



July 2, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: 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, Notice of *Ex Parte* Communication

Dear Ms. Dortch:

On June 30, July 1, 2015, Bruce Franca, Patrick McFadden and the undersigned, all of the National Association of Broadcasters, had separate meetings with Matthew Berry of Commissioner Pai's office, and Valery Galasso of Commissioner Rosenworcel's office. On July 2, Bruce Franca and Patrick McFadden met with Louis Peraertz and David Strickland of Commissioner Clyburn's office. During these meetings, NAB discussed a few critical components of the upcoming Procedures PN.

Preserving the Duplex Gap for Wireless Microphones

In its Incentive Auction order adopted just one year ago, the FCC decided to eliminate the two channels currently reserved for use by licensed wireless microphones. The Commission expressly recognized, however, that this decision could leave some markets with no exclusive spectrum for wireless microphones to cover breaking news and emergencies following the auction.¹ Accordingly, the Commission reserved 4 MHz of spectrum in the duplex gap for use by wireless microphones. The FCC reserved an additional 6 MHz in the

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 314 ("Without access to some guard band spectrum for [wireless microphones], 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.")

1771 N Street NW
Washington DC 20036 2800
Phone 202 429 5300

duplex gap for unlicensed use. Thus, while the FCC eliminated two reserved channels for wireless microphones, it maintained at least some exclusive spectrum for licensed wireless microphones.

The Procedures PN upends the Commission's original decision by allowing repacked television stations to be assigned new channels in the duplex gap. Such a move is unnecessary and will foreclose the possibility of wireless microphone or unlicensed operation in the duplex gap in certain markets.

The staff response that it would be appropriate for the Commission to discard its commitment to reserving exclusive spectrum for licensed wireless microphone use because the impact will only be felt in a handful of markets is unpersuasive. First, the Commission has not released the underlying data for its simulations, so there is no way for parties, or the Commissioners themselves, to know which markets are likely to be affected by stations being placed in the duplex gap. Second, what little we do know about the potential impairment suggests that the Commission is likely to employ this approach in congested markets; precisely those markets where alternatives for wireless microphones are most limited.

Market Variability

Incorporating more variability than absolutely necessary in the auction is bad spectrum policy. The FCC should have learned its lesson from the fallout of the 700 MHz A block's challenges due to its close proximity to TV channel 51. Instead, the Commission proposes to recreate those challenges, but on a much larger scale. Plainly, if variability is necessary at all, it should be tightly confined to the minimum necessary to allow the auction to succeed.

Unfortunately, the Procedures PN will apparently fail to meet this standard. Depending on the spectrum recovery target, the Procedures PN will still permit impairments covering up to 20 percent of weighted population – precisely the same level of impairment that was roundly criticized when originally proposed. What is more, the Commission's new standard of the equivalent of one nationwide license allows increased impairment the lower the spectrum clearing target drops. This is counter-intuitive; as the spectrum recovery drops, so will the level of foreign impairments. This suggests that, if a complex sliding scale of impairment is necessary at all, the Procedures PN has the scale exactly backwards – the permissible level of impairment should drop, not rise, with a falling recovery target.

AT&T has proposed, and NAB has endorsed, a less complicated and sounder approach. Under this proposal, the Commission would allow domestic impairments totaling no more than three percent above and beyond total foreign impairments. AT&T has estimated that

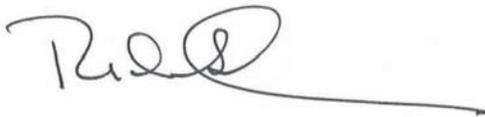
foreign impairments from active television broadcasters are approximately 10 percent at a 126 MHz clearing, and 6 percent at an 84 MHz clearing.²

The critical difference between this proposal and the one set forth in the Procedures PN is that foreign impairments have a clear path to resolution. Domestic impairments, on the other hand, may well be *permanent* encumbrances on both wireless carriers and broadcasters. The FCC should attempt to constrain domestic impairments to the greatest extent possible. The Procedures PN does not distinguish between foreign and domestic impairments. Thus, in the event the Commission is able to conclude agreements with Canada and/or Mexico prior to the auction to reduce or eliminate foreign impairments, the Procedures PN would allow the Commission to replace these foreign impairments with new domestic impairments – an unnecessary and unreasonable outcome.

Bidding Decrements

NAB supports bidding decrements lower than those currently set forth in the Procedures PN. NAB concurs with the Expanding Opportunities for Broadcasters Coalition that a five percent price reduction in the initial rounds of the auction is too large and may create inefficient outcomes. We would support fixed decrements of no more than one to two percent as both simpler and fairer than the Procedures PN's formula.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Rick Kaplan', with a long horizontal line extending to the right from the end of the signature.

Rick Kaplan
General Counsel and Executive Vice President,
Legal and Regulatory Affairs
National Association of Broadcasters

cc: Matthew Berry
Valery Galasso
Louis Peraertz
David Strickland

² Letter from Michael P. Goggin to Marlene H. Dortch, GN Docket No. 12-268, 2 (filed April 14, 2015).