



January 27, 2014

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, Notice of *Ex Parte* Communication

Dear Ms. Dortch:

On January 23, 2014, Rick Kaplan, Jane Mago, Victor Tawil and Patrick McFadden of the National Association of Broadcasters (“NAB”) met with Commissioner Michael O’Rielly and Courtney Reinhard and Erin McGrath of the Commissioner’s staff.

In the meeting, NAB reiterated its positions already set forth in comments and presentations in this docket.

NAB expressed its view that the incentive auction must remain truly voluntary, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act” or “Act”).<sup>1</sup> In particular, NAB noted that some parties have recently encouraged the Commission to take actions in unrelated Commission proceedings that would affirmatively harm broadcasters with an eye toward encouraging their participation in the auction. The Commission is barred by law from taking such actions, as it would completely undermine the voluntary nature of the auction, as set forth by the Spectrum Act.<sup>2</sup>

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<sup>1</sup> Pub. L. 112-96, 126 Stat. 156 § 6403(a)(1) (Feb. 22, 2012) (codified at 47 U.S.C. § 1452(a)(1)).

<sup>2</sup> See NAB Reply Comments, MB Docket 13-236 (Jan. 13, 2014).

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NAB also outlined some of the major issues that remain unresolved in the incentive auction proceeding, and NAB's positions on those topics.

### **Protection of Full Power and Class A Stations**

The Spectrum Act provides that "the Commission shall 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>3</sup> The Act defines "broadcast television licensees" as licensees of full-power television stations or a low-power television station that has been accorded primary status as a Class A television licensee.<sup>4</sup> The Commission has recognized, however, that the Act does not "prohibit the Commission from granting protection to additional facilities where appropriate."<sup>5</sup>

NAB expressed its view that the FCC should use its authority to protect stations and their viewers in at least two additional categories. First, the FCC should immediately process all applications that were pending prior to May 31, 2011, when the Commission froze the acceptance of rulemaking petitions requesting channel substitutions to the Post-Transition Table of DTV Allotments.<sup>6</sup> There is no good policy reason why potential licensees, who have followed the Commission's rules to the letter, should have their applications held in limbo for multiple years. Should the FCC maintain its current approach, it will have retroactively imposed a *de facto* freeze prior to May 31, 2011 (and long before the Spectrum Act was passed).

Second, to meet the Spectrum Act's directive to preserve "the coverage area and population served of each broadcast television licensee," the FCC must protect each station's translators insofar as those translators are being used to fill out a station's coverage area. Those translators help establish the coverage areas and people served by these stations, and thus are protected under the Act.<sup>7</sup>

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<sup>3</sup> Spectrum Act at § 6403(b)(2) (codified at 47 U.S.C. § 1452(b)(2)).

<sup>4</sup> *Id.* at § 6001(6) (codified at 47 U.S.C. § 1401(6)).

<sup>5</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, ¶ 113 (2012).

<sup>6</sup> *Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 26 FCC Rcd 7721 (MB 2011).

<sup>7</sup> See NAB Reply Comments, GN Docket 12-268 (Mar. 12, 2013), at 47-56.

## **OET-69: Longley-Rice Implementation for Computing Coverage and Interference**

NAB noted its eagerness to resolve the lingering concern over recommended staff changes to the long-established methodology in OET Bulletin No. 69 (“OET-69”). The Spectrum Act dictates that the Commission must use the methodology employed by OET-69, and thus NAB has repeatedly urged the Commission to do just that.<sup>8</sup> Congress sought to create as much certainty for broadcasters as possible, and thus specifically prescribed the method by which stations’ coverage areas are to be determined. The Commission must follow this specific direction, and take the difficult issue of whether and when to make changes to OET-69 (and what changes to make) off the table. Changing stations’ coverage areas during the auction process is antithetical to the stated purposes of the Act, and thus the Commission should reject any suggestion that a different or altered methodology should be employed. NAB stands ready to resolve this issue as soon as possible.

### **Repacking**

Repacking is the engine that will help determine the fate of the auction. If done properly, broadcasters can maintain their coverage areas and populations served – and viewers will continue to receive their favorite stations that remain on the air – and wireless companies can both gain access to even more spectrum and be free from interference from broadcasters. NAB explained that success on this front involves using both correct inputs into the repacking model and a flawless model that will generate the most accurate results to comport with the Spectrum Act and the Commission’s related rules governing the auction.

In terms of the mechanism employed, NAB urged the Commission to consider creating an expert group of outside stakeholders who will work together to test the software when it is complete to ensure it works as intended. This proactive engagement will allow the FCC to have the confidence that its software is ready for prime time and will tap into the resources of various industries that are committed to seeing a successful auction. NAB pledged to help in this regard and dedicate any resources necessary to the process.

On the input side, NAB reiterated its concern with the use of so-called “proxy” channels in repacking to determine channel availability and evaluate co- and adjacent channel

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<sup>8</sup> See Comments of NAB, *et al.*, ET Docket 13-26 and GN Docket 12-268 (Mar. 21, 2013); Reply Comments of NAB, *et al.*, ET Docket 13-26 and GN Docket 12-268 (Apr. 5, 2013).

interference between specific stations.<sup>9</sup> NAB's studies have shown that the use of proxy channels can lead to significant errors and inaccuracies, and that use of proxy channels will lead to inaccurate repacking results that fail to protect stations' service areas. NAB has proposed two solutions: (1) use stations' actual assigned channels for evaluation; or (2) use proxy channels, but confirm that the repacking solution developed for each round of the auction actually meets the interference standard or can be optimized or modified to meet the standard when specific channels are assigned *before* concluding a round or moving to the next round of the auction.

### **Band Plan**

NAB noted that the docket largely reflects stakeholder consensus around the so-called "Down from 51" band plan. NAB also explained the drawbacks associated with a variable band plan, including that spectrum use by both broadcasters and wireless service providers will be affected by co-channel (and to some extent adjacent channel) interference permitted under a variable plan, because the required distance to avoid interference between a broadcast operation and a wireless system base station is large and will affect multiple wireless service areas. NAB also stressed that the band plan the Commission adopts must avoid broadcast operation between wireless uplink and downlink bands.<sup>10</sup>

NAB also expressed its hope that the staff will share its latest thinking on the band plan, and make it available for public comment. There is no downside to doing so, as the process will work far more efficiently if the Commission receives feedback on the current version of the band plan, rather than merely circulating it to the Commissioners as part of an omnibus order that calls for their vote. NAB noted that comments on the initial "split" band plan were extremely beneficial for the Commission and that an additional round of comment not only increases transparency, but will lead to a better result for all stakeholders.

### **Canadian and Mexican Coordination**

One of the most difficult and yet still publicly unexplored issues the FCC faces in determining the amount of spectrum that will be available for auction concerns the Canadian and Mexican borders. Without reaching new agreements with Canada and Mexico, the Commission will find it nearly impossible to reclaim sufficient spectrum within 250 miles of the Canadian border and 150 miles of the Mexican border, because

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<sup>9</sup> See NAB *Ex Parte*, GN Docket 12-268 (Nov. 27, 2013).

<sup>10</sup> See NAB Comments, GN Docket 12-268 (Jan. 25, 2013) at 33-45; NAB Reply Comments, GN Docket 12-268 (Mar. 12, 2013) at 6-19.

it will be unable to move stations through repacking. Further, once the repacking takes place, there will be few, if any channels in the future to which border stations can move. The band will already be tightly packed, essentially guaranteeing different band plans in the north and south as well as the center of the country for decades. Thus, whatever the Commission's timeline, it must develop one comprehensive repacking plan that includes potential future moves for border-area stations. Without it, a subsequent repack will not be possible.<sup>11</sup>

### **Wireless Microphones**

NAB also raised the status of wireless microphones. Somehow lost in the auction shuffle has been the importance of wireless microphones and the fact that they depend upon their 600 MHz allocation.<sup>12</sup> This allocation was just settled a few years ago as part of the white spaces proceeding. The Commission appears poised to upend wireless microphones yet again in the incentive auction proceeding, as it has proposed to eliminate the two reserve channels for their exclusive use. Broadcasters, at a minimum, need some exclusive use spectrum for wireless microphone operation so that we can continue to cover breaking news. The database rules developed in the white spaces proceeding are wholly inadequate for broadcasters attempting to cover relevant emerging stories of local and national interest, as they require unlicensed devices to check the database only once every 24 hours. Thus, if spectrum is not reserved for broadcast use – either by designation or database – broadcast operations will be subject to harmful interference.

Wireless microphone users have met frequently with Commission staff, but have had no indication that there will be a meaningful place remaining for their operation post-auction. This outcome is not acceptable and would significantly harm the public interest. The Commission must have a solution to provide adequate access to spectrum for wireless microphone operation.

To that end, NAB continued its pledge to work with the Commission to create adequate space for wireless microphones. NAB acknowledged that one potential solution is for wireless microphones to have exclusive access to the duplex gap, as, unless artificially inflated in size, the duplex gap is not a realistic home for unlicensed operations. NAB is continuing, along with wireless microphone manufacturers and users, to explore this option and examine the viability of LTE/wireless microphone coexistence in the upper 600 MHz band.

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<sup>11</sup> See NAB *Ex Parte*, GN Docket 12-268 (Nov. 27, 2013).

<sup>12</sup> See, e.g., NAB Reply Comments, GN Docket 12-268 (Mar. 12, 2013) at 56-57.

### **Broadcaster Transition & Channel Sharing**

To conclude the meeting, NAB discussed its recommendation that the Commission appoint an independent, third-party administrator to oversee reimbursement of broadcaster relocation costs. Further, NAB reiterated its position that the Commission should treat the TV Broadcaster Relocation Fund established by the Spectrum Act as a budget for repacking, to ensure that all relocating stations are made whole as intended by Congress.<sup>13</sup> It is nonsensical to suggest that Congress only sought to cover some unstated portion of non-participating broadcaster costs as opposed to making them whole.

NAB also expressed its support for the Commission's current channel sharing rules, as long as sharing remains a truly voluntary option for broadcast stations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right from the end of the signature.

Rick Kaplan  
Executive Vice President, Strategic Planning  
National Association of Broadcasters

cc: Michael O'Rielly  
Courtney Reinhard  
Erin McGrath

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<sup>13</sup> See *Catalog of Eligible Expenses and Other Issues Related to the Reimbursement of Broadcaster Channel Reassignment Costs*, GN Docket 12-268, NAB Comments (Nov. 4, 2013).