

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

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

**JOINT REPLY COMMENTS OF
FOX TELEVISION STATIONS INC., ION MEDIA NETWORKS, INC.,
TRIBUNE MEDIA COMPANY, AND UNIVISION COMMUNICATIONS INC.**

Fox Television Stations Inc., ION Media Networks, Inc., Tribune Media
Company and Univision Communications Inc. (the “Broadcaster Representatives”)¹ respectfully
submit these reply comments relating to the Commission’s December 17, 2014, Comment Public
Notice in the captioned proceeding.²

The Broadcaster Representatives previously have stated their commitment to
work with the Commission and the Incentive Auction Task Force (“IATF”) to help achieve a

¹ The Broadcaster Representatives collectively own full power and Class A television stations that account for more than 5 billion MHz-pops of broadcast spectrum. As established broadcasters with deep ties and abiding commitments to their communities, they assign high value to their existing businesses and operations, and they intend to continue to serve their viewers with the same high level of service following the conclusion of the incentive auction. As they previously have explained to the Commission, their evaluation of whether and how to participate in the incentive auction depends on the adoption of clear and effective rules designed to maximize the value of the potential opportunity for all broadcasters. *See* Letter from Mace Rosenstein to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 14-252, GN Docket No. 12-268 (Feb. 6, 2015).

² *See Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, FCC 14-191 (rel. Dec. 17, 2014) (“*Comment PN*”).

successful broadcast incentive auction as quickly as possible following adoption of appropriate implementing rules. The Broadcaster Representatives believe that auction success should be measured by maximum spectrum recovery and maximum forward auction proceeds spurred by robust broadcaster participation. The rules implementing the incentive auction therefore must be designed—both individually and in their collective effects—to achieve these objectives. We agree with the Commission that the incentive auction presents a historic opportunity to enable the highest and best use of spectrum, while at the same time allowing broadcasters to continue to inform and entertain their communities and viewers.

To that end, the Broadcaster Representatives urge the Commission to take into account several observations, set out briefly below, regarding the proposals contained in the *Comment PN*. Our overarching concern in each case is that the auction rules be informed by the fundamental precepts of simplicity, transparency, predictability, and flexibility. Our goal is to enable broadcasters to make informed decisions whether to participate in the auction and thereby ensure the greatest likelihood of auction success.

Initial Clearing Target. As a threshold matter, the Commission should provide greater certainty and transparency in designating the auction’s initial clearing target. The clearing target will be a key determinant of broadcaster participation and therefore of auction success. Consistent with the key auction success measures of maximizing the amount of spectrum to be repurposed and inducing robust broadcaster participation, the Broadcaster Representatives urge the Commission to set and publicize an initial clearing target of at least 126 MHz prior to the deadline for filing reverse auction applications. Early disclosure and wide dissemination of a 126 MHz or higher clearing target is the most efficient way to maximize broadcaster participation and thereby to facilitate the orderly repurposing of broadcast spectrum

for wireless broadband.³ Conversely, a lesser clearing target, or withholding clearing target information altogether until after the auction, will deter broadcaster participation—especially by large station groups such as the Broadcaster Representatives—and thereby diminish the likelihood of a successful auction.⁴

Clock Price. The Broadcaster Representatives believe that an increase in clock price also would incent participation by broadcasters. Although the Commission has proposed a starting price of \$900 million, the results of the recently-concluded AWS-3 auction clearly warrant and justify an increase in the starting price to approximately \$1.3 billion. Our proposal does not necessitate a reconsideration of opening price methodology. Rather, we believe a clock price reflective of current market conditions will incent broadcaster participation and increase the likelihood of auction success.

Interim Transparency. In addition to ensuring robust broadcaster participation by publishing a 126 MHz clearing target before the auction begins, the Commission should, at a minimum, provide for ongoing disclosure of information regarding auction status as the auction progresses. This would include, at a minimum, disclosing to all auction participants, at each

³ See AT&T Comments at 40 (“[S]ome broadcasters will be especially difficult to repack (or represent the key to unlocking other, more extensive repacking possibilities), and thus the Commission must develop a robust method of calculating opening prices that are high enough to induce such broadcasters to participate in the auction.”); T-Mobile Comments at 21 (“Every available megahertz of low-band spectrum that can be repurposed for broadband use is valuable, and the auction design rightly seeks to establish the highest possible initial clearing target to meet burgeoning consumer demand for wireless broadband services.”); Verizon Comments at 3 (“The Commission should adopt a simple, transparent near-nationwide clearing target that limits the number of impaired markets.”).

⁴ Consistent with the principles of certainty and transparency the Commission also should provide information regarding the clearing target for each subsequent auction stage before bidding begins at that stage.

stage of the auction, the next stage clearing target, the number of remaining participants, and whether Dynamic Reserve Pricing (if it is implemented) is “on” or “off.”

Price Decrements. The Broadcaster Representatives believe that during the auction descending clock price decrements should be fixed at one percent or at a minimum should be uniform for all markets. The Commission has proposed to drop prices between rounds by an amount in the range of three to ten percent; however, decrements of that magnitude will put broadcasters in the position of having to accept substantially lower prices in each round. Thus, both the magnitude and the range proposed by the Commission will deter broadcaster participation. A fixed one percent decrement would simplify the bidding process and facilitate informed decision making, thereby incenting broadcaster participation and helping to ensure a successful auction.

Dynamic Reserve Pricing. The Broadcaster Representatives believe the proposed 20 percent impairment threshold to be implemented in connection with DRP is unjustifiably high. Because creating additional impairment is a prerequisite to “turning off” DRP, a high threshold will almost certainly result in impairment, especially in key forward auction markets. A high impairment threshold also will—as commenters have demonstrated—severely repress, if not destroy, demand in the forward auction.⁵ If the Commission implements DRP, then it must lower the impairment threshold to as low as possible; certainly in a range of between no more than three to five percent. That level will afford the Commission sufficient flexibility to clear spectrum while reducing the risk of auction failure.

Channel Sharing Flexibility. The Broadcaster Representatives believe that channel sharing is an important tool to allow broadcasters to continue to serve the public interest.

⁵ See AT&T Comments at 27–28.

It also is critical to ensuring auction success—as measured by maximum spectrum clearance for use by wireless services. The Commission’s proposed requirement that channel sharing agreements (“CSAs”) be definitively documented and executed as a precondition to submission of an auction application will deter channel sharing and reduce broadcaster participation. As a practical matter, under the Commission’s proposal broadcasters will have insufficient time and inadequate information to negotiate definitive CSAs prior to submission of their reverse auction applications. Furthermore, requiring potential channel sharing partners to finalize their agreements prior to commencement of the auction, and therefore without any knowledge of auction outcomes, will result in uncertainty by effectively precluding negotiation of the economic terms that will be central to such agreements.

The Broadcaster Representatives believe that broadcasters should be permitted both to enter into multiple contingent CSAs prior to the auction and to enter into CSAs following completion of the auction. Either approach could be accommodated without impairing the Commission’s confidentiality and anti-collusion policies.

Channel sharing should be available to any station that elects to participate in the auction (since it is agreeing to surrender all its spectrum) and to any station that does not participate in the auction but that nevertheless elects to limit its spectrum usage rights by volunteering to “host” a sharing partner (or partners). Accordingly, licensees should be permitted to enter into contingent multi-party CSAs across multiple markets, and to communicate during the auction, including with respect to bids or bidding strategy, in order to allocate spectrum usage rights most efficiently between or among them throughout their collocated station portfolios.

The Broadcaster Representatives also believe that CSA parties should be afforded maximum flexibility in determining both their sharing partners and the duration of their agreements. To this end, the Commission should modify its proposal to permanently designate “shared” channels in the television Table of Allotments. Otherwise stations risk being put in the perverse position of having voluntarily entered into a negotiated operating arrangement that over time and due to circumstances beyond their control becomes, effectively, a contract of adhesion.

Indeed, because each station party to a CSA will hold a license for the full underlying 6 MHz RF channel, upon the expiration or termination of a CSA sharing stations should have the flexibility either to utilize the full capacity of their shared channel or to enter into a channel sharing arrangement with a new partner (or partners). This could be accomplished by permitting CSA parties to acquire options, rights of first refusal and other, similar rights to the spectrum of their sharing partners. Such an approach also could create a market in shared spectrum, with corresponding potential benefits for diversity and competition in television station ownership.

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The Broadcaster Representatives welcome the opportunity to comment in this proceeding. We look forward to working with the Commission and the IATF to fashion the implementing rules necessary to ensure a successful incentive auction.

Respectfully submitted,

**FOX TELEVISION STATIONS INC.,
ION MEDIA NETWORKS, INC.,
TRIBUNE MEDIA COMPANY, AND
UNIVISION COMMUNICATIONS INC.**

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