

September 28, 2017

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

Re: Notice of Ex Parte Communication, AU Docket No. 14-252, GN Docket No. 12-268,
WT Docket No. 12-269, MB Docket No. 16-306

Dear Ms. Dortch:

On September 26, Bruce Franca, Alison Neplokh, Robert Weller and the undersigned, all of the National Association of Broadcasters, met with Commission staff. A complete list of Commission staff attending this meeting is set forth below. During the meeting NAB discussed the Commission's plans to reimburse expenses for stations that are involuntarily repacked as part of the broadcast spectrum incentive auction.

With repacking work underway, every stakeholder shares the common goal of preventing unnecessary or avoidable delays as well as disruptions of service. Right now, the Commission can best achieve this shared goal by making reimbursement funds available promptly and to the maximum extent possible. Failing to do so unnecessarily creates the potential for delay for stations that cannot afford to order equipment and services until they are reimbursed.

In its April 13 Public Notice, the Incentive Auction Task Force stated that, after the review of initial cost estimates was complete, initial allocations of funds for repacked stations will be made "in an amount not to exceed \$1 billion."¹ NAB urges the Commission to make more than \$1 billion available in initial allocations. Since the release of the Closing and Channel Reassignment PN, there have been at least three important developments that support this outcome.

¹ *Incentive Auction Closing and Channel Reassignment Public Notice*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, MB Docket No. 16-306, DA 17-314, ¶ 87 (rel. April 13, 2017).

- First, vendors playing a critical role in the repack have expressed concern that stations' uncertainty around the timing and reimbursement has forced some stations to delay placing firm orders for necessary equipment.²
- Second, the Commission now has available the full \$1.75 billion for reimbursement. In its 2014 framework order, the Commission stated that the amount available to be issued for initial allocations would depend in part on the timing of initial allocations.³ The Commission explained that the Spectrum Act authorized the FCC to borrow up to \$1 billion from the Treasury for repacking expenses upon the effective date of channel reassignments.⁴ The additional \$750 million authorized for repacking expenses would not be legally available until the FCC granted at least some forward auction licenses and forward auction proceeds became available.⁵ The Commission further stated, “[i]f **necessary**, the initial allocations [] will be made in tranches as funds become legally available.”⁶ Given that the FCC now has the full amount available, there is no reason to limit allocations to \$1 billion.
- Third, the Commission now knows that estimated costs greatly exceed \$1 billion. In 2014 the Commission stated that the amount available for initial allocations would depend on the total repacking expenses stations submitted in their cost estimates.⁷ The Commission authorized initial allocations up to 80 percent for commercial stations and up to 90 percent for non-commercial stations, stating that such sums would permit broadcasters to fund construction and other reimbursable costs until a subsequent allocation phase, and that withholding 10 percent or 20 percent, respectively, of requested costs would reduce the possibility of allocating more funds than actually necessary.⁸ The Bureau's approach, on the other hand, would make an initial allocation that would represent less than 60 percent of estimated costs. This is

² Letter from Kenny Brown, Electronics Research, Inc., to U.S. House of Representatives, Committee on Energy and Commerce (Sept. 6, 2017) (available at: <http://docs.house.gov/meetings/IF/IF16/20170907/106373/HHRG-115-IF16-20170907-SD004-U25.pdf>) (“Currently, ERI has no firmed orders from repacked broadcasters. It is our understanding from speaking with the dozens of broadcasters who have sought quotes for equipment and services that they are nervous about availability of reimbursement funds.”) See also Letter from Christine M. Crowe, counsel to American Tower Corporation, to Marlene H. Dortch, FCC, Attachment at 10, GN Docket No. 12-268, MB Docket No. 16-306 (Sept. 20, 2017) (citing hesitancy by stations to move forward with equipment purchases and construction due to uncertainty of reimbursement approvals as a risk to the 39-month timeline.)

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 615 (2014).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* (emphasis added).

⁷ *Id.*

⁸ *Id.* at ¶ 614.

a marked departure from the Commission's earlier policy and risks leaving some stations unable to order necessary equipment on a timely basis.

We urge the Commission to stick to its original plan and make initial allocations as close as possible to 80 percent for commercial stations and 90 percent for non-commercial stations as soon as possible. We believe that withholding \$175 million, 10 percent of the available funding, is adequate to guard against the possibility of over-allocation while also reducing the possibility that a lack of funding becomes a source of otherwise avoidable delays.

NAB also discussed the process for stations that ultimately disagree with reasonableness determinations made by the FCC's reimbursement administrator and the staff regarding initial allocations. NAB appreciates the hard work the Media Bureau and the Incentive Auction Task Force have dedicated to reviewing cost estimates and working with repacked broadcasters since the submission of cost estimates and construction permit applications on July 12. We encourage the Commission to consider an expedited process to allow stations to seek a Commission determination of the reasonableness of proposed costs.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick McFadden", with a stylized flourish at the end.

Patrick McFadden
Associate General Counsel,
National Association of Broadcasters

cc (Meeting Attendees): Jean Kiddoo
 Hillary DeNigro
 Barbara Kreisman
 Jeffrey Neumann
 Pamela Gallant
 Varsha Mangal
 Erin Griffith
 Raphael Sznajder
 Sasha Javid
 Charles Meisch