

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket Nos. 12-268 and 13-26
Opportunities of Spectrum Through)	
Incentive Auctions)	
)	

**COMMENTS OF SINCLAIR BROADCAST GROUP, INC.
ON UPDATED OET-69 SOFTWARE**

These comments respond to the Office of Engineering and Technology’s Public Notice dated February 4, 2013, DA-13-138, which announces the release of new software to perform analyses of coverage and interference of full-service digital and Class A television stations in connection with repacking of stations following an incentive auction.¹ Sinclair Broadcast Group, Inc. (“Sinclair”) opposes use of TV Study, or any other new or modified software that would change OET-69, or the methodology or application of OET-69, for purposes of the proposed incentive auction of broadcast television spectrum.

Although the Spectrum Act² gives the Commission more than a decade to implement its single opportunity to conduct a broadcast incentive auction, the NPRM proposes to conduct the auction – universally acknowledged to be the most complex spectrum auction in world history – just two years into the ten year timeframe.³ And although the Spectrum Act permits the FCC to conduct

¹ See *Public Notice*, Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software, DA 13-138 (rel. Feb. 4, 2013) (“Public Notice”). Sinclair fully supports the comments of the National Association of Broadcasters (“NAB”) in the above-referenced Dockets in every respect. NAB’s comments and reply comments do not address every issue that Sinclair believes should be priorities for the Commission, but Sinclair supports the NAB views and recommendations on issues that the NAB comments address.

² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) (“Spectrum Act”).

³ See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, FCC 12-118, Docket No. 12-268, 27 FCC Rcd. 12357 (2012) (“NPRM”) at ¶ 10.

the forward and reverse auctions simultaneously or in any order,⁴ the Commission appears to be pursuing a simultaneous auction format that would require repacking assignments to be made quickly, prioritizing speed over accuracy.

Given the long time frame Congress has allowed for the auction, its immense complexity, and the Commission's authority to conduct only one incentive auction to repurpose broadcast spectrum, Sinclair has previously expressed great reservations about the Commission's proposal to rush into the auction.⁵ Sinclair is equally concerned with the Commission's apparent desire to modify OET-69 so that the FCC may rush *in* the auction itself. The NPRM acknowledges practical limits to the degree of accuracy, optimization and transparency that can be expected with the kinds of automated, truncated repacking analyses that are feasible using computer optimization software such as TV Study.⁶ Yet the Public Notice suggests the Commission is willing to sacrifice the accuracy of and transparency of repacking modeling in the interest of a particular auction format that can be conducted quickly. In part for this reason, Sinclair maintains that the Spectrum Act requires the FCC or the forward auction winner to assume the risk if *any* non-participating station (including those not required to change channels in repacking) suffers loss of population coverage or service area after repacking.

According to the Public Notice, the FCC's current software for making OET-69 calculations was "designed for processing individual applications rather than the concurrent study of complete,

⁴ See Spectrum Act § 6403(f)(1) (authorizing the Commission to conduct the reverse auction, repacking and forward auction on a contemporaneous basis).

⁵ See Comments of Sinclair, at 4-5 (filed on January 25, 2013); Reply Comments of Sinclair, at 6-7 (filed on March 12, 2013).

⁶ See NPRM at ¶ 45.

nationwide assignments”⁷ and TV Study calculations will run “much faster”⁸, presumably to better facilitate the rapid pace of the auction format the NPRM proposes.

Sinclair takes no position on whether OET-69 (as it exists today) is ideal or even serviceable within the constraints of any particular auction format. However, the FCC lacks statutory authority to modify OET-69 in order to make it fit the FCC’s preferred choice among many possible auction formats, or to accelerate the pace of its preferred format. Rather, the FCC must design an auction that is consistent with the requirements and limitations imposed by the Spectrum Act, specifically including calculations for preservation of population covered and service area using OET-69 as it existed at the time of enactment of the Spectrum Act. The proposed *modified* approach to OET-69 would change both the methodology and implementation of OET-69 as measured against what Congress mandated. It does not comply with the Spectrum Act, and therefore must not be implemented.

Even if Congress had permitted the FCC to measure protection of stations in repacking by a new or modified standard, the FCC’s approach here, and TV Study itself, are both fatally flawed. Sinclair agrees with the NAB that the kinds of changes proposed and many others would require a formal notice and comment rule making proceeding.⁹ Moreover, even in the context of a formal proceeding, as a practical matter, the FCC would have to allow far more than six weeks for review and analysis of TV Study. The FCC released the software, with no advance notice, for an operating system that is not widely used in broadcast engineering. Sinclair has spoken at length with several of the preeminent television broadcast engineering firms, and has heard widespread concerns,

⁷ Public Notice, at 3.

⁸ *Id.* at 1.

⁹ See Letter from Rick Kaplan, Executive Vice President of Strategic Planning, NAB, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 13-26, GN Docket No. 12-268 (filed Feb. 8, 2012). Sinclair also fully supports, and incorporates by reference, the other arguments submitted by NAB in its February 8, 2013 ex parte filing.

ranging for problems getting the software to run on different operating systems, to inconsistent and even “drastically different” results between different firms, and even varying results by the same firm, on the same platform, with the same inputs. Sinclair has been told that the FCC has declined to release results of studies run on its own version of the software for independent engineers to test against, so it is impossible to know if any particular set of results is consistent with what the FCC’s own implementation would reflect.

Sinclair is concerned that the FCC has released what appears to be beta software and stated that it intends to use that software for repacking, rather than asking whether the software complies with the Spectrum Act and is otherwise suitable for the proposed use. The Public Notice says, in essence, “we have decided to use TV Study even though we understand it may produce errors and unexpected behaviors, so please identify any such problems you find.” Compliance with the statute aside, the FCC simply should not even consider making repacking decisions based on software it knows to be “buggy,” with the expectation that ad hoc, non-collaborative testing on a breakneck schedule will identify all material problems. The already fatal problems with this approach are compounded when the FCC itself is unwilling to provide its own benchmark results.

Sinclair appreciates that OET-69 has failed to meet the expectations of stakeholders in a variety of areas, with underlying methodologies and modeling assumptions inconsistent with the needs of modern digital systems. While it is true that OET-69 is imperfect and that the Commission and the industry, long term, need a better approach to calculating coverage, the process of developing a better approach must be thorough, and any new approach must be fully vetted by all stakeholders. Addressing the problems piecemeal or reactively is not the answer. As is the case in every other successful wireless system, an adequately defined ‘link budget’ that takes into account all elements of the system – transmission/path/receiver – must be understood and addressed to

ensure most effective use of spectrum. In any case, Congress has mandated the use of OET-69 for repacking in connection with the incentive auction of broadcast spectrum, and the FCC is not at liberty to use a different approach.

Sinclair sees an opportunity for the FCC to improve broadband *and* television service for consumers through the incentive auction process, and Sinclair wants the auction to succeed. We understand that the Commission wishes to proceed quickly. But it may not brush aside critical statutory requirements in order to accommodate a particular auction design or to meet a self-imposed deadline that falls just two years into the ten year window Congress authorized for the incentive auction.

Respectfully submitted,

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