

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Expanding the Economic and Innovation ) GN Docket No. 12-268  
Opportunities of Spectrum Through Incentive )  
Auctions )

To: The Commission

**COMMENTS OF VISION COMMUNICATIONS, LLC**

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## SUMMARY

Vision Communications, LLC supports the goal of encouraging participation by as many television broadcasters as possible in the “reverse” portion of the upcoming Incentive Auction. To foster such wide participation, the Commission should take the following approaches. First, it should adopt the “multiple round” bid collection model, together with the “threshold pricing” system for determining how a broadcaster would be compensated for relinquishing its rights to the spectrum associated with a given television channel. The multiple round model should be selected because it will result in efficient bidding by broadcasters during the reverse auction. The threshold pricing system should be preferred because it makes bidding very simple for broadcasters. Vision also maintains that a broadcaster’s bid does not need to be “scored” because that would unnecessarily complicate the reverse auction process. The coverage area and population served of the television station is immaterial to a bidder in the forward auction. The only thing that matters to that forward auction bidder is the spectrum being relinquished.

Second, all full-power and Class A stations should be eligible to participate in the reverse auction and be protected during the repacking process. Such eligibility and protection should be extended to situations where the Media Bureau has granted a construction permit for new full-power construction, but the station has not yet been built, and to all digital Class A stations and permittees in existence as of February 22, 2012, the effective date of the Spectrum Act.

Regarding auction rules, Vision supports most of the Commission’s proposals that would quickly compensate broadcasters following the end of the incentive auction. Vision also urges the Commission to interpret the Spectrum Act to mean that a broadcaster may obtain proceeds from the auction even if it is the only participant in its market. Vision also urges the Commission to establish high reserve prices in the reverse auction, particularly in the spectrum-

congested border markets. That will incentivize broad participation in those markets and allow access to bidders in the forward auction to nationwide swaths of spectrum.

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**COMMENTS OF VISION COMMUNICATIONS, LLC**

Vision Communications, LLC (“Vision”) hereby submits these comments in response to the Notice of Proposed Rulemaking issued by the Commission on October 2, 2012 in the captioned proceeding (“Notice”).<sup>1</sup> Vision is the parent of the licensee of full power station WYDC(DT), Corning, New York. In addition, principals of Vision hold interests in other full-power and Class A television stations. Vision and its principals have not made a determination regarding participation in the Commission’s proposed incentive auction process, but anticipate making a decision based on the rules and policies the Commission ultimately adopts.

By these comments, Vision supports the goal of encouraging voluntary participation by broadcasters in the incentive auction, as envisioned by the Commission as part of the National Broadband Plan<sup>2</sup> and by Congress as part of the Spectrum Act.<sup>3</sup> As set forth below, Vision’s principal concern is to ensure that participation in the reverse portion of the incentive auction is

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<sup>1</sup> *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Notice of Proposed Rulemaking*, FCC 12-118 (October 2, 2012).

<sup>2</sup> See Federal Communications Commission, *Connecting America: The National Broadband Plan* at 88-91 (2010).

<sup>3</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (“Spectrum Act”).

open to all full-power and Class A television broadcasters nationwide, and that the “rules of the road” for the auction and the spectrum “repacking” process are simple and straightforward.<sup>4</sup>

## **I. COMMENTS REGARDING REVERSE AUCTION DESIGN**

### **A. To Encourage Wide Participation, the Commission Should Adopt Simple Procedures for Bid Collection and Payments.**

Paragraph 39 of the Notice offers two options for how to collect bids during the reverse auction. Vision supports the second option – the multiple round procedure, whereby broadcast bidders would accept progressively lower payments in exchange for relinquishing the spectrum associated with their television channels. Paragraph 51 of the Notice offers two options for determining the amounts paid to broadcasters for relinquishing their spectrum rights. Vision supports the “threshold” pricing mechanism, whereby the Commission would offer a sequence of declining prices until a sufficient number of broadcasters in a given local market decide that the price is too low and they would prefer to continue broadcasting. In that case, the remaining broadcasters would each receive the last offered price to go off the air.

Vision believes that the multiple round bid collection model, combined with the threshold pricing system for payments, will attract the greatest number of bidders because of its simplicity and efficiency. The other bid collection option offered at Paragraph 39, a single-round, sealed bid process, could scare off many potential broadcast participants who may fear submitting a “set in stone” price that is either far too low or far too high when compared with other bids from same-market stations. The multiple-round model is preferable because it would result in opportunities to correct inefficient bids in subsequent rounds. It is significant that the authors of Appendix C favor the multiple-round approach.

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<sup>4</sup> Under the repacking process, stations electing to remain broadcasting will occupy a smaller portion of the UHF band. Notice at ¶ 91.

Vision also maintains that the threshold pricing mechanism would attract the highest number of bidders because, as set forth in Appendix C to the Notice, that approach makes bidding very simple. A bidder will establish its own value for relinquishing its spectrum. If, during the reverse auction, the bidding reaches that level and goes no further, the broadcaster will accept the bid and relinquish its spectrum rights. If the reverse auction bidding goes below the broadcaster's perceived station value, the broadcaster will reject the bid, exit the auction and continue broadcasting. If the reverse auction bidding does not reach the broadcaster's value, the broadcaster will relinquish its spectrum rights for a higher than expected price. On the other hand, if the Commission were to adopt the alternative set forth at Paragraph 51, whereby the winning bidder would be paid only the amount of its one-time bid, there likely would not be enough participants because of the risk of submitting a bid that is either too high or too low. For these reasons, the Commission should adopt the threshold pricing bid payment system.

**B. Reverse Auction Bids Should not be "Scored."**

Vision opposes the proposal, set forth at Paragraph 42 of the Notice, which would "score" a broadcaster's bid in the reverse auction based on the relevant station's coverage area and population. Note 83 of the Notice incorrectly concludes that selecting bids based on the "price per covered-population basis may promote greater competition among bidders." Vision maintains that the opposite is true and would unnecessarily complicate the auction process, in stark contrast to at least four Commissioners' public comments on this issue.

The stated purpose of the reverse auction is to trade six MHz of spectrum from a television broadcaster to a winning bidder in the forward auction that will use that spectrum for some other purpose. Thus, all that matters to that forward auction bidder is the spectrum itself, not how much population the station served or how large the station's coverage area was,

because those are functions only of the television's license effective radiated power and height of its antenna, not its spectrum.

Except in highly exceptional circumstances involving unforeseeable risk-taking in the auction process, a broadcaster with a relatively weak signal will submit successively lower bids in each round in the reverse auction (assuming the Commission adopts that approach) because that broadcaster understands that its station always was, and will always be, worth less than a station in the same market serving a greater area and more population. Therefore, it is the marketplace that will decide how much a station's spectrum in a given market will be worth in the reverse auction. There is no need to attach a "score" to each bid.

Moreover, if the Commission were to adopt procedures to score each bid, smaller, non-network affiliated broadcasters, who may not be as sophisticated as their larger counterparts, may sit out the auction for fear that the entire process would be too complex. And if smaller broadcasters do not participate, the reverse auction will be doomed, because it is unlikely that larger, more financially-stable broadcasters will participate, no matter how the rules are crafted.

Similarly, a majority of Commissioners have voiced support for a simple and non-cumbersome auction process. Speaking at the Commission's LEARN seminar on October 26, 2012, Commissioner Clyburn stated that the Commission's staff is "trying to remove as many computational challenges from broadcasters who may be interested in relinquishing spectrum." In addition, Commissioner Rosenworcel testified before Congress: "[I]ncentive auctions are undeniably complicated. But at every structural junction, a bias toward simplicity is crucial. Simplicity will allow the market to work and yield the most favorable participation."<sup>5</sup> Commissioner Pai also testified that the Commission must keep its incentive auction rules "as

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<sup>5</sup> Statement of Commissioner Rosenworcel before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives, "Keeping the New Broadband Spectrum Law on Track," Dec. 12, 2012.

simple as possible.”<sup>6</sup> Finally, Commissioner McDowell’s Congressional testimony summarized his approach as seeking “simplicity, humility and regulatory restraint.”<sup>7</sup> With all of this in mind, the Commission should reject as unnecessarily complex the notion of scoring broadcasters’ bids in the reverse auction.

## **II. COMMENTS REGARDING REVERSE AUCTION AND REPACKING**

### **A. All Full-Power Stations Should be Eligible to Participate in the Reverse Auction and Protected in the Repacking Process.**

Paragraph 77 of the Notice asked for comment on the Commission’s tentative conclusion that an entity holding an original construction permit for a full power television station as of February 22, 2012 (the date of enactment of the Spectrum Act) would be eligible to participate in the reverse auction, if that entity obtains a license by the commencement of the auction process. In footnote 109 of the Notice, the Commission clarified that in order to participate in the reverse auction, the permittee would have to obtain a license for the station by the date on which it submits its pre-auction “short form” application.

As for “repacking,” Paragraph 114 of the Notice proposed to protect the facilities authorized in construction permits for unbuilt, new full-power television stations, also as of February 22, 2012. Paragraph 113 of the Notice explained that a station “protected” during the repacking process means that the Commission would preserve its coverage area and population served.

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<sup>6</sup> Statement of Commissioner Pai before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives, “Keeping the New Broadband Spectrum Law on Track,” Dec. 12, 2012.

<sup>7</sup> Statement of Commissioner McDowell before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives, “Keeping the New Broadband Spectrum Law on Track,” Dec. 12, 2012.

Vision supports the Commission's tentative conclusions set forth in Paragraphs 77 and 114. With respect to eligibility to participate in the reverse auction, there is at least one situation in which the Media Bureau has granted a construction permit and the permittee timely filed an application for a license to cover the permit on FCC Form 302-DTV, but the Media Bureau has not yet granted that application (or program test authority to allow broadcasting to commence) because the entity has not acquired certain equipment that the Bureau informally has advised must be installed before it will grant the pending application. Footnote 111 of the Notice indicates that there are three outstanding construction permits that fall into this category, but the Bureau's Consolidated Database System indicates that there may be several others. In general, in cases where the Bureau has not formally issued a letter establishing a deadline for responding to its directive, the application for license to cover will remain pending until the permittee takes action, so usually there is no urgency for the permittee to act.

However, because of the Commission's interest in identifying broadcast spectrum that will be made available to parties in the forward auction, Vision recognizes that there is a need to establish procedures governing the class of entities holding construction permits for full-power stations – but not licenses – as of February 22, 2012. The Commission's recommended approach would allow each permittee in this class sufficient time to complete its buildout process prior to the auction, so that it then can make an informed decision regarding whether to participate in the reverse auction. Proceeding in this manner strikes an appropriate balance of the goals set forth in the Spectrum Act, which states that the reverse auction shall be held to determine “the amount of compensation that each broadcast television *licensee* would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to *make*

*spectrum available for assignment through a system of competitive bidding* under” the Communications Act.<sup>8</sup>

Thus, allowing a full power television permittee until sometime in 2014 – when the reverse auction is due to begin – to complete construction of its facilities and obtain a license satisfies the first goal of ensuring that “licensees” are able to participate in the reverse auction. It also satisfies the second goal of making available as much spectrum as possible to bidders in the forward auction.

For similar reasons, Vision supports the Commission’s proposal to protect, in the repacking process, facilities authorized by construction permits for unbuilt, new full power stations as of February 22, 2012. As stated in Paragraph 114 of the Notice, because there are only a few broadcasters that have obtained construction permits for full-power stations as of that date but have not yet obtained licenses to cover those permits, protecting them in the repacking process will not significantly limit the Commission’s flexibility to administer the reverse or forward auctions. Vision also supports any proposal that would afford protection in the repacking process to as many broadcasters as possible, including, as set forth in Paragraph 116 of the Notice, to those that have initiated rulemaking proceedings to change their channels and hold construction permits for such changes, but have not yet built out the facilities set forth in such outstanding permits.

**B. All Class A Stations Should be Eligible to Participate in the Reverse Auction and Protected in the Repacking Process.**

Vision supports the proposal set forth at Paragraph 80 of the Notice, which would evaluate the reverse auction bid of a digital Class A station licensed after February 22, 2012 based on the station’s licensed facility on the date the reverse auction begins. Similarly, Vision

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<sup>8</sup> Spectrum Act, § 6403(a)(1) (emphasis added).

supports the proposal set forth at Paragraph 115 of the Notice, which would provide flexibility during the repacking process to each digital Class A station by allowing such stations to elect the facilities sought to be protected at some future date, rather than protecting only the Class A's digital facilities licensed as of February 22, 2012. Vision agrees with the Commission's conclusions at Paragraphs 80 and 115 that it would be unfair to existing analog Class A licensees, who made their digital conversion plans in reliance on a previous Commission Order,<sup>9</sup> to (a) prohibit them from participating in the reverse auction or (b) fail to protect their digital facilities during the repacking process. Such measure would be particularly draconian as applied to Class A stations, which often face severe financial constraints preventing the prompt buildout of their digital facilities.

Indeed, Vision recommends taking the additional step of allowing Class A digital *permittees* to participate in the reverse auction. This would enable existing analog Class A stations to avoid the needless expenses associated with converting to digital for a station that may never actually commence broadcasting as a result of the reverse auction. Such an approach would be consistent with the Spectrum Act, which makes Class A "licensees" eligible for the reverse auction and repacking. The Spectrum Act does not define a Class A licensee as a party holding only a digital license. Thus, because the Commission is not constrained by any statutory definition of a Class A licensee, it is free to include analog Class A licensees among the licensees eligible to participate in the reverse auction and the repacking process.

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<sup>9</sup> *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator and Television Booster Station, and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Red 10732 (2011).

### III. COMMENTS REGARDING AUCTION RULES

#### A. In Order for a Broadcaster to Receive Compensation, Only Two Competing Participants are Required Nationwide.

Paragraph 256 of the Notice seeks comment on a vague portion of the Spectrum Act: “[T]he Commission may not enter into an agreement for a licensee to relinquish spectrum usage rights in exchange for a share of auction proceeds...unless...at least two competing licensees participate in the reverse auction.”<sup>10</sup> If this provision is interpreted narrowly, it could mean that a broadcaster seeking to relinquish its spectrum in a given market during the reverse auction would not be compensated unless at least one other station in that market also elected to participate in the reverse auction. That would result in a chilling effect on participation in the reverse auction. Because a broadcaster may withdraw from the reverse auction at any time,<sup>11</sup> if there exists a situation where a broadcaster is the only one in its market willing to relinquish its spectrum, it would have no incentive to participate if it would not be compensated for that participation.

Instead, Section 6403(a)(3) of the Spectrum Act should be interpreted much more broadly, so that a broadcaster participating in the reverse auction may obtain the proceeds therefrom if there are at least two broadcasters *nationwide* electing to participate. The legislative history of the Spectrum Act is silent on this provision. That is, there does not appear to have been any Congressional deliberation on whether the intent was to withhold payment if only one broadcaster in a market participates in the reverse auction (assuming that there is sufficient demand for the relinquished spectrum in the forward auction). In the absence of a clear directive

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<sup>10</sup> 47 U.S.C. § 309(j)(8)(6)(ii); Spectrum Act at ¶ 6402.

<sup>11</sup> Notice at ¶¶ 39 and 46.

from Congress, the Commission is free to interpret intent.<sup>12</sup> In this case, in order to ensure broad participation and a successful reverse auction, the Commission should allow proceeds from the forward auction to flow to the broadcasters, as the providers of the spectrum, if there are at least two broadcasters nationwide that elect to participate in the reverse auction.

**B. Vision Urges the Commission to Establish High Reserve Prices, Particularly in the Spectrum-Congested Border Markets.**

Paragraphs 274-275 of the Notice solicit comment on the factors the Commission should take into account when setting reserve prices for the reverse (and forward) auctions. Vision submits that an important factor to consider with respect to the reverse auction is the ability for participants in the forward auction to acquire nationwide swaths of spectrum so that they can roll-out their services to as many customers as possible, with minimal complications caused by spectrum concerns.

In order to provide nationwide spectrum to a forward auction bidder, the Commission will need to encourage broadcast bidders to participate in the reverse auction. One way to attract broadcast bidders would be to establish high reserve prices (the lowest price paid to a broadcaster for relinquishing its spectrum) in certain key markets, such as those that border Canada and Mexico, where spectrum will be at a premium. Vision understands that there will not be significant demand for spectrum in the forward auction in markets located outside the top 30 or in markets not bordering foreign countries, so high reserve prices will not be necessary in those markets. But the opposite holds true in other markets, such as Buffalo, Seattle, Syracuse, Cleveland, Spokane, Rochester, Watertown, NY and Flint, MI. The National Association of Broadcasters believes those markets will face severe spectrum scarcity following implementation of the Spectrum Act because of international treaty obligations designed to minimize interference

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<sup>12</sup> *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

between Canadian and U.S. cities.<sup>13</sup> The higher the reserve price, the more likely a broadcaster would be willing to participate in the reverse auction. For that reason, the Commission should establish high reserve prices in those markets.

**C. Vision Supports Many of the Commission's Other Proposals Regarding Post-Auction Procedures.**

In general, Vision supports the Commission's proposals that would quickly compensate broadcasters following the end of the incentive auction, as well as those proposals that would more rapidly transition the broadcast spectrum to the winners in the forward auction. To that end, in response to the Commission's request for comment set forth at Paragraph 287 regarding compensation to broadcasters, Vision believes that broadcasters should be compensated as close to the end of the auction as possible. In particular, Vision believes the Commission should provide the relevant payment to the winning bidder in the broadcast auction within 30 days after the broadcaster has notified the Commission of its license surrender. Such a policy would encourage the winners in the reverse auction to vacate their spectrum on the earliest possible date.

At Paragraphs 321 and 325, the Commission sought comment on the deadline for a winning broadcaster in the reverse auction to cease broadcasting. Vision maintains that such winning broadcaster should be allowed to voluntarily cease broadcasting on the station at any time after the Commission has determined by a final, non-appealable Order or Public Notice that the broadcaster has submitted a winning bid. The Commission also should take all actions necessary to provide winning broadcasters with sufficient regulatory flexibility so that they may easily transition their stations either off the air entirely or to new channels as part of channel sharing arrangements. With that in mind, the Commission should not enforce any of its

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<sup>13</sup> See National Association of Broadcasters, "FCC Broadband Plan Threatens Millions of TV Viewers," Press Release, rel. July 25, 2011.

operating rules on such winning broadcasters during the transition, including the rules governing the number of hours per day that a station is required to broadcast<sup>14</sup> and the number of hours per week that a station must broadcast programming aimed at children.<sup>15</sup>

At Paragraphs 338-339 and 345, the Commission sought comment on how broadcasters subject to repacking should be reimbursed – in particular, whether a broadcaster whose station is assigned another channel as part of the repacking process should be reimbursed based on estimated or actual costs. Vision urges the Commission to allow broadcasters to be reimbursed based on estimated costs. This approach would markedly speed the transition from broadcast to other uses on the affected channels because broadcasters, many of whom may be struggling financially, may not have funds available to pay in advance the costs associated with changing their stations' channels. Those costs include engineering studies and new equipment, legal fees and marketing expenses (to make their audiences aware of their new over-the-air channels).

Some broadcasters will not be able to afford these expenses, which could delay the transition. In order to avoid such delays, the Commission could determine well in advance approximately how much each transitioning broadcast station should be reimbursed. First, the Commission could release a Public Notice asking broadcasters to provide cost estimates, along with evidence in support. After receiving comments, the Commission could calculate the amount each station should be reimbursed (perhaps by reducing the cost estimates by ten percent). Each station should be reimbursed the same amount, as there should not be wild fluctuations among stations, even taking into account regional cost-of-doing-business differences. The ten percent “penalty” would discourage wasteful spending by broadcasters and prevent broadcasters from receiving a windfall resulting from the repacking process.

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<sup>14</sup> 47 C.F.R. § 73.1740.

<sup>15</sup> 47 C.F.R. § 73.671.

On the other hand, broadcasters would derive an enormous benefit from receiving the reimbursement funds in advance, as they would be able to budget their expenditures accordingly. Moreover, broadcasters would not have to account for every dollar spent, and the Commission staff would not have to pore over every receipt in order to audit each broadcaster's expenses, thereby drastically reducing the Commission's administrative costs. This would also be a win for the successful bidders in the forward auction and their potential new customers, as the broadcast spectrum would be cleared much more quickly. In the event the total eligible relocation costs exceed the statutory limit of \$1.75 billion,<sup>16</sup> Vision supports prioritizing requests on a first-come, first-served basis. The earlier that a broadcaster submits a completed reimbursement form, the earlier its request will be processed.

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<sup>16</sup> Notice at ¶ 336; Spectrum Act at § 6403(d).

#### **IV. CONCLUSION**

As set forth herein, Vision believes that the Commission should interpret the Spectrum Act to encourage participation in the reverse auction by as many broadcast licensees as possible. To reach that goal, the Commission should adopt simple procedures designed to make the reverse auction accessible and the repacking process operate smoothly.

Respectfully submitted,

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