



October 9, 2014

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

*Re: In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software, ET Docket No. 13-26, Notice of Ex Parte Communication*

Dear Ms. Dortch:

On October 7, 2014, the undersigned met with Commissioner Mignon Clyburn to discuss the current proposal set for a vote at the Commission's October 17, 2014, meeting, on whether to cap the amount of population loss any one broadcaster can receive as a result of the incentive auction. We discussed NAB's great concern about the possibility that, without any meaningful cap, the Commission staff will be granted the unconstrained ability to assess any level of interference to a non-participating station. The failure to cabin the staff's discretion in this manner would be a plain violation of the Spectrum Act, and threaten the ability of viewers across the country to maintain access to the thousands of stations that remain on the air following the auction.

In particular, our conversation focused on the Incentive Auction Task force's June 2<sup>nd</sup> Public Notice, which described the staff's view that no television station remaining on the air would receive more than 2% new interference.<sup>1</sup> NAB has submitted record evidence demonstrating that number underestimates the amount of new interference stations can receive. For some reason, the staff elected not to take into account that more than half of all stations will move, and thus arrived at a smaller per station percentage. Even if the staff's analysis was accurate, however, it seems eminently reasonable for the Commission to cap the amount of aggregate population loss at that level. Indeed, what reason could the Commission have for not capping interference at a threshold it insists will never be crossed? NAB has advocated a 1% cap since January

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<sup>1</sup> *Incentive Auction Task Force Releases Updated Constraint File Data Using Actual Channels and Staff Analysis Regarding Pairwise Approach to Preserving Population Served*, Public Notice, GN Docket No. 12-268, ET Docket No. 13-26, DA 14-677 (June 2, 2014).

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2013, but has recently indicated that a 2% cap, while far from ideal, might meet the Spectrum Act's preservation mandate.

Any suggestion that a cap is infeasible is specious. First, among other things, the FCC could simply add an aggregate cap element to its existing constraint files. Second, if the reason for not adopting a cap is because the feasibility checker allegedly renders a cap impossible, then the Commission should revisit the use of this mechanism, as it is the Spectrum Act, and not the Commission's sunk costs in a particular feasibility model, that should govern the auction's operation.

NAB has worked tirelessly to ensure a timely and successful incentive auction that is fair to all parties and that benefits the American public. We believe strongly that these goals can be achieved while also remaining faithful to the Spectrum Act and ensuring that broadcasters and their viewers are not harmed. The best way to do that in this instance is to foster confidence among broadcasters that they will not be unduly harmed during repacking by providing them the certainty they need through capping the amount of new losses in population served they can receive during the process.

Respectfully Submitted,

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

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

cc: Commissioner Clyburn