Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Widelity Report and Catalog of Potential Expenses and Estimated Costs	)	GN Docket No. 12-268
	)	

COMMENTS OF BLOCK COMMUNICATIONS, INC., LIMA COMUNICATIONS CORPORATION, INDEPENDENCE TELEVISION COMPANY, WAND(TV) PARTNERSHIP, IDAHO INDEPENDENT TELEVISION, INC., AND WEST CENTRAL OHIO BROADCASTING, INC.

Block Communications, Inc., on behalf of its subsidiaries Lima Communications Corporation, Independence Television Company, WAND(TV) Partnership, Idaho Independent Television, Inc., and West Central Ohio Broadcasting, Inc. (collectively, the "Block Stations"), hereby submits its comments in response to the FCC's public notice seeking input on the spectrum repack and reimbursement issues raised by the Widelity Report.[1]

I. INTRODUCTION

The Block Stations are committed to continuing to serve their communities with free, over-the-air television broadcast service following the upcoming incentive auction and repack. Since they won't be participating in the reverse auction of TV spectrum, none of this process is "voluntary," and the Block Stations are keenly interested in ensuring that the FCC respects Congress's mandates that existing TV service is fully protected by the FCC's repack scheme and that broadcasters are <u>fully reimbursed</u> for all reasonable costs if they are required to modify their

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[1] *See* Media Bureau Seeks Comment on Widelity Report and Catalog of Potential Expenses and Estimated Costs, *Public Notice*, DA 14-389 (rel. Mar. 20, 2014) (the "*Widelity Public Notice*"); *see also Response to the Federal Communications Commission for the Broadcaster Transition Study Solicitation—FCC13R0003* (Dec. 30, 2103), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0320/DA-14-389A2.pdf (the "Widelity Report").

facilities to accommodate the repack.[2] Both of these Congressional requirements are crucial to ensuring that the incentive auctions are successful for all Americans – not just the wireless companies that will be converting spectrum that currently provides a free service into a platform for highly profitable paid services. Congress made preservation of a robust over-the-air broadcasting service an absolute precondition for the auction and repack and the FCC must act accordingly. The Block Stations have actively participated in this proceeding to ensure that the FCC carries out Congress's mandate that protection of America's over-the-air broadcasting system must be the top priority in the auction process.[3]

II. THE SPECTRUM ACT REQUIRES FULL REIMBURSEMENT FOR BROADCASTERS' REPACK COSTS, AND THE REIMBURSEMENT PROCESS SHOULD BE SIMPLE, COMPREHENSIVE, AND SERVICE DRIVEN.

The Spectrum Act requires the FCC to fully reimburse all broadcasters' reasonable costs in relocating or modifying their stations' facilities during the post-auction repack.[4] This is one of the most important responsibilities that the Spectrum Act places on the FCC. Unlike the DTV transition, when required facilities changes meant improved service to TV viewers, the post-auction repack will force broadcasters to scrap entirely functional equipment long before the end of its useful life with no upgrade in the service provided to viewers. Congress rightly determined that broadcasters should not be required to bear the cost of capital investments that will do no

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[2] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156, §§ 6403(b)(2), 6403(b)(4)(a) (2012) ("Spectrum Act" or "Act").

[3] *See* Comments of Lima Communications Corporation, Independence Television Company, WAND(TV) Partnership, Idaho Independent Television, Inc., and West Central Ohio Broadcasting, Inc., GN Docket No. 12-268, filed Jan. 25, 2013; Reply Comments of Lima Communications Company, *et al.*, GN Docket No. 12-268, filed Mar. 12, 2013; Comments of Lima Communications Company, *et al.*, GN Docket No. 12-268, filed June 14, 2013; Reply Comments of Idaho Independent Television, Inc., *et al.*, GN Docket No. 12-268, filed Nov. 18, 2013 ("Block Repack Reply Comments Comments"); Comments of the Fair Repack Reimbursement Coalition, GN Docket No. 12-268, filed Nov. 4, 2013 ("FRRC Comments").

[4] *See* Spectrum Act at §6403(b)(4)(a).

more than replicate the current TV broadcast service. Any failure to reimburse broadcasters' repack expenses will effectively be a government-enforced transfer of assets from broadcasters to wireless operators. Average television viewers would pay for such a change by receiving lower quality television service.

Moreover, full reimbursement for the costs of relocating or modifying full power stations is essential to many broadcasters' businesses because the Spectrum Act's reimbursement provisions cover only some of the costs that will be borne by broadcasters as a part of the repack. For example, as the Block Stations have explained, low-power and translator stations are likely to be displaced in the repack.[5] Several of the Block Stations low-power stations provide local network-affiliated programming in the Lima, Ohio market. The Spectrum Act does not provide reimbursement for revenue lost from these stations or the cost of reconstructing them (assuming spectrum can be found after the repack), but the costs and loss of revenue will have a substantial impact on the Block Stations' abilities to serve their communities. In light of all the costs that the Spectrum Act will not cover, it is particularly important that the FCC provide full reimbursement to the stations covered by the Spectrum Act's reimbursement provisions.

The Block Stations already have commented extensively on the principles that should govern the repack,[6] the importance to the broadcast business of a fully reimbursed repack,[7] and the technical and financial challenges that the repack with present to individual stations.[8] The three main principles the FCC should observe in designing and executing the repack are that the process should be simple, comprehensive, and service driven:

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5 *See* Block Repack Reply Comments at 4.

6 *See* Block Repack Reply Comments at 3, 7-9; FRRC Comments at 2-10.

7 *See* Block Repack Reply Comments at 3-6.

8 *See* Block Repack Reply Comments at 2-3, 4-5; Block Initial Comments at 7.

(1) **Simple:** The process should be simple and efficient, with no unnecessary administrative burdens on broadcasters and a minimum of government red tape;

(2) **Comprehensive**: The repack should cover all reasonable costs as Congress intended – not just the costs included in a government-compiled list; and

(3) **Service Driven**: Broadcasters' repack choices should be driven by the needs of viewers in their individual markets, not by government directive or central control.

If the FCC observes these principles, the repack has a reasonable chance of delivering Congress's requirement that the over-the-air television survive and thrive through the auction and repack. If, however, the FCC turns the repack into just another centrally controlled, hyper-bureaucratic government program, the repack will fail and viewers will suffer.

III. THE WIDELITY REPORT SHOULD NOT BE USED TO DICTATE TO BROADCASTERS WHAT TECHNOLOGY OR OTHER CHOICES ARE ACCEPTABLE IN RELOCATING OR MODIFYING THEIR STATIONS.

Unfortunately, the Widelity Report and recent comments made in private FCC staff briefing sessions for select industry players (not including the Block Stations), the FCC appears to be veering away from the simple, comprehensive, and service-driven approach that would work for broadcasters and viewers. The Report suggests the FCC may be moving towards an intrusive, command-and-control model that is highly unlikely to provide the full reimbursement required by Congress.

The Block Stations appreciate the extensive efforts made in the Widelity Report to research and document what repack expenses may be incurred by stations across the country. At the same time, however, the Block Stations question whether Widelity's compilation of its lists of expected expenses and estimated costs will have any practical value once stations actually begin making the changes necessitated by the repack. Every station that needs to rebuild of modify its facilities will face unique – and in many cases daunting – challenges that cannot be

quantified by a pre-fabricated government schedule of acceptable expenses. Moreover, until new channels are assigned, broadcasters cannot even begin to estimate what the required modifications will cost. The Widelity Report should not be used as a pretext for limiting broadcasters' choices in reconfiguring their stations during the repack or as an excuse for dictating to broadcasters the technology or other choices they will be forced to make during this process.

For example, the Block stations include WDRB(TV), Louisville, Kentucky, and WMYO(TV) Salem, Indiana, which currently are located on Channels 49 and 51, respectively. Both of these stations are likely to be relocated under the post-auction repack scenarios the FCC has discussed. Preliminary engineering studies show that it will be extremely difficult for the FCC to locate channels in the Louisville market that replicate the stations' current service area and population, raising serious questions about whether the FCC can repack the Louisville market in accordance with the requirements of the Spectrum Act. But even assuming the FCC can find acceptable channels for these two stations, any relocation is going to be very expensive, potentially requiring the purchase of additional property to construct a new tower and the purchase of duplicate transmission facilities. There is simply no way to anticipate any of these costs until after the auction is complete and new channels have been assigned.

The Widelity Report recognizes that these challenges exist and may be severe. Nonetheless, it delivers, upon FCC request, a catalog of potential cost categories and a range of likely prices for each item.[9] This looks to the Block Stations like the beginning of a classic bureaucratic overreach, wherein the FCC – or some appointed third party agent – seeks to tell broadcasters who are being forced to relocate their stations what they should buy and how much

[9] *See* Widelity Report at Appendix B.

they should pay for it. The Spectrum Act does not give the FCC the authority to micromanage each station's repack. It simply mandates that the FCC pay the costs that the repack entails from auction revenues. The Widelity Report looks like the beginning of a process here the FCC avoids paying certain costs it deems "unreasonable" not the process of full reimbursement that Congress envisioned.

None of which is meant to impugn the motives or the work of Widelity, which worked closely with broadcasters and has produced a reasonable catalog of potential expenditures and a good first effort at estimating costs. But the very nature of Widelity's efforts renders it result too inexact and speculative to be of much use in the repack reimbursement process. If reports are true that the FCC expects to complete the repack in 39 months,[10] the FCC can expect all estimated costs to skyrocket across the board as broadcasters scramble to acquire the necessary equipment and administrative approvals in an environment of severely overtaxed resources. Of particular concern is whether there will be sufficient tower crews to complete the necessary work within the FCC's aggressive timeframes. Industry experts have estimated that only 14 tower crews in the United States are capable of working for repacking stations, meaning that only approximately 364 stations can be repacked in three years.[11] Presumably the price of being one of those 364 stations will be much higher than the rate charged under normal circumstances. Widelity's cost estimates may be reasonable today, but there is no reason to think they will hold in the atmosphere of scarcity and dire need that will characterize the repack period. Engineering,

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[10] *See* Phil Kurz, *FCC Auction, Repack Tech Proposals Detailed*, TVNEWSCHECK, Apr. 17, 2014, *available at* http://www.tvnewscheck.com/article/75648/fcc-auction-repack-tech-proposals-detailed.

[11] *See* Phil Kurz, *Repack Sked Troubles Stations, Vendors*, TVNEWSCHECK, Apr. 17, 2014, *available at* http://www.tvnewscheck.com/article/75650/fcc-repack-sked-troubles-stations-vendors. The Widelity Report notes the potential tower crew shortages, but it is not clear that it factored those shortages into its estimates pricing model. *See* Widelity Report at 18-20.

equipment, and legal costs do not decrease in a period of government mandated deadlines – they increase exponentially.

For these reasons, the FCC cannot enshrine Widelity's estimates as any kind of limitation on what costs may be reimbursed or in what amounts. Congress mandated full reimbursement of reasonable expenses, and what is reasonable must be judged by broadcasters that are actually accomplishing the task of channel relocation – not on the blackboard in some government office in Washington.

IV. THE COMMISSION SHOULD USE THE WIDELITY REPORT AS A TOOL FOR DETERMINING HOW MANY STATIONS CAN BE REPACKED WITHIN THE SPECTRUM ACT'S $1.75 BILLION REPACK BUDGET.

The Widelity Report may have some use, but it won't be as a tool for limiting broadcasters' potential reimbursement. Instead, the FCC should use the report to begin to develop a plan to determine the maximum number of stations that the FCC may permissibly repack given the $1.75 billion budget that Congress has allotted for the this task.[12] The FCC thus far has proceeded as if it may repack as many stations as necessary to accomplish the agency's spectrum clearing goals. This is a clear misinterpretation of the Spectrum Act and could lead to the complete failure of the auction. As the FCC knows, Congress directed the FCC to pay all broadcasters' reasonable repack-related expenses and it authorized the FCC to spend $1.75 billion dollars from a fund created with auction revenues to accomplish that task. In other words, as many commenters have noted, the law permits the FCC to repack only as many stations as can be reimbursed from the $1.75 billion fund.

If the FCC embarks on an auction plan that leads to more station relocations that the FCC can reimburse, then the auction will violate the Spectrum Act. In that event, unreimbursed

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[12] *See, e.g.*, Reply Comments of National Association of Broadcasters, GN Docket No. 12-268, at 37-42, filed Mar. 12, 2013; Comments of the National Association of Broadcasters, GN Docket 12-268, at 41-42 filed Nov. 4, 2013; FRRC Comments at 3.

broadcasters are sure to take the agency to court, which will jeopardize the auction results, and, at the very least lead to years of costly litigation during which the "reclaimed" 600 MHz spectrum will likely be unusable by wireless carriers or broadcasters. The Widelity Report gives the FCC a chance to avoid that outcome by forming the basis for a methodical incentive auction that seeks to relocate only as many stations as can be fully reimbursed from the relocation fund.

V. THE FCC'S REIMBURSEMENT PROCESS MUST BE STREAMLINED IF IT EXPECTS TO MEET ITS REPACK TRANSITION TARGET DATES.

As the Block Stations have explained in its previous submissions, a successful transition requires that broadcasters receive full reimbursement for any repack-related expenses in a timely manner without excessive administrative costs.[13] For that reason, the Block Stations urge the FCC to reject the Widelity Report's recommendation that the FCC hire a third-party administrator to handle accepting claims and making disbursements from the reimbursement fund.[14] Adding a third party to this process will simply add another layer of bureaucracy, expense, and delay to a process that must move quickly and efficiently to be successful.

Regardless of whether the FCC decides to administer the fund itself or hire a third-party to handle it, the repack reimbursement process should be the same streamlined and decentralized approach proposed by the Fair Repack Reimbursement Coalition in the Fall of 2013. The procedure should consist of five simple steps:

Step 1: Once each broadcaster's post-auction channel and facilities have been identified, the Commission should ask each repacked broadcaster to submit an estimate of anticipated repack costs.

Step2: Within a reasonable period, each affected broadcaster will file a brief summary of its repack plans and a good-faith estimate of the expected cost.

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13 FRRC Comments at 3, 5.

14 *See* Widelity Report at 40.

Step 3: Absent some evidence that the initial estimate has been made in bad faith, the Commission should disburse to each broadcaster a payment equal to that broadcaster's estimate.

Step 4: Following the initial disbursement but before construction is complete, each affected broadcaster should be permitted to seek additional repack funding upon a showing that the disbursed funds were insufficient to cover all repack-related costs.

Step 5: Upon completion of repack construction, broadcasters that have received repack funds should be required to certify to the Commission that the amount of disbursed funds were spent on repack related expenses and return any unused funds.

This simple process would rely on broadcasters' familiar responsibility to deal with the FCC with the utmost candor and honesty as a condition of their licenses. The risk of waste, fraud, or abuse in such a process would be minimal given the potential risks of seeking to game the repack system.

The simple process the Block Stations have endorsed will be necessary if the FCC expects to have any chance of completing the repack during the 39-month timeframe that has been publicly discussed. If broadcasters are forced to waste valuable months making submissions to a third-party repack authority and then, potentially more months arguing over whether certain expenditures are "reasonable," the repack will not be completed in a timely manner. The proposed process has the virtues of (1) ensuring that broadcasters are free to do what they have the knowledge and experience to do best – build and operate TV stations; and (2) guaranteeing that that the FCC treats Congress's mandate of full repack reimbursement as a serious commitment rather than an empty promise.

VI. CONCLUSION

For the reasons set forth above, the Block Stations urge the Commission to adopt the proposals discussed herein.

Respectfully submitted,

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