

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

In the Matter of)	
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Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
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COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

Sinclair Broadcast Group, Inc. (“Sinclair”) submits these comments in response to the *Public Notice* seeking comment on the report prepared by Widelity Inc. (the “Widelity Report” or the “Report”) and on the Catalog of Potential Expenses and Estimated Costs.¹

As an initial matter, Sinclair observes that every month that the current freeze² on broadcast facilities applications continues, the more unreliable the Widelity Report becomes. The Report acknowledges the marked lack of capacity within the affected industries and among essential professionals to accomplish an enormously complex process, and confirms that even in the best case scenario the transition of some stations will take more than three years. And the support industries that are essential to a successful transition have suffered another four months of almost total work stoppage since the Widelity Report was released. Industry capacity will continue to shrink for the duration of the freeze. The FCC should be doing everything in its power to enhance workflow for these critical industries, instead of putting them further into deep freeze.

¹ *Media Bureau Seeks Comment on Widelity Report and Catalog of Potential Expenses and Estimated Costs*, GN Docket No. 12-268, DA 14-389 (rel. March 21, 2014) (“*Public Notice*”).

² *See Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, DA 13-618 (rel. April 5, 2013).

The tradeoff the Commission has made here – causing the very industries that are essential to a timely and cost-effective transition to atrophy for the sole purpose of simplifying its auction planning – reflects yet another case of the FCC getting its Congressionally-mandated priorities backwards. Congress gave the FCC ten years to plan and conduct the incentive auction, and requires the Commission to make all reimbursements within three years.³ Yet in its effort to accelerate the auction at all costs, the FCC has implemented a freeze that compounds, rather than mitigates, the challenge of meeting the statutory reimbursement deadline.

To be clear: Sinclair does *not* suggest that the auction be “delayed” as measured against the Commission’s arbitrary timetable. Sinclair only observes that the Commission must not trade off statutory mandates simply to meet a timetable preferred by the agency.

I. Timing Issues

The particulars of the repacking process can have a significant impact on both the cost of repacking and the timetable for completion. But since the FCC has provided virtually no information about the repacking process itself, Widelity’s research was conducted in the absence of critical contextual information, and all comments on the Widelity Report necessarily reflect the same deficiency. The Widelity Report, while providing useful data points, cannot be relied upon as a definitive baseline for repacking planning.

It is clear from the Widelity Report that in the best case scenario repacking will require upwards of four years. Getting as close as possible to the best case scenario naturally requires thorough planning by all parties. Yet broadcasters cannot do *any* advance planning without a clear and complete understanding of the repacking and transition scenarios the FCC intends to impose. The FCC has not detailed what the Commission’s role will be in determining qualified

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(b)(4)(D), 125 Stat. 156, 227 (2012) (the “Spectrum Act”).

vendors, and what remediation might be available if vendors are constrained because of volume, particularly give the expeditious schedule apparently planned by the FCC. Will the FCC consult with vendors, professionals and stations to attempt to prescribe priorities? Will there be some staggering of construction dates by region, by the type of facility change required, by population affected or some other criteria? Or will the FCC leave simply allow affected broadcasters to compete for the available resources, which are already known to be inadequate? How would that decision impact the cost of the transition? How will the FCC address the “daisy chain” effects of the inevitable impediments? What happens if a tower crew is idled mid-project by a zoning dispute? Will the FCC cover the cost of temporarily re-deploying that crew to another location, even if that contingency was initially not budgeted? And perhaps the most important question of all is “what is the FCC’s ultimate transition plan?” This drives nearly all of the pre-planning and planning mentioned in the Report.

The Report does not fully consider the impact of RS-222-G (GSPEC – “Revision G”) on many aspects of tower related activity. This is particularly true with respect to the phased nature of loading and unloading of towers over a period of time. The new standards in revision G have significantly complicated construction requirements. Many existing towers fail to meet required specifications, and the need to bring those towers up to spec introduces another time consuming variable to that the Commission must consider and address.

And although the Widelity Report acknowledges the critical lack of industry capacity to do the necessary work, it does not sufficiently account either for further declines in capacity resulting from the application freeze or for the impact of a sudden and dramatic increase in demand for products and services that simply are not being produced and provided in the ordinary course today. The Spectrum Act requires that “... to the extent practicable, all . . .

reassignments and reallocations shall become effective simultaneously.”⁴ As a practical matter, this means that all of the stations that must change channels will all be competing for the same few resources for tower evaluations, for structural design, for replacement antennas, for transmission lines, for transmitters, for the few qualified tower crews, and for the limited number of field engineers and installation personnel. A tower evaluation can require four to ten weeks, depending on the tower’s condition and the project’s requirements, and could potentially cost in the five-figure range.⁵ Considering there are only a few qualified structural firms that can perform such work, each station relocated will basically have to “take a number.”

The same situation applies to the other steps in the process. Just for towers to be strengthened tower-grade steel, fittings and hardware must be available. Materials to make antennas and transmission-line systems must be obtained in sufficient quantities. The few antenna and RF systems manufacturers will, of course, be competing for the same raw materials.

The Report also does not take sufficient account of the lack of qualified tower crews that remain since the DTV transition and the ongoing deterioration of that market resulting from the FCC-imposed TV application freeze. When the Report was drafted, Widelity noted that only approximately 14 qualified tower crews existed.⁶ How many of those are still in existence now, and how many will be around in one, two or three years, if the FCC does not promptly lift the freeze?

The industry also lacks enough qualified structural engineers to ensure safety of qualified tower crews, particularly tall and complex tower projects, and this is a fundamental flaw in the assumptions underlying the Report. As the Commission is aware, structural engineers are

⁴ Spectrum Act, at § 6403(f)(2).

⁵ Widelity Report, at 14.

⁶ *Id.*, at 18.

essential for planning, loading analysis, construction, follow-up troubleshooting and maintenance. Without a doubt the transition process will be time-consuming because when dealing with towers (particularly larger towers), safety considerations unquestionably must be at the forefront. Again, given that the FCC has until 2022 to complete the auction⁷ a rush to begin a transition, when the necessary support industries and professionals are small and dwindling fast, could be fairly criticized as disregarding both market realities and the paramount importance of safety. The FCC's priority for a quick auction does not (and should not) exempt stations, their engineers, or their contractors and suppliers from abiding by long-standing rules and regulations of the FCC or the construction regulations of local jurisdictions. But proceeding according to all of these requirements takes time. And many of the requirements, such as local regulations, are externalities to the repacking process, most of which are beyond the control of the Commission or broadcasters.

The Report is also largely silent regarding the issue of whether or not there is adequate time given to station licensing, particularly given that many of the presumed markets that will be impacted are located within international border constraints. The three months the Commission provides for licensing seems woefully shy of typical times required for coordination across borders, which may take upwards of a year and sometimes longer. Given the historically slow nature of international coordination issues between the FCC and its Canadian and Mexican counterparts, the conclusions underlying the Report in this regard are not realistic. In light of the complexity of the incentive auction, it is extremely unlikely that international coordination will occur more quickly than the slow manner that has been historically been the case.

⁷ See Spectrum Act, at § 6403(f)(3).

Inevitably, some significant and unexpected issues will arise with the FCC's new channel assignments. As it appears that the Commission does not plan to seek any public input regarding new assignments prior to closing the auction, the Commission must leave adequate time for problems to be addressed *before* facilities are changed. As Sinclair has previously noted, the Commission's apparent plans for the conduct of the auction incentivize the Commission to be overly optimistic in choosing repacking scenarios.⁸ A decision by the Commission to shift the risk of overly-optimistic predictions to broadcasters is inconsistent with Congress' mandate that the FCC use "all reasonable efforts to preserve . . . the coverage area and population served of each broadcast television licensee. . . ."⁹

II. Cost Implications

Although the Report seems to have correctly taken a number of cost and reimbursement issues into account based on information available and conditions extant at the time the Report was drafted, there are number of additional factors and costs that should be considered by the Commission. As noted above, many stations chasing too few resources to meet the Commission's transition timeline will be the norm, and this will almost certainly have a significant adverse impact on price. When supply is limited and demand ramps from zero to one hundred overnight, costs will grow and, inevitably, errors requiring costly corrections will be made.

The inability to plan far in advance, the dearth of capacity in support industries and the short timeframe the FCC is pursuing will also impose additional and unnecessary costs on broadcast stations, which will have little choice other than to redeploy station personnel and other resources from existing priorities and projects in order to manage the transition process.

⁸ Comments of Sinclair Broadcast Group, Inc., GN Docket No. 12-268, filed January 25, 2013.

⁹ Spectrum Act, at §6403(b)(2).

These costs are real and substantial, and the Commission's reimbursements should cover the costs of station personnel and other resources required for repacking, both before and after the auction.

Although the degree of pre-planning that can be done is limited, stations that are "out of core" – in the upper portions of the UHF band that are most likely to be re-purposed, should be encouraged to undertake whatever advance contingency planning is feasible, and the costs of that planning should be reimbursable. A limited head start is better than no head start at all. The FCC should reimburse the reasonable costs of pre-planning by station personnel and outside contractors.

The fully accounted costs in time, money and disruption of normal television broadcast operations can be surprisingly high. Even the easiest of channel changes in a "normal" market can cost in excess of \$1,000,000.¹⁰ A station which shares a panel type broadband antenna can possibly change channels without incurring any costs for a new antenna (there are a relative few that would see such benefit) with minimal tower work (optimization of antenna tuning would most likely still be required). However, the station must still acquire a new channel mask filter and make modifications to the RF combiner, along with modification, retuning or replacement of its transmitter to operate on the new channel. Mask filters are not off-the-shelf items: they must be individually designed, constructed, delivered, and installed. Under ideal conditions, again in a "normal" market, this process would typically require at least three months.

But when a station uses a channel-specific antenna, such as a slotted coaxial antenna, the antenna must be replaced, and often the transmission-line as well. For example, a proposal to change Sinclair station WKEF in Dayton, Ohio from channel 51 to channel 31 was prepared and

¹⁰ See Widelity Report, at 77.

presented to a wireless operator last year. That proposal included, among other things, the costs of preparing an application for a construction permit and a license application. Because the antenna will be replaced, the tower must be studied to determine if it is capable of supporting the proposed new antenna and transmission line. Because the antenna aperture (size) is limited, the new channel 31 antenna would have less gain so more transmitter power output is required. The costs associated with this project have already been considerable. And these costs and timetable reflect what is in essence a temporary glut of capacity, since the few remaining professionals and suppliers have very little work at the moment.

III. Conclusion

A conservative estimate for a simple transition requiring no tower work or no new antenna typically exceeds \$1,000,000 and by a substantial amount. More complex transitions could cost in excess of \$5,000,000. One of Sinclair's primary concerns about this transition is that the repacking fund is limited to \$1,750,000,000, and this budget must cover eligible MVPD costs as well.¹¹ Given the short timetable for the transition, the sudden increase in demand, the inevitable unexpected problems (both station-specific and generally), and the cost and time required for error remediation, Sinclair believes the Commission should put far more effort than is currently apparent into planning an orderly transition. This requires, among other steps, development of a very specific and practical transition plan that includes substantial margin for error in both costs and timing. Sinclair fully supports the call of the National Association of Broadcasters for a Notice of Proposed Rule Making to address the issues in this proceeding in detail.¹²

¹¹ See Spectrum Act, at § 6402(G)(iii)(I)

¹² See Comments of the National Association of Broadcasters, GN Docket No. 12-268, filed April 4, 2014.

In addition, Sinclair renews its call for the FCC to define “standard” flexible use waivers and grant them liberally prior to the auction.¹³ This is perhaps the single most significant step the FCC can take to relieve some of the burden on the repacking fund and improve the likelihood of a successful auction.

Respectfully submitted,

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¹³ See Notice of Ex Parte of Sinclair Broadcast Group, Inc., GN Docket No. 12-268, filed September 4, 2013.