

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

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

REPLY COMMENTS OF ION MEDIA NETWORKS, INC.

As the nation's only broadcast television network that is unaffiliated with a domestic or foreign media conglomerate, ION offers a uniquely independent perspective on the issues raised in the Notice. ION has led the television industry in developing innovative ways to deliver content not only to consumers' television sets, but also to their wireless devices through its work in support of the Dyle™ platform (Mobile Content Venture).

ION serves nearly 90 percent of households across the United States with a variety of high-quality programming -- general entertainment, children's, and lifestyle content -- that has a particularly strong following among over-the-air households, women, and minorities. In addition to ION's marquee ION Television network, which offers popular series, theatrical and made-for-television movies and specials, ION has developed two special interest television networks: Qubo, the country's only 24/7 broadcast television service offering educational and informational children's programming, and ION Life, the country's first national, over-the-air service dedicated to active living and personal growth.

As the Commission considers the reallocation of spectrum to wireless broadband use, it would be wrong to conclude that consumer demand for over-the-air television services is declining. To the contrary, SNL Kagan recently reported that the percentage of over-the-air-only television households in the U.S. is forecast to *increase* from 13.8 percent in 2012 to

17.2 percent in 2017, as consumers increasingly endorse the value proposition of broadcast television with respect to both quality and price. Meanwhile, ION's data is consistent with data submitted by other commenters in this proceeding that demonstrates that tens of millions of Americans rely exclusively on over-the-air television to access important news, weather, sports, and entertainment content.¹ And a recent Nielsen study found that 290 million people own at least one television set, and nearly 65 percent of U.S. households have more television sets than people.² Nielsen data also shows that the most technologically savvy groups that have the highest smartphone penetration (*i.e.*, young people, African-Americans, Hispanics and Asians) also have the highest reliance on over-the-air television.³

These trends should not be surprising. Local broadcasting helps create a sense of community in an increasingly fragmented world. Television stations address matters of importance for local communities, such as local news, severe weather and emergency alerts, school closings, high school sports, local elections and public affairs. Broadcast stations also are the means through which local businesses educate and inform the public about their goods and services and, in turn, create jobs and support local economies.

ION is proud of its role as a pioneer utilizing digital technologies to expand and enhance television viewing for all Americans. Since the introduction of digital television, ION and other broadcasters have more than doubled the number of free television channels in the United States, with over 5,700 free digital channels now available across the country, including over 1,800 HD channels, and over 200 mobile channels. The average television market now has more than 27 free digital broadcast channels, with some having well over 100 channels. As new technologies are introduced, the number, quality, diversity and capabilities of broadcast television will only increase.

In light of the critical role that television stations are serving -- and will continue to serve -- in keeping Americans informed, connected, and entertained, ION is intent on ensuring that our system of free, over-the-air television remains vibrant and robust, with ample opportunities for broadcasters to continue to innovate, grow and offer quality content and new services to consumers, after completion of the incentive auction and repacking process. In these reply comments, ION urges the Commission to address three critical concerns of broadcasters:

1. Consumers Must Continue To Receive the Same Local Television Services After a Repacking.

ION strongly endorses one of the Spectrum Act's key directives: any repacking must preserve every viewer's existing local television services.⁴ A disproportionate share of ION's viewership comes from over-the-air-only households, and our viewers often tell us how important our channels are in their overall television viewing experience. ION believes the Commission has a duty, by way of the Spectrum Act, to ensure that none of these households be deprived of their access to content, whether provided by ION or by other broadcasters. Accordingly, ION agrees that the Spectrum Act's "all reasonable efforts" standard requires the Commission to replicate television stations' entire authorized coverage area and population served.⁵

ION therefore encourages the Commission to take steps to help ensure that all of a station's existing viewers receive the same level of television service before and after a repacking:

- *Tolerate new interference only as a last resort.* If it is possible to preserve a station's current coverage area and population served, then the Commission must do so. Only if this is not possible may the Commission authorize the creation of new interference, and, even then, any permitted interference must be *de minimis*.⁶ Any other approach would diminish the public's access to important local television services, which the vast majority of Americans depend on for news, weather, sports and entertainment content.

- *Preserve broadcast facilities in various stages of authorization.* Some of ION's stations have been granted construction permits for facilities that, once built, will allow the stations to better serve their local communities, reaching more homes with higher quality signals. Two of these construction permits were granted only in April 2012.⁷ Other construction permits were applied for in good faith and granted prior to February 22, 2012, but are not required to be constructed until after that date.⁸ One of ION's stations has actually completed construction and now has a license application pending.⁹ Two other ION stations are operating on fully licensed facilities following channel change rulemakings that were completed after February 22, 2012.¹⁰ These stations have reasonably relied on the Commission's rules and the terms of their authorizations when planning their future operations and construction budgets. To renege on previously granted permits and license applications at this stage would be inequitable for licensees, disrupt stations, and unjustly punish viewers.

2. Any repacking process must be transparent and realistic.

First, ION believes the Commission should release its repacking model and software before adopting incentive auction and repacking rules. This will enable all interested parties to test the FCC's assumptions in ways that could significantly improve the Commission's process.

Second, ION urges the Commission to adopt a more realistic and longer transition period.¹¹ An 18-month implementation schedule is far too short given the magnitude and complexity of the transition contemplated.¹² In addition, any repacking should be phased in across geographic regions in order to accommodate international coordination, winter weather challenges in the northern United States, facilitate equipment reuse, and minimize the risk of tower crew shortages.

3. Broadcasters that are forced to relocate or modify their facilities in a repacking must be made whole in the reimbursement process.

The Spectrum Act's \$1.75 billion cap on reimbursement of relocation costs is a statutory bar that restricts the Commission's repacking authority.¹³ Broadcasters that choose not to participate in the incentive auction must not be forced to incur unrecoverable costs in excess

of the TV Broadcaster Relocation Fund. To require otherwise would contradict the Spectrum Act's directive that participation in the incentive auction be truly voluntary for all broadcasters.¹⁴

To help ensure that the reimbursement process is efficient, transparent and fair, ION encourages the Commission to adopt proposals to provide stations the option of receiving advance payments based on their estimated costs associated with a repacking. These estimates should be confirmed through a subsequent true-up in which stations would not only return unused funds, but also be reimbursed to the extent that the estimate did not cover the station's actual costs.

* * *

ION appreciates this opportunity to share its unique perspective as the only truly independent broadcast television network in the U.S. The incentive auction and repacking is the most significant and complicated initiative the Commission has undertaken, and the Commission must get it right. ION looks forward to hearing more from the Commission regarding these important issues.

Respectfully submitted,

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NOTES

¹ *See, e.g.*, Comments of Univision Communications Inc. at 8; Comments of Entravision Holdings, LLC, at 14–15; Comments of Gray Television, Inc., at 8; Comments of Raycom Media, Inc., at 5.

² Knowlton Thomas, “1 in 3 Households in America Own Four or More Televisions” (Jan. 6, 2012), <http://www.techvibes.com/blog/1-in-3-households-in-america-own-four-or-more-televisions-infographic-2012-01-06>.

³ Nielsen, *The Cross Platform Report*, Quarter 2, 2012--US.

⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156, Title VI (2012) (“Spectrum Act”), at § 6403(b)(2).

⁵ *See, e.g.*, Comments of Cox Media Group at 2-3; Comments of Lima Communications Corporation, *et al.*, at 5.

⁶ Twenty-two commenters urged the Commission to adopt an interference standard only if it is not possible to replicate broadcast stations’ existing service areas, and even then only if it provides for the least additional interference possible. *See, e.g.*, Comments of The National Association of Broadcasters at 18-21; Comments of LIN Television Corporation at 18-21 (“LIN Comments”).

⁷ *See* KPXM-TV, St. Cloud, Minnesota, BPCDT-20120323AGY (granted April 4, 2012); WPXK-TV, Jellico, Tennessee, BPCDT-20120323AGX (granted April 5, 2012).

⁸ *See* WBPX-TV, Boston, Massachusetts, BPCDT-20080620ACX (granted July 16, 2010); WOPX-TV, Melbourne, Florida, BPCDT-20080620AKI (granted Sept. 9, 2010); WPPX-TV, Wilmington, Delaware, BPCDT-20080620AMP (granted Mar. 22, 2011); WPXG-TV, Concord, New Hampshire, BPCDT-20080619AJF (granted July 16, 2010); WPXM-TV, Miami, Florida, BMPCDT-20080620AMR (granted Jan. 30, 2012).

⁹ *See* KPPX-TV, Tolleson, Arizona, BMPCDT-20080619AGC (granted Aug. 19, 2009) and BLCDDT-20120817ABA (license application filed Aug. 17, 2012).

¹⁰ *See* WPXD-TV, Ann Arbor, Michigan, BLCDDT-20120801ADY (granted Nov. 18, 2012); WEPX-TV, Greenville, North Carolina, BLCDDT-20121029ACA (granted Nov. 26, 2012), whose privately negotiated channel relocation from channel 51 to channel 26 permits wireless operation in the 700 MHz band.

¹¹ Comments of DirecTV and DISH Network at 12 (“Dish/DirecTV Comments”); Comments of CBS Corporation, Fox Entertainment Group, Inc., NBCUniversal Media, LLC, The Walt Disney Company, and Univision Communications Inc., at 4-5; Comments of the Telecommunications Industry Association at 6.

¹² Thirteen commenters argued that the repacking timeline as currently proposed is too short to account for the complex nature of the proposed repacking. *See, e.g.*, Comments of Tribune Company at 18-21; Comments of Harris Corporation at 11-13; Univision Comments at 17-18. *See also* Dish/DirecTV Comments at 11-12 (noting that the repacking timeline fails to allow time for MVPD coordination).

¹³ *See* LIN Comments at 6; Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates at 46-47.

¹⁴ *See* Comments of the Association of Public Television Stations, Corporation for Public Broadcasting and Public Broadcasting Service at 27-29; Comments of School Board of Miami-Dade County at 19-20.