

**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

**REPLY COMMENTS OF  
POST-NEWSWEEK STATIONS, INC.**

Post-Newsweek Stations, Inc. (“Post-Newsweek”) responds here to the comments filed concerning the repacking proposals outlined in the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.<sup>1</sup> There was broad consensus among numerous commenters that the scope of protection proposed by the NPRM is too narrow to comply with the requirements of the Spectrum Act<sup>2</sup> and would deprive viewers of access to free, over-the-air television service from stations that choose not to participate in the auction.<sup>3</sup> As the licensee of a station that would be directly and adversely affected by the NPRM’s proposed approach, Post-Newsweek agrees with these commenters and urges the Commission to adopt broader protections for television stations and their viewers in the repacking.

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<sup>1</sup> Comments of Post-Newsweek Stations, Inc., GN Dkt. 12-268 (Jan. 25, 2013).

<sup>2</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>3</sup> See, e.g., Comments of Cox Media Group, GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of Cox”), at 2-3 (arguing that the Spectrum Act requires the Commission to seek to replicate station’s existing service area in any post-auction repacking); Comments of Lima Communications Corporation, et. al., GN Dkt. No. 12-268 (Jan. 25, 2013), at 5 (the FCC is required under the Spectrum Act to adopt a repacking plan that replicates stations’ current service areas and viewers’ current level of service from all station).

*The Spectrum Act Requires Protection of Service Provided Pursuant to STA as of February 22, 2012.* In the NPRM, the Commission proposed to interpret the Spectrum 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>4</sup> Dozens of commenters pointed out, however, that the Spectrum Act imposes no such condition: It requires the Commission to “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>5</sup> Thus, the Commission’s proposed interpretation is too

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<sup>4</sup> NPRM at para. 98.

<sup>5</sup> Spectrum Act at § 6403(b)(2). *See, e.g.*, Comments of Gray Television, Inc., GN Docket No. 12-268 (Jan. 25, 2013) at 2-5; Comments of Belo Corp., GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of Belo”), at 16-18; Comments of Comcast Corporation and NBCUniversal Media, LLC, GN Dkt. No. 12-268 (Jan. 25, 2013), at 6; Comments of National Religious Broadcasters, GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of National Religious Broadcasters”), at 19; Comments of Univision Communications, Inc., GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of Univision”), at 8-12; Comments of LeSEA Broadcasting Corporation, GN Dkt. No. 12-268 (Jan. 25, 2013), at 1-3; Comments of Lincoln Broadcasting, LLC, GN Dkt. No. 12-268 (Jan. 25, 2013), at 1-4; Comments of KAZN License, LLC, GN Dkt. No. 12-268 (Jan. 25, 2013), at 7-9; Comments of SATV10 LLC, GN Dkt. No. 12-268 (Jan. 25, 2013), at 3-4; Comments of Tribune Company, GN Dkt. No. 12-268 (Jan. 25, 2013), at 20; Comments of Bahakel Communications, GN Dkt. No. 12-268 (Jan. 25, 2013), at 1; Comments of Channel 32 Montgomery LLC, GN Dkt. No. 12-268 (Jan. 25, 2013), at 3-10; Comments of The Walt Disney Company, GN Dkt. No. 12-268 (Jan. 25, 2013), at 13-16, 21-23; Comments of Parker Broadcasting of Louisiana LLC, GN Dkt. No. 12-268 (Jan. 25, 2013), at 3-9; Comments of Community Television, Inc., GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of Community Television”), at 1-3; Comments of Carolina Christian Broadcasting, Inc., GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of Carolina Christian Broadcasting”), at 1-3; Comments of the Computer & Communications Industry Association, GN Dkt. No. 12-268 (Jan. 25, 2013), at 12-13; Comments of Dispatch Printing Company, GN Docket No. 12-268 (Jan. 25, 2013), at 1-2; Comments of CBS Corporation, Fox Entertainment Group, Inc., NBCUniversal Media, LLC, The Walt Disney Company, and Univision Communications Inc., GN Dkt. No. 12-268 (Jan. 25, 2013), at 8; Comments of the National Association of Broadcasters (“NAB”), GN Dkt. 12-268 (Jan. 25, 2013) (“Comments of NAB”), at 31-33; Comments of Vision Communications, LLC, GN Dkt. No. 12-268 (Jan. 25, 2013), at 5-7; Comments of Named State Broadcasters Associations, GN Dkt. No. 12-268 (Jan. 25, 2013), at 14; Comments of WGAL Hearst Television Inc., GN Dkt. No. 12-268 (Jan. 25, 2013), at 8-11; Comments of Cox at 6-8; Comments of The Durst Organization, GN Dkt. No. 12-268 (Jan. 25, 2013), at 3-4.

narrow and is contrary to the statutory requirement to protect stations' footprints without regard to whether those footprints were licensed (or subject to license applications) as of February 22, 2012.<sup>6</sup> As the Affiliates Associations explain, “[h]ad Congress intended the narrower interpretation proffered by the *Notice*, then it could have easily said that only ‘licensed facilities’ would be protected.”<sup>7</sup> Accordingly, the failure to protect, at a minimum, KSAT’s service provided pursuant to the STA as of February 22, 2012, would be contrary to the clear and explicit requirements of the Spectrum Act.

***The Commission Must Not Adopt Policies That Eliminate Existing Television Service From Stations That Choose Not To Participate In The Auction.*** A number of commenters also agreed with Post-Newsweek that the Commission’s repacking methodology should include a presumption against loss of service to any viewers, even if the facility was not constructed as of February 22, 2012.<sup>8</sup> In the case of Post-Newsweek station KSAT, San

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<sup>6</sup> See, e.g., Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (the “Affiliates Associations”), GN Docket No. 12-268 (Jan. 25, 2013) (“Comments of the Affiliates Associations”), at 20-21 (“The *Notice*’s proposal is inconsistent with both the plain language and statutory purpose of the Act.... The purpose of the Spectrum Act was to create an entirely voluntary opportunity for certain broadcasters to relinquish their spectrum rights in return for a monetary payment but to hold harmless those broadcasters that choose not to participate in the auction process.”).

<sup>7</sup> Comments of the Affiliates Association at 21-22. See also Comments of Raycom Media, Inc., GN Docket No. 12-268 (Jan. 25, 2013), at 7-8 (“Section 6403(b)(2) of the Spectrum Act defines *who* must be protected (each broadcast television licensee), and also *what* must be protected (the coverage area and population served by each such licensee, as of February 22, 2012). Congress did not require this population and coverage area be licensed, *i.e.*, it did not refer to “licensed coverage area.”).

<sup>8</sup> See, e.g., Comments of National Religious Broadcasters at 19; Comments of Univision at 9 (the FCC should protect all construction permits *granted as of* February 22, 2012 held by new and existing licensees, including those that have not been completed). See also Comments of Community Television at 3; Comments of Carolina Christian Broadcasting at 3 (the FCC should protect maximized digital television construction permits so long as a station held a license as of February 22, 2012). Indeed, one commenter even argued that, to give full effect to Congressional intent, the Commission *must* protect granted, but unbuilt, construction permits and other (continued...)

Antonio, Texas, the station was operating pursuant to special temporary authority (“STA”) as of February 22, 2012 while it was awaiting action on a then-pending request for a construction permit to maximize its facilities.<sup>9</sup> KSAT applied for the construction permit *a year before* the enactment of the Spectrum Act. As a VHF station, KSAT sought the construction permit to enable it to improve service that had been impaired since the digital transition.<sup>10</sup> Following FCC processing delays that were outside of Post-Newsweek’s ability to control (primarily, Post-Newsweek understands, due to the international coordination process), the construction permit was finally granted after the Spectrum Act was enacted, and KSAT is now serving viewers with the maximized facilities. The FCC has licensed the maximized facilities,<sup>11</sup> which serve a greater coverage area and 38,278 more viewers than were served by KSAT as of February 22, 2012 under the STA, and which provide a much better signal to viewers within the station’s service area. As the Commission recognized, the Spectrum Act does not “prohibit the Commission from granting protection to additional facilities where appropriate.”<sup>12</sup> Post-Newsweek agrees with Univision that “[s]tations should not be penalized where their timely-filed maximization applications remained pending as of February 22, 2012, due to circumstances beyond their control.”<sup>13</sup>

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authorizations held by existing licensees. Comments of Comcast/NBCU at 14. *See also* Comments of Cox at 7 (the FCC should establish a *future freeze date* before which applications for modified facilities and for new or modified digital replacement translators, as well as granted but unbuilt construction permits, will be protected in the repacking process).

<sup>9</sup> *See* FCC File No. BEDSTA-20120104ABB.

<sup>10</sup> Indeed, following two power increases meant to restore service to viewers that lost service due to the digital transition, KSAT is *still* receiving calls from viewers that have problems receiving the station’s VHF digital signal.

<sup>11</sup> *See* FCC File No. BLCDT - 20121102ABH.

<sup>12</sup> NPRM at para. 113.

<sup>13</sup> Comments of Univision at 10.

A presumption against depriving viewers of service that they currently receive would be consistent with the public interest, longstanding FCC policy, and the Spectrum Act.<sup>14</sup> Moreover, it would put into practice the clear lessons of the digital transition. As broadcasters and the Commission learned in the digital transition, viewers strongly — and rightfully — object to losing access to their free, local television stations. When viewers lost service in the digital transition, they complained to the Commission, to their local stations, and to their Congressional delegations. In KSAT’s case, for example, viewer outcry over the service lost in connection with the digital transition was intense and immediate. Moreover, years later, affected viewers have *continued* to voice their concerns and complaints through calls and e-mails. Viewers have continued to appeal for answers and for solutions because they count on their local television stations to provide them with access to local news, emergency information, entertainment programming, sports programming, weather reports, children’s programming, and the myriad other services that local broadcasters offer — all for free. Post-Newsweek is confident that viewers will be no less vocal if they lose service in connection with a repacking. If anything, given the trend of “cord-cutting,” with households increasingly relying on over-the-air television, public outcry about reductions to over-the-air service will be more intense than it was during the digital transition. In addition, compression of the television band may foreclose the ability to

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<sup>14</sup> *See, e.g.*, Comments of Belo at 17 (“Excluding these facilities would undermine the legitimate business expectations of broadcasters as well as the public interest.”); Comments of Gray Television, Inc., GN Docket No. 12-268 (Jan. 25, 2013), at 3-4 (“The Commission has clear authority to protect additional facilities and must do so in order to avoid unnecessary disruption and permit fulfillment of the reasonable service expectations of stations and their local audiences.... [B]roadcasters should not be penalized for following the timeline established by the Commission and explicitly stated in outstanding construction permits”); Comments of the Affiliates Associations at 22 (“the statute signals Congress’s intent to preserve the status quo, and that status quo includes the Commission’s normal processes, which Congress is presumed to know when it acts”).

restore service through other means, such as replacement translators.<sup>15</sup> All of this is to say, there is a premium on adopting up-front repacking rules and policies that avoid real pain for viewers down the road.

***International Coordination Issues Must Be Addressed Up Front.*** Finally, Post-Newsweek agrees with the commenters that stressed the complexity of international coordination issues and the need for the Commission to ensure that stations in the border areas receive the protections established by the Spectrum Act for all full power and Class A stations.<sup>16</sup> As the National Association of Broadcasters (NAB) explained, “[t]here are approximately 795 full power stations that are licensed within the 250-mile Canadian coordination zone alone.”<sup>17</sup> The international coordination process is complex, and even for a single station, it can take many months (if not more) to complete the process. In order to ensure a smooth auction and repacking process, and in any event, as required by the Spectrum Act,<sup>18</sup> Post-Newsweek agrees with NAB that the Commission should pre-coordinate the border components of any repacking plan and

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<sup>15</sup> Even in cases where stations may be able to restore service, such solutions may take years to implement and may only restore service to a fraction of affected viewers.

<sup>16</sup> Commenters from every affected industry overwhelmingly urged the Commission to take action on international coordination as soon as possible. *See, e.g.*, Comments of the Affiliates Associations at 12 (pointing out that “in the case of the DTV transition, international coordination in some cases took many years to complete”); Comments of Nokia Siemens Networks US LLC, GN Dkt. 12-268 (Jan. 25, 2013), at 21; Comments of Mobile Future, GN Dkt. 12-268 (Jan. 25, 2013), at 18; Comments of the Consumer Electronics Association, GN Dkt. 12-268 (Jan. 25, 2013), at 33; Comments of CTIA–The Wireless Association, GN Dkt. 12-268 (Jan. 25, 2013), at 41.

<sup>17</sup> Comments of NAB at 12. The Affiliates Associations also cite another 115 negotiated allotments (on the U.S. side of the border) in the Mexican border region. Comments of the Affiliates Associations at 13.

<sup>18</sup> *See* Spectrum Act at § 6403(b)(1)(B) (requiring that repacking must be “subject to international coordination along the border with Mexico and Canada”).

“under no circumstances should any broadcast station be assigned a new DTV channel that requires *subsequent* coordination and approval by Canada or Mexico.”<sup>19</sup>

Respectfully submitted,



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<sup>19</sup> Comments of NAB at 15 (emphasis in original). *See also* Comments of Belo at 12 (“In order for the auction and subsequent repacking to be successful, the Commission must be proactive and act now to develop a plan to facilitate international coordination”); Comments of LIN Television Corporation d/b/a LIN Media, GN Docket No. 12-268 (Jan. 25, 2013) at 10 (“these coordination issues will be extraordinarily complex and require attention at high levels of the U.S. government”).