



Competitive Carriers Association
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December 22, 2015

EX PARTE VIA ECFS

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

Re: **EX PARTE LETTER**

GN Docket No. 12-268: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*

Dear Ms. Dortch:

The 600 MHz incentive auction promises to promote economic growth, increase employment and accelerate broadband investment and innovation through greater competition in the wireless marketplace. But calls to delay the 39-month transition period for incumbent relocation or to increase the amount Congress set-aside to pay for the relocation threaten to upend these public interest benefits.¹ Competitive Carriers Association (“CCA”) therefore supports the Commission’s plan to conclude the 600 MHz broadcast relocation on time and on budget in order to have a successful incentive auction.²

¹ See Letter from Rick Kaplan, General Counsel and Executive Vice President, National Association of Broadcasters to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Nov. 9, 2015) (asking the FCC to “reconsider” its decision to grant broadcasters 39 months from the end of the incentive auction to relocate operations). NAB’s letter is procedurally deficient and seeks to reexamine an issue that has been both decided by the FCC and upheld by the DC Circuit. See *Nat’l Ass’n of Broadcasters v. Fed. Comm’n’s Comm’n*, 789 F.3d 165 (D.C. Cir. 2015) (upholding the FCC’s 39-month transition period).

² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report & Order, 29 FCC Rcd 6567, 6796-802 ¶¶ 559-73 (2014) (“*Incentive Auction Order*”) (establishing a 39-month post-auction transition period for broadcasters that are assigned new channels in the repacking process, which includes a three-month period during which broadcasters will complete and file their construction permit applications followed by a 36-month period consisting of varied construction deadlines).

By the time the 39-month active relocation period ends, broadcasters and suppliers of critical inputs will have had more than seven years to prepare for the introduction of new wireless broadband services contemplated by Congress's adoption of the landmark Spectrum Act of 2012, which identified the broadcast television bands for auction and relocation.³ Legacy 600 MHz broadcasters – including hundreds who will not participate in the incentive auction – can and should start the transition process now by preparing for the possible 39-month active relocation period to avoid any disruption in service.⁴ As the Commission has observed, reasonable activities for broadcasters to commence prior to the active relocation period include “construction planning, installation of new power line[s], equipment purchases, and onsite storage of equipment.”⁵ The extended lead time before the active relocation period will similarly provide tower construction companies, antenna and transmitter manufacturers and consulting engineers the opportunity to expand capacity, hire additional employees and take other preparatory steps to address the anticipated increase in demand.

In the Spectrum Act, Congress unambiguously set a budget for broadcaster relocation following the incentive auction. Section 6402 of the Spectrum Act allocates \$1.75 billion for the 600 MHz transition (the “Broadcaster Relocation Fund”).⁶ This figure was established after significant debate and several congressional hearings in which interested parties, including broadcasting

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) (the “Spectrum Act”). The Spectrum Act was enacted February 22, 2012, and the 600 MHz incentive auction is unlikely to conclude prior to August 1, 2016. Assuming the auction closed on August 1, 2016, 53 months and 10 days will have elapsed between adoption of the Spectrum Act and the presumptive close of the incentive auction.

⁴ *Incentive Auction Order*, 29 FCC Rcd at 6798 ¶ 565; see also *Incentive Auction Task Force and Wireless Telecommunications Bureau Release Opening Bid Prices for Reverse Auction*, Public Notice, AU Docket No. 12-252, GN Docket No. 12-268, WT Docket No. 12-269, DA 15-1191 at Attach. A (rel. Oct. 16, 2015) (finding that nearly 400 broadcasters are “not needed” for the incentive auction and will therefore not be eligible for participation in the reverse auction).

⁵ *Incentive Auction Order*, 29 FCC Rcd at 6798 ¶ 565, n.1595. These broadcasters should also examine their tower structural capabilities and compliance with the EIA/TIA RS-222-G (“Rev. G”) structural standard. The Rev. G version of the EIA/TIA standard examines each tower and its geographic environment in greater detail than prior versions did. Among other things, Rev. G accounts for geographic and topographic factors such as wind speed, soil properties and ice loading. This new, more context-sensitive version of the standard often allows for additional capacity than permissible under prior versions. See *ANSI/TIA Revision G and Addendums Incorporate Sweeping Changes*, Wireless Estimator (last updated Jan. 20, 2015), <http://bit.ly/1Inbrvp>. In addition, broadcasters should explore the physical environment for returning their transmission facilities to another – likely lower-frequency – television channel and consider the technical and logistical issues associated with working around other transmitters, such as FM radio, that may be collocated on the tower facility.

⁶ Spectrum Act § 6402, 47 U.S.C. § 309(j)(8)(G)(iii) (2015).

representatives, discussed compensation for repacked television stations.⁷ Congress's statutory cap on expenses thus reflects a considered assessment of the market and careful stewardship of the nation's financial resources.⁸

Both the FCC-established 39-month active relocation period and the \$1.75 billion statutory cap on relocation spending that Congress adopted are reasonable. The National Association of Broadcasters ("NAB") has reversed course and belatedly disagreed.⁹ But the arguments NAB and its consultant DTC make in the recent NAB Submission are without merit.¹⁰

First, the infrastructure market to support the active relocation period is not static, but rather will respond to the financial rewards of offering new products and services to incumbents.¹¹ The

⁷ See, e.g., *Promoting Broadband, Jobs, and Economic Growth Through Commercial Spectrum Auctions: Hearing Before the Subcomm. on Comm'n & Tech. of the H. Comm. on Energy & Commerce*, 112th Cong. 11 (2011) (statement of Todd F. Schurz, President and CEO, Schurz Commc'ns, Inc. on behalf of the Nat'l Assoc. of Broadcasters); *Using Spectrum to Advance Public Safety, Promote Broadband, Create Jobs, and Reduce the Deficit, Hearing Before the Subcomm. on Comm'n & Tech. of the H. Comm. on Energy & Commerce*, 112th Cong. 264 (2011) (statement of Robert Good, Chief Engineer, WGAL-TV on behalf of Hearst Television, Inc.).

⁸ NAB implicitly acknowledges that the Commission lacks the authority to increase the statutorily-capped \$1.75 billion allocated for broadcaster reimbursement. See *Current Rules on TV Station Relocation Could Unintentionally Force Local Broadcast Stations Off the Air*, National Association of Broadcasters Advocacy Page, <http://bit.ly/1jrBGLV> (last visited Dec. 1, 2015) ("[I]f the FCC intends to repack more stations than the \$1.75 billion fund can support, Congress should [authorize] additional funding for station relocation.").

⁹ Several broadcasting representatives – including NAB – have affirmed that an active relocation period of 30 or 36 months will provide sufficient time for relocation. Compare Comments of National Association of Broadcasters, GN Docket No. 12-268 at 50 (filed Jan. 25, 2013) ("NAB also proposes that the Commission allow 30 months for the construction deadline for new broadcast facilities") and Comments of State Broadcasters Associations, GN Docket No. 12-268 at 15 (filed Jan. 25, 2015) ("[T]he Commission should allow at least thirty (30) months for a 'repacked' station to complete the required modifications") with Letter from Rick Kaplan, General Counsel and Executive Vice President, National Association of Broadcasters to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 at 1 (filed Nov. 9, 2015) (urging the Commission to "reconsider its prior determination that all broadcasters designated for repacking following the incentive auction must relocate within 39 months" and stating that "the Commission's one-size-fits-all deadline is manifestly unreasonable . . .").

¹⁰ See Letter from Myra Moore, President, Digital Tech Consulting, Inc. ("DTC") to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Nov. 6, 2015), attaching Digital Tech Consulting, Inc., *Broadcast Spectrum Repacking Timeline, Resource and Cost Analysis Study* (Oct. 2015) ("NAB Submission").

¹¹ See *Incentive Auction Order*, 29 FCC Rcd at 6801 ¶ 571 (noting that "equipment manufacturing and tower installation industries will respond to the greatly increased demand resulting from the post-auction transition and will take advantage of this unique opportunity to provide equipment and

NAB Submission identifies 16 “qualified” tower and antenna installation crews, 30 “qualified” RF installation engineers and technicians, and two “industry-accepted” antenna manufacturers.¹² These likely are conservative estimates due to the NAB Submission’s use of undefined qualifiers such as “industry-accepted.” However, even assuming between 600 and 900 stations will need to be repacked over the transition period, each installation crew would only need to work on slightly more than one station per month—a reasonable workload with proper coordination.¹³ In addition, the estimates in the NAB Submission do not account for the expected increase in the supply of these services in response to new demand.

Second, the Commission will prioritize assigning broadcast stations to their pre-auction channels during the repacking process and intends to phase-in the transition in a logical fashion to minimize the transition’s effect on incumbents.¹⁴

Third, extending the active relocation period would increase the risk of costly delays and disputes because the relocation period would no longer closely align with the three-year period within which the FCC must make relocation payments.¹⁵

Fourth, many stations may not require relocation or can transition to replacement facilities and channels relatively quickly and without incurring significant costs.¹⁶ Contrary to the NAB

construction services.”). The United States tower climber workforce can grow to address increased demand. *See Over 29,000 Tower Climbers Identified in Extensive Wireless Workforce Survey*, Wireless Estimator (Feb. 17, 2015), <http://bit.ly/1NAutxb> (last visited Nov. 11, 2015); Jarad Matula, *How to Become a Tower Climber: Experience, Training, Equipment*, RCR WIRELESS NEWS (Sept. 23, 2014), <http://bit.ly/1MtjX23>.

¹² NAB Submission at 32, 29, 3.

¹³ *See* Letter from Brian Benison, Director, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Dec. 18, 2015) (estimating that as many as 1200 stations will remain on the air after the auction and that approximately 850 stations may need to retune equipment or move to new channel assignments). CCA believes that AT&T’s unsupported projections are too conservative. Additional repacking analysis is being conducted and will be submitted into the record that will show that far fewer stations will ultimately need to relocate.

¹⁴ *Procedures for Competitive Bidding in Auction 1000 Including Initial Clearing Target Determination, Qualifying to Bid and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, 30 FCC Rcd 8975, 9101-02 ¶¶ 273-74 (2015) (“*Bidding Procedures Public Notice*”).

¹⁵ *Incentive Auction Order*, 29 FCC Rcd at 6799-80 ¶ 568. Adopting a construction period that is longer than the statutorily-mandated reimbursement window would either force the FCC to reimburse broadcasters for not-yet-incurred expenses or deprive those broadcasters of a mechanism to obtain reimbursement.

¹⁶ *See id.* at 6800 ¶ 570 (explaining that “some stations will be able to switch channels simply by retuning their existing equipment, a process that can be completed in a short period of time,” and that “[t]hus, not all stations will need or be given the full 36 months to complete construction . . .”).

Submission's assumptions, not all broadcast relocations will involve materially different frequencies, which will allow for the possibility of reuse and reduce the amount of new equipment purchases required. Moreover, the NAB Submission wholly fails to consider equipment recycling. The NAB Submission, in other words, makes no allowance for secondary-market transactions in antennas and other equipment that will have value in some markets, but not others. A station relocating to a new channel incompatible with its current antenna will have a financial incentive to identify a buyer relocating onto that channel, and finding partners in the secondary market should accelerate transition times and reduce relocation costs. Moreover, stations that are not able to construct new facilities by the end of the 39-month transition period may have the opportunity to continue operating on temporary facilities.¹⁷

For these reasons, the Commission's 39-month active relocation period strikes a reasonable balance between the desire of legacy incumbents to avoid acquiring new equipment and the pressing need for consumers and businesses to gain access to additional wireless broadband connectivity. The D.C. Circuit Court of Appeals confirmed the decision's reasonableness when it explained that "we perceive nothing arbitrary or capricious about the Commission's choice of [the 39-month] cut-off point."¹⁸ The court found that:

The Commission chose a 39-month period based on the combination of a three-month period within which to apply for a construction permit and a 36-month period within which to transfer facilities to the new channel. . . . [A] number of commenters on the broadcaster side, including NAB, pushed for a still shorter period of less than 36 months. Moreover, the Commission's choice accords with FCC rules requiring licensees constructing entirely new facilities to do so within three years. And the transition period also coheres with the Spectrum Act's requirement that the Commission reimburse reassigned broadcasters for their relocation expenses within three years of the forward auction.

....
To be sure, the Commission, while expecting the vast majority of relocated broadcasters to meet the 39-month deadline, acknowledged that some stations might face challenges in doing so. But the Commission determined that extending the go-dark deadline beyond 39 months "could depress forward auction participation or the value of investments made by forward auction winners," some of whom would already have to wait three years before enjoying the fruits of their investments.¹⁹

The court concluded that "the Commission reasonably balanced the Spectrum Act's competing imperatives."²⁰ The \$1.75 billion allocated for broadcaster reimbursement is similarly reasonable and

¹⁷ *Id.* at 6800 ¶ 569.

¹⁸ *Nat'l Ass'n of Broadcasters v. Fed. Commc'ns Comm'n*, 789 F.3d 165, 182 (D.C. Cir. 2015).

¹⁹ *Id.* (internal citations omitted).

²⁰ *Id.*

may even exceed actual costs given the potentially large cost savings made possible through a secondary market in broadcasting equipment.²¹

An important hallmark of the FCC's most successful auctions is certainty. In allocating spectrum for PCS, for example, the FCC adopted a fixed, two-year period during which a new entrant was encouraged to negotiate relocation of a fixed point-to-point microwave incumbent followed by a one-year mandatory negotiation period that led to involuntary relocation.²² While far from perfect, these rules provided unambiguous rights to spectrum users that allowed bidders at auction to make intelligent decisions about their bids and bidding strategies. Under this model, Auctions 4 and 5 had revenues of more than \$17 billion – a record at the time.²³ The FCC adopted a similar, definitive approach to relocation more recently in the auction of AWS-3 spectrum that, despite some long-lasting encumbrances, set a new revenue record for a U.S. spectrum auction.²⁴ Auction revenues depend on many factors, but providing bidders with greater certainty about the cost and availability of resources following the close of the auction provides bidders with the confidence necessary to make significant, long-term investments in spectrum that, once deployed, acts as an economic stimulus for the economy as a whole.²⁵ Setting a definitive transition period and enforcing the congressionally mandated budget for relocation will encourage forward-auction participation and help accelerate next-generation technology investment.²⁶ By contrast, delaying the

²¹ See CTIA – The Wireless Association[®] and Consumer Electronics Association, *Broadcast Spectrum Incentive Auctions White Paper* 16-17 (Feb. 15, 2011), available at <http://bit.ly/1InbPd5> (estimating broadcaster relocation costs of \$565 million).

²² See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589, 6595-96 ¶¶ 15-18 (1993).

²³ See FCC Auction 4 Fact Sheet, available at <http://fcc.us/1JucJnK> (showing net bids of \$7,019,403,797); FCC Auction 5 Fact Sheet, available at <http://fcc.us/1AU6Mwr> (showing net bids of \$10,071,708,841.50). Other relocation plans have suffered from less definitive deadlines. The 800 MHz public safety relocation process, for example, is only now being completed more than ten years after its commencement. See *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969 (2004). And the BAS licensee relocation process similarly stagnated until clear incentives and deadlines were established. See, e.g., *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 4393 ¶¶ 3-28 (2008) (summarizing the BAS relocation process).

²⁴ See *Winning Bidders Announced for Auction 97*, Public Notice, 30 FCC Rcd 630 (2015). Several wireless carriers bid in the AWS-3 auction in reliance on an incumbent relocation plan that provided a clear path to deployment. See *id.*; see also NTIA, *Transition Plans and Transition Data for the 1755 – 1780 MHz Band* (last accessed Dec. 22, 2015), <http://1.usa.gov/1Tfq7NA>.

²⁵ See Coleman Bazelon & Giulia McHenry, *Mobile Broadband Spectrum: A Vital Resource for the U.S. Economy*, THE BRATTLE GROUP (May 11, 2015), available at <http://bit.ly/1PKEM5F> (“Quite simply, every dollar spent on wireless service resulted in \$2.32 of total spending”).

²⁶ *Incentive Auction Order*, 29 FCC Rcd at 6801 ¶ 572; *Nat'l Ass'n of Broadcasters v. Fed. Commc'ns Comm'n*, 789 F.3d 165, 182 (D.C. Cir. 2015).

600 MHz transition or creating new uncertainty on transition expenses would not only depress incentive auction revenues, but also diminish the amount of broadband spectrum available to meet the wireless broadband needs of consumers and businesses throughout the country.²⁷

The Commission has many means of ensuring construction within the total 39-month period within which stations must relocate in addition to requiring broadcasters to cease operations on their pre-auction channel until construction of new facilities is complete.²⁸ For example, the Commission could employ short-term license renewals to incentivize broadcasters to go dark on their pre-auction channels. The FCC has granted these types of precautionary renewals in response to licensees' violations of the rules or other regulations and could do so again here.²⁹ The Commission could also levy monetary forfeitures against broadcasters that fail to comply with the 39-month transition period the Commission has established under the Spectrum Act. The Communications Act allows the FCC to assess monetary forfeitures against parties that willfully or repeatedly fail to comply with the FCC's rules, the FCC's regulations or the terms and conditions of a license.³⁰ For broadcasters, the maximum penalty is \$25,000 for each day of a continuing violation, and the penalty cannot exceed \$250,000 for a continuing violation.³¹ The Commission has well-established authority to impose monetary forfeitures on broadcasters under a variety of circumstances.³²

As a further alternative, the Commission could withhold payments from the Broadcaster Relocation Fund to broadcasters that have not concluded relocation by the construction permit deadline. The FCC's reimbursement process provides broadcasters with an "initial allocation" based on their estimated eligible costs and a "final allocation" based on their actual and remaining

²⁷ For example, the Brattle Group has estimated that each year of delay reduces the economic value of the 600 MHz spectrum and costs society \$60 billion in foregone consumer welfare. *See* The Brattle Group, *Realizing the Benefits of the FCC's Incentive Auction Without Delay* 13-14 (2015), attached to Comments of LocusPoint Networks, AU Docket No. 14-252, GN Docket No. 12-268 (filed Feb. 20, 2015).

²⁸ *Incentive Auction Order*, 29 FCC Rcd at 6797 ¶ 564.

²⁹ *See, e.g., Application of LKCM Radio Group, LP, for Renewal of License for Station KOME-FM Meridian, Texas*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1045 (MB 2014); *Clear Channel Television, Inc. (KTTU(TV))*, Letter, 10 FCC Rcd 3773 (1995); *Northstar Television of Erie, Inc. (WSEE-TV)*, Letter, 10 FCC Rcd 3779 (1995).

³⁰ 47 U.S.C. § 503(b)(1).

³¹ *Id.* § 503(b)(2)(A).

³² *See, e.g., Fellowshipworld, Inc.*, Forfeiture Order, 30 FCC Rcd 6107 (EB 2015) (requiring a radio broadcaster to pay \$8,000 for transmitting from a site that was thirty-six miles from its authorized location); *Pittman Broadcasting Servs., LLC*, Forfeiture Order, 29 FCC Rcd 9260 (EB 2014) (requiring a television broadcaster to pay \$14,000 for failing to comply with the FCC's Emergency Alert System rules); *D.T.V., LLC*, Forfeiture Order, 29 FCC Rcd 9675 (MB 2014) (requiring a television broadcaster to pay \$9,000 for failing to file Children's Television Programming reports).

estimated costs.³³ These allocations will be placed in designated individual accounts within the U.S. Treasury, and broadcasters will be able to draw from them as they incur eligible expenses.³⁴ The FCC could use its authority over the Broadcaster Relocation Fund to encourage timely relocation to post-auction channels by weighing actual costs more heavily than remaining estimated costs when determining final allocations, which would reward broadcasters who do not wait until the end of the 39-month transition period to construct their new facilities. Or the Commission could define “eligible expenses” to include only expenses that are incurred before the end of the 39-month transition period, which would cause broadcasters who do not timely relocate to forgo payments from the Broadcaster Relocation Fund.

The timely, cost-effective relocation of legacy services out of the 600 MHz band remains critical to wireless broadband deployment and investment in the United States. Wireless carriers are approaching, and bidding, in the incentive auction with the expectation that the majority of the spectrum they purchase at auction will be cleared within the deadline. The FCC’s 39-month active relocation promises meaningful, long-term benefits for the American economy as well as the consumers and enterprise customers that depend on improved wireless broadband connectivity. While any deadline or budget has the potential to create disruption for legacy incumbents, the proposed transition period – combined with waivers for exceptional cases – properly balances the needs of broadcasters, broadband providers and consumers. The Commission should reaffirm its commitment to a 39-month active relocation period and the congressionally mandated relocation budget because these measures represent a reasonable balance of competing interests that will benefit the American economy as a whole.

Respectfully submitted,

/s/ Rebecca Murphy Thompson

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³³ *Incentive Auction Order*, 29 FCC Rcd at 6815-16 ¶ 607. Final allocations must include estimated remaining costs in addition to actual costs because the FCC’s three-year period to make reimbursements will end before the 39-month transition period. *See id.* at 6816 ¶ 608.

³⁴ *Id.* at 6816-17 ¶ 609.