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 THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] has previously explained how the Federal Communications Commission's ("FCC" or "Commission") implementation of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") may have the unlawful effect of forcing low power television broadcasters and translators off the air, thereby drastically reducing full-power broadcasters' coverage areas and populations served, in violation of Section 6403(b)(2) of the Spectrum Act.[2] NAB incorporates those prior comments here, and hereby renews its objections to any Commission Order that fails to ensure, *ex ante*, that translators are protected during the Commission's repacking process. Failure to protect translators during the repacking would reduce the coverage area and population served of full-power stations, and would

[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] Comments of the National Association of Broadcasters, GN Docket No. 12-268, at 8-9 (Jan 25, 2013); Reply Comments of the National Association of Broadcasters, GN Docket No. 12-268, at 47-52 (March 12, 2013).

deprive their viewers of access to programming they currently receive. This result would be arbitrary, capricious, and contrary to law for the reasons set forth below.[3]

ARGUMENT

Translators serve a vital role in the broadcast ecosystem that has been undiminished for more than a half-century.[4] In many areas of the country, full-power broadcast stations cannot reach significant portions of the populations they serve due to terrain, the size of the area served by the full-power stations, and other geographic or spatial considerations. In these markets, broadcasters and the consumers they serve rely on translators to fill in gaps in coverage, extend the main station's broadcast signal, and help to ensure uninterrupted broadcast service to millions of television viewers. Translators are particularly critical in providing free broadcast service to dispersed populations in mountainous terrain and in Western states, where large service areas make a reliable network of translators essential to ensuring access to the broadcast programming of full-power stations. For example, KNPB in Reno, Nevada uses a network of 28 translators to reach half of its 845,000 viewers, including 27 tribal communities; and translators provide service to 69 percent of public television stations'

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[3] 5 U.S.C. § 706(2)(a).

[4] *See Amendment of the Commission's Rules and Regulations to permit the Operation of TV Translator Stations in Conjunction with the Primary Transmitter*, Report and Order, 13 Rad. Reg. (P & F) 1561, 1566 (1956) (Translator Authorization Order) (when initially authorizing translators, the FCC noted the "urgent need" for service in "isolated communities" and that translators could "be employed to bring multiple services to communities too small to support several stations"); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19342 (2004) (determining to preserve TV translator stations in the "digital age," citing their "unique role in delivering over-the-air programming of TV broadcast stations to many communities otherwise unable to receive such service").

coverage area in Wyoming.[5] In many states in the East, translators fill in coverage where viewers could not otherwise receive a full-power station's signal due to terrain.

Because translators effectively stand in the shoes of full-power stations by translating their signals and making them available to broad swaths of viewers who would otherwise lack access, protecting translators is an indispensable component of the Commission's mandate under the Spectrum Act to "make all reasonable efforts to preserve . . . the coverage area and population served of each broadcast television licensee" as of the date of the Spectrum Act's enactment, February 22, 2012.[6] For this reason, NAB objects to any Commission Order that fails to ensure that translators are protected during the repacking of broadcast spectrum. At a minimum, the Commission must protect fill-in translators authorized to replicate analog service of full-power stations prior to the DTV transition. Failure to consider translators would be contrary to the plain text of the Spectrum Act and fifty years of Congressional and Commission policy. Section 6403(b)(2) of the Spectrum Act provides:

> [i]n making any reassignments or reallocations . . ., 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, as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology of the Commission.[7]

The coverage areas and populations served of broadcast television licensees include the areas and populations served by translators who re-transmit the main broadcast

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[5] *See* Comments of the Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service in GN Docket No. 12-268 (filed Jan. 25, 2013), at 10-11.

[6] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6403(b)(2) (Feb. 22, 2012) (codified at 47 U.S.C. § 1452(b)(2)) ("Spectrum Act").

[7] Spectrum Act, § 6403(b)(2).

station's signal and thereby ensure that the original broadcast service reaches each broadcast licensee's full audience and coverage area.

Although the Spectrum Act defines "broadcast television licensee" to mean full power television stations and Class A low-power stations,[8] nothing in the Spectrum Act allows the Commission to deprive translators of their existing allocation of spectrum usage rights in the repacking. Quite the contrary, the Spectrum Act expressly provides:

> (5) LOW-POWER TELEVISION USAGE RIGHTS.—Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations.[9]

Section 6403(b)(2) must be construed in conjunction with subsection (b)(5) to require the Commission to ensure that it preserves the *entire* coverage area and population served for each broadcast television licensee—including the coverage areas and populations served by translators who re-broadcast the main station's signal.[10] While Section 6403(b)(5) cannot be read to provide low power stations with the right to be reimbursed for relocation costs, or to participate in the auction,[11] Section 6403(b)(2) must be construed in conjunction with subsection (b)(5) to require the Commission to ensure that it preserves the *entire* coverage area and population served for each broadcast television licensee—including the coverage areas and populations served by translators who re-broadcast the main station's signal.[12] As a policy matter, NAB

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[8] Spectrum Act, § 6001(6).

[9] Spectrum Act, § 6403(b)(5).

[10] *See Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 132 S. Ct. 1670, 1680 (2012) (construing statutory provision "in the context of the entire statute").

[11] Spectrum Act § 6403(a) ("The Commission shall conduct a reverse auction to determine the amount of compensation that each *broadcast television licensee* would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights…") (emphasis added); *see also* Spectrum Act § 6403(b)(4) ("[T]he Commission shall reimburse costs reasonably incurred by a *broadcast television licensee* that was reassigned…) (emphasis added).

[12] *See Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 132 S. Ct. 1670, 1680 (2012) (construing statutory provision "in the context of the entire statute").

continues to support all translators and low power stations that are providing essential services to the American people.[13]

Failure to protect translators not only would violate the Spectrum Act, it would also undermine longstanding Congressional and Commission policy. In the Digital Transition and Public Safety Act of 2005, for example, Congress specifically provided funds to ensure that translators could continue to serve the public after the conversion to digital.[14] Similarly, in the Local Community Radio Act of 2010, Congress recognized the important role that translators play in providing broadcast service to local communities, expressly providing that the Commission "shall ensure that . . . licenses are available to FM translator stations."[15] And in the Satellite Television Extension and Localism Act of 2010, Congress directed the Commission to develop a predictive model that "account[s] for the continuing operation of translator stations and low power television stations."[16] Although the Commission historically has required that translators "accept interference from" full-service television stations,[17] the Commission has never taken action that would result in the wholesale loss of this valuable broadcast service to millions of viewers.

The spectrum auction threatens to upset this settled regime and radically alter coverage areas and populations served for hundreds of broadcasters nationwide. Any Commission Order that does not ensure *ex ante* that translators upon which broadcast television licensees rely to provide serviceare protected in the repacking inevitably

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[13] *See* Reply Comments of the National Association of Broadcasters, GN Docket No. 12-268, 23 (Mar. 12, 2013).

[14] Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4, §§ 3008-3009 (Feb. 8, 2006).

[15] Local Community Radio Act of 2010, Pub. L. 111-371, 124 Stat. 4072, § 5 (Jan. 5, 2010).

[16] Satellite Television Extension and Localism Act of 2010, Pub. L. 111-175, 124 Stat. 1218, § 204 (May 27, 2010).

[17] Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations, Report and Order, 19 FCC Rcd 19331, 19333 (2004).

would mean that, in many markets viewers will lose valuable local broadcast service that Congress has repeatedly stated must be protected. Accordingly, any failure by the Commission to protect translators would violate Section 6403(b)(5) and Section 6403(b)(2), which requires the Commission to make "all reasonable efforts" to preserve each broadcast television licensee's coverage area and population served as of February 22, 2012.

CONCLUSION

Translators play an indispensable role in providing free and reliable broadcast television service to millions of Americans. They do so by retransmitting broadcast signals from full-power stations in areas that those stations cannot reach, thereby augmenting and ensuring the coverage areas and populations served of those full-power stations. NAB renews its prior comments on the effects of excluding translators from the repacking, and reiterates its objection to any Commission Order that fails to ensure that the spectrum usage rights of broadcasters are protected *ex ante* in the repacking. Failure to protect translators relied on by broadcast television licensees ahead of the repacking inevitably would mean that many translators would be forced off the air, thereby reducing the coverage areas and populations served of full-power stations. This result would be arbitrary, capricious, and contrary to law.

Respectfully submitted,

/s/

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May 8, 2014