

**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: Secretary, Federal Communications Commission  
Attention: The Commission

**JOINT REPLY COMMENTS  
OF PUBLIC TELEVISION LICENSEES**

The group of public television station licensees shown below (collectively, “Public TV Licensees”) provide these reply comments in response to the Commission’s *Notice of Proposed Rulemaking* in GN Docket No. 12-268<sup>1</sup>, and in support of comments filed by representatives of public television.

The Public TV Licensees are public universities and university systems, state educational communications authorities, boards and commissions, community and technical college districts, and non-profit community-based educational entities. Collectively, they are licensees of numerous full power public television stations, as well as numerous television translator and other associated facilities, over which they provide an incredible array of services to their communities.

The *NPRM* proposes rules for implementing the incentive spectrum auction provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum

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<sup>1</sup> *Notice of Proposed Rulemaking*, GN Docket No. 12-268 (rel. October 2, 2012).

Act”). The plan has three major pieces: a reverse auction in which broadcast television licensees submit bids to relinquish spectrum usage rights in exchange for payments; repacking of the broadcast television bands in order to free up a portion of the UHF band for wireless use; and a forward auction of licenses for use of the newly available spectrum.

The reverse auction and repacking process will significantly affect many if not most public television stations. The Public TV Licensees very strongly believe that the rules ultimately adopted by the Commission must preserve their ability to provide their broadcast services, minimize disruption caused by the repacking process, and provide a fair and effective opportunity for participation in the reverse auction for those public TV stations that may choose to do so. On these issues, the Public TV Licensees agree with, and fully endorse, the Comments filed in this proceeding by the Association of Public Television Stations, the Corporation for Public Broadcasting and the Public Broadcasting Service.<sup>2</sup>

#### Preservation of Universal Public Television Service

The APTS/CPB/PBS Comments stress public television’s statutory mandate to provide “telecommunications services for all the citizens of the Nation” and the Commission’s own long-standing policy of promoting universal public television service. These goals are also important to individual public television stations, which are committed to ensuring that each household can receive free over-the-air public television service.

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<sup>2</sup> Comments of the Association of Public Television Stations, Corporation for Public Broadcasting and the Public Broadcasting Service in GN Docket No. 12-268, filed January 25, 2013 (“APTS/CPB/PBS Comments”).

To sustain universal service, APTS/CPB/PBS urge that the Spectrum Act must be properly interpreted to require the Commission, in the repacking process, to preserve existing public television stations' coverage and enable stations to continue to serve the same specific viewers that were served as of the date of the enactment of the Spectrum Act. Options put forward by the Commission that would result in loss of over-the-air coverage in current station service areas conflict with public television's universal service mission. The Public TV Licensees share APTS/CPB/PBS views and therefore support the FCC's "Option 2" interference standard for the repacking process, which does not treat viewers as interchangeable. Public television stations should be able to serve the same viewers after the repack as before.<sup>3</sup>

APTS/CPB/PBS also note that the public television system relies on hundreds of TV translator stations to provide service, particularly in remote and rural areas, and urge the Commission to take additional steps to limit the impact of the repacking process on viewers who receive their television service from translators. These steps include avoiding the reclamation of more TV spectrum than absolutely required in rural areas, permitting translators to operate on out of core channels unless and until they are displaced by a winning bidder in the forward auction who actually deploys facilities that would conflict with the translator's use of its channel, and special displacement accommodation of public television translators.

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<sup>3</sup> The goal in the repacking process is to permit each TV station to continue to provide service to each existing viewer, and the Commission is obligated by the Spectrum Act to make "all reasonable efforts" to do so. In the event that there are nevertheless some particular and unusual circumstances in which such efforts cannot avoid the loss of some service, there must be strict limits to the interference that the Commission will allow. The National Association of Broadcasters has suggested that stations might be required to tolerate additional interference from another station for up to 0.5% of the station's viewers (as proposed by the Commission), but only so long as the aggregate additional interference received from all stations does not exceed 1.0%. Comments of the National Association of Broadcasters in in GN Docket No. 12-268, filed January 25, 2013, at 20 ("NAB Comments"). The Public TV Licensees would support this approach.

The Public TV Licensees strongly support APTS/CPB/PBS on these points. Many public television stations greatly rely on translators to provide service to rural and other unserved areas. Often these are areas where there are no options other than over-the-air service via such translators for viewers to watch local television stations, and certainly no other free and universally available television viewing options. The Commission's goal should be to avoid any disruption to these translators, or at least to put off any such disruption as long as possible. And, while the Public TV Licensees understand that the Spectrum Act does not specifically authorize reimbursement of expenses to replace disrupted translator stations (except as noted in the next paragraph), the Commission should undertake the repacking process mindful that public broadcasters having to modify translator stations to preserve universal public television service will in effect be subsidizing costs of the repacking process to the benefit of those who ultimately acquire spectrum in the forward auction, and/or the US Treasury.

In addition, the Commission should regard replacement television translators, which have been licensed within the service areas of full-power stations to reach viewers who lost service as a result of the digital television transition, as being part of the primary service of the full-power station and thus entitled to protection (and reimbursement in the repacking process) under the Spectrum Act. These replacement translators have the same call sign and facility identification number as the full-power station, may not be separately assigned or transferred, and are renewed with the station's main license.

In the reverse auction, APTS/CPB/PBS suggest that the Commission should not accept a proposed public television station's bid if it would result in the loss of all local public television service in a designated market area. Alternatives exist for public television stations to participate in the auction even if they are the sole public station in

the market – such as channel sharing or moving into the VHF band. Being committed to universal service, the Public TV Licensees agree that no TV market should lose all local public television service as a result of the auction and repack.

#### Minimizing Disruption in Repacking

APTS/CPB/PBS seek several accommodations in the Commission's rules to minimize disruption in the repacking process, so as to help minimize even the temporary loss of public television service.

First, APTS/CPB/PBS urge that stations should have 3 years, rather than 18 months, to complete their transitions to new channel assignments. APTS/CPB/PBS and other broadcasters believe that 18 months is unrealistically short, given the industry's experience in the DTV transition. In that process, unavoidable and in some cases unanticipated delays resulted from equipment unavailability, tower crew limitations, severe weather and regional emergencies, channel occupancy dependencies and the need to educate consumers and give them time to prepare. All of these obstacles can be expected in the post-auction repacking process. Indeed, APTS/CPB/PBS point out that the DTV transition was actually *less* disruptive than the repack will likely be, given that in the DTV transition some stations were able to transition early, stations had companion digital channels to operate side by side in the transition process, and there was no complicating factor of channel sharing.

Based on their experience in the DTV transition, the Public TV Licensees do not believe that the repack can realistically be accomplished in 18 months. In addition to the factors noted by APTS/CPB/PBS, there will be an additional layer of activity in the repack for many of the Public TV Licensees because they are in many cases public entities required by law to follow specified procurement policies for facilities (such as

equipment) and services (such as engineering and tower rigging). These policies will often of necessity lengthen the time required for a station's facilities to be modified.

In addition to allowing additional time for all stations during the repacking process, the Commission needs to consider and accommodate the needs of public television stations in border areas, which based on their experience in the DTV transition, are rightly concerned with disruptions or delays in the coordination of new channel positions with Mexico and Canada.

APTS/CPB/PBS also correctly note that public television stations face unique financial challenges in the repacking process, and cannot "front" the costs associated with the process, or suffer a deficit in reimbursement when all is said and done. Thus, rules need to be established under which stations will receive advance payment of estimated costs, cost estimates need to be determined by a fair and realistic process, and there will be a true-up process at the end under which stations may either return unused funds or be able to obtain additional funds where unusual or unexpected challenges increase costs.

APTS/CPB/PBS also express serious concern about the prospect that the relocation fund authorized by the Spectrum Act could be exhausted in the repacking process, and point to reasons why public television stations are not in a position to absorb repacking costs without full reimbursement. The Public TV Licensees confirm that a process resulting in un-reimbursed relocation costs would be a disaster for public television stations and result in serious damage to their service, and therefore urge that the Commission must conduct the repacking process in such a manner as to ensure that the relocation fund will be sufficient to reimburse all costs. In that respect, the Public TV Licensees support the NAB Comments, which argue that the Commission's repacking scheme must reflect the amount of the money the agency has available to reimburse

affected parties.<sup>4</sup> Thus, essentially, the amount of the relocation fund must be viewed as a limit on the permissible extent of the repacking process, to ensure that there is no short-fall in reimbursement.

#### Simple and Transparent Auction Rules

In their Comments, APTS/CPB/PBS urge that the Commission should adopt simple and transparent auction rules. The Public TV Licensees agree.

The auction rules need to fit the circumstances, including the fact that collaboration between and among stations will be necessary leading up to and even during the auction process, particularly where stations are working together on channel sharing arrangements. APTS/CPB/PBS stress three specific points in connection with auction anti-collusion rules: first, that the “baseline” position on anti-collusion is that participants may communicate so long as there is disclosure; second, that anti-collusion rules should not be extended to governing board members; and third, that the anti-collusion rules should no longer apply once a participant exits the auction so as to permit opportunities for channel sharing arrangements between the exiting participant and a station still participating in the auction. The Public TV Licensees concur with these points.

APTS/CPB/PBS also urge that the auction rules should provide broad flexibility for stations to design their bids. This would include being able to specify a bid limited to moving to a high VHF channel, or a bid that is conditioned on a waiver of VHF power and height limits. A station should also be able to relinquish a high VHF channel and share with a station in the UHF band. The Public TV Licensees support their call for such broad flexibility.

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<sup>4</sup> NAB Comments at 48 – 49.

Conclusion

The Public TV Licensees support the Comments filed in this proceeding by the Association of Public Television Stations, the Corporation for Public Broadcasting and the Public Broadcasting Service.

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Respectfully submitted,

By: /s/ Todd D. Gray  
Todd D. Gray  
Margaret L. Miller  
Barry Persh

Their Attorneys

Dow Lohnes PLLC  
1200 New Hampshire Ave., N.W.  
Suite 800  
Washington, DC 20036-6802  
(202) 776-2571  
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