



January 20, 2016

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

Re: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268; Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269; Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 and 1002, AU Docket No. 14-252; Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Spaces Devices and Wireless Microphones, MB Docket No. 15-146

Dear Ms. Dortch:

While the Commission has finalized procedures for conducting the auction, a few important questions remain outstanding. In particular, the National Association of Broadcasters (NAB) sought reconsideration of two limited aspects of the procedures for conducting the auction: the Commission's decision to locate some television stations in the duplex gap following the auction; and the level of variability the Commission will permit between markets.¹ No party opposed NAB's petition for reconsideration. Given that no party registered opposition to NAB's petition, the sound public policy it represents and the fact that the changes sought would not delay the auction in any way, NAB urges the Commission to act promptly on the petition.

Duplex Gap

Throughout this proceeding, NAB and other broadcasters have stressed the need to maintain some exclusive use spectrum for wireless microphones used to cover breaking news and emergencies.² The Commission itself agreed in its framework incentive auction

¹ Petition for Reconsideration of the National Association of Broadcasters, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, MB Docket No. 15-146 (Sept. 10, 2015).

² See, e.g., Reply Comments of Radio Television Digital News Association, GN Docket No. 12-268, AU Docket No. 14-252 (filed March 13, 2015); Reply Comments of the National Association of Broadcasters at 5-6, GN Docket No. 12-268, AU Docket No. 14-252 (filed March 13, 2015). See also Letter from Rick Kaplan to Marlene H. Dortch, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (filed July 23, 2015).

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order, and provided a reduced, but still exclusive, home for licensed wireless microphones in the duplex gap. Unfortunately, the Commission subsequently changed course, and made clear that it will likely place full power television stations in the duplex gap, which eliminates exclusive use spectrum for wireless microphones.

The Chairman has publicly stated that this problem will not be widespread, but the Commission has been unwilling to commit to any limitations in its ability to impair the duplex gap and displace broadcasters' emergency newsgathering services.³ Broadcasters and other stakeholders have no way of knowing how many markets will actually be affected by this decision, let alone which markets will be affected. Worse, the Commission's "solution" to this problem, allocating an additional television channel to unlicensed use, penalizes the broadcasting industry for the Commission's auction design and policy choices.

Assigning television stations to the duplex gap also raises significant technical concerns, and creates the potential for harmful interference to wireless transmissions.⁴ As this will significantly reduce the value of some of the spectrum the Commission can offer in the forward auction, the costs of this policy shift outweigh any perceived benefits. No party has disputed these points on reconsideration.

Variability

The Procedures PN adopted a standard to limit market variability to the equivalent of one paired block of spectrum nationwide.⁵ This scale will permit no more than 8 percent impairment at a clearing target of 144 MHz, and up to 20 percent impairment at clearing targets of 72 MHz or less. We appreciate the Commission's adjustment of its proposed impairment level of 20 percent in all cases, but the Commission's progress in negotiating framework agreements with both Canada and Mexico warrant reconsideration of the scale the FCC has adopted.

Foreign impairments may contribute significantly to impairment levels, and how those foreign impairments are counted may have a significant impact on the clearing target the Commission ultimately sets. Both AT&T and NAB advocated for an impairment standard that would essentially ignore the border region for impairment calculation purposes, and allow an additional three percent impairment in the rest of the nation.⁶ This proposal reflected the fact that domestic impairments created by relocating U.S. broadcasters in the 600 MHz

³ *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; 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, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, MB Docket No. 15-146, FCC 15-78, ¶ 31 (Aug. 11, 2015) (Procedures PN), citing Letter from Gary M. Epstein to Marlene H. Dortch, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, Appendix at 3-5 (filed July 10, 2015).

⁴ Charles W. Rhodes, TV Technology, *The Perils of Putting TV Stations in the Duplex Gap* (Jan. 5, 2016) available at: <http://www.tvtechnology.com/expertise/0003/the-perils-of-placing-tv-stations-in-duplex-band-gaps/277685>.

⁵ Procedures PN at ¶ 39.

⁶ 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).

band will be permanent impairments. Foreign impairments, on the other hand, are different. They are temporary and subject to eventual resolution.

The Commission's framework agreements with both Canada and Mexico mark significant progress towards international coordination that will allow border stations to successfully relocate to their new channels.⁷ Unfortunately, leaving the current scale in place in the United States will allow the Commission to add significant, and permanent, domestic impairments, while staying under its threshold, because Canadian and Mexican impairments will be counted at zero.

On reconsideration, the Commission should preserve the duplex gap for use by licensed wireless microphones and unlicensed operations by protecting the duplex gap from any impairment. We also urge the Commission to take advantage of the progress it has made towards international coordination by lowering the nationwide standard for market variability to reflect the framework agreements reached with Canada and Mexico, which will largely constrain foreign impairments. NAB believes the Commission can address both of these issues entirely through software settings. Addressing these issues thus will not delay the commencement of the auction or unduly burden Commission resources.

Respectfully Submitted,

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

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

⁷ See Gary Epstein, Incentive Auction Task Force Chair, and Mindel DelaTorre, International Bureau Chief, *International Coordination with Canada for a Successful Incentive Auction* (Aug. 14, 2015), <https://www.fcc.gov/blog/international-coordination-canada-successful-incentive-auction>; Mindel DelaTorre, International Bureau Chief, and Gary Epstein, Chair of the Incentive Auction Task Force, *International Cooperation with Mexico for a Successful Incentive Auction* (July 24, 2015), <https://www.fcc.gov/blog/international-cooperation-mexico-successful-incentive-auction>.