

**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
)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ submits these comments in response to the Public Notice released by the Incentive Auction Task Force on May 20, 2015 regarding the staff's initial clearing target optimization simulations.² The Public Notice is quite troubling. Apart from the fact that the Public Notice both sets forth a new standard for limiting market variability following the incentive auction and is not entirely clear regarding how this standard will be used, the Public Notice represents a step backwards in our shared goal of holding a successful incentive auction in 2016. The proposed new standard not only fails to materially lower market variability, it may increase it for certain spectrum recovery targets. NAB continues to urge the Commission to adopt a simpler approach that will not result in

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Incentive Auction Task Force Releases Initial Clearing Target Optimization Simulations*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268 (rel. May 20, 2015) (Public Notice).

widespread variability and a substandard and internationally unappealing band plan. Moreover, the new standard appears to assume that TV stations will be placed in the duplex gap, which would be inconsistent with the incentive auction framework order, which recognized that it is essential to provide at least some spectrum in each market for exclusive use by wireless microphones.

I. THE PUBLIC NOTICE RAISES MORE QUESTIONS THAN IT ANSWERS

NAB appreciates the staff's willingness to seek comment on new proposals as this proceeding and the staff's thinking continue to evolve. In this case, the Commission previously proposed to seek a "near-nationwide" band plan by limiting impairments to wireless licenses to those covering no more than 20 percent of weighted population nationally.³ The Public Notice, however, seeks comment on simulations conducted using a different standard, one allowing up to the equivalent of one impaired license block nationwide, as measured by weighted population.⁴

Unfortunately, the Public Notice provides no further detail as to how the Commission might use this standard in conducting the auction. That information is essential if parties are to comment effectively. For example, does this standard replace the proposed 20 percent standard? Or, will this standard be used only to set an initial spectrum clearing target? That is, will additional variability, up to 20 percent, be permitted if the use of Dynamic Reserve Pricing forces the Commission to assign additional television stations to channels located in the wireless portion of the band? The Public Notice also provides little information concerning the simulations and the results themselves. For example, how many simulations did the staff run?

³ *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, 29 FCC Rcd 15750, ¶ 25 (2014) (Comment PN).

⁴ Public Notice at ¶ 2.

Are the results presented averages across all simulations, or selected cases? What assumptions were built into the simulations? Do the stated participation levels reflect the required levels of national participation, or merely the required levels of participation in certain challenging markets?

Further, the results set forth in Public Notice do not incorporate impairments caused by Mexican television stations.⁵ This is puzzling for two reasons. First, at least one party, AT&T, has been able to estimate the effects of impairments from Mexican television stations.⁶ Plainly, it is possible at least to estimate Mexican impairments at this time. Second, the effects of these impairments may be quite significant, and is likely to increase.

AT&T's analysis estimates that considering only active Mexican television stations will contribute 3.18 percent additional impairment, and considering all vacant and active allotments in Mexico will contribute 7.5 percent additional impairment.⁷ Assuming the Commission will eventually count impairments caused by Mexican television stations in calculating the nationwide level of impairment, these levels of impairment significantly alter any examination of the results set forth in the Public Notice. This is particularly so given that Mexico has granted licenses for two additional national networks, with additional television stations throughout the country, including in the border regions.⁸

⁵ *Id.* at ¶ 3. The Public Notice anticipates that the Commission will have data regarding Mexican impairments in advance of the auction, and that including interference from Mexican stations will increase the impairment *level* for each clearing target.

⁶ Letter from Michael P. Goggin to Marlene H. Dortch, GN Docket No. 12-268 (April 14, 2015).

⁷ *Id.*, Attachment at 9.

⁸ Reuters, Mexico telecoms regulator reveals bids for two new TV networks, available at: <http://www.reuters.com/article/2015/03/11/mexico-telecoms-idUSL5NOWD06P20150311> (March 11, 2015).

II. THE COMMISSION SHOULD ADOPT THE ALTERNATIVE IMPAIRMENT PROPOSAL SET FORTH BY NAB AND AT&T

Numerous parties have urged the Commission to limit the level of impairment that will be permitted following the auction.⁹ As NAB has demonstrated, creating impairments covering 20 percent of weighted population could dramatically curtail the amount of unimpaired spectrum available in high demand markets in the forward auction.¹⁰ This outcome would significantly limit auction revenues and could ultimately threaten the viability of the auction. It would also lay the groundwork for years of interference disputes between broadcast television stations and wireless carriers. A better approach is to limit impairments by repacking as few stations as possible in the wireless portion of the band. This would increase the amount of unimpaired, paired spectrum the Commission could offer in the forward auction, as well as the fungibility of license blocks – both factors that would drive up auction revenues.

The new standard proposed in the Public Notice, which would allow up to the equivalent of one impaired block nationwide, does nothing to limit the level of impairment beyond the Commission's original proposal. For example, the Public Notice states that, at a clearing target of 84 MHz, the proposed one impaired license block standard will allow nationwide impairment of 14 percent.¹¹ As noted above, AT&T has estimated that, at an 84 MHz clearing target, operational Mexican stations add 3.18 percent, while considering all

⁹ See, e.g., Comments of AT&T at 11-24, AU Docket No. 14-252, GN Docket No. 12-268 (filed Feb. 20, 2015); Comments of Verizon at 4-8, AU Docket No. 14-252, GN Docket No. 12-268 (filed Feb. 20, 2015) (Verizon Procedures Comments).

¹⁰ See, e.g., Comments of the National Association of Broadcasters at 11-15, GN Docket No. 12-268, AU Docket No. 14-252 (filed Feb. 20, 2015); Letter from Patrick McFadden to Marlene H. Dortch, GN Docket No. 12-268, AU Docket No. 14-252 (filed March 13, 2015).

¹¹ Public Notice, Appendix at 1.

vacant and operational stations would contribute 7.5 percent impairment. Thus, the standard described in the Public Notice could actually allow between 17.18 percent and 21.5 percent nationwide impairment. For lower clearing targets, the proposal would allow a significantly higher percentage of impairments. Indeed, the percentage of weighted population that is impaired equals or exceeds the original proposal of 20 percent for spectrum recovery targets of 72 MHz or less, even before accounting for Mexico. This is a step backwards.

The results are not materially better at higher clearing targets. For example, the Public Notice states that, at a clearing target of 126 MHz, the proposed standard will allow nationwide impairment of 10 percent. Yet, according to AT&T's estimates, at 126 MHz, operational Mexican stations add 6.2 percent impairment, and all vacant and operational stations contribute 8.3 percent impairment. Thus, the Public Notice's standard would allow between 16.2 and 18.3 percent nationwide impairment at 126 MHz.

We urge the Commission to reject a needlessly complex approach to calculating impairments that does nothing to materially limit impairments. Instead, the Commission should adopt a proposal, supported by both AT&T and NAB, which recognizes that border areas are subject to impairments from foreign stations that could be resolved by future agreements with Canada and Mexico.¹² These temporary impairments should not stand in the way of the FCC pursuing a band plan that is truly near-nationwide.

Simply put, the border regions are different, and they should be treated differently. Critically, however, the Commission should not use foreign impairments as a means of masking new impairments created by reassigning domestic television stations to channels in

¹² See Letter from Joan Marsh to Marlene Dortch, GN Docket No. 12-268 (May 1, 2015); Letter from Rick Kaplan to Marlene H. Dortch, GN Docket No. 12-268 (May 12, 2015).

the wireless portion of the band; that is, an existing foreign impairment in Los Angeles should not leave the Commission free to create a new domestic impairment.

The AT&T and NAB proposal would essentially ignore the border region for impairment calculation purposes, and allow only three percent impairment in the rest of the nation. Such an approach would foster clearing television stations in the border regions, which would reduce border impairments to wireless carriers from those stations and also facilitate negotiations with Canada and Mexico by providing greater opportunity to develop cross border repacking assignments. This approach would also ensure that “near nationwide” spectrum is reclaimed and available in major markets, while preserving spectrum for television translators and LPTV stations in rural markets.

Finally, the Commission should reject the use of Dynamic Reserve Pricing in the reverse auction. When DRP procedures are in effect, the Commission may not accept a broadcaster’s voluntary bid even when there is no way for the Commission to repack that broadcaster in its original band. That is, the Commission will reject a bid from a willing seller, even where accepting that bid would remove an otherwise unavoidable impairment. Instead, the Commission will continue to lower the price offered in an attempt to cajole the broadcaster into selling more cheaply. This contravenes the market-based approach Congress established and risks creating needless impairments in the wireless portion of the band.

III. THE COMMISSION SHOULD NOT RELOCATE TELEVISION STATIONS IN THE DUPLEX GAP

The Public Notice includes impairment data for the clearing targets it examines where the duplex gap is protected, meaning that television stations are not repacked in the duplex gap. According to this impairment data, protecting the duplex gap will increase the level of impairment. For example, at a 114 MHz clearing target, the simulations staff studied indicate that protecting the duplex gap yields impairment of 11.5 percent, as opposed to 9.1 percent

when the duplex gap is not protected. Particularly in light of the importance of reducing impairments, as discussed above, the Commission may interpret this data as demonstrating the necessity of accepting some impairment of the duplex gap. It should not.

First, a number of commenters have already emphasized the technical challenges associated with relocating television stations in the duplex gap. Verizon, for example, has stated that such an outcome will cause interference to handset receivers, and that there is no viable filtering approach for avoiding such interference.¹³ CTIA similarly stated that the presence of television stations in the duplex gap will create harmful interference to wireless operations in the 600 MHz band.¹⁴

Second, repacking television stations in the duplex gap will eliminate spectrum the Commission would otherwise allocate for use by wireless microphones so that newsgatherers can cover breaking stories without advance notice. The Commission's incentive auction framework order acknowledges the importance of maintaining some exclusive use spectrum for licensed wireless microphones.¹⁵ If TV stations are placed in the duplex gap, the Commission would effectively would be rewriting its framework rules governing operation in

¹³ Verizon Procedures Comments at 19.

¹⁴ Comments of CTIA – The Wireless Association at 5, AU Docket No. 14-252, GN Docket No. 12-268 (filed Feb. 20, 2015)

¹⁵ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 314 (“Broadcasters and cable programming networks contend that without the continued availability of unused television channels for interference-free wireless microphone operations, they will have difficulty providing certain programming, including emergency information, on which their ability to provide vital information to first responders and the public depends. Without access to some guard band spectrum for this purpose, there may be areas in the country where there would be little if any certain access to UHF band spectrum for wireless microphone operations on a protected basis. Accordingly, we conclude that the public interest will be served by allowing broadcasters and cable programming networks using wireless microphones on a licensed basis in a portion of the duplex gap to obtain interference protection from unlicensed devices at specified times and locations, on an as-needed basis.”)

the duplex gap. This approach would not only be unlawful, but would be contrary to the public interest.

IV. CONCLUSION

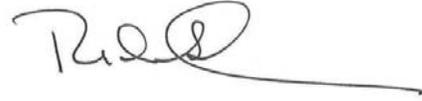
The Public Notice presents an incomplete picture of impairments because it does not take into account impairments created by Mexican television stations. It also provides no clarity as to how the nationwide impairment standard it describes will be used in the auction, if it is used at all. Making matters more confusing, the Public Notice provides little insight into the data the staff examined, including whether the results the Public Notice presents are averages of all the simulations the staff ran, or selected examples.

Substantively, the proposal set forth in the Public Notice does not meaningfully constrain impairments, and leaves open the possibility that the success of the incentive auction will be threatened by levels of impairment that drive down auction revenues. A better approach is the proposal recommended by AT&T and NAB, which will limit impairments to three percent outside of the border regions. We hope the Commission will move forward with this proposal. We also expect the Commission will preserve the limited solution for wireless microphones it adopted in its framework order, by avoiding repacking television stations in the duplex gap.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1771 N Street, NW
Washington, DC 20036
(202) 429-5430

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

Rick Kaplan
Patrick McFadden

Bruce Franca
Robert Weller

June 3, 2015