EXPANDING OPPORTUNITIES FOR BROADCASTERS COALITION

April 28, 2014

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268

On April 24, 2014, undersigned Executive Director of the Expanding Opportunities for Broadcasters Coalition (the "Coalition") and Ari Meltzer of Wiley Rein LLP participated in a meeting with Commissioner Michael O'Rielly and Courtney Reinhard and Erin McGrath from Commissioner O'Rielly's office.

During the meetings, the Coalition representatives expressed an appreciation for the FCC's recent actions to increase the confidence of perspective sellers in the Incentive Auction process—highlighting, in particular, reassuring statements by Chairman Wheeler at an April 18, 2014 meeting. At the same time, the Coalition representatives emphasized that there is a lot of work to be done to ensure a successful auction. Nearly every stakeholder is in agreement that the key to a successful auction is to bring lots of broadcasters in the front door: with an ample supply of broadcast volunteers the FCC can reallocate 120 MHz, generate plenty of money for all of the secondary Congressional goals, and eliminate any perceived need for bidding restrictions in the forward auction. But, it appears that the Stanford economists advising the Commission have identified as a "disease" an auction that achieves less than a Nobel Laureate level of efficiency. And it appears that their "cure" will be a complicated scheme of "adjustment factors" (formerly known as "scoring") seemingly designed to minimize payments to

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broadcasters.[1] The problem is that this "cure"—even if based on sound economic theory—sends the wrong message to broadcasters and will drive them away from the auction. In other words, the "cure" would be far worse than the "disease." The mistrust created by efforts to limit payments to broadcast participants is depressing broadcaster interest in the auction.

The Coalition representatives explained that the best remedy for this mistrust, and the only way to ensure a positive narrative in the broadcast community, is to both: (1) disavow in the Report and Order the use of any "adjustment factors" that serve as a proxy for a station's enterprise value (e.g., revenue, population served, network affiliation, ratings, etc.); and (2) provide as much information as quickly as possible about how the FCC will establish offers to broadcasters.

With regard to scoring, the Coalition representatives explained that a major source of consternation in the broadcast community is the FCC's refusal to foreswear the use of a station's population served as an adjustment factor, despite prior assurances to the contrary. The Coalition representatives presented their analysis of the FCC's own broadcast data, included the in attached exhibit, which conclusively demonstrates that the correlation between the number of POPs served by a station and its value in clearing the broadcast spectrum is minimal at best. As such, the only reason for the Commission to consider a station's population served is to try to outsmart the market and reduce payments to broadcasters based on some factor other than the value of their spectrum. The Coalition representatives warned that the notion that economists are developing a formula to minimize payments to those broadcasters most likely to participate will dampen broadcaster interest and cause the auction to, at best, under-perform and, at worst, fail entirely. They strongly encouraged the Commission to disavow any explicit use of scoring in the auction, or, if the Commission insists on any further "scoring," to base it solely on demonstrated interference or preclusion factors.

The Coalition representatives also urged the Commission to move swiftly to solidify broadcaster interest and support by providing broadcasters

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[1] The Coalition notes that the issue is not the FCC's terminology, but rather the flawed principles that underlie the agency's scoring proposals.

with concrete information about the prices it will offer broadcasters in the reverse auction. They stressed that even if the FCC is not prepared to share actual numbers with individual stations at this time—the "book" that Chairman Wheeler has described—it should not wait to provide as much information as possible about how the Commission will set prices. Because the television stations that the FCC needs to entice for the auction to succeed are going enterprises with leases, capital expenses, and long-term business plans, any delay in communicating payment information could result in missed opportunities for broadcaster participation.

The Coalition representatives urged the Commission to establish prices that are sufficient to incentivize auction participation and establish a market for broadcast spectrum. The FCC's own Omnibus Broadband Initiative (OBI) Technical Paper No. 3 documents an "estimated ten-fold disparity in economic value between spectrum used for mobile broadband and spectrum used for OTA TV broadcasting."[2] This gap is the "incentive" in the incentive auction—providing an enticement to broadcasters to consider voluntarily relinquishing their spectrum. If the offered amounts are sufficiently high, even "dedicated broadcasters" will have an incentive to participate, using the proceeds to purchase more stations and/or stations in larger and more valuable markets. Further, by offering prices that attract a broad supply of broadcast spectrum, the Commission will fulfill Chairman Wheeler's vision of allowing "market forces to determine the highest and best use of spectrum."[3]

The Coalition representatives also encouraged the Commission to take steps to encourage innovative channel sharing proposals. The Coalition representatives stressed there is no rational basis for paying less to a station surrendering 6 MHz to channel share than to a station surrendering 6 MHz to exit the business. They also explained that there are innovative channel sharing arrangements that are stalled due to the lack of pricing guidance. Given the complexity of these arrangements, if the FCC waits much longer to provide broadcasters with information about auction pricing, it will be too

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[2] FCC, *Spectrum Analysis: Options for Broadcast Spectrum; OBI Technical Paper No. 3* 7 (June 2010), *available at* http://download.broadband.gov/plan/fcc-omnibus-broadband-initiative-(obi)-technical-paper-spectrum-analysis-options-for-broadband-spectrum.pdf.
[3] Posting of Chairman Tom Wheeler to Official FCC Blog, http://www.fcc.gov/blog/getting-incentive-auction-right (Apr. 18, 2014).

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late, and opportunities to reclaim substantial amounts of spectrum in major markets will be lost.

With regard to recent suggestions, including in the FCC's Incentive Auction Fact Sheet, that reallocating between 45 MHz and 90 MHz would be considered a "successful" auction, the Coalition representatives reiterated that the auction was born out of the National Broadband Plan, which called for the reallocation of 500 MHz for mobile broadband use, including 120 MHz of broadcast spectrum, and that Congress desired when it adopted the Spectrum Act for the FCC to reallocate 120 MHz of broadcast spectrum. The Coalition representatives encouraged the Commission to continue to pursue its original goal—shared by Congress—of reallocating 120 MHz of broadcast spectrum through the incentive auction.

Finally, the Coalition representatives expressed their concern about reports that the Commission plans to restrict the ability of Verizon Wireless and AT&T to participate in the forward auction. They explained that limiting the amount of spectrum that the two largest wireless providers can purchase—and therefore the amount of revenue they will contribute—will diminish the expectations of broadcasters, leading to a more limited supply of spectrum in the reverse auction and less overall spectrum reallocated for mobile broadband use—which is and should be the primary focus of the incentive auction.

Pursuant to Section 1.1206 of the Commission's rules, attached hereto is a copy of the written presentation that was provided to the FCC representatives during the meeting.

Respectfully Submitted,

/s/ Preston Padden /s/

Preston Padden
Executive Director
Expanding Opportunities for
Broadcasters Coalition

EXPANDING OPPORTUNITIES FOR BROADCASTERS COALITION

cc: Commissioner Michael O'Rielly
Erin McGrath
Courtney Reinhard

EXPANDING
OPPORTUNITIES
FOR
BROADCASTERS
COALITION

UNLOCKING THE VALUE OF BROADCAST SPECTRUM
Keys to a Successful Auction

1. Don't "Blow" The Auction By Needlessly Depressing Broadcaster Enthusiasm

Strong wireless demand will produce a successful auction **IF** the FCC secures an adequate supply of spectrum. And, the clock in the reverse auction will move in only one direction - down. Therefore, the FCC should set initial broadcaster prices at amounts sufficiently high to attract enough broadcasters to the auction to facilitate a robust market for broadcast spectrum.

The FCC's own OBI Technical Paper No. 3 documents an "estimated ten-fold disparity in economic value between spectrum used for mobile broadband and spectrum used for OTA TV broadcasting." The gap between those amounts is the "incentive" in the incentive auction – providing an enticement to broadcasters to consider voluntarily relinquishing their spectrum. Ultimately, however, where prices fall within that range will be for the market to decide. The FCC's role is to facilitate the market by attracting adequate supply through attractive opening prices.

As of this date, broadcaster interest in the auction is weak and is lagging far behind the level of participation that will be necessary to have a successful auction.

The only way to increase broadcaster interest is to offer initial prices that are high enough to attract broadcaster participation and ultimately to pay true market value to broadcasters that choose to sell their spectrum.

If the FCC successfully reallocates substantial spectrum for wireless, no one will care how much broadcasters were paid. If inadequate FCC offers to broadcasters result in a failed auction, everyone will blame a penny-wise, but pound-foolish approach.

2. The FCC Needs To Get Pricing Guidance To Broadcasters ASAP

Broadcasters have many long-term contractual commitments—building leases, tower leases, programming contracts, employment agreements, etc. A decision to participate in the auction will require advance planning. The FCC must provide financial guidance now if it wants to increase broadcaster interest in the auction. For example, there are broadcasters who are considering innovative channel sharing plans but who cannot move forward on those plans until they receive initial pricing guidance.

If, as the FCC apparently is planning, the Report and Order proposes a vague "scoring" mechanism with a promise to provide details later and pricing way later, the Commission will leave a giant vacuum to be filled with negativity. The FCC must provide detailed pricing information concurrent with or shortly after it releases the Report and Order to maintain broadcaster interest and keep the naysayers from controlling the auction messaging.

3. "Scoring" Won't Work In This Auction

Noted auction expert Peter Cramton has explained that, in order for scoring to be effective in the incentive auction, the FCC: (1) would need to know the reserve prices lurking in the brain of every participating broadcaster (clearly not possible); and (2) would need to change its weights dynamically as stations are repacked (which would add intolerable complexity).

Scoring the reverse auction is a recipe for failure. If the FCC, based on imperfect information, attempts to "score" stations, it faces a serious risk of attracting the wrong broadcasters, leading to higher overall clearing costs or a lower supply of spectrum. For example, take two stations with similar preclusion effects—one that the FCC "scores" at 0.5 and the other that the FCC "scores" at 1 because the FCC concludes that, based on some metric, it would take more money to convince the second station to sell. If the first station would have sold at 0.8 but the second station only will sell at 1.5, neither station participates. Thus, by attempting to "score" stations based on imperfect information, the FCC ends up paying more for a combination of other stations to achieve the same outcome or, even worse, is unable to achieve realistic spectrum goals.

The population covered by a station's contour, in particular, is an imperfect metric for scoring that will lead to undesirable auction results. As the attached analysis demonstrates, any correlation between a station's covered POPs and the station's true value to the auction—its preclusive effect—is minimal at best. Population-based scoring, therefore, would produce absurd results in many situations—prioritizing (and offering greater amounts to) stations that have limited effect on the FCC's ability to reallocate spectrum.

Fortunately, the Commission does not need to "score" stations based on imperfect information to prioritize stations most critical to repacking. The design of the auction itself will result in higher prices for those stations most important for clearing spectrum, making "scoring" unnecessary. That is why AT&T and Verizon, whose sole motivation is to increase spectrum supply, both oppose "scoring".

4. The FCC Should Go For 120 MHz

Given exploding consumer demand for wireless services and the dearth of other sources of spectrum, the Commission should seek to reallocate from broadcasting to wireless as much spectrum as wireless carrier demand will support, with 120 MHz as the goal. The National Broadband Plan forecast the need for an additional 500 MHz of spectrum for mobile broadband – 120 MHz of which should come from broadcasters. The FCC should make every effort to satisfy this spectrum allocation goal.

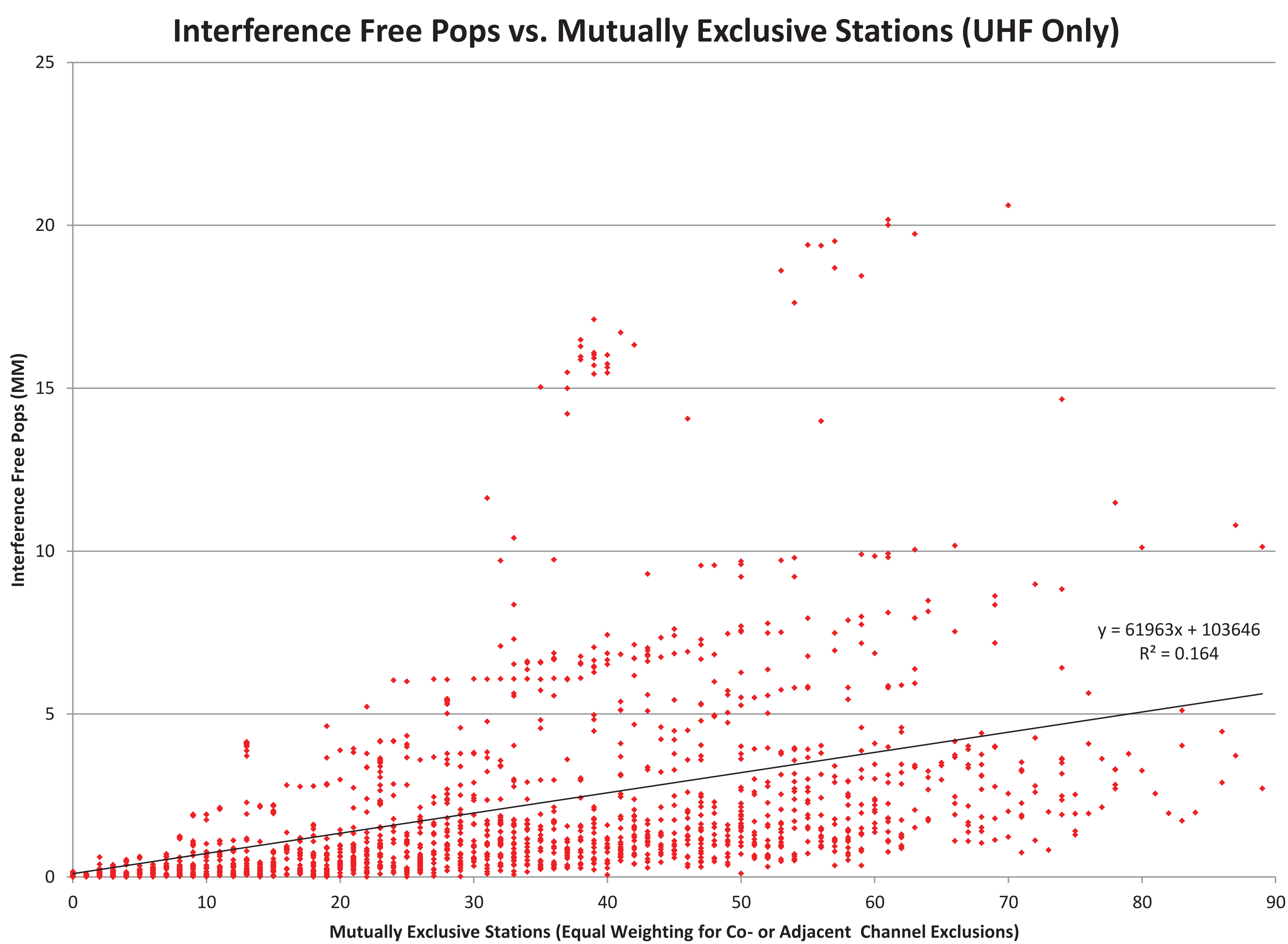
5. The FCC Should Not Waiver on Reverse Auction Pricing, But Should Favor A Mechanism to Facilitate Auction Closing

The FCC must make clear that the initial offer to each broadcaster is a "best and final" offer that will not increase under any conditions. Providing a safety valve—a so-called "oops round"—if prices are too low would suggest that the FCC either lacks confidence in its auction design, or worse, knows it can offer higher prices later, breeding distrust and providing an incentive for broadcasters to reject their initial offers.

At the same time, the FCC should adopt a mechanism that would allow it to increase forward auction revenue if the closing conditions cannot be met. If, after the forward auction, there is insufficient revenue to satisfy the closing conditions, the FCC should ask forward auction winners to incrementally increase their bids to allow the auction to close.

6. Restricting Forward Auction Participation Is a Lose-Lose Proposition

Restricting the ability of Verizon Wireless and AT&T to participate in the forward auction will interfere with market forces on both sides of the auction and very possibly could cause the auction to fail. The incentive auction will only succeed if: (1) broadcasters perceive that the forward auction will generate sufficient revenues to compensate willing broadcasters; and (2) the forward auction, in fact, generates sufficient revenues to satisfy the closing conditions. The perception that the FCC is willing forego auction revenue to achieve an objective other than those identified by Congress in the Spectrum Act will cause many broadcasters to rethink their auction participation, reducing the supply of spectrum and, thus, the amount of spectrum available to all carriers in the forward auction.



Interference Free Pops vs. Mutually Exclusive Stations (UHF Only)
Interference Free Pops (MM)
25
20
15
10
5
0
0
10
20
30
40
50
60
70
80
90
Mutually Exclusive Stations (Equal Weighting for Co- or Adjacent Channel Exclusions)
y = 61963x + 103646
R² = 0.164

Station Comparisons*

The lack of significant correlation between covered POPs and auction desirability is illustrated by real world examples from the FCC's own NY data:

– Station A and Station B have arguably similar auction value—each precludes around 100 stations and around 850M POPs. However, Station A has only 28% of the covered POPs of Station B.

– Similarly, Station C and Station D have similar POP coverage—around 7M POPs—but Station C precludes only 43% of the number of stations precluded by Station D, precludes only 70% of the POPs of Station D, and therefore arguably has lower auction value.

* Station data from the FCC's TVStudy data published July 2013 (http://data.fcc.gov/download/incentive-auctions/OET-69/). Stations chosen for illustrative purposes and anonymized to avoid any implication regarding auction participation. MX station count provides equal weighting for co- and adjacent preclusions, but POP data weighted at 50% for adjacent channel coverage.

Station Comparisons

Similar examples can be found in other major markets as well:

- In Los Angeles, two stations cover roughly the same number of POPs (7M), but one station has almost two and a half times the number of MX’d stations
- In Chicago, two stations each cover approximately 1.8M POPs, but one is MX’d with almost six times the number of stations as the other
- In Dallas, two stations cover around 1.1M POPs each, but one has 60% more MX’d stations
- In San Francisco, two station each cover around 6.3M POPs, but one has nearly twice the number of MX’d stations as the other