

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

In the Matter of)	
)	
Expanding the Economic and Innovation)	
Opportunities of Spectrum Through)	GN Docket No. 12-268
Incentive Auctions)	
)	
Incentive Auction Task Force Seeks)	
Comment on Staff Analysis Regarding)	ET Docket No. 13-26
Pairwise Approach to Preserving Population)	
Served)	

COMMENTS OF BLOCK COMMUNICATIONS, INC., LIMA COMMUNICATIONS 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”),¹ hereby submits its comments in support of proposals for a one percent aggregate cap on new interference created by the post-auction TV spectrum repack.²

¹ The Block Stations are local operating affiliates of Block Communications, Inc., an integrated media company headquartered in Toledo, Ohio. Lima Communications Corporation is the licensee of WLIO(TV), Lima, Ohio; Independence Television Company is the licensee of WDRB(TV), Louisville, Kentucky and WMYO, Salem, Indiana; WAND(TV) Partnership is the licensee of WAND(TV), Decatur, Illinois; and Idaho Independent Television is the licensee of KTRV(TV), Nampa-Boise, Idaho. West Central Ohio Broadcasting, Inc. is the licensee of Class A television station WOHL-CD, Lima, Ohio, and low-power stations WLQP-LP, Lima, Ohio, WLMO-LP, Lima, Ohio, and WFND-LP, Findlay, Ohio.

² See Incentive Auction Task Force Released Updated Constraint File Data Using Actual Channels and Staff Analysis Regarding Pairwise Approach To Preserving Population Served, *Public Notice*, GN Docket No., 12-268, ET Docket No. 13-26, DA 14-677 (rel. June 2, 2014) (the “*Public Notice*”).

I. INTRODUCTION

Every increment of new interference among television stations that the FCC permits during the post-auction repack represents actual people who will lose over-the-air television service. These real TV viewers tend to get lost in technical discussions of permissible new interference percentages and sophisticated software packages designed to allow the simultaneous auction and development of a repack plan. But Congress instructed the FCC to make “all reasonable efforts” to protect every one of these TV viewers, and that directive must inform every repack interference decision that the FCC makes.³

In this proceeding, carrying out Congress’s mandate absolutely requires the FCC to adopt the one percent aggregate interference cap proposed by the National Association of Broadcasters (“NAB”) and others in comments earlier in this proceeding.⁴ As described below, the Block Stations do not believe that the 0.5% new interference standard for individual station pairs satisfies the “all reasonable efforts” test.⁵ The FCC appears to be content to seek to “minimize” new interference rather than carry out its statutory duty to make all reasonable efforts to ensure that there is no new interference. The Block Stations submit that the FCC’s interpretation of the statute is untenable and threatens to deprive many, many TV viewers of relied-upon service.

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403(b)(2), 125 Stat. 156 (2012) (the “Spectrum Act”)

⁴ See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, *Report and Order*, FCC 14-50, para. 182 (2014) (the “*Report and Order*”); *Public Notice* at 2 & n.7 (citing Comments of the National Association of Broadcasters, GN Docket No. 12-268 at 20-21 (filed Jan. 25, 2013); Comments of ABC Television Affiliates Association et al., GN Docket No. 12-268 at 3 (filed Jan. 25, 2013); Comments of Univision Communications, GN Docket No. 12-268 at 7 (filed Jan. 25, 2013); Comments of Belo Corp., GN Docket No. 12-268 at 14-15 (filed Jan. 25, 2013); Reply Comments of the National Association of Broadcasters, GN Docket No. 12-268 at 43-44 (filed Mar. 12, 2013)).

⁵ *Report and Order* at para. 178.

But even assuming solely for the sake of argument that the FCC’s interpretation of its statutory mandate is correct, failing to cap the total amount of interference stations must tolerate – *i.e.*, the number of TV viewers that will lose service – plainly would violate the statute. Absent a cap, each station potentially would be subject to several times the 0.5 percent interference limit. This easily could translate into millions of viewers losing over-the-air TV service they have depended upon for decades. The proposed interference cap would minimize these service losses and constitutes the least the FCC can do to even arguably satisfy its duties under the Spectrum Act. And, since the FCC staff’s own studies indicate that few stations would be subject to more than one percent new interference, adopting the cap plainly would be a “reasonable effort” to protect broadcasters’ service areas and populations. The FCC should not try to evade this conclusion; it should embrace and take this reasonable step, as Congress directed.

The Block Stations, therefore, strongly support adoption of the proposed one percent interference cap proposed by NAB.

II. THE FCC MUST ADOPT AN INTERFERENCE CAP TO COMPLY WITH THE SPECTRUM ACT’S REQUIREMENT THAT THE FCC PROTECT OVER-THE-AIR TV VIEWERS.

In the *Report and Order*, the FCC left open the issue of whether to adopt an aggregate interference cap, and directed staff to conduct further proceedings to develop a more complete record on the issue.⁶ The Incentive Auction Task Force (the “Task Force”) seeks comment on whether the interference cap is necessary in light of staff repack simulations that purport to show that few stations will receive in excess of 0.5 percent aggregate interference and that no station will receive greater than two percent aggregate interference.⁷

⁶ See *id.* at para. 182.

⁷ See *Public Notice* at 3-4.

The Block Stations submit that the *Public Notice* appears to misconstrue the FCC's responsibility under the Spectrum Act. That law requires the FCC to make "all reasonable efforts" to protect viewers from loss of service. It does not permit the FCC to reject reasonable means of protecting TV viewers from new interference if the number of affected stations is small enough. While the Block Stations are pleased that staff repack simulations predict that few stations will receive catastrophic interference, those simulations only reinforce the arguments favoring the proposed cap on aggregate interference. They show that such a cap fits squarely into the category of a "reasonable effort" to preserve stations' existing service areas and populations.

The FCC decided in the *Report and Order* that its responsibility to make "all reasonable efforts" to preserve existing TV service is limited by the FCC needs for flexibility to accomplish an orderly TV spectrum repack.⁸ It follows from this logic that a proposed means of limiting new interference is reasonable if it limits new interference without unduly limiting the FCC's flexibility in the repack. A one percent aggregate interference cap accomplishes both. First, it is a simple way to ensure that the number of TV viewers that lose service as a result of the repack is limited as much as reasonably possible. Second, the Task Force's repack simulations show that the number of stations affected by an aggregate cap would be small, meaning that the impact on the FCC's repack flexibility would be small. Thus, under the logic of the *Report and Order*, adoption of an aggregate interference cap is required because it would clearly constitute a "reasonable effort" to protect stations' service areas and populations, *i.e.* the very real TV viewers threatened with service loss during the repack.

⁸ See *Report and Order* at paras. 19, 119-126.

The Block Stations note that they disagree with the FCC's decision to design a repack system that permits new interference. Instead, the Block Stations advocated for a repack that generated full replication of stations' licensed service areas and populations and protects all TV stations and TV viewers.⁹ The FCC's decision to permit new interference as part of the repack plan already risks non-compliance with the Spectrum Act's "all reasonable efforts" language. If the FCC also decides to reject a reasonable interference cap, it would be in clear violation of the Spectrum Act and subject to reversal, endangering the entire repack process.

The *Public Notice* suggests that an interference cap is unneeded because staff simulations show that few stations will receive excessive new interference.¹⁰ But these results cut in favor of adopting an aggregate interference cap, not against it. In the first place, the "all reasonable efforts" standard applies to all stations; it does not exclude the unlucky few that will experience excessive interference. The staff simulations show that at least some stations will experience aggregate new interference greater than one percent, and an aggregate interference cap obviously would help those stations and their viewers. Equally important, the staff simulations show that the impact on the repack of adopting the aggregate interference cap would be minimal at worst. In other words, some number of stations and their viewers would benefit, and the FCC's repack flexibility would not be unduly impaired. It's hard to imagine a more reasonable, less intrusive solution to a problem that threatens relied-upon television service to an untold number of television viewers nationwide.

⁹ See Comments of Lima Communications Corporation, *et al.*, ET Docket No. 12-268 at 1-2 (filed June 14, 2013); Reply Comments of Lima Communications Corporation, *et al.*, ET Docket No. 12-268 at 1 (filed Mar. 12, 2013); Comments of Lima Communications Corporation, *et al.*, ET Docket No. 12-268 at 3-5 (filed Jan. 25, 2013).

¹⁰ *Public Notice* at 3-4.

The FCC should act in this matter to protect as many American TV viewers as possible from disruption of their television service. When this issue is viewed through the lens of average Americans whose television service is threatened by the repack, adoption of an aggregate interference cap is simply necessary to carry out both the purpose and the mandate of the Spectrum Act.

III. CONCLUSION

For the foregoing reasons, the Block Stations request that the FCC adopt to proposed one percent interference cap for television stations affected by the post-auction repack.

Respectfully submitted,

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

/s/

John R. Feore
Jason E. Rademacher
COOLEY, LLP
1299 Pennsylvania Ave., NW
Washington, D.C. 20004
Its attorneys.

July 2, 2014