

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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  
POST-NEWSWEEK STATIONS, INC.**

Post-Newsweek Stations, Inc. (“Post-Newsweek”) respectfully submits its comments concerning the repacking proposals described by the Commission in the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding. In the NPRM, the Commission proposes to provide less protection to television stations and their viewers than Congress has determined is necessary. This proposal would affect a Post-Newsweek station and the station’s viewers, and accordingly, Post-Newsweek urges the Commission to adopt a repacking methodology that would provide the full amount of protection required by Congress. Post-Newsweek also comments here on the importance of addressing international coordination issues.

In the Spectrum Act,<sup>1</sup> Congress provided that in the repacking, “the Commission shall make all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population *served* of each broadcast television licensee...”<sup>2</sup> In the NPRM, the Commission stated that “we interpret the mandate to preserve ‘as of the date of the enactment

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<sup>1</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156, Title VI (2012) (“Spectrum Act”).

<sup>2</sup> Spectrum Act at § 6403(b)(2) (emphasis added).

of this Act' to require preservation only with regard to facilities that were licensed, or for which an application for license to cover authorized facilities already was on file with the Commission, as of February 22, 2012.”<sup>3</sup>

The Commission's proposal creates a gap in protection for coverage area and population that must be protected under the plain language of the Spectrum Act. Post-Newsweek station KSAT-TV, San Antonio, Texas, illustrates this situation. In KSAT's case, as of February 22, 2012, the station was operating pursuant to special temporary authority (“STA”), while it was awaiting action on a then-pending request for a construction permit to maximize its facilities.<sup>4</sup> Ultimately, the FCC granted the construction permit, and the station was able to construct and license the maximized facilities — a modification that entailed the installation of a new antenna and that also has substantially improved reception for the station's viewers.<sup>5</sup>

If the Commission protects only those facilities that were licensed (or the subject of a pending license application) as of the February 22, 2012 cut-off date, then it will only protect the 22 kW facility that was licensed for KSAT in August 2010.<sup>6</sup> If it protects the full *coverage area and population served* by KSAT as of February 2012, then it will protect the 37 kW STA facility.<sup>7</sup> The statutory language is clear that at least the entire footprint provided by the station as of February 22, 2012 must be protected in the repacking. Section 6403(b)(2) of the

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<sup>3</sup> NPRM at para. 98.

<sup>4</sup> See FCC File No. BEDSTA-20120104ABB (seeking extension of STA to operate digital facilities pursuant to previously-granted STA, BDSTA-20110630AEJ, while FCC continued to work with Mexican authorities on coordination of the desired construction permit, as specified in FCC File No. BPCDT-20110224AAL).

<sup>5</sup> See FCC File No. BLCDT - 20121102ABH.

<sup>6</sup> See FCC File No. BLCDT - 20090710AED.

<sup>7</sup> See William R. Meintel “Analysis of Potential Repacking Issues Affecting KSAT Channel 12 San Antonio, TX,” attached hereto as the “Engineering Analysis,” at 1, noting that station commenced 37 kW operations on August 2, 2012.

Spectrum Act requires the Commission to “preserve, as of the date of the enactment of this Act, the coverage area and population *served* of each broadcast television licensee.” The term “licensee” refers to which entities the Commission must protect — not what must be protected. What must be protected is the “coverage area and population served” as of the date of the Spectrum Act’s enactment — without regard to whether such facilities were licensed.

In addition, Post-Newsweek notes that KSAT’s current, licensed facilities (operating at 65 kW, with a directional antenna) serve an even greater footprint than those served by the above-referenced STA facilities, and serve 38,278 more viewers than those that were served under the 37 kW STA facility.<sup>8</sup> This modification has allowed KSAT to “significantly improve the service margin within the service area” of the station.<sup>9</sup> Today, “most areas receive a much higher level of signal.”<sup>10</sup> It would be in the public interest and consistent with the Spectrum Act for the Commission to protect the licensed 65 kW facility in the repacking, as the station is currently serving these additional viewers, and failure to protect the station’s currently-licensed facilities could result in a loss of free, over-the-air television service to these viewers. A repacking methodology that ignores service actually provided to the public — and therefore presumptively results in a loss of service for those stations that have improved service to their communities since enactment of the Spectrum Act — would be contrary to the public interest, important goals underlying the Spectrum Act, and longstanding FCC policy. The Commission’s repacking methodology should include a presumption against loss of service to any viewers. As

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<sup>8</sup> Engineering Analysis at 7 (comparing 65 kW facility to 37 kW facility).

<sup>9</sup> Engineering Analysis at 3.

<sup>10</sup> *Id.*

the Commission has recognized, the Spectrum Act does not “prohibit the Commission from granting protection to additional facilities where appropriate.”<sup>11</sup>

The equities are particularly salient where, as here, the application for the construction permit that the station ultimately was able to construct and license was filed a *year* before the Spectrum Act was passed.<sup>12</sup> The FCC’s processing of the application appears to have been delayed by the international coordination process, a process completely outside of the station’s ability to control.<sup>13</sup> It took a year and a half for the permit to be granted. Because the station filed its application a year before the Spectrum Act was enacted, and because it is now serving viewers with this facility (including by having installed a new antenna),<sup>14</sup> the Commission should extend protection to the station’s currently-licensed coverage area and population served.

In sum, the Spectrum Act requires that the Commission protect in the repacking, at minimum, the population and coverage area served by KSAT as of the date that the Spectrum Act was enacted. That would be the population and coverage area served by KSAT pursuant to the STA described in FCC File No. BEDSTA-20120104ABB. Under the Spectrum Act, it makes no difference that such facilities were not licensed (or the subject of a pending license application) when the Spectrum Act was enacted. In order to avoid depriving additional KSAT viewers of service that they receive today, however, the Commission should protect KSAT’s existing, licensed facilities (as specified in FCC File No. BLCDDT - 20121102ABH). It should

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<sup>11</sup> NPRM at para. 113.

<sup>12</sup> See FCC File No. BPCDDT-20110224AAL.

<sup>13</sup> See Engineering Statement at 1 (“Although the construction permit application had no domestic conflicts the grant was delayed due to the need for Mexican coordination.”).

<sup>14</sup> See FCC File No. BLCDDT - 20121102ABH.

not adopt a repacking model that presumptively deprives the public of service that it is receiving from a station prior to the repacking process.

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Post-Newsweek also comments briefly on the question of international coordination. Post-Newsweek owns several stations located near international borders, including one, WDIV-DT, Detroit, Michigan, which operates on a high UHF channel (Channel 45) and therefore appears particularly likely to be moved to a new allotment in the repacking. The Spectrum Act requires that the repacking be subject to international coordination with Canada and Mexico,<sup>15</sup> as the Commission acknowledges in the NPRM.<sup>16</sup> The experience of Post-Newsweek and many other broadcasters with stations near the border areas is that international coordination is a process that inherently involves complexity and delays, particularly when it is just one part of a larger process in which many other stations are changing channels (as occurred with the digital transition). In some instances, international coordination can take an extraordinarily long time to complete.<sup>17</sup> Consistent with the Spectrum Act, the Commission should take measures to ensure that stations required to change channels in the repacking receive allotments that meet all of the requirements of the Spectrum Act (including those concerning protection of stations' coverage areas and populations). Further, no station should be required to cease its current operations until after it has had the full measure of time (three years) to

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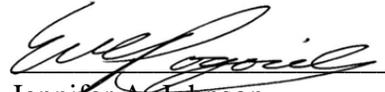
<sup>15</sup> Spectrum Act at § 6403(b)(1)(B).

<sup>16</sup> NPRM at paras. 29 and 34 (“we must coordinate any changes in the authorizations of television stations operating in the border regions with Mexico and Canada”).

<sup>17</sup> For example, in the case of a Michigan station owned by another broadcaster, international coordination took approximately eight and a half years. *See* FCC File No. BPCDT-19991028ACK (filed October 1999; granted April 2008).

construct a new facility. The clock should not start until after international coordination has been completed and the pertinent construction permit granted.

Respectfully submitted,



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