

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

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

To: The Commission

**REPLY COMMENTS OF MILACHI MEDIA, LLC**

Milachi Media, LLC (“Milachi”) hereby submits these reply comments in this proceeding, limited to the issue of repacking stations located near Toronto, Ontario following the incentive auction – what Milachi terms the “Toronto Problem.”

Milachi believes that, once the auction ends, the Commission will not have much difficulty finding spectrum and repacking television stations located in the overwhelming majority of markets along the U.S. – Canada border. That is because, in most areas, there is sufficient space between the U.S. and Canadian cities.

But Toronto and the markets in upstate New York that are near the border (Buffalo, Syracuse, Rochester, Watertown, Corning-Elmira, etc.) (collectively, the “Upstate New York Markets”) represent a unique repacking dilemma not seen anywhere else along the nearly 4,000 miles of the border in the Continental U.S. Accordingly, Milachi urges the Commission to undertake a much more rigorous review of the stations on both sides of the border near Toronto.

As far back as July 2011, the NAB presented to the FCC an *ex parte* document showing the most difficult markets in the nations to repack. In large part due to its proximity to Toronto,

Buffalo was ranked as the third hardest to repack and Rochester was ranked fourth, harder than the much larger media markets of New York, Philadelphia, Los Angeles, or San Francisco.<sup>1</sup>

Stated simply, Toronto is the New York City of Canada. It is by far the nation's largest city, with nearly six million people in its metro area. It lies a mere 57 miles north of Buffalo and just 30 miles from U.S. soil. Additionally, there are numerous Canadian stations with transmitter sites in between Toronto and Buffalo, making the spectrum landscape that much more tight. Adding to the congestion, Rochester is just 95 miles from Toronto and just 66 miles from Buffalo. And Syracuse is just 73 miles from Rochester. Much of the focus on what constitutes a "congested corridor" for purposes of the repack focuses on the Eastern U.S. seaboard (Boston to D.C., encompassing numerous markets in between). But the upstate New York Markets and Toronto actually are much closer together.

So when the Commission released the results of 100 Aggregate Interference Simulations it had performed, based on its TV Study software, to create simulated sets of stations to be repacked,<sup>2</sup> Milachi was surprised that only a few stations from the Upstate New York Markets would have to be cleared in order to allocate 120 MHz of the broadcast spectrum for new wireless users. To Milachi's principals, who had endured significant difficulties in finding spectrum in the Upstate New York Markets during the first television spectrum repacking that took place as part of the DTV transition, this result seemed to defy logic.

Milachi urges the Commission to take a much harder look at the Toronto Problem. The most recent iteration of Industry Canada's Table of Allotments (released in May 2014) (the "May 2014 IC Table"), used by the Commission in the 100 Aggregate Interference Simulations, indicates

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<sup>1</sup> See National Association of Broadcasters, Notice of Ex Parte Communication, ET Docket No. 10-235, filed July 29, 2011.

<sup>2</sup> Available at [http://data.fcc.gov/download/incentive-auctions/Simulation\\_Results/](http://data.fcc.gov/download/incentive-auctions/Simulation_Results/).

that there are seventeen television stations or allocations in Canada within 60 miles of downtown Buffalo. Eleven of those Canadian stations are between channels 34 and 51. And an additional five channels are currently in the VHF band. But it appears as if just six of the seventeen overall Canadian UHF channels are set to be protected in the Commission's proposed post-auction band plan (*see* Appendix A). Indeed, as Milachi reads the simulations, the U.S. will get 14 of the channels between 14 and 34, while Canada would get just six, meaning there would be no room for either the eleven major Canadian stations currently operating between channel 34 and 51, or any VHF stations in the region that would likely want to be in the new band plan. Given these stations' proximity to Toronto, it seems highly unlikely that any of these stations are struggling and would want to go out of business.

Milachi understands that Industry Canada is leaning toward harmonizing a band plan with the U.S. This makes sense for both countries. In previous treaties, the nations have equally shared spectrum at the border. It is possible that in other, more rural areas along the U.S. – Canada border, Industry Canada might agree to the Commission's proposed one-sided spectrum allocation. But Milachi believes it is extremely unlikely that Industry Canada would agree to be on the short end of the spectrum stick in Toronto, its largest and most important media market. Milachi believes that, ultimately, Canada will end up with at least ten – not six – of the stations between channels 14 and 34 in the Toronto/upstate New York region. And this discrepancy is the reason why there is significant variance between the NAB's studies (such as the one from July 2011) and the Commission's 100 Aggregate Simulations.

The thrust of these comments is that Milachi submits that the Commission's models are vastly underestimating the impact of Toronto on the repackability of the Upstate New York Markets. This is such a small area of the U.S., and yet at the same time affects millions of TV

viewers and wireless customers. Milachi believes that it would not be difficult to spend additional time to adjust the current repacking model and get it right before the auction occurs. Although Milachi is unsure of the proper fix to this limited but critical Toronto Problem, one suggestion may be to protect an additional five or six phantom channels as placeholders for Canada's eventual repack. Or perhaps try to come to an agreement with Canada now about just this area.

It is important to address this now, so that the Upstate New York Markets do not need to be repacked again shortly after the auction, in the likely event that Canada claims that the Commission did not properly account for its spectrum needs.

Respectfully submitted,

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# Appendix A

## Canadian Allotments within 60 Miles of Buffalo

channel	service	city	fac_callsign	arn	app_id	haat	da	erp	facility_id
5	DT	TORONTO	ALLOTMENT	CANADA1140	2001140	463.3	ND	0.74	1001140
6	DT	PARIS	CIII-TV	CANADA1018	2001018	316.1	ND	4	1001018
6	DT	STEVENSON	ALLOTMENT	CANADA1082	2001082	300	ND	0.6	1001082
8	DT	TORONTO	ALLOTMENT	CANADA1139	2001139	463.3	DA	3	1001139
9	DT	TORONTO	CFTO-DT	CANADA1144	2001144	467	DA	10.8	1001144
11	DT	HAMILTON	CHCH-TV	CANADA878	2000878	358	ND	6.1	1000878
15	DT	HAMILTON	CKXT-TV-1	CANADA881	2000881	338	ND	493	1000881
19	DT	TORONTO	CICA-TV	CANADA1145	2001145	491	ND	106	1001145
20	DT	TORONTO	CBLT	CANADA1142	2001142	499.8	ND	99.6	1001142
21	DT	TORONTO	YESTV	CANADA1151	2001151	303.7	ND	9	1001151
25	DT	TORONTO	CBLFT	CANADA1141	2001141	499.8	ND	99	1001141
30	DT	TORONTO	HDTV	CANADA1150	2001150	303.7	ND	5	1001150
34	DT	BRANTFORD	ALLOTMENT	CANADA814	2000814	150	ND	6	1000814
35	DT	HAMILTON	CHCJ-DT	CANADA879	2000879	110	DA	390	1000879
36	DT	HAMILTON	CITS-TV	CANADA880	2000880	338.2	ND	493	1000880
40	DT	TORONTO	CKXT-TV	CANADA1149	2001149	467	ND	107	1001149
41	DT	TORONTO	CIII-DT-41	CANADA1146	2001146	503	ND	100	1001146
42	DT	FONTHILL	CKVP-DT	CANADA859	2000859	151.3	DA	5	1000859
42	DT	NORMANDEALE	CBLN-TV-6	CANADA974	2000974	101	ND	0.295	1000974
44	DT	TORONTO	CJMT-TV	CANADA1148	2001148	303.7	ND	1000	1001148
47	DT	TORONTO	CFMT-TV	CANADA1143	2001143	501.4	ND	99	1001143
48	DT	FORT ERIE	CIII-TV-55	CANADA860	2000860	118.4	ND	105	1000860
50	DT	WELLAND	ALLOTMENT	CANADA1166	2001166	100	ND	0.3	1001166
51	DT	TORONTO	CITY-TV	CANADA1147	2001147	463.3	ND	23	1001147

\*\* The yellow shading denotes the only channels that the Commission proposes at this time to protect against stations in the Upstate New York Markets.