January 18, 2013

Federal Communications Commission
Washington, DC 20554

Subject: Docket No. 12-268
Comments on NPRM for the Incentive Auctions

Foreword

The comments below are written by a banker with twenty years experience serving the media industry, but also an individual who increasingly enjoys the functionality and convenience of mobile devices. Hopefully, they provide a balanced perspective.

Channel Share Agreements

Number of Co-licensees:

Allow more than two channel sharers per continuing signal to have co-licensee status. This provision will encourage broadcasters who do not need 3MHz of spectrum for their content to participate in the auction, and protect their rights as a licensee from any misconduct or negligence of a channel share partner. This provision would provide an economical means for minority content, currently broadcast on multicast channels, to continue free, over-the-air distribution. The FCC could also allow more than two channel share partners to keep their original call signs.

Backfill Original Contour:

Allow a full power licensee who agrees to channel share with a Class A to selectively backfill their original contour with a DTS system, in order to maintain coverage of major population concentrations and cable headends. This provision is consistent with the Congressional Statute's objective to maintain over-the-air coverage and the rights of the full power licensee to retain must carry on cable systems.

The Commission should be flexible in allowing CSA partners to use directional antennas or DTS systems to cover their original City of License, when the CSA partners are licensed to different cities but both serve the same DMA.

Reliance on Must Carry:

There has been discussion recently in Congress about revoking must carry rights that full power licensees have with MVPD's. It would be unfair to participants in the auction, who rely on keeping their must carry rights as part of the consideration in tendering their spectrum, if those rights were taken away afterward. Therefore, if Congress revisits the scope of the February 2012 statute at any time, the

FCC should ask the legislators to build in protections on must carry rights for those auction participants who cooperate.

Tax Treatment:

While the FCC does not set tax policy, the ambiguity over whether the tendering of spectrum into the reverse auction and redeploying proceeds into a channel share agreement is a taxable event will be a deterrent to participants. A non-binding observation from the FCC that a transaction as just described should be treated as a “like kind exchange” would motivate licensees to participate.

Auction Process

Covered Population/ Auction Geography:

Clarify how the FCC intends to compensate reverse auction participants for population inside a broadcaster’s service area but outside the Nielson DMA and, possibly, the closest geographic area for the forward auction. If the service area falls into two separate geographic zones for the forward auction, and a threshold price applies to the reverse auction, will the reverse auction proceeds be split according to the licensed population by County? As an example, consider a station broadcasting from Palm Beach that also covers a large portion of Miami.

Aggregate Tender:

Assuming the auction uses the descending clock format, the FCC should maintain the confidentiality of those licensees participating, but disclose the aggregate total of spectrum tendered. If the amount tendered is short of the goal, additional licensees could be encouraged to join the auction, and a shortage would discourage participants from dropping out.

Shared Bids:

Allow proposed channel share partners to submit contingent bids relating to the price the partner submits. The partners could have very different target price levels. The FCC will want to avoid price collusion between proposed partners, but the share arrangement becomes inoperable if neither, or both, sell their spectrum. Therefore, the FCC should allow the proposed sharer to set a price, contingent on not accepting the tender of the sharee. Inversely, allow the sharee to tender, contingent on the FCC not accepting the price from the sharer. An alternative is to allow joint offers from channel share partners for 6MHz.

Payment Timing:

The reverse auction proceeds should be payable after repacking. The same timing should apply for expense reimbursement. There needs to be an alignment of interest between broadcasters and the FCC so that the licensees cooperate with the repacking. Those planning a channel share agreement could begin engineering and order necessary equipment early in the process, so they receive proceeds sooner.

Agents:

Allow entities with disclosed and regulatory-compliant financial interests, to be an agent on behalf of the licensee in the auction. This designation will be distinct from licensees with programming control.

Sequence:

The NPRM asks whether the reverse and forward auction should be concurrent or sequential. As a practical matter, it is difficult to see how there could be a premium retained for the public safety network and expense reimbursement, if the reverse participants can see the value being bid in the forward auction. Also, knowing the amount of spectrum available for the forward auction is impractical if the reverse auction isn't largely concluded before the forward auction starts.