television stations once the final stage rule has been satisfied. The Commission has explained that the purpose of the anti-collusion rules is to prevent antitrust violations before they begin.⁹ Any such concerns will evaporate once the final stage rule has been satisfied. As the Commission recognizes in proposing to run its channel optimization at that point, once the final stage rule has been satisfied, the reverse auction will be complete, the aggregate clearing cost will be known, and the only item to be resolved is bidding in the forward auction. No information about the bids or bidding strategies of any broadcast television station could conceivably have any effect on the outcome of the auction. Retaining the anti-collusion rules at that point, then, is an exercise in form over function, with potentially disastrous results. If the Commission wants its transition plan to be successful, it must allow broadcasters to communicate with relevant employees,

⁸ Parties that violate the Commission’s prohibited communications rule are subject to severe sanctions including, but not limited to, forfeiture of reverse auction winning bid incentive payments and license revocation. Prohibited Communications PN ¶ 44.

⁹ See, e.g., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6736, para. 397 (2014) (explaining that the anti-collusion rule “attempts to avoid harms that antitrust enforcement may only address in retrospect.”) (“Incentive Auction R&O”).

contractors and advisors, and with each other.

B. The Commission Should Publicly Release the Preliminary Channel Reassignments or Take Other Actions to Facilitate Coordination Among Broadcasters

In the TSPPN, the Commission proposes to “send each eligible station that will remain on the air after the auction a confidential letter identifying the station’s post-auction channel assignment, technical parameters, and assigned transition phase.”¹⁰ The Commission believes that doing so will “give broadcasters additional time for post-auction transition planning...”¹¹ The Joint Commenters appreciate the Commission’s efforts in this regard and agree that the information contained in the confidential letters will facilitate transition planning. However, for broadcasters to take full advantage of this additional time, they must be able to begin coordinating with other broadcasters as soon as possible.

Stations’ transitions to their post-auction channels will not occur in a vacuum. As explained above, the transition will involve many moving parts, all with the potential to collide and derail the Commission’s transition schedule plan.¹² Ideally, therefore, broadcasters would know the phase and channel assignments of all other stations so they could determine which stations will affect their own ability to transition (without regard for their phase).¹³

¹⁰ TSSPN ¶ 7.

¹¹ *Id.*

¹² The FCC’s plan appears to assume that numerous stations will be able to “flip the switch” to new channels on the same day. This does not account for the fact that stations will need their pre-repack antenna and post-repack antenna available on the tower all but simultaneously. Unfortunately, many towers are at capacity or not able to support multiple stations placing multiple antennas on the towers at the same time. Lighter, temporary antennas cannot solve the problem, and in fact create a whole other set of problems. To be lighter, temporary antennas will have substantially smaller coverage areas than their more permanent counterparts, thus depriving viewers of the programming upon which they rely. Moreover, if a broadcaster elects to use a temporary antenna for its new channel, it is highly likely that a tower crew will not be able to come back to make the permanent switch until after the entire repack is complete, which would result in very long term disruption to viewers.

¹³ This information would also be beneficial to tower owners. In order to determine the structural requirements for the addition of new antenna, tower owners must know the facilities that will be added to their towers as a result of the repacking. This requires knowing what antennae will be on the tower. To know that, antenna design must be done before the tower analysis can be finalized. Also, as the FCC has recognized, more than 60% of towers may

Giving broadcasters visibility into the overall transition picture will grease the wheels of change.¹⁴ For example, stations may be able to use information about other stations' phase and channel assignments to coordinate tower work, equipment deliveries, or the actual transition schedule for dependent stations. Such coordination is particularly important for stations that utilize a shared combiner and, therefore, *must necessarily* know the channel reassignments of the other stations sharing the combiner to even begin the transition planning process. Furthermore, in some cases, it may be more efficient to conduct tasks simultaneously for stations in different phases, or even to begin certain tasks "out of order" so as to minimize having to re-do work later on. The Commission simply cannot anticipate all of the nuances and micro-level issues that may arise and impact the transition schedule. Broadcasters on the ground (or in the air on a tower, as the case may be) will be in the best position to deal with these issues and challenges, and they will be able to do so most effectively when they know where they stand in relation to other broadcasters.

By the time the FCC releases the channel reassignment Public Notice, it may be too late to undertake the level of coordination and cooperation that could be achieved earlier in the process. And indeed, there is no reason not to publicly release the preliminary channel reassignments. By making this release preliminary, none of the deadlines that accompany the release of the final Channel Reassignment PN will be triggered. Allowing broadcasters to coordinate, meanwhile, will maximize the efficiency of the repack without any detrimental effect on reverse auction bidding, which will then be over.

need to be upgraded; this will require significant time and planning. *See id.* ¶ 3 & n.17; *see also Media Bureau Seeks Comment on Widelity Report and Catalog Costs of Potential Expenses and Estimated Costs*, GN Docket No.12-268, Public Notice, 29 FCC Rcd. 2989, 3006 (MB 2014) ("Widelity Report").

¹⁴ This is particularly true for stations in phase 1 of the transition. Stations in that phase will have the shortest period of time in which to plan for their channel change, order necessary equipment, and schedule tower crews (etc.) because they must wait for their construction permit to be approved before finalizing any orders or other plans.

Any reluctance by the Commission to release preliminary reassignment information due to statutory confidentiality restrictions is unjustified. The Spectrum Act directs the Commission to “take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction”¹⁵ Releasing a list of stations that are changing channels will not violate this prohibition. First, the Commission would not be releasing “Commission-held data.” Commission-held data would necessarily reflect what happened to a station in the auction. Conversely, a station could appear on the channel change list because it *declined to participate* or was unsuccessful in the auction, but nevertheless must be repacked. Second, including a station on the channel change list does not necessarily allow for any inference about Commission-held data of licensees participating in the reverse auction. A station not appearing on the list may have submitted a successful bid to go off air, may be channel sharing, or may be assigned to its pre-auction channel. As the Commission has concluded in the context of its anti-collusion rules, “communications regarding legitimate, non-auction-related business topics are unlikely to support reliable inferences by other covered entities regarding bids or bidding strategies.”¹⁶

If the Commission nevertheless declines to publicly release the preliminary channel reassignments, there are still two alternatives that would allow broadcasters to fully utilize the additional time for their transition planning. First, the Commission could authorize the creation of a “clearinghouse” for phase and channel reassignment information. Broadcasters would be able to voluntarily provide the clearinghouse with information regarding their phase and channel assignment, which could then be published or provided to other broadcasters upon request—all without the Commission’s involvement. Second, the Commission could include in each station’s

¹⁵ Spectrum Act, 47 U.S.C. § 1452(a)(3).

¹⁶ Prohibited Communications PN ¶ 10.

confidential letter a list of all other stations assigned to the same transition phase. This would facilitate at least some initial coordination. As with any highly complex undertaking, more information is preferable to less, and the Commission should adopt a plan to disseminate as much information as possible as early as possible.

III. THE COMMISSION SHOULD ACCOUNT FOR ADDITIONAL FACTORS IN ITS PHASE ASSIGNMENT AND SCHEDULING TOOLS

The Commission proposes using its Phase Assignment Tool to assign stations to transition phases based on a defined set of constraints and objectives.¹⁷ These constraints include, among others, limits on interference and the number of transition phases to which stations in the same DMA can be assigned.¹⁸ The Phase Scheduling Tool, meanwhile, will be used to help determine the completion date for each phase and will take into account certain resource constraints, including the limited availability of tower crews.¹⁹ Both tools must be re-worked to reflect real world considerations that will almost certainly impact broadcasters' ability to successfully transition to a new channel.

With regard to the Phase Assignment Tool, the Commission should add additional constraints that are relevant to where a station should fall in the transition schedule. First, the Phase Assignment Tool should account for regional weather (*e.g.*, freezing temperatures, ice, snow, and high winds) that make certain tower sites inaccessible for months on end. The failure to account for weather conditions could result in certain phase assignments being infeasible from the outset. Second, the Phase Assignment Tool should account for local zoning restrictions that necessarily

¹⁷ See TSPPN ¶ 12.

¹⁸ See *id.*, Appendix A ¶ 20.

¹⁹ See *id.*, Appendix A ¶ 49.

will delay tower access in some areas.²⁰ As the 2013 FCC-commissioned “Broadcaster Transition Study” found, “In some cases [the local zoning] process can add significantly to a timeline.”²¹ That local permitting and zoning requirements will affect broadcasters’ ability to successfully transition to a new channel is not a possibility, but a certainty. To approach anything close to reality, the Phase Assignment Tool must account for these real world constraints. Third, the Phase Assignment Tool should limit the number of stations that any one broadcast group has in a given phase. Licensees have finite internal resources. In the vast majority of cases, few or none of those resources will be dedicated exclusively to managing the transition process. As the number of stations increases, so too does the complexity of the transition process, which may overwhelm a licensee’s ability to handle all that is required to ensure successful channel changes. To ensure that licensee resources are not stretched to the breaking point, the Commission should add a constraint preventing a single broadcast group from being disproportionately represented in any phase of the transition.²² To the extent one broadcast group must transition a significant number of stations within a given phase, it should not be one of the first two phases, when timing and resources are most limited.

The Phase Scheduling Tool must also account for these factors, in addition to revising its assumptions regarding manufacturing capacity and availability of tower crews.²³ The proposed assumptions should be significantly revised to more closely reflect reality. For example, Table

²⁰ Issues related to these factors have been discussed at length in other filings. *See, e.g.*, The National Association of Broadcasters, Comments, GN Docket No. 12-268 at 24-26 (Nov. 4, 2013) (discussing zoning issues related to Sutro Tower site in San Francisco).

²¹ Widelity Report at 3009.

²² For example, Nexstar is the licensee of over 100 television stations and provides engineering and technical services to numerous other stations under services agreements. Even if its engineering management team had no other obligations, overseeing the transition of a dozen or more stations in any one phase would be an exceptionally challenging task.

²³ *See* TSPPN, Appendix A ¶ 38.

11 in Appendix A indicates that 25 tower crews will be needed in the first year of the repack to handle “Difficult Sites” alone.²⁴ Yet, according to industry estimates, there will be far fewer qualified tower crews available for repack work.²⁵ The assumption that crews can merely be added, meanwhile, fails to account for the highly skilled and hazardous nature of tower work.²⁶ To preserve even the possibility of an on-time transition, the Phase Scheduling Tool must be driven by the real world availability of resources.

IV. THE COMMISSION MUST NOT ALLOW MORE THAN 0.5% INTERFERENCE FROM ANY STATION

In the TSSPN, the Commission proposes to temporarily allow increased pairwise interference of up to 2%.²⁷ This represents a substantial increase in interference over the amount authorized by the FCC’s rules²⁸ and cannot be reconciled with the clear directives of Congress. Accordingly, the Commission should allow no more than 0.5% interference during the transition process.

In the Spectrum Act, Congress directed the FCC to use “all reasonable efforts” to preserve the coverage area and population served of television stations continuing to operate after the auction.²⁹ In interpreting that mandate, the Commission stated that it would aim to assure that each repacked station “serves essentially the same viewers that it served before the incentive

²⁴ *Id.*, Appendix A ¶ 49.

²⁵ *See, e.g.*, Digital Tech Consulting, Inc., *Broadcast Spectrum Repacking Timeline, Resource and Cost Analysis Study* 15 (Oct. 2015), http://www.nab.org/documents/newsRoom/pdfs/110615_NAB_Repack_Study.pdf (estimating that 16 qualified crews will be available); The National Association of Broadcasters, *Ex Parte*, GN Docket No 12-268 (Mar. 9, 2016).

²⁶ A 2015 Request for Information from the Occupational Safety and Health Administration identified 91 fatalities involving communications towers from 2003 through 2013. *See* 80 Fed. Reg. 20185 (Apr. 15, 2015).

²⁷ TSSPN ¶19.

²⁸ *See* 47 C.F.R. § 73.616(e).

²⁹ Spectrum Act at § 1452(b)(2).

auction.”³⁰ To protect those specific viewers, the Commission adopted a proposal (“Option 2”) whereby “no individual channel reassignment, considered alone, will reduce another station’s population served ... by more than 0.5 percent.”³¹ In so doing, the Commission noted that “Option 2 provides the most protection to television stations’ existing populations served consistent with our auction design needs.”³² Nothing in the Spectrum Act limits Congress’s directive to use “all reasonable efforts to preserve” a station’s coverage area and population served to the time period after the transition is complete. Similarly, nothing in the Commission’s interpretation of the statutory mandate indicates that the agency will protect specific viewers by allowing no more than 0.5% interference only after the transition is complete or other than during the transition. The Commission has concluded that permitting up to 0.5% interference per station constitutes a reasonable effort, and the analysis in the TSPPN confirms that a 0.5% limit on pairwise interference during the transition is consistent with the FCC’s needs.³³ While it may be appropriate for the FCC to encourage stations to *voluntarily* accept additional interference, it does not have the authority to *mandate* that stations accept an increase.³⁴

The Commission’s reliance on precedent from the 700 MHz transition to justify permitting up to 2% interference per station is misplaced. Specifically, the agency notes that “in the past [we] allowed temporary increases in interference to broadcasters in order to facilitate transition to new services. For example, [we] permitted new wireless licensees in the 700 MHz Band

³⁰ Incentive Auction R&O at 6572, ¶ 7; *see also Nat’l Ass’n of Broadcasters v. FCC*, 789 F.3d 165, 170 (D.C. Cir. 2015).

³¹ Incentive Auction R&O at 6650 ¶179.

³² *Id.* at 6650-51 ¶ 180.

³³ *See* TSPPN, Appendix A ¶ 27 & Table 3 (demonstrating that it is feasible to complete the repack with a 0.5% limit on pairwise interference, albeit with fewer, larger linked-station sets).

³⁴ Moreover, the Commission and the D.C. Circuit have extensively considered the “all reasonable efforts” requirement and determined that it permits only a *de minimis* amount of pairwise interference of up to 0.5%. *See Nat’l Ass’n of Broadcasters v. FCC*, 789 F.3d at 178.

to cause temporary increases of up to 1.5 percent interference to broadcasters.”³⁵ During the 700 MHz transition, however, the Commission was not under a mandate to make “all reasonable efforts” to preserve television stations’ coverage areas and population served. Given Congress’s clear directive in the present context, the Commission must cap the amount of interference caused by any one station during the transition to 0.5%.

Should the Commission, nevertheless, adopt its proposal to allow up to 2% interference from each station, it must adopt an aggregate cap for the amount of interference any station is forced to accept. Allowing up to 2% interference from each interfering station with no aggregate cap could result in “death by a thousand cuts,” disrupting over-the-air broadcast service for months or years on end, causing a substantial detriment to stations and their viewers, and running counter to Congress’s intent in the Spectrum Act. Consistent with its mandate to make all reasonable efforts to preserve each station’s coverage area and population served, the Commission should cap aggregate interference during the transition to no more than 3% per station.³⁶

V. **THE COMMISSION SHOULD NOT FORCE ANY STATION OFF THE AIR THAT HAS MADE A GOOD FAITH EFFORT TO COMPLY WITH ITS PHASE COMPLETION DEADLINE**

Transitioning approximately 1400 stations to new channels is necessarily complex and requires the entire broadcast ecosystem to work in tandem. It is not only possible, but likely, that some stations—despite their good faith efforts to complete their new facilities by the phase completion deadline—will be unable to do so. The reasons for missing the deadline will likely derive from circumstances beyond the station’s control, including delays related to weather,

³⁵ TSPPN ¶18.

³⁶ The Commission has estimated that the maximum aggregate interference to any one station would be 2.96%. *Id.*, Appendix A ¶ 28. Thus, adopting a 3% aggregate limit should not unnecessarily burden the transition.

equipment availability, and tower crew scheduling.³⁷ The FCC must not penalize stations that are unable to complete their facilities by the phase completion deadline through no fault of their own.³⁸

The Commission states that it will “rely on existing rules and procedures” to address circumstances in which a broadcaster is unable to complete the transition to its new channel in a timely manner.³⁹ This is not enough. The FCC must affirmatively commit not to force any station off the air that can demonstrate that it has made a good faith effort to comply with its phase completion deadline. Broadcasters have every incentive to complete their transition on time, and do not need the added weight of a regulatory anvil hanging over their heads. Being forced off-air is a draconian penalty that can cause major disruption to the broadcaster and its viewers alike. The FCC should make clear from the outset that a broadcaster acting in good faith should not be subjected to such a risk.

As a backstop against having to shut down stations, the Commission should permit, but not require, broadcasters to utilize temporary channels. The Joint Commenters agree that mandating the use of temporary channels is problematic for a number of reasons, including that it would force stations to transition twice: once to a temporary channel and then to their post-auction channel during a later scheduling phase.⁴⁰ However, there may be situations in which use of a temporary channel would be in the best interests of a broadcaster, such as a broadcaster that would otherwise be forced off the air due to facility construction delays on its assigned channel. Thus, to the extent necessary and feasible, the FCC should permit the *voluntary* use of

³⁷ In addition, the FCC’s transition schedule does not give any leeway to stations delayed because it is not feasible to operate with their assigned parameters.

³⁸ Forcing stations off the air is particularly draconian in light of the one year statutory deadline, meaning that stations may lose their license before completing their new facilities.

³⁹ *Id.*, Appendix A at ¶26.

⁴⁰ *See id.* at ¶ 20.

temporary channels for stations that otherwise would be unable to complete construction by their phase transition deadline. Such channels should be entitled to full must carry rights (despite any loss of over-the-air coverage), should receive all applicable interference protection, and should be eligible for complete reimbursement.⁴¹

VI. CONCLUSION

The Joint Commenters appreciate the opportunity to comment on the FCC's proposed transition schedule plan, which provides a solid framework for addressing the challenges that the transition presents. Unfortunately, the plan as proposed does not go far enough either to provide broadcasters with the necessary head start on their planning or to account for the realities of the transition process. The Joint Commenters encourage the Commission to modify its plan to include the revisions proposed in these comments, which will enhance broadcasters' ability to transition to their new channels, thereby improving the likelihood of a successful and efficient repack.

⁴¹ See *id.* at ¶¶ 20-25.

Respectfully submitted,

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