

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

JOINT COMMENTS

Eagle Creek Broadcasting of Laredo, LLC; Journal Broadcast Corporation; Mountain Licenses, L.P. (“Mountain”); and Stainless Broadcasting, L.P. (collectively, “Border Station Licensees”), by their attorneys, hereby submit the following comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking, FCC 12-118, released October 2, 2012 (“NPRM”) in the above-captioned proceeding.¹

BACKGROUND

The NPRM poses an extensive series of questions concerning a wide variety of issues relevant to the FCC’s efforts to implement Congress’ directive that the agency hold a first-of-its-kind “incentive” spectrum auction. In Sections 6402 and 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (the “Spectrum Act”), Congress tasked the FCC with designing and conducting an incentive auction with multiple components, including: (i) a “reverse auction” in which television broadcasters may voluntarily relinquish spectrum in return for monetary payments from the government; (ii) a “forward auction” in which relinquished

¹ By *Order*, DA 12-1916, released November 29, 2012, the FCC extended the deadline for filing comments in this proceeding until January 25, 2013.

spectrum is resold for new uses such as broadband; and (iii) a “repacking” process in which the FCC is to reassign, post-auction, spectrum retained by TV broadcasters, in a way that both maximizes the amount of usable spectrum for the forward auction and preserves existing over-the-air service provided by those incumbent broadcasters.

In these comments, Border Station Licensees focus the Commission’s attention on key concerns relating to one vital repacking issue under the Spectrum Act, namely, how the FCC will preserve (post-auction) the coverage area and population served by incumbent television stations subject to repacking that are located within 400 kilometers (approximately 250 miles) of the Canadian border and 275 kilometers (approximately 170 miles) of the Mexican border (collectively, “Border Zones”).²

DISCUSSION

I. Careful Advance Planning And Coordination With Canada And Mexico, Without Regard To Artificial Calendar Deadlines, Is Essential.

One of the defining features of the new incentive auction is that Congress effectively afforded the FCC just one opportunity to implement it. That is, although Congress provided the Commission an ample amount of time to design and conduct the reverse and forward auctions, until the end of fiscal year 2022,³ Congress also made clear that if the auction design does not

² The boundaries of the Border Zones derive from a 1998 Memorandum of Understanding between Mexico and the United States and a 2000 Letter of Understanding between Canada and the United States. *See* Memorandum of Understanding between the Federal Communications Commission of the United States of America and the Secretaria de Comunicaciones y Transportes of the United Mexican States Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border, Jul. 22, 1998, *available at* <http://transition.fcc.gov/ib/sand/agree/files/mex-bc/mex-dtv2.pdf>, and Public Notice, U.S. and Canada Reach Agreement on Implementing Digital Television Service Along the U.S./Canada Border, rel. Sept. 29, 2000. Attached hereto is a list of the stations licensed to the Border Station Licensees whose transmitter sites are located within the Border Zones.

³ *See* Section 6403(f)(3) of the Spectrum Act.

produce a successful result (e.g., not enough revenue is generated in the forward auction to cover all the incentive auction's costs), the FCC gets no "second bite" at the incentive auction "apple."⁴ This reality, coupled with the fact that Section 6403(b)(1)(B) of the Spectrum Act requires the FCC to coordinate all channel repacking in the Border Zones with Canada and Mexico,⁵ places a substantial burden on the FCC to understand and resolve international border coordination issues before the auction occurs. For that to happen, the FCC must allow sufficient time for the advance planning/coordination process to run its course.

The NPRM proposes an ambitious, some might say heroic, 2014 deadline for completion of design and conduct of the incentive auction.⁶ This deadline is *not* set by statute. Nor is it, Border Station Licensees suggest, anchored in a realistic, particularized assessment of how long it will take the FCC to meet all of its obligations under the Spectrum Act. For example, nowhere in the NPRM does the FCC offer a concrete projection of how long it will take to identify and resolve in advance of the auction's conduct all of the issues that attend repacking numerous television stations located in the Border Zones (the "Border Issues"). The FCC's own experience teaches that the resolution of such issues is likely to be extremely time consuming, for a variety of reasons, including but not limited to the obvious fact that Canada and Mexico operate outside the FCC's jurisdiction, with a need to consult and attend to their own timetables, priorities, and resident stakeholders along their borders.⁷

⁴ See Section 6403(g)(2) of the Spectrum Act.

⁵ See also NPRM at ¶ 34 (the FCC "must coordinate any changes in the authorizations of television stations operating in the border regions with Mexico and Canada.").

⁶ See NPRM at ¶ 14.

⁷ The NPRM (at ¶ 172) recognizes one relevant factor in this vein – "the disparate timeframes for conversion to digital television in Canada and Mexico."

During the television industry's recent transition from analog to digital transmission systems, for instance, many broadcasters encountered substantial delays during the FCC's process of coordinating new channel assignments across international borders. To cite just one example, KAYU-TV, Spokane, Washington, licensed to Mountain, waited many months for ultimate Canadian approval of its assigned digital channel 28. The process entailed fits and starts, encompassing an initial Canadian objection that was eventually withdrawn. KAYU-TV's experience is merely illustrative of a much larger reality potentially affecting scores of stations in the Border Zones.

Against that background, it is surprising that the NPRM offers no specifics as to how the FCC will accomplish the requisite international coordination in advance of the incentive auction. Without that detail, Border Station Licensees are left to emphasize in these comments the "big picture" – the fundamental importance of the need for the FCC to fulfill *all* of its obligations under the Spectrum Act, including the statutorily mandated coordination of the repacking process with Canada and Mexico, and the FCC's obligation to employ *all* reasonable efforts to design a repacking plan that *preserves* the coverage area and population served of *each* existing television station.⁸ Border Station Licensees also stress that the Commission needs to take all the advance planning and international coordination time necessary to ensure that its master repacking plan will "work" across international borders. Border Station Licensees view repacking as a delicately interwoven tapestry, vulnerable to unraveling if any of its constituent threads needs to be pulled out for reworking. The FCC's "one-chance" incentive auction, in other words, runs the risk of failure if Canada and Mexico do not acquiesce to FCC-proposed "repacked" channel assignments within their respective Border Zones. Without the international

⁸ See Section 6403(b)(2) of the Spectrum Act.

coordination that the Spectrum Act demands, the incentive auction will founder. All of these considerations demand that the FCC proceed with the utmost caution, mindful of the adage as to what haste makes.⁹

II. Specific Timing Realities Reinforce The Paramount Need For The FCC To Comprehensively Address Border Issues Before Conducting The Incentive Auction.

Additional considerations support Border Station Licensees' fundamental concern that the FCC not rush its design of the incentive auction. First, because the reverse and forward auctions are inextricably intertwined with the repacking process, any finalized FCC auction design will almost certainly call for all three of these elements to be completed contemporaneously, within a compressed timeframe. That reality places a premium on advance issue identification and troubleshooting to avoid the specter of post-auction dysfunction. Unless the Border Issues are properly addressed in advance, the FCC will be repacking channels under time constraints in the "international dark," without the requisite understanding of which channels are truly available for assignment to repacked stations within the United States. It is insufficient for the FCC merely to determine that spectrum is available within the United States for a repacked station in a Border Zone. The agency must also be certain, in real time as the incentive auction occurs, that Canada or Mexico, as the case may be, has consented to use of a specific channel in the United States.

⁹ Proactive Congressional leaders representing districts in the Canadian Border Zone have already exhorted the FCC to pay close attention to, and successfully resolve in a transparent manner, all Border Issues, and to preserve existing television service in the Border Zones. *See* "Border State Democrats Call for Transparency From FCC on Channel Repacking," TVTECHNOLOGY, Jan. 2, 2013, *available at* <http://www.tvtechnology.com/article/border-state-democrats-call-for-transparency-from--fcc-on-channel-repacking/217028>.

Second, the TV station relocation cost reimbursement timeline is fixed by statute, to be completed not later than the date that is three years after completion of the forward auction.¹⁰ The FCC therefore must get its repacking right the first time. Such a tight statutory deadline will not accommodate **re**-repacking delays and relocation cost recalculations caused by the need to resolve international issues stemming from a flawed initial repacking plan.

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The concerns raised herein by Border Station Licensees all point to the same conclusion – the FCC’s need to satisfy a variety of obligations under the Spectrum Act, particularly those relating to the Border Issues, trumps any artificial deadline for conducting the incentive auction.

III. CONCLUSION

Border Station Licensees respectfully request that the Commission, in designing and conducting the incentive auction, take full account of the concerns articulated above.

Respectfully submitted,

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¹⁰ See Section 6403(b)(4)(D) of the Spectrum Act.

ATTACHMENT

List of Border Station Licensees' Stations Located in the Border Zones

Eagle Creek Broadcasting of Laredo, LLC

KVTV, Laredo, TX

Journal Broadcast Corporation

KGUN-TV, Tucson, AZ

KMIR-TV, Palm Springs, CA

KWBA-TV, Sierra Vista, AZ

WACY-TV, Appleton, WI

WGBA-TV, Green Bay, WI

WSYM-TV, Lansing, MI

Mountain Licenses, L.P.

KAYU-TV, Spokane, WA

KFFX-TV, Pendleton, OR

Stainless Broadcasting, L.P.

WICZ-TV, Binghamton, NY