

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Broadcast Incentive Auction Comment Public)	
Notice Auction 1000, 1001 and 1002)	AU Docket No. 14-252
)	
Expanding the Economic and Innovation)	
Opportunities of Spectrum Through Incentive)	GN Docket No. 12-268
Auctions)	

JOINT COMMENTS OF BROADCASTERS FOR VHF PRICING PARITY

The Broadcasters for VHF Pricing Parity (“Joint Broadcasters”)¹ respectfully submit these comments in response to the Commission’s *Auction Comment Public Notice* in the above-referenced proceedings.² The Joint Broadcasters are the licensees of seven UHF television stations—both commercial and non-commercial—in several locations where the Commission has projected that spectrum demand in the Incentive Auction will be high. One of the Joint Broadcasters, Commonwealth Public Broadcasting, is the licensee of two stations in the Washington, D.C. area—WNVC(TV), Fairfax, Virginia, and WNVN, Goldvein, Virginia—along with stations in Richmond, Virginia and Charlottesville, Virginia. The Joint Broadcasters are committed to continuing to serve the public interest through over-the-air broadcasting, but are also intrigued by the possibility of funding their continued operations by relinquishing some or all of their UHF spectrum rights in exchange for a portion of the proceeds from the forward

¹ Pursuant to the Public Notice issued on December 18, 2012 (DA 12-2040), the undersigned submits these comments on behalf of broadcasters who, for the purpose of business continuity, desire to remain anonymous at this time. However, these comments are signed by a named party, as provided for in Section 1.419 of the Commission’s rules. *See* 47 C.F.R. § 1.419.

² *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, GN Docket No. 12-268, AU Docket No. 14-242, DA 15-24 (rel. Jan. 7, 2015) (“*Comment PN*”).

auction and a channel in the VHF band. As explained more fully below, however, the Joint Broadcasters believe the rules proposed in the *Comment PN* unnecessarily discourage UHF-to-VHF bids and thereby make it less likely that the Joint Broadcasters will relinquish their UHF spectrum rights.

I. INTRODUCTION AND SUMMARY

In these comments, the Joint Broadcasters urge the FCC to modify its proposals in the *Comment PN* so as to provide the proper incentives for broadcasters to submit UHF-to-VHF bids in the forthcoming Incentive Auction. The Commission has defined the “central goal of a successful auction” as “allow[ing] market forces to determine the highest and best use of spectrum.”³ For the auction to achieve this goal, however, broadcaster participation cannot be limited to only those stations willing to relinquish their full spectrum usage rights and go off the air. In recognition of this principle, Congress directed the agency to offer two additional options to measure the highest and best use of spectrum: (i) exchanging a station’s UHF channel for a VHF channel; and (ii) relinquishing usage rights in order to share a television channel with another licensee.⁴ These options have the potential to greatly expand broadcaster participation in the reverse auction, thereby increasing the likelihood that the Commission will be able to reallocate 126 MHz on a near-nationwide basis through a competitive reverse auction process.

Unfortunately, the procedures proposed in the *Comment PN* would erect unnecessary barriers to the submission of UHF-to-VHF bids in the reverse auction. *First*, the Commission’s proposal would grossly undercompensate broadcasters for accepting what is widely acknowledged as inferior VHF spectrum. This creates an incentive for broadcasters to stay in the

³ *Id.* ¶ 37.

⁴ *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6403(a)(2) (“Spectrum Act”).

UHF band, undermining the agency’s ability to reallocate the maximum amount of UHF spectrum. *Second*, the Commission’s proposal to lock broadcasters into UHF-to-VHF bids at the start of the auction contravenes the agency’s stated desire to provide broadcasters with flexibility in the reverse auction process. Under the FCC’s proposal, a broadcaster that elects the UHF-to-VHF option risks not being able to participate in the auction at all—even if that broadcaster’s participation would lead to a more efficient repacking of the broadcast band.

The FCC should reconsider these ill-advised proposals and instead provide broadcasters with the flexibility and proper compensation to submit UHF-to-VHF bids.

II. ARGUMENT

A. UHF-to-VHF Bids are a Critical Component of a Successful Incentive Auction.

As every member of the Commission has acknowledged, on at least one occasion, “[r]obust participation by broadcasters will be critical to the success of the auction.”⁵ Accordingly, both the FCC and Congress have recognized that it is not enough to offer one mechanism for broadcasters to participate in the Incentive Auction. Rather, in the Spectrum Act, Congress instructed the FCC to offer three relinquishment options: (i) complete relinquishment to go off the air; (ii) partial relinquishment to channel share with another station; and (iii)

⁵ See Tom Wheeler, FCC Chairman, *The Incentive Auction: Helping Broadcasters Make Informed Decisions*, Official FCC Blog (June 25, 2014, 1:41 p.m.), <http://www.fcc.gov/blog/incentive-auction-helping-broadcasters-make-informed-decisions-0> (last visited Jan. 31, 2015); Statement of Commissioner Mignon L. Clyburn, *FCC Seeks Input on Incentive Auction Procedures* (Dec. 11, 2014), available at <http://www.fcc.gov/article/doc-330994a4> (recognizing that “broadcasters in small and large markets are pivotal to clearing spectrum on a nationwide basis”); Statement of Commissioner Jessica Rosenworcel, *Incentive Auction Task Force Update* (Aug. 9, 2013), available at <http://www.fcc.gov/document/rosenworcel-statement-incentive-auction-task-force-update> (recognizing that voluntary participation by broadcasters “is essential”); Statement of Commissioner Ajit Pai, *Presentation by the Incentive Auction Task Force* (Jan. 30, 2014), available at <http://www.fcc.gov/document/commissioner-pai-statement-ia-task-force-presentation> (“If there is not sufficient broadcaster participation in the reverse auction, the incentive auction will fail. It is as simple as that.”); Remarks of FCC Commissioner Michael O’Rielly Before the Hudson Institute (Jan. 27, 2014), available at <http://www.fcc.gov/document/commissioner-oriellys-remarks-hudson-institute> (“In order to be successful, we need many things to fall into place, including broadcaster participation because without them, the auction simply fails.”).

relinquishing a channel in the UHF band for a channel in the VHF band.⁶ In the *Incentive Auction Report and Order*, the Commission acknowledged that providing broadcasters with options to move from UHF-to-VHF will “encourage reverse auction participation” and provide broadcasters with “flexibility in the reverse auction process.”⁷

In fact, for many broadcasters, the UHF-to-VHF option is either the only acceptable option for participating in the auction or, at least potentially, the most desirable. Although much attention has been focused on the channel sharing option, which is attractive to some stations, sharing six megahertz of spectrum with another party is not for all broadcasters. First, there are myriad logistical issues with entering into a channel sharing agreement. The parties will need to address everything from distribution of auction proceeds, to management of the shared infrastructure, to contingencies for what happens if the relationship sours. And this assumes that stations can find willing sharing partners in the first instance. Second, it would be contrary to the business plan and/or public service objectives of many broadcasters to relinquish half of their over-the-air capacity. Multicasting presents broadcasters with unique opportunities that may not be possible with the reduced capacity that channel sharing requires. Accordingly, channel sharing is a non-starter for many broadcasters, and the FCC must do everything possible to encourage those broadcasters to move to VHF.

B. The FCC Should Not Pay Broadcasters Less to Move From UHF-to-VHF Than to Relinquish Their Spectrum or Channel Share.

The FCC’s proposal to pay broadcasters substantially less to move from UHF to a VHF channel than to relinquish their spectrum or channel share is misguided and will result in misplaced priorities that hamper the Commission’s ability “to determine the highest and best use

⁶ Spectrum Act § 6403(a)(2)

⁷ *Expanding the Economic and Innovation Opportunities for Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 370 (2014) (“*Incentive Auction R&O*”).

of spectrum.” The primary purpose of the reverse auction is to free up as much UHF spectrum as possible. Yet, in the *Comment PN*, the Commission proposes to discriminate against stations that prefer to continue to serve the public interest by operating a VHF channel: offering stations moving from UHF to High-VHF between 33 and 50 percent of the station’s off-air price and offering stations moving from UHF to Low-VHF between 67 and 80 percent of a station’s off-air price.⁸ These policies will—for no apparent reason—discourage stations from relinquishing their UHF spectrum.

First, the FCC will obtain the same benefit whether a station relinquishes six megahertz of UHF spectrum to go off the air or whether it seeks to continue broadcasting on a VHF channel. In both scenarios, the Commission will have an additional six megahertz to reallocate to the 600 MHz band. Paying broadcasters less because they desire to continue to serve the public interest is penny-wise and pound foolish and threatens to undermine the success of the auction.

Second, the Commission’s proposed pricing fails to account for the substantial technical inferiority of VHF channels. By exchanging a UHF channel for a VHF channel, broadcasters would be relinquishing both over-the-air reception quality and the ability to transmit to mobile devices both now and, likely, in the future. Broadcasters will not be likely to accept these trade-offs in the absence of substantial compensation.

Third, by pricing the UHF-to-VHF option less favorably than the UHF channel sharing option, the FCC will needlessly encourage broadcasters to retain UHF spectrum—contravening the underlying purpose of the reverse auction.

⁸ *Comment PN* ¶ 99.

Finally, by adopting a pricing policy that discourages UHF-to-VHF moves, the Commission will handicap its ability to reallocate additional UHF spectrum in the future.

In lieu of this distorted pricing, the FCC should offer broadcasters the same price for all relinquishment options and allow market forces to dictate the final prices that broadcasters are paid for each option.

1. The Commission Will Obtain the Same Value for a UHF-to-VHF Move As for Other Relinquishment Options, and Should Compensate Broadcasters Accordingly.

The FCC’s proposal to offer highly disparate pricing to a broadcaster for various UHF relinquishment options is not commensurate with the benefit that the agency will obtain if a broadcaster elects any of those options. Whether a broadcaster elects to go off the air, channel share with another broadcaster, or move to a VHF channel, the benefit to the Commission is the same: six megahertz of vacated UHF spectrum that it can sell in the forward auction.

Accordingly, the Commission should offer broadcasters the same amount for any of these options and allow market forces—not the FCC’s subjective judgment about the value to broadcasters of these options—to determine the ultimate prices paid.

In its attempt to justify offering drastically lower prices for broadcasters electing a UHF-to-VHF option, the Commission reasons that “a winning bidder electing one of the VHF options will retain a full six megahertz channel, and thus should not receive the same compensation as a bidder that relinquishes its rights to a six megahertz channel.”⁹ There are two flaws with this reasoning. First, it mistakenly assumes that the agency, rather than the marketplace, is the best judge of the relative value of a UHF-to-VHF option. Yet, as the FCC recognizes in the preceding paragraph, “[f]inal discounts for the VHF options will be determined by the demand

⁹ *Id.* ¶ 100.

by bidders for VHF channels and the availability of those channels.”¹⁰ If broadcasters believe that there is a benefit to retaining a full, but inferior, six megahertz channel, then competition will be greater for that option and prices will fall. Thus, a broadcaster most likely would not “receive the same compensation” to go off the air as to move to VHF, even if the Commission’s pricing for those options was the same.

Second, the FCC’s application of this principle is inconsistent. Although in the context of a UHF-to-VHF move, the Commission apparently believes it should discount price offers based on what the broadcaster will retain, it has adopted the opposite approach for channel sharing, proposing that “a participant that wishes to relinquish rights in order to share another licensee’s channel will bid to go off-air, following the same bidding procedures as bidders that wish to go off-air without retaining a license.”¹¹ In both cases, the broadcaster relinquishing its UHF spectrum usage rights will be able to continue broadcasting. Thus, the agency should offer broadcasters the same price for either option and allow the market to determine whether to compensate one higher than the other.¹²

2. The Proposed Pricing Fails to Account for the Substantial Sacrifice that Broadcasters Will Make to Move from UHF-to-VHF.

Although the Commission’s pricing policy might make sense if UHF and VHF spectrum were essentially equivalent, this is far from the case. As the Commission has recognized, “VHF channels have certain characteristics that have posed challenges for their use in providing digital

¹⁰ *Id.* ¶ 99.

¹¹ *Id.* at 72.

¹² Although many broadcasters will need to share a portion of their auction proceeds with a channel sharing partner, such compensation is the subject of private business negotiations and should not affect the Commission’s pricing decisions. In fact, some broadcasters may be able to channel share with a commonly owned station and retain the full amount received for relinquishing the rights to use six megahertz of spectrum.

television service.”¹³ Specifically, the FCC has recognized that “the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances, nearby electrical devices tends to emit noise in this band that can cause interference, and reception of VHF signals requires physically larger antennas that are generally not well suited to the mobile applications expected under flexible use, relative to UHF channels.”¹⁴ As a result of these challenges, VHF stations have a considerably lower residual value than UHF stations, and the FCC must provide the proper incentive for broadcasters to accept these limitations.

The sacrifices that a broadcaster will need to make to move from UHF to VHF are more than just technical. In the *Incentive Auction R&O*, the Commission elected not to reimburse broadcasters that voluntarily move from UHF-to-VHF or from High-VHF to Low-VHF for the cost of constructing a VHF transmission plant (on an FCC-assigned channel), reasoning that “successful reverse auction bidders can be expected to cover any relocation costs stemming from their successful bids out of auction proceeds.”¹⁵ As a result, a broadcaster who voluntarily moves from UHF-to-VHF necessarily will net a lower amount than if it had chosen to go off the air—even if the price for those options was the same. The Commission’s proposed pricing policy appears to ignore this discrepancy, greatly reducing the desirability of a UHF-to-VHF move.

¹³ *Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, ET Docket No. 10-235, FCC 10-196 ¶ 42 (rel. Nov. 30, 2010).

¹⁴ *Id.*

¹⁵ *Incentive Auction R&O* ¶ 601 & n.1694.

3. Pricing UHF-to-VHF Moves At or Below Channel Sharing Will Result In Inefficient Use of Spectrum.

The proposed discount for UHF-to-VHF moves will distort broadcaster priorities, resulting in inefficient use of spectrum. Although some broadcasters may prefer moving to VHF over channel sharing to retain the maximum output capacity, others will be indifferent, choosing whatever option will pay them the most and allow them to continue broadcasting. In markets with two such stations, they can either: (i) both move to VHF, freeing up twelve megahertz of UHF spectrum; or (ii) channel share on a UHF channel, freeing up only six megahertz of UHF spectrum. The Commission's pricing policies should be designed to encourage both of these broadcasters to exit the UHF band, thereby maximizing spectrum reallocation. Yet, the pricing policy proposed in the *Comment PN* does just the opposite, providing these broadcasters with a financial incentive to channel share on a UHF station, where they will share 100% of the relinquishment price, rather than moving to VHF, where they will receive inferior spectrum for a fraction of the price. As a result, rather than potentially removing two stations from the UHF band, the FCC could be left with a large number of stations sharing UHF channels, which will reduce the amount of spectrum that the FCC can reallocate for mobile broadband use.

4. Pricing That Discourages UHF-to-VHF Moves Will Reduce Future FCC Spectrum Flexibility.

As a final consideration, the Commission should offer prices to broadcasters that will encourage as many as possible to relinquish UHF spectrum to provide the agency with the greatest long-term spectrum flexibility. Should the FCC ever want to reallocate additional broadcast spectrum, it would benefit from moving as many stations as possible out of the UHF band now rather than having to buy such stations out in subsequent auctions. The proposed pricing, however, encourages broadcasters that want to stay on the air to remain in the UHF band

(either as standalone stations or through channel sharing). This could severely (and needlessly) inhibit the agency’s ability to reallocate additional spectrum in the future.

C. The FCC Should Provide Broadcasters With Flexibility to Move To and From the UHF-to-VHF Option During the Auction.

In the *Comment PN*, the FCC proposes “to treat the various options available to broadcasters, from license relinquishment to remaining on the air in their pre-auction bands, as a hierarchy in order of relinquishment and value to the auction.”¹⁶ Under this “hierarchy,” the options for a UHF station are ranked in the following order: (i) go off-air; (ii) move to low-VHF; (iii) move to high-VHF; and (iv) remain in UHF.¹⁷ Under the Commission’s proposal, “a bidder will not be permitted to bid for options that would involve greater relinquishments than the most recent option selected.”¹⁸ Thus, if a broadcaster elects the move to high-VHF option in the first round of the auction and that option either becomes unavailable or the price for that option falls below the price that the broadcaster is willing to accept, its only option will be to remain in UHF.

Locking broadcasters into a single relinquishment option defeats the “flexibility in the reverse auction process” that the Commission has sought to provide broadcasters.”¹⁹ The FCC’s justification for this proposal—that it will allow “the auction system [to] calculate price offers based on consistent indications of bidder preferences, which will simplify bidding choices and lead to a speedier reverse auction”—does not support abandoning a more flexible approach. The agency has not proposed to lock all broadcasters into a single relinquishment option, as this statement would suggest. Rather, it is proposing to discriminate among relinquishment options,

¹⁶ *Comment PN* ¶ 73.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 74.

¹⁹ *Expanding the Economic and Innovation Opportunities for Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 370 (2014).

favoring those that it subjectively, and on an *ex ante* basis, has deemed are of greater “value” to the auction.

The likely result of this approach is that the Commission will need to repack stations that prefer to move to VHF but would have been willing to relinquish their spectrum—thus either: (i) increasing the total payments to broadcasters (through inefficient clearing); or (ii) creating additional impairments of the 600 MHz band. For example, station WAAA might prefer to remain a broadcaster and exchange its UHF channel for one in the VHF band as long as the Commission will pay it at least \$80 million. Its secondary preference would be to go off-air, as long as the Commission will pay it at least \$100 million. WBBB, a station with the same preclusive effect, is only interested in going off the air, with a reservation price of \$120 million.

The auction plays out as follows:

	WAAA (Off-Air)	WAAA (Move to VHF)	WBBB (Off-Air)
Initial Price	\$150 M	\$100 M	\$150 M
Round 1	\$140 M	\$90 M	\$140 M
Round 2	\$130 M	\$80 M	\$130 M
Round 3	\$120 M	\$70 M	\$120 M

In Round 3, the price for a UHF-to-VHF move falls below the price that WAAA is willing to accept. Although WAAA would have accepted \$120 million to go off the air, under the Commission’s policy, WAAA’s only option would be to remain in UHF. Accordingly, the Commission would need to buy WBBB for \$120 million even though, if WAAA had been allowed to switch to the off-air option, the competition would have caused both stations’ prices (and the price ultimately paid by the FCC) to drop.

Not only will the FCC’s proposal create inefficiencies, but it also will complicate the bidding choices for broadcasters that prefer to move to VHF. Those broadcasters will need to game theory the auction in advance to determine whether, by electing their preferred option of a

UHF-to-VHF move, they would risk not being able to participate in the auction at all. The Commission should not force broadcasters to make such difficult choices in advance, without any opportunity for price discovery. Rather, the agency should provide broadcasters with the flexibility to move freely between any relinquishment options.

III. CONCLUSION

Rather than encourage stations to trade their highly-desired UHF spectrum for far less desirable VHF spectrum, the policies that the Commission has proposed in the *Comment PN* would substantially limit the desirability of such moves. This approach is unjustified and will distort the results of the auction, leading to an inefficient allocation of spectrum. Rather than injecting its subjective judgment about the relative value of UHF-to-VHF moves, the Commission should allow competitive forces to determine the payment a broadcaster will receive to exchange its UHF channel for a technically inferior VHF channel. Additionally, the Commission should provide broadcasters with as much flexibility as possible to move between different relinquishment options. These approaches will allow the agency to reallocate the maximum amount of UHF spectrum in the most efficient manner possible, thus creating the greatest likelihood of a successful Incentive Auction.

Respectfully submitted,

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