

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
)	
Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002)	AU Docket No. 14-252
)	

REPLY COMMENTS OF

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SPEAK SOFTLY AND CARRY A BIG STICK:
HOW LOCAL TV BROADCASTERS EXERT
POLITICAL POWER**

February 24, 2015

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I. THE COMMISSION SHOULD ENABLE THE DETECTION OF BROADCAST INDUSTRY COLLUSION IN THE REVERSE AUCTION

As Adam Smith famously said more than 200 years ago, “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.” This is a severe concern with the FCC’s proposed incentive auction. Under the current proposed rules, the broadcast industry has every incentive to engage in price fixing, partly because it is so difficult to detect when only a small number of players are involved and they routinely meet together to conduct business unrelated to price fixing. At the least, the FCC should request that the chief officers of all companies that submit broadcast licenses for auction sign an ethics statement acknowledging that they recognize that 1) price fixing is illegal and extremely harmful to the public interest, and 2) they will be legally liable for not reporting any price fixing schemes to the FCC and FTC even if their own companies do not participate in such schemes. All communications between TV stations and their agents in the same local TV market should be banned during and shortly before the auction, regardless of subject matter, due to the extreme difficulty in detecting price collusion within local TV broadcast markets. More generally, an expanded set of options should be explored to reduce the extraordinary incentive broadcasters would otherwise face to engage in price collusion.

II. THE COMMISSION SHOULD SET SEVERE AND ENFORCEABLE PENALTIES FOR PRICE COLLUSION IN THE REVERSE AUCTION

Broadcasters have billions of dollars to gain at public expense from engaging in price collusion. The penalties for price collusion should be adequate to deter such behavior. Traditionally, broadcasters have been able to ignore FCC rules with the understanding that even if their violations of the rules were detected and punished, the penalties would be negligible, a mere cost of doing business. Well known examples include broadcasters' so-called public interest obligations (based on such promised obligations they received tens of billions of dollars' worth of public subsidies) and, more recently, their rollout obligations during their transition from analog to digital TV transmission. The problem has been aggravated by the propensity of influential members of Congress to punish the FCC when it has sought to enforce the law, as members of Congress who win re-election tend to have good relations with the local TV broadcasters who control their message to their constituents. As a result, in addition to creating severe penalties for price collusion, the FCC must create clear and enforceable penalties not subject to the usual shenanigans.

III. THE COMMISSION SHOULD NOT ABANDON SAFEGUARDS TO ENSURE THAT THE PUBLIC RECEIVES FAIR COMPENSATION FOR ITS PUBLIC PROPERTY

The broadcast industry and its allies are seeking to exert great pressure on the FCC to get the FCC to abandon safeguards to ensure that the public receives fair compensation for its property. The FCC should keep in mind that its primary duty is to ensure that the public receives fair compensation for its property, not to bend over backwards to ensure that the broadcast industry receives a maximum return at public expense for its licenses.

IV. THE COMMISSION SHOULD SET A PUBLIC TARGET FOR HOW MUCH IT EXPECTS THE BROADCAST AUCTION TO RETURN TO THE U.S. TREASURY

The Congressional Budget Office has never offered a figure for how much it expects the broadcast incentive auction to return to the U.S. Treasury. The numbers it provided to Congress and that members of Congress subsequently used in public at Congressional hearings and in other public venues were for a bundle of different auctions with no breakdown specifically for the incentive auction. Nevertheless, Congress made it clear that it expects the public to receive at least a portion of the proceeds from the auction of public property. The FCC should correct this gross Congressional omission in specifying how much by providing some type of parameters for a minimally adequate public return on the public airwaves. This public return cannot merely be that the airwaves will be transitioned from a grossly inefficient use (e.g., one-way, one-size-fits-all TV broadcasting) to one highly demanded by the American public (e.g., interactive, flexible mobile use). That type of argument has no more merit than that the federal government should give for free oil drilling rights off the Gulf Coast to giant oil companies because the resulting oil will benefit the American public. The public needs to be told in unequivocal terms that certain outcomes are unacceptable. For example, hiding the giveaway to the broadcast industry is unacceptable. And assuming the dimensions of the giveaway are only partially hidden, there should be clear guidelines as to what outcomes are unacceptable. For example, an outcome where the broadcast industry receives more than \$50 billion for its short-term and restricted TV licenses and the public receives, net, less than \$1 billion, should be viewed as unacceptable and grounds for voiding the auction.

Some might consider it absurd to even suppose that this could be the outcome of a so-called auction of public airwaves. If so, they would not be familiar with the FCC's auction history. For example, in the early 2000s the FCC auctioned spectrum worth over \$20 billion to Nextwave from which the public received only a tiny fraction of that value. Analogously, since 2000 the FCC has given away tens of billions of dollars' worth of spectrum rights to satellite companies with ambitions to repurpose that spectrum for much more valuable terrestrial service. Indeed, the spectrum auction and related rulemakings it has been proposing for the broadcasters actually dramatically increases the value of the broadcasters' spectrum—without any public compensation—regardless of whether they participate in the spectrum auction. Surely, there must be some floor the FCC should specify publicly below which it will not go in giving away public property to private industry.

Respectfully submitted,

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