



May 6, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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; 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 Space Devices and Wireless Microphones, MB Docket No. 15-146; Notice of Ex Parte Communication

Dear Ms. Dortch:

On April 28, 2016, Google Inc. submitted a letter urging the Commission to move ahead with its proposal to allocate free spectrum in the television band for Google following the broadcast spectrum incentive auction.<sup>1</sup> Just one day later, the Commission announced an initial clearing target of 126 MHz for the incentive auction.<sup>2</sup> Google's timing is not felicitous.

The Commission's appropriately aggressive clearing target presents opportunities and unique challenges going forward. It represents strong broadcaster interest in the auction and provides the Commission with an opportunity to offer a large swath of spectrum to the commercial wireless industry. At the same time, if the Commission is able to clear 126 MHz in the auction, the challenge will be maintaining as much LPTV and translator service as possible in a significantly reduced TV band.<sup>3</sup> In terms of low power operations, it is plain that

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<sup>1</sup> Letter from Paul Margie, Counsel to Google Inc., to Marlene H. Dortch, FCC, GN Docket No. 12-268, MB Docket No. 15-146 (April 28, 2016) (Google Letter).

<sup>2</sup> *Initial Clearing Target of 126 Megahertz Set For the Broadcast Television Spectrum Incentive Auction; Bidding in the Clock Phase of the Reverse Auction (Auction 1001) Will Start on May 31, 2016*, Public Notice, GN Docket No. 12-268, AU Docket No. 14-252, WT Docket No. 12-269, DA 16-453 (April 29, 2016).

<sup>3</sup> The National Association of Broadcasters (NAB) has estimated that as many as one-quarter of all UHF LPTV and translator stations in the U.S. may be unable to find new UHF channels following the auction based on a clearing target of 120 MHz. In markets where LPTV and translator stations are unable to find new channels following the auction, every additional channel given away to Google represents a channel that is unavailable for LPTV and translator stations that will be seeking new

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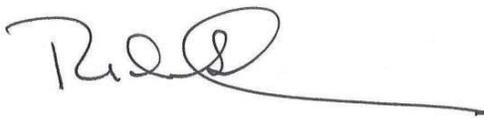
setting aside additional free channels for Google will make this already challenging situation materially worse.

According to Google, “the impact of the proposed vacant-channel rule on LPTV and translator stations will be negligible.”<sup>4</sup> Google continues to be unfazed by a clear contradiction at the heart of its position; namely, that it is both necessary for the Commission to reserve channels to preserve unlicensed use because of spectrum scarcity in the post-auction TV band, and that reservation is not an issue for LPTV and translator stations because of the abundance of post-auction spectrum in the TV band.

While Google has twisted itself into a pretzel in an attempt to obtain more spectrum, the reality is that layering additional constraints on licensees in an already over-committed band will disenfranchise some licensees and their viewers in favor of unlicensed users. Google claims that the smoking gun in its favor is that NAB’s detailed analysis of the auction impact on LPTV and translator stations did not also estimate the number of additional stations that would be forced off the air if the Commission adopts its Google Channel proposal. However, it doesn’t take a rocket scientist to understand that if there are no channels left in a market following the auction, the LPTV and translator stations in that market will have nowhere to operate.

More fundamentally, there is no need for the Commission to speculate at this point. The auction is already underway and bidding in the clock rounds of the reverse auction is scheduled to begin at the end of the month. Rather than pick between competing studies, the FCC should focus on concluding a successful incentive auction, and make decisions regarding the post-auction spectrum landscape only when it has a clearer understanding of the facts. There simply is no rush. This is all the more true given that the impacts of a poor decision may be felt by hundreds of thousands of viewers, while the benefits of white space technology remain aspirational at best.

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

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channels in order to remain on the air. Letter from Rick Kaplan, NAB, to Marlene H. Dortch, FCC, GN Docket No. 12-268, MB Docket No. 15-146 (March 31, 2016) (NAB Rebuttal).

<sup>4</sup> Google Letter at 7. Google’s analysis continues to be based on a misunderstanding of the auction.