

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Expanding the Economic and Innovation
Opportunities of Spectrum Through Incentive
Auctions

Docket No. 12-268

JOINT REPLY COMMENTS OF DIRECTV AND DISH NETWORK

DIRECTV, LLC (“DIRECTV”) and DISH Network L.L.C. (“DISH”) (together, the “DBS Providers”) respectfully submit these reply comments limited to three discrete issues related to post-auction broadcaster relocation issues. Specifically, (1) the incentive auction should not result in any new broadcast carriage rights; (2) the Relocation Fund should fairly and transparently compensate both MVPDs and broadcasters for all reasonable post-auction relocation costs; and (3) the Commission should establish a MVPD notification process for all post-auction broadcast facility or signal changes.¹

Carriage Rights. Commenters correctly highlight that the incentive auction proceeding should not be a vehicle for the expansion of any broadcaster carriage rights.² Comcast and NCTA emphasize that Class A stations sharing a channel with a full power station are only

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Notice of Proposed Rulemaking, FCC 12-118 (rel. Oct. 2, 2012) (“*NPRM*” or “*Notice*”).

² Comcast Corp. and NBCUniversal Media, LLC Comments at 4, 46-47; NCTA Comments at 22-23.

entitled to the same carriage rights on MVPD systems as they had prior to the channel-sharing arrangement taking effect.³ This is not only the right policy; it is also required by the Spectrum Act and the Communications Act.⁴ The Commission has already appropriately addressed this issue,⁵ and should affirm its prior findings here.

A handful of commenters, however, seek to manipulate the incentive auction process and acquire new carriage rights.⁶ The Commission should reject demands for additional carriage rights for Class A stations through channel sharing arrangements,⁷ or low power stations through multicast arrangements.⁸ Beyond the clear statutory bar, these broadcast interests ignore the substantial potential costs associated with any expansion of carriage rights, particularly for DBS providers that have unique—and often capacity-constrained—satellite and terrestrial infrastructure dedicated to each local market.⁹

³ *Id.*

⁴ Spectrum Act § 6403(a)(4) (explaining that a channel-sharing station “shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.”); *see also* 47 U.S.C. § 338(a)(3) (explaining that “[n]o low power television station . . . shall be entitled to insist on carriage” on DBS systems).

⁵ In the Channel Sharing Order, the Commission “agree[d] . . . that the ‘mere fact that multiple broadcast licensees share a single broadcast channel should not affect their must carry rights.’” *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, 27 FCC Rcd 4616, 4361 ¶¶ 28 (2012); *see also* *NPRM*, ¶ 372.

⁶ Tribune urges the Commission to adopt explicit rules protecting the carriage of rights of full power and Class A broadcasters that continue to operate, “regardless of their post-auction facilities.” Tribune Company Comments at 25. Broadcasters would, however, still have the statutory obligation to deliver a good quality signal to the DBS Provider’s designated local receive facility from those post-auction facilities. 47 U.S.C. § 338(b).

⁷ *See* Airwaves, Inc. Comments at 3-4.

⁸ *See* National Religious Broadcasters Comments at 8.

⁹ DBS Providers Comments at 2-5.

Relocation Fund. All costs reasonably incurred by MVPDs and broadcasters related to the post-auction repacking should be eligible under the Relocation Fund. Without any compensation, the DBS Providers incurred significant expenses during the 2009 DTV transition. As stressed by NCTA, the Commission should ensure that MVPDs receive the funding necessary to accommodate broadcasters' relocation and are, in fact, "held harmless" by this process consistent with the Spectrum Act.¹⁰

Commenters, particularly the network affiliates, provided a comprehensive breakdown of the expected broadcaster and MVPD costs reasonably related to the post-auction transition.¹¹ Because the universe of expected reimbursable costs is generally known by both broadcasters and MVPDs today, a number of parties propose a reimbursement mechanism based on estimated costs as the simplest and most efficient methodology.¹² Another set of commenters support a hybrid approach that would provide an advance payment for a percentage of the estimated costs with a true-up process based on actual relocation costs.¹³ Both approaches warrant serious

¹⁰ See NCTA Comments at 18-21.

¹¹ See Network Affiliates Comments at Appendix A; DBS Providers at 8-10. While the vast majority of suggested costs in the record appear to be reasonable and appropriate, a few outlier cost proposals do not appear to be reasonably associated with post-auction relocation. One commenter, for example, argues that the Commission should compensate broadcasters for marketing expenses relating to the promotion of new channel locations. See Vision Communications, LLC Comments at 12. Another commenter encourages the Commission to provide cash remuneration from the Relocation Fund to repacked broadcasters that "agree[] to carry a displaced LPTV station on one of their free, over-the-air digital multicast channels." See National Religious Broadcasters Comments at 8. Neither cost bears any relation to the actual post-auction technical transition for full power and Class A broadcasters required by the Spectrum Act. The Commission must ensure that funds from the finite Relocation Fund go only to eligible costs.

¹² CEA Comments at 35; National Hispanic Media Coalition Comments at 9-10; U.S. Cellular Comments at 58.

¹³ See, e.g., Comcast Corp. and NBCUniversal Media, LLC at 24-29; NAB Comments at 51-54.

consideration, and the Commission should strike the right balance between fiscal prudence and an administrable and efficient reimbursement structure.

Proposals to prioritize funding under the Relocation Fund for certain entities, or to set aside a particular pool of funds for designated uses, however, should be rejected.¹⁴ The incentive auction process requires both broadcasters and MVPDs to involuntarily expend resources, and there is no statutory or policy basis to give any particular entity or eligible cost preferential treatment. Any prioritization would needlessly complicate the administration of the Relocation Fund, and would risk inequitable distribution of finite funds.

Broadcast/MVPD Notice. A number of broadcast commenters highlight post-auction logistical challenges, and suggest that the proposed 18-month transition period after the auction is insufficient.¹⁵ Whatever timeline the Commission ultimately adopts, MVPDs need at least 120 days notice of any broadcaster channel or technical changes. A notice period of at least 120 days would allow MVPDs sufficient time to prepare facilities, allocate engineering staff, and procure the equipment to enact the necessary alterations from broadcasters' relocation.

In addition, as the FCC has proposed and as the DBS Providers and other commenters have suggested, a staggered or regional transition of broadcasters following the auction should be adopted.¹⁶ Because the DBS Providers' local receive facilities are not staffed on a daily basis, and their field engineers are assigned regionally, the DBS Providers cannot accommodate several hundred broadcast stations implementing changes in a single day without the risk of significant

¹⁴ See APTS/PBS Comments at 29; School Board of Broward County Comments at 2-3 (urging the Commission to create "a set aside pool of funds for ... NCE licensees.").

¹⁵ See, e.g., Belo Corp. Comments at 12-13; Tribune Company Comments at 25-26; APTS/PBS. at 24-27.

¹⁶ See, e.g., Univision Communications Inc. Comments at 18.

disruption. Further, a staggered or regional transition may lead to greater efficiencies and lower costs – an important goal, given the limited Relocation Fund – and would allow MVPDs and broadcasters to better manage internal and external staffing issues and avoid seasonally related weather issues.

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The Commission can help ensure a successful broadcaster transition and minimize disruption by denying efforts to expand carriage rights; deeming only costs reasonably associated with the transition eligible for reimbursement; and establishing a clear MVPD/broadcast notice process.

Respectfully submitted,

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