Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF THE
EXPANDING OPPORTUNITIES FOR BROADCASTERS COALITION

Preston Padden
Executive Director

Expanding Opportunities for
Broadcasters Coalition

1301 Canyon Blvd #306
Boulder, Colorado 80302
(202) 329-4750
ppadden@broadcastcoalition.org

January 23, 2012

EXECUTIVE SUMMARY

The Commission initiated this proceeding to implement procedures for an incentive auction consistent with the goals set forth in the *National Broadband Plan* and reaffirmed by Congress in the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act"). In granting the agency authority to conduct an incentive auction, Congress was driven by two paramount goals: (1) the reallocation of at least 120 MHz of spectrum from broadcast use to mobile broadband use; and (2) the generation of surplus revenues that can be allocated to constructing a national public safety broadband network and deficit reduction.

The Expanding Opportunities for Broadcasters Coalition (the "Coalition") consists of broadcasters who recognize the potential value of participating in an incentive auction and are committed to working with the FCC to develop rules that will encourage broadcaster participation and thereby facilitate the auction's success. The Coalition not only believes that the Commission ***should*** reallocate 120 MHz of broadcast spectrum for wireless broadband; the Coalition believes that the FCC ***can***. The Coalition not only believes that the Commission ***should*** raise billions of dollars in surplus funds for the construction of a national public safety broadband network; the Coalition believes that the FCC ***can***. And, the Coalition not only believes that the Commission ***should*** raise additional funds for deficit reduction; the Coalition believes that the FCC ***can***. Considering the nearly forty (40) major market stations already represented by the Coalition (in addition to likely future additions to the Coalition) as well as other commercial and public television stations that are interested in selling their spectrum, the Coalition believes that these Congressional public policy goals are attainable.

As both Congress and the FCC have reiterated, however, participation in the reverse auction is entirely voluntary. It follows that the incentive auction cannot succeed unless the

Commission adopts rules designed to facilitate widespread broadcaster participation, especially in the largest markets. In most markets, the FCC can assemble 120 MHz of broadcast spectrum without buying out any stations. But the value of that spectrum will be dramatically diminished if it is not part of a continuous 120 MHz nationwide allocation that includes the major markets. As a result, the payments to broadcasters in the very biggest markets are the key to unlocking the value of the spectrum assembled in most of the country through repacking.

The rules adopted in this proceeding will greatly influence whether broadcasters with stations located in major markets—including the members of the Coalition—will help bring the goals of the *National Broadband Plan* and the Spectrum Act to fruition. As an initial matter, it is critical that the reverse auction procedures are designed to permit broadcasters to recognize the market value for any spectrum rights they choose to relinquish. This entails both encouraging price discovery through a descending clock auction and enticing broadcaster interest by offering high initial bid amounts and allowing the auction mechanism to identify actual market prices. This also requires resisting the urge to place any constraints upon the forward auction that will have the effect of limiting the amount of revenue available to compensate broadcasters, cover auction and relocation expenses, and fund a national public safety broadband network.

Additionally, the Commission must adopt procedures that are simple enough not to discourage participation by even the most unsophisticated broadcasters but nuanced enough to account for the many variables inherent in the incentive auction process. This means not overcomplicating the auction with myriad bidding options and complex scoring formulas. It also means aiding interested broadcasters rather than erecting barriers to their participation, such as by accommodating applications for construction permits filed before February 22, 2012 and accommodating stations interested in channel sharing.

The spectrum allocation goals set forth by the Commission and affirmed by Congress are aggressive, but wholly attainable. The Coalition and its members believe that adherence to the recommendations contained herein will enable the FCC to obtain the widespread broadcaster participation that is critical to achieving those goals.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF THE
<u>EXPANDING OPPORTUNITIES FOR BROADCASTERS COALITION</u>

The Expanding Opportunities for Broadcasters Coalition (the "Coalition") is composed of broadcasters who together currently own, are proposed assignees, or have rights to acquire thirty-nine (39) television stations in many of the country's largest metropolitan areas, including eight of the ten largest television markets.[1] Coalition members recognize the potential benefit that could come from a successful incentive auction and, accordingly, are dedicated to working with the FCC to develop rules and procedures that will facilitate the auction's success. The members of the Coalition intend to participate in the reverse auction – provided that the rules adopted by the Commission are fair and allow broadcasters to recognize the true market value of their spectrum.

I. <u>INTRODUCTION</u>

The Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act") established a mechanism for the FCC to conduct an incentive auction of broadcast spectrum, as

[1] Pursuant to the Public Notice issued on December 18, 2012 (DA 12-2040), these comments represent the views of a coalition of broadcasters who desire to remain anonymous at this time. The coalition's name and mailing address are provided in accordance with Section 1.419 of the Commission's rules. *See* 47 C.F.R. § 1.419(d).

proposed in the *National Broadband Plan*.[2] Never before had Congress permitted the FCC to share the proceeds of a spectrum auction with an existing Commission licensee. In granting the agency this unprecedented authority, Congress sought to achieve two primary goals: (1) the transfer of *at least* 120 MHz of spectrum for mobile broadband use to alleviate capacity concerns; and (2) the generation of substantial revenue that could be used for purposes including the funding of a national broadband public safety network and deficit reduction.[3]

Of course, realizing Congress's goals hinges upon the completion of a successful incentive auction, where an indispensable component is participation by willing sellers. In too many markets, including those where demand for wireless spectrum is the greatest, repacking alone simply cannot clear sufficient channels to achieve a meaningful transfer of spectrum. Indeed, absent participation by willing sellers, several critical markets could have a complete dearth of available spectrum in the 600 MHz band. Accordingly, if the Commission wants to fulfill Congressional expectations and transfer at least 120 MHz for mobile broadband use while also generating surplus revenue for a national public safety broadband network and deficit reduction, it must craft rules and procedures that encourage participation by willing sellers, including the members of the Coalition.

The Notice of Proposed Rulemaking ("*NPRM*")[4] represents the first step by the Commission to implement the Spectrum Act and facilitate the reallocation of broadcast television spectrum for mobile broadband use. The Coalition commends the FCC for its

---

2 Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 §§ 6401 et seq., 125 Stat. 156 (2012).

3 *See, e.g.*, 158 Cong. Rec. H915 (daily ed. Feb. 17, 2012) (describing purpose of legislation: "to ease the nation's growing spectrum shortage, create a nationwide, interoperable broadband network for public safety officials, and raise $15 billion").

4 *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012) ("*NPRM*").

willingness to pursue a first-of-its-kind incentive auction. At the same time, the Coalition urges the agency to be cognizant that it only has one opportunity to conduct a broadcast incentive auction pursuant to Section 6403, which provides the best opportunity to quickly and efficiently repurpose broadcast spectrum for broadband use. It therefore is imperative that the Commission act swiftly, but also cautiously, to develop auction rules and procedures that will result in the transfer of all necessary spectrum to establish a meaningful and valuable 600 MHz wireless band while minimizing the number of potential hurdles that could undermine the Commission's ability to achieve its spectrum reallocation goals.

The incentive auction proposed in the *NPRM* consists of three interdependent components: a reverse auction to reclaim spectrum in the broadcast bands, a forward auction of the available 600 MHz spectrum, and a repacking of remaining broadcasters. The first component of this regulatory trilogy—the reverse auction to reclaim broadcast spectrum—is a necessary foundation upon which the other phases of the reverse auction must be built. Absent an ample supply of sought-after spectrum (including, in particular, spectrum in the 15-20 markets where wireless demand is the greatest), this foundation will collapse and the incentive auction will fail. Accordingly, as the Commission properly has recognized on several occasions, the participation of willing broadcasters is essential to the incentive auction's success.[5]

---

[5] *See*, *e.g.*, Gary Epstein, Chairman of FCC Incentive Auction Task Force, Overview and Guiding Principles of the *NPRM* , Overview of the Incentive Auction 7 (Oct 26, 2012) ("FCC seeks to *maximize participation*" (emphasis in original)), *available at* http://transition fcc.gov/presentations/10262012/LEARN-Workshop-10262012.pdf; Statement of Chairman Julius Genachowski, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, FCC 12-118, GN Docket No. 12-268 (rel. Oct. 2, 2012) (establishing goal of "[m]aximizing broadcaster participation in the auction"), *available at* http://hraunfoss fcc.gov/edocs_public/attachmatch/FCC-12-118A3.pdf; Julius Genachowski, Chairman, Federal Communications Commission, Prepared Remarks at NAB Show 2011 (Apr. 12, 2011) ("No matter what happens in the marketplace, the only thing that can address the growing overall demand for mobile is increasing the overall supply of spectrum and the efficiency of its use."); Federal Communications Commission, Connecting America: The National Broadband Plan 90 (2011) ("*National Broadband Plan*") (incentives necessary to "facilitate movement of spectrum to flexible broadband use").

The Coalition believes that the Commission must follow two guiding principles to ensure sufficient broadcaster participation in the reverse auction:

- *First*, the FCC must design the reverse auction such that broadcasters will receive the market value of any spectrum that they relinquish – an amount that corresponds to the value of the spectrum being offered, not the value of the station operating on that spectrum. A station's enterprise value has no correlation to the value of recovering spectrum rights and it is those spectrum rights, not any broadcast operations, that the Commission is seeking to reallocate through the incentive auction. Given the voluntary nature of the reverse auction, which the Coalition fully supports, broadcasters will only relinquish their spectrum if the available price fulfills their expectations. Accordingly, to attract a sufficient number of bidders—and, therefore, to generate ample spectrum for mobile broadband use—it is essential for the Commission to establish initial bid prices that exceed the expectations of potential sellers. The incentive auction mechanism then will identify an efficient price for the offered spectrum, obviating the need for the agency to artificially limit the initial amounts offered.

- *Second*, the agency must not impose any unnecessary or onerous conditions that will impede the ability of broadcasters or wireless service providers to voluntarily participate in the auction.

In developing the auction rules, the Commission can choose to pursue one of two paths. It could seek to tilt the scales of the free market that is inherent in the auction process, thereby disrupting the natural flow of the auction and ultimately placing in jeopardy its ability to repurpose any broadcast spectrum, much less fund a national broadband public safety network or contribute to debt reduction. Or, it could follow the basic free market principles described herein, as it generally proposes in the *NPRM*, thereby increasing the likelihood that the incentive auction will be an unmitigated success and a model for future spectrum reallocation.

II. THE COMMISSION SHOULD ENSURE THAT BROADCASTERS CAN REASONABLY EXPECT TO RECEIVE MARKET VALUE FOR THEIR SPECTRUM

The most important determinant of whether broadcasters voluntarily will participate in the reverse auction—and therefore that at least 120 MHz will be available for mobile broadband use—is the value that broadcasters can expect to receive in exchange for relinquishing their spectrum. If the Commission can offer values sufficient to generate meaningful participation by willing broadcasters in those markets where the need for spectrum is the greatest, the other elements of the auction will fall into place. A "light touch" approach that allows market forces to work with minimal constraints will encourage broadcasters to explore whether the market will sustain a price at which they are willing to relinquish their spectrum. These market conditions, not the FCC, are best equipped to determine the equilibrium between reverse auction supply and forward auction demand. Conversely, placing unnecessary and onerous conditions on the auction that could reduce broadcasters' potential reverse auction proceeds will discourage participation and increase the likelihood that the incentive auction will fail.

A. A Descending Clock Auction With Intra-Round Bidding Would Provide The Most Effective Mechanism To Offer Broadcasters Market Value For Their Spectrum.

For the Commission to provide broadcasters with the market value for their spectrum, it must first establish a mechanism that will both attract broad reverse auction participation and identify the market value of the spectrum at play.[6] In the *NPRM*, the Commission presents two options for how to collect bids from broadcasters in the reverse auction: a single sealed bid

---

6 *See* Declaration of Jeffrey A. Eisenach ¶ 13 (attached hereto as **Exhibit A**) ("Eisenach Decl.").

approach or a multiple dynamic bid approach.[7] The Coalition supports a multiple dynamic bid approach, such as the descending clock auction described in the expert report attached to the *NPRM*.[8] A descending clock auction is preferable to a single sealed bid for two reasons.

First, a descending clock auction will provide the certainty to broadcasters that will be necessary to maximize participation. In a single sealed bid auction, broadcasters not only would need to determine the minimum price at which they would relinquish their spectrum, but also the higher price at which they could maximize the amount received without bidding themselves out of the auction. Determining this specific amount will be difficult, especially given that this is the first incentive auction of its kind. As a result, many broadcasters may not be able to overcome inertia and will instead choose to observe from the sidelines rather than submit to the uncertainty. Those broadcasters who do choose to participate in a single sealed bid auction will experience higher transaction costs (the specter of which may further discourage participation, especially among licensees who do not believe their bids are likely to be accepted) to retain experts who can help identify the proper bid. A descending clock auction will remove this uncertainty by shifting to the Commission the burden of establishing prices and leaving broadcasters only to decide whether to accept or to decline.[9]

Second, as described in further detail below, a descending clock auction could increase participation by attracting the interest of broadcasters who assumed that their asking price would be too high. Even if some of these broadcasters ultimately are correct, the participation of additional stations in the initial rounds will increase the likelihood that those broadcasters will relinquish their spectrum, thus helping to fulfill Congress' expectations.

---

[7] *NPRM* ¶¶ 38-40.

[8] *See* Paul Milgrom, Lawrence Ausubel, Jon Levin, Ilya Segal, *Incentive Auction Rules Option and Discussion*, *NPRM* App. C (Sept. 12, 2012) ("MALS Integrated Auction Proposal").

[9] *See* Eisenach Decl. ¶ 21.

The *NPRM* asks whether, if the FCC adopts a multiple dynamic bid approach, it should permit broadcasters to submit "proxy bids" in advance indicating the minimum payment that they would be willing to accept.[10] The prospect of the Commission asking broadcasters to disclose their minimum tender price in a competitive bidding process (even if such disclosure is purportedly confidential) will only breed great concern and distrust among the already skeptical broadcast community, thereby discouraging reverse auction participation. The Coalition strongly encourages the agency not to create the associated paranoia that proxy bidding will bring. Even providing the option of proxy bidding will add a needless level of complexity to the auction process and undercut the flexibility of broadcasters to make decisions in real time during the auction. As a practical matter, because most broadcasters will want to retain the flexibility to adjust their bids as the auction progresses, the Coalition does not believe that many broadcasters would voluntarily elect to submit proxy bids. Therefore, given the many other complex auction-related issues that the agency must address, it would not be an efficient use of the FCC's scarce resources to develop and incorporate proxy bidding into the auction rules.

The Commission should, however, incorporate an intra-round bidding option similar to that presented in the MALS Integrated Auction Proposal.[11] Intra-round bidding will enable the FCC to establish high initial offer values while implementing large decrements in subsequent rounds, thereby minimizing the total number of rounds for the reverse auction.[12] Absent intra-round bidding, if a broadcaster's reserve price is somewhere between the start- and end-of round prices, that broadcaster will decline the offer and its spectrum will not become available in the forward auction. With intra-round bidding, however, the broadcaster can reject the FCC's offer,

---

[10] *NPRM* ¶¶ 39-40.

[11] MALS Integrated Auction Proposal at 11.

[12] *See* Eisenach Decl. ¶ 25.

but specify the price between the start- and end-round prices that it would accept. The agency could then evaluate the intra-round bid to determine whether it could be accepted consistent with the closing conditions and whether accepting the bid would increase the amount of spectrum available for reallocation. If yes, then accepting the intra-round bid would fulfill Congress' expectations. Otherwise, the FCC could reject the offer and the broadcaster would be out of the auction, just as it would have been without intra-round bidding.

B. Opening Reverse Auction Bids Should Be Set At A Rate That Will Encourage Broad Participation From Broadcasters.

The Coalition recognizes that a descending clock auction must start with an initial offer, which, in the absence of other factors, is effectively a reserve price. With respect to such offers, the Coalition believes that the only way to unleash the value envisioned by Congress in the Spectrum Act and to maximize the spectrum converted from broadcast services to mobile broadband use (at least 120 MHz) is to adopt a pricing mechanism that is designed to induce broad broadcaster participation.[13] Just as the Commission typically sets reserve prices in forward auctions sufficiently low to attract maximum participation and to ascertain the actual market price,[14] so too must the Commission adopt an initial price for the reverse auction that is sufficiently high to determine the price at which broadcasters would be willing to relinquish their spectrum.

In establishing initial bid prices, the Commission must recognize that, consistent with the closing conditions, in the most severely spectrum-constrained markets it not only can but must

---

13 *See id*. ¶¶ 23-24.

14 *See, e.g. Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008 (Auction 78),* Public Notice, AU Docket No. 08-46, DA 08-1090 ¶¶ 191-197 (rel. May 16, 2008) (not establishing reserve prices and reserving discretion to lower minimum bids); *Auction of 700 MHz Bank Licenses Schedule for January 24, 2008 (Auctions 73 and 76),* Public Notice, AU Docket No. 07-157, DA 07-4171 ¶ 199 (rel. Oct. 5, 2007) ("the Bureau proposed reserve prices intended to represent a likely low end of the licenses' potential value, in order to assure that the public recovers a portion of the value of the public spectrum resource").

offer to compensate broadcasters at an amount equal to or even in excess of the full forward auction value of the spectrum in that market. In most markets, the agency will have no problem assembling at least 120 MHz of broadcast spectrum without buying out any stations. But the value of that spectrum will dramatically increase if the spectrum is part of a continuous 120 MHz nationwide allocation that includes the major markets. As a result, the FCC must establish initial payments in the very largest markets sufficient to attract broad participation, even if this requires exceeding the anticipated forward auction value in those markets. The spectrum relinquished in the largest markets as a result of this approach will allow the FCC to unlock the value of spectrum assembled in the rest of the country through repacking alone, resulting in the greatest reallocation of spectrum for mobile broadband use and the largest surplus to fund the public safety broadband network and deficit reduction.

In fact, given the nature of the descending clock auction, the only way that the Commission can err is by selecting initial prices that are too low. As recognized in the MALS Integrated Auction Proposal, if the FCC does not offer prices that meet the expectations of willing broadcasters, the result would be reduced participation by broadcasters and a curtailment of the amount of spectrum available for mobile broadband use as well as the surplus funding available for the construction of a nationwide public safety broadband network.[15] On the other hand, there is no risk of setting the initial offer price too high. As recognized in the *NPRM*, the Spectrum Act already establishes a ceiling for reverse auction prices, given that the total forward auction revenues must exceed all payments to broadcasters, costs of administering the auction, and costs of the broadcaster relocation fund.[16] By offering initial bids designed to attract maximum participation, then, the agency would identify the maximum amount of spectrum that

[15] *See* MALS Integrated Auction Proposal at 13.

[16] *See NPRM* ¶ 275.

it could clear consistent with the closing conditions. In those markets where the supply of spectrum exceeds the Commission's clearing target, the price offered would decline in subsequent rounds until the proper market price is identified.

As a further backstop against the possibility that the auction could be hindered by setting the initial prices too low, the Coalition supports extending the intra-round bidding concept to the initial prices, enabling a reverse auction participant choosing to reject the initial offer to specify the price that it would accept. This would strengthen the FCC's ability to fulfill Congress' expectations by allowing the agency to analyze whether it can repurpose additional spectrum for mobile broadband services consistent with the closing conditions.[17] If it could, then the Commission would accept the offers. Otherwise, the initial intra-round bids would be rejected, and the agency would be in no worse a position than if the willing broadcasters had just rejected the initial bid.

C. Winning Bids Should Be Based On The Threshold Amount.

The *NPRM* asks whether winning bid amounts should be based on: (1) the actual amount bid; or (2) the threshold price (*e.g.*, the highest amount the broadcaster could have bid and still had its bid accepted).[18] The Coalition supports the threshold price structure, which better accounts for the difficulty of establishing a value for broadcast spectrum *ex ante* and which seems implicit in the way the FCC has described its descending clock auction mechanism.[19] An actual price structure will almost certainly cause some broadcasters to withdraw from the auction before reaching their reserve price out of fear that they will receive less than market value by accepting a lower bid. As a result, there will be less spectrum reclaimed in the reverse auction

---

17 *See* Eisenach Decl. ¶ 26.

18 *NPRM* ¶¶ 51-52.

19 *See* Eisenach Decl. ¶ 19.

or, if this behavior is widespread, the Commission may actually pay a higher price for the bids that it does accept.[20] Threshold bidding will remove this fear, leading broadcasters to openly bid down to their actual reserve price while avoiding the perception that the Commission is unfairly taking advantage of station owners who lack the sophistication to accurately value their spectrum.

D. The Commission Should Take All Steps To Ensure That Artificial Constraints On The Forward Auction Do Not Impede Reverse Auction Values.

In the *NPRM*, the Commission asks how the forward and reverse auctions should be staged to ensure that relevant information is available to both sides.[21] The Coalition believes that the reverse and forward auctions should be conducted simultaneously to enhance the information available to participants about the supply and demand on each side of the incentive auction.[22] Additionally, the Coalition believes the agency can take additional steps in this proceeding that will advance the FCC's goal of converting the maximum amount of spectrum from broadcast use to mobile broadband use.

The Coalition proposes that the FCC select a high provisional starting point for the amount of spectrum to be reclaimed in the auction of no less than the 120 MHz identified in the National Broadband Plan.[23] Under the MALS Integrated Auction Proposal, clearing targets must descend over the course of the auction,[24] so it is imperative that the Commission start with

[20] In either instance – the auction of a less than efficient amount of spectrum or the Commission paying more than the market value of the spectrum that it does reclaim – the auction will yield a lower amount of revenue and thus have a smaller surplus to fund construction of a public safety broadband network and deficit reduction.

[21] *NPRM* ¶¶ 66-68.

[22] *See* Eisenach Decl. ¶ 16.

[23] The Commission should not necessarily limit its provisional starting point to 120 MHz if additional broadcast spectrum can be reallocated consistent with the closing conditions. Fulfilling the goal identified in the *National Broadband Plan* of reallocating 120 MHz may require the Commission to reclaim more than 120 MHz to account for guard bands and duplex gaps.

[24] *See* MALS Integrated Auction Proposal at 3, 7, 11.

the highest amount of spectrum that it believes could be reallocated and allow market forces to dictate the final results. In the *National Broadband Plan*, the agency recognized that without responding to the rapid growth in demand for wireless spectrum, "scarcity of mobile broadband could mean higher prices, poor service quality, an inability for the U.S. to compete internationally, depressed demand and, ultimately, a drag on innovation."[25] Accordingly, the *National Broadband Plan* recommended reallocating at least 120 MHz from the broadcast television bands for mobile broadband services,[26] a figure relied upon by Congress in its passage of the Spectrum Act.[27] The Coalition believes that under the right conditions, participation from broadcasters, including the major market stations already represented by the Coalition, will make this goal attainable. If nothing else, because the Commission will not know if it can clear 120 MHz until it tries, it should, consistent with Congressional expectations, establish an initial clearing goal of at least 120 MHz and only lower this goal if the target cannot be met consistent with the auction closing conditions.

The Coalition urges the Commission not to impose any closing conditions beyond those specified in the Spectrum Act.[28] The Coalition supports measuring closing conditions on a national basis, not through sub-auctions for specific markets. This is clearly what Congress directed when it required that forward auction revenues exceed "the *total* amount of compensation that the Commission must pay successful bidders in the reverse auction," in

---

25 *National Broadband Plan* at 77.

26 *Id.* at 88-89.

27 *See* U.S. Gov't Accountability Office, GAO 12-118, Commercial Spectrum: Plans and Actions to Meet Future Needs, Including Continued Use of Auctions 20, 22, 28 (2011); 158 Cong. Rec. S888 (daily ed. Feb. 17, 2012) (statement of Sen. Jay Rockefeller) (noting that the incentive auction "will help meet the growing spectrum demands of smartphones and tablets"); 158 Cong. Rec. S890 (daily ed. Feb. 17, 2012) (statement of Sen. Carl Levin) (incentive auctions should "entice broadcasters to sell some of their unused or underused spectrum to free up spectrum to meet growing demand for wireless broadband technologies").

28 *See NPRM* ¶ 61.

addition to other costs.[29] This approach also will provide the greatest likelihood of clearing ample spectrum in some of the largest, most spectrum-constrained markets, where payments to broadcasters may need to exceed the forward auction value. In a well-designed auction, the FCC will be able to recoup the costs of clearing spectrum in what likely will be no more than 15-20 markets through the revenues that it will collect from the nationwide forward auction, while still having a substantial surplus to fund the national public safety broadband network and for deficit reduction. Accordingly, there is no need for more stringent closing conditions than those specified in the Spectrum Act.

The Coalition supports a non-uniform band plan that recognizes that the same amount of spectrum will not be cleared nationwide.[30] The band plan should not serve as an obstacle to clearing spectrum that could otherwise be reallocated given broadcast and wireless carrier interest. The Coalition stresses that any approach should maximize the amount of reclaimed spectrum in the largest markets to ensure a successful forward auction and a vibrant 600 MHz ecosystem nationwide.[31]

The Coalition strongly opposes any efforts to exclude or otherwise restrict any wireless providers from participating in the forward auction.[32] Simple truths can be stated succinctly. The potentially willing broadcast sellers, upon whom the FCC must rely for the success of the incentive auction, strongly and sincerely believe that the following would be the nearly certain consequences of restricting Verizon and/or AT&T from participating in the forward auction

---

[29] Spectrum Act § 6403(c)(2)(B).

[30] *See NPRM* ¶¶ 131-43.

[31] *See* Eisenach Decl. ¶ 18.

[32] *See NPRM* ¶¶ 381-84.

(including any requirement that they divest other spectrum as a condition of closing on spectrum purchased in the incentive auction):

- *First*, the auction will not produce the revenues necessary to meet the expectations of the potentially willing broadcast sellers;
- *Second*, the auction will fail;
- *Third*, there will be no new spectrum allocated for consumer use of wireless devices;
- *Fourth*, there will be no surplus to fund an interoperable network for public safety first responders; and
- *Fifth*, there will be no surplus for deficit reduction.[33]

The Coalition offers these observations as an independent assessment. No wireless carrier is a member of our Coalition. No wireless carrier has contributed a single penny to our Coalition. There will be many other opportunities, in other contexts and in other proceedings, to address concerns regarding concentration of wireless spectrum ownership. But there will be only one opportunity to conduct a broadcast incentive auction under Section 6403 of the Spectrum Act.

III. THE REVERSE AUCTION STRUCTURE SHOULD REFLECT THE COMMISSION'S DESIRE TO MAXIMIZE THE AMOUNT OF SPECTRUM AVAILABLE FOR MOBILE BROADBAND USE

Beyond price, the design of the reverse auction also will influence whether broadcasters choose to participate in the incentive auction. Although auctions have become commonplace in the wireless sector, the two-sided auction proposed in the *NPRM* is unprecedented. For many broadcasters, the novel nature of the incentive auction makes it difficult to determine whether and at what price to relinquish, modify, or share their most important asset and therefore raises

---

33 *See* Eisenach Decl. ¶¶ 30-42.

the costs of participating in the incentive auction. With this in mind, the Commission should adopt auction rules and procedures that provide broadcasters with the utmost flexibility and that will entice the maximum number of willing broadcasters to participate.

A. The Commission Should Not Impose Any Restrictions Upon Reverse Auction Eligibility Beyond Those Required In the Spectrum Act.

The incentive auction cannot succeed unless a sufficient number of broadcasters—especially those in the 15-20 most spectrum-constrained markets—volunteer to relinquish their spectrum through the reverse auction.[34] To ensure that enough broadcasters participate, the FCC should allow all broadcasters permitted by law to enter the incentive auction. Any artificial restrictions on the eligibility of participants will further complicate the repacking and the subsequent forward auction, potentially jeopardizing the success of the auction.

The *NPRM* proposes to make all full power and Class A broadcast television stations, including commercial and noncommercial stations, eligible to participate in the reverse auction.[35] The Coalition supports this proposal as being fully consistent with the Spectrum Act and Congressional intent. However, the Coalition believes that the FCC's proposal to further restrict participation is unnecessary, arbitrary, and would artificially limit the number of potential reverse auction participants.

The *NPRM* proposes to "entertain bids to relinquish only the spectrum usage rights associated with the license held by such stations as of February 22, 2012."[36] This would arbitrarily restrict the number of stations eligible to participate in the incentive auction by excluding stations whose applications for construction permits were still pending as of that date

[34] *See National Broadband Plan* at 88 ("Reallocation would focus primarily on the major markets where the broadcast TV bands are most congested and the need for additional spectrum for broadband use will be greatest.").

[35] *See NPRM* ¶ 73.

[36] *Id.* ¶ 79.

as well as stations whose construction permits had been granted but that had not yet filed a license to cover. This is an overly restrictive interpretation of the Spectrum Act that would penalize stations based on a deadline for which no advance warning was provided and, in many cases, for circumstances beyond their control. For example, the proposal would restrict the participation of a licensee that filed an application for a construction permit months, or even years, before the proposed deadline, but which application could not be granted until the Commission received concurrence from authorities in Canada or Mexico. Similarly, the proposal would restrict the participation of a licensee whose construction permit was granted before the proposed deadline, but who faced technical obstacles (such as interference) that prevented it from filing a license to cover.

There is no statutory requirement to so limit auction participation, as the Commission recognizes in proposing a more flexible standard for Class A stations that have yet to complete their digital transition.[37] The Coalition believes this is the right approach for analog Class A stations and encourages the agency to adopt a similarly flexible approach for all stations by determining auction eligibility based on the date the application for a construction permit was filed rather than the date of grant or license. This approach accounts for factors beyond a licensee's control and will encourage maximum participation in the reverse auction while at the same time establishing an appropriate limit on what facilities modifications will be incorporated into the reverse auction.

[37] *Id.* ¶ 80 (proposing "to 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 of commencement of the reverse auction process").

B. Reverse Auction Participants Should Have Flexibility to Bid On Different Exit Options in Each Round of a Descending Clock Auction.

Although there are myriad possibilities for how broadcasters can relinquish spectrum in a reverse auction, Congress chose to include three specific options in the Spectrum Act: license termination, channel sharing, and accepting a VHF channel for a licensee's existing UHF allocation.[38] The Coalition opposes the addition of any bid options beyond those contemplated by Congress. In establishing three bid options for broadcasters, Congress appropriately balanced the utility of providing flexible bid options in furtherance of its goal of reallocating at least 120 MHz for mobile broadband use against the risk of overcomplicating the reverse auction and undermining those efforts. Adopting additional bid options beyond those enumerated in the Spectrum Act would disrupt this careful balance.

Specifically, the Commission must not adopt the proposal in the *NPRM* to allow broadcasters to submit a bid to accept additional interference.[39] This option would counteract the agency's efforts to simplify the auction process for even the most unsophisticated broadcasters. Allowing broadcasters to submit bids to accept additional interference would add an unnecessary layer of complexity, requiring the Commission to determine how to calculate the amount of additional interference, how to value such interference, and how to incorporate bids for additional interference into the repacking model. Broadcasters, meanwhile, would need to determine how much additional interference they would be willing to tolerate and the value to them of accepting this additional interference. The difficulty of making these determinations is magnified by the fact that not all interference is equal; rather, the location of any additional interference could be a substantial factor in determining how a broadcaster values the

---

[38] *See* Spectrum Act § 6403(a)(2).

[39] *See NPRM* ¶ 87.

interference or whether it is willing to accept such interference at all. The Coalition simply does not believe that the benefit of adding this option could possibly justify the additional complexity that it will impose upon the reverse auction.

Whatever bid options the FCC ultimately adopts, the auction rules should provide sufficient flexibility for a broadcaster to choose, at each round of the auction, from among the available options, as a broadcaster may be willing to exit at one price point but to channel share or move to VHF at a different price point.[40] Because each of these options would provide additional UHF spectrum that the Commission could include in the forward auction, identifying the price at which a broadcaster would choose each option will help facilitate a successful auction.

C. The Commission Should Not Discriminate Among Stations Participating in a Reverse Auction.

The Commission asks whether bids should be "scored" to reflect different service areas and populations served by different stations.[41] It is not clear from the *NPRM*, however, what scoring parameters the agency proposes to use, making it difficult for the Coalition to evaluate this proposal. The Commission appears to consider two types of scoring mechanisms: one based on a station's importance to the success of the incentive auction (*i.e.*, the geographic area served by the station) and the other based on the station's enterprise value. As a general matter, the Coalition believes that scoring bids is inconsistent with the FCC's goal of maximizing the amount of spectrum available for wireless use in the forward auction. Scoring bids will

---

[40] *See* MALS Integrated Auction Proposal at 8-9.

[41] *NPRM* ¶ 42.

discourage participation by complicating the auction process, making it more difficult for broadcasters to assess the value of their spectrum.[42]

If the Commission does choose to score bids, the only scoring should be based on a station's impact on clearing a market for mobile broadband services. The preclusionary effect that a station may have on the agency's ability to reallocate broadcast spectrum is the only consideration relevant to the goals of the incentive auction and therefore the value of the spectrum.[43] Under no circumstances should the Commission score bids based on a model of a station's operating or broadcast enterprise value. A station's present operating value is not relevant to the FCC's goals and may bear no correlation to the value the broadcaster places on relinquishing its spectrum rights.[44] Scoring stations based on their broadcast enterprise value would be inconsistent with the auction goals by placing a lower value on those stations that are most likely to participate in the auction even though such stations are equally important to the agency's ability to free up spectrum for mobile broadband services.

Nor should the Commission adopt the proposal in the *NPRM* to utilize cost per population,[45] as this is based on the faulty assumption that cost per population *served* is the appropriate metric for determining which of two stations to clear. But there are additional considerations for which the Commission would need to account. For instance, in the example provided in the *NPRM* of a Class A station that covers a small population and a full power station that covers a large population submitting the same bid, the cost per population *served* would be greater for the Class A. However, assuming that clearing either station would result in

---

[42] *See* Eisenach Decl. ¶¶ 28-29.

[43] *See id.* ¶ 27.

[44] A station may have many reasons for setting an exit value that is higher than its present operating value, including sunk costs, family ownership, and even projected growth after other stations exit the market.

[45] *See NPRM* ¶ 42 n.83.

the same amount of spectrum being available in the forward auction, there is no reason why clearing the full power station is more efficient. In fact, it might be preferable as a matter of public policy to clear the Class A station if doing so would result in the availability of the same amount of spectrum for mobile broadband while causing the least disruption to broadcast viewers. Other considerations may favor a different result. Given the number of potential factors, the subjectivity of many of those factors, and the difficulty of reducing them to a scoring formula, the Commission would be better off eschewing scoring and resolving any tiebreakers through intra-round bids.

The *NPRM* also asks whether the Commission should use an integer programming algorithm (computer optimized) or sequential algorithm approach to capture repacking considerations in bid evaluations.[46] The information provided in the *NPRM* is insufficient for the Coalition to evaluate these options, however, and the Coalition therefore reserves comment on these options.

D. <u>The Commission Should Not Impose Unnecessary Barriers to Channel Sharing.</u>

The *NPRM* proposes to limit channel sharing bids to those that would not require a change to a station's community of license.[47] The Coalition opposes this approach as unnecessarily restrictive on the ability of stations to channel share. Successful channel shares will advance the Commission's dual goals of reallocating spectrum for mobile broadband use while also preserving a vibrant over-the-air broadcast service.[48] By providing a mechanism by which broadcasters can both participate in the auction and continue to broadcast (over a shared

---

46 *Id.* ¶ 45.

47 *Id.* ¶ 89.

48 *See National Broadband Plan* at 88-89 ("Because of the continued importance of over-the-air television, the recommendations in the plan seek to preserve it as a healthy, viable medium going forward . . . while establishing mechanisms to make available additional spectrum for flexible broadband uses.").

channel), channel sharing could expand the pool of broadcasters willing to relinquish their spectrum. At the same time, channel sharing protects the public interest in over-the-air television by maintaining a voice that otherwise would disappear from the public airwaves.

For channel sharing to exist as a viable alternative for broadcasters, however, those licensees who are interested in both participating in the auction and continuing as broadcasters must have willing partners. Under the agency's existing rules, a television station must locate its transmitter in a location capable of placing a city grade contour over the station's entire city of license.[49] To comply with this rule, then, a station looking to relinquish its spectrum and channel share with another station would have to identify a station capable of delivering a city grade contour to its community of license. Unfortunately, for many of the stations most likely to pursue this option—independent stations located within a metropolitan area but outside of the city proper—only a limited number of stations would meet this criterion. As a result, those stations for which channel sharing is most attractive may find it impossible to find channel sharing partners. By limiting the number of stations with which an interested station can channel share, therefore, the FCC would reduce the possibility that stations will be able to avail themselves of this option.

In support of its proposal to restrict channel shares to those not requiring a change in a station's community of license, the Commission cites to Section 307(b) of the Communications Act, which directs the FCC to "provide a fair, efficient, and equitable distribution of radio service."[50] The Coalition does not believe this provision can be read to preclude channel sharing under the unique circumstances of the broadcast incentive auction. In granting the agency authority to conduct the incentive auction, Congress recognized that it necessarily would be

49 *See* 47 C.F.R. § 73.625.

50 *NPRM* ¶ 315 & n.484. (citing 47 U.S.C. § 307(b)).

altering the distribution of radio service; after all, the primary goal of the incentive auction is to encourage broadcasters to relinquish their licenses, including through channel sharing.[51] Accordingly, it would contravene Congress' expectations for the Commission to adopt rules that *discourage* broadcasters from sharing channels. Rather, the FCC should adopt flexible rules that facilitate channel sharing by maximizing the likelihood that every station interested in channel sharing can identify a willing partner within its existing designated market area.

E. The Commission Should Adopt Additional Rules and Policies Tailored to Encourage Broadcaster Participation.

The *NPRM* contains detailed proposals for certain application and bidding procedures, which the Coalition generally supports as consistent with the Congressional expectation of converting the maximum amount of spectrum from broadcast use to mobile broadband use.

Confidentiality. The Commission asks what types of information should be withheld from public disclosure in order to protect the identities of reverse auction participants.[52] Strong confidentiality provisions are critical to the success of the reverse auction. The television licensees that participate in the reverse auction, including those owned by Coalition members, are operating businesses with employees, advertisers, and viewers. Any indication that these licensees are participating in the reverse auction could prove highly disruptive to their existing businesses, and even the risk of such disruption will hamper auction participation. Accordingly, the FCC must take all precautions to protect the identity of participating stations.

Auction Timing. Several Commissioners and FCC staff have expressed the goal of issuing an Order in this proceeding by this summer to facilitate an incentive auction in the

[51] *See* Spectrum Act § 6403(a)(4) (protecting carriage rights of stations relinquishing their spectrum in the incentive auction to channel share).

[52] *NPRM* ¶ 258.

summer of 2014.[53] The Coalition supports the FCC's desire to maintain an aggressive timeline and complete the incentive auction as soon as practicable. Although conducting an incentive auction is a complex undertaking, neither the broadcast industry nor the wireless industry will benefit from the uncertainty resulting from an unnecessarily drawn-out auction process.

Incentive Payments. The Commission seeks comment on the appropriate date for making incentive payments.[54] The Coalition believes that all incentive auction payments should be made no later than forty-five (45) days of the completion of the auction. The Commission routinely requires successful forward auction bidders to make their final payments within thirty (30) days of the auction close and there is no reason why it should not do so here.[55] Once the forward payment funds have been remitted to the FCC, it should use those funds to make incentive payments to winning reverse auction bidders within the following fifteen (15) days. Establishing a policy of prompt payments to winning bidders will encourage reverse auction participation by minimizing the risk of business disruption for winning bidders. Prompt payment also will facilitate the expeditious reallocation of relinquished spectrum.

Anti-Collusion. The *NPRM* seeks comment on appropriate restrictions on communications related to bid strategy.[56] The *NPRM* does not include sufficient information to allow for comment on how to apply the Commission's anti-collusion rules to the reverse auction context. However, the Coalition urges the Commission to not reflexively apply existing rules to

---

53 *See, e.g.*, Statement of Chairman Julius Genachowski, *NPRM* at 190 ("we anticipate conducting the world's first incentive auction in 2014"); Statement of Commissioner Ajit Pai, *id.* at 204 (expressing goal to begin the incentive auction by June 30, 2014).

54 *NPRM* ¶ 287.

55 *See, e.g., Auction of 700 MHz Band Licenses Scheduled for July 19, 2011 (Auction 92)*, Public Notice, DA 11-420, AU Docket No. 10-248 ¶¶ 192-194 (WTB Mar. 16, 2011) (final payments due within ten days of public notice identifying winning bidders); *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006 (Auction 66)*, Public Notice, 21 FCC Rcd. 4562 ¶¶ 245-47 (2006) (final payments due within ten days of public notice identifying winning bidders).

56 *NPRM* ¶¶ 264-70.

the first-of-its-kind incentive auction. The proposed reverse auction of broadcast spectrum presents many unique scenarios in which communication regarding bidding strategy may be optimal, if not necessary.

The most obvious examples relate to channel sharing agreements, which Congress and the FCC have encouraged as a mechanism to clear spectrum for mobile broadband use. For channel sharing to work, however, stations interested in pursuing a channel sharing agreement must have the flexibility to hold candid and detailed discussions with other stations in their market about issues including operations, finances, and auction goals. Restricting these communications would be fatal to the agency's efforts to encourage channel sharing. Once stations have entered into channel sharing agreements, they must be permitted to have unrestricted communications about auction strategy in preparation for and throughout the course of the reverse auction.

In addition, any anti-collusion rules must account for the myriad broadcast ownership and management structures that may require communication regarding auction strategy (such as communications between licensees and their investors or other commercial partners). Limiting communications among these potentially willing sellers will at best restrict their flexibility and at worst entirely discourage their participation, thereby reducing the amount of spectrum repurposed for mobile broadband use. The Commission's goals thus would best be served by adopting narrowly tailored anti-collusion rules that account for the unique circumstances of the broadcast incentive auction.

IV. THE COMMISSION MUST QUICKLY AND TRANSPARENTLY RESOLVE BORDER ISSUES

In the *NPRM*, the Commission acknowledges that "the broadcast television spectrum incentive auction will involve technical coordination with Canada and Mexico" with regard to any changes in television station authorizations and the allowance of wireless broadband operations in the UHF band in border areas.[57] The FCC should strive to resolve these border issues as quickly as possible to the extent that they could affect the incentive action and the corresponding repacking of the broadcast spectrum. The Coalition also encourages the agency to identify in its order in this proceeding any remaining unresolved border coordination issues and to explain how the incentive auction and repacking would proceed if those issues cannot be resolved.

[57] *Id.* ¶ 34.

V. CONCLUSION

The participation of willing broadcasters in 15-20 of the most spectrum constrained markets is critical to the FCC's ability to unleash the full value of the proposed 600 MHz band, which would enable it to fulfill Congress' expectations by: (1) reallocating a substantial amount of spectrum for wireless broadband use; (2) satisfying the auction closing conditions; (3) funding a national broadband public safety network; and (4) paying down the national debt. The Coalition recognizes that the *NPRM* is the first step in a complicated march toward the incentive auction and is dedicated to working with the Commission to develop rules and procedures that will encourage the necessary participation by willing sellers to ensure the auction's success.

EXPANDING OPPORTUNITIES FOR
BROADCASTERS COALITION

By: /s/

Preston Padden
Executive Director
1301 Canyon Blvd #306
Boulder, Colorado 80302
(202) 329-4750
ppadden@broadcastcoalition.org

January 23, 2012