

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	

**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

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Summary

Congress has delegated to the Commission the unprecedented challenge of solving a problem that Sir Winston Churchill might have described as “a riddle, wrapped in a mystery, inside an enigma.” Specifically, the Commission has been charged with designing a system that will encourage (i) *enough* television broadcasters, particularly in spectrum congested markets, to participate in an incentive auction even before such broadcasters know how much spectrum will be needed in their markets and the effect repacking may have on them if they do not successfully participate in the reverse auction process, and (ii) *enough* bidders to bid *enough* money in the forward auction for television spectrum in those markets to pay the “prices” sought by the television stations even before such bidders know how much television spectrum will in fact be available through a combination of surrendered and repacked spectrum.

To facilitate the Commission’s, and ultimately Congress’s objective, the State Associations urge the Commission to adopt four overarching principles. First, the Commission’s responsibilities are clear and its discretion is limited under both the Spectrum Act and the Communications Act – it may only encourage broadcasters to relinquish their spectrum usage rights “voluntarily” in exchange for proceeds obtained from the forward auction. Thus, for example, the Commission must be completely faithful to, or not tentative or ambiguous about, its commitment to implementing Congress’s charge that the Commission use “all reasonable efforts” to preserve a station’s existing coverage area and population. Second, broadcasters must be able to make truly informed decisions whether to participate in the incentive auction process. Thus, the Commission, *inter alia*, should remove the uncertainty regarding coordination with Canada and Mexico by assuring that those coordinations will be complete prior to the commencement of the auction process, and provide detailed information on the repacking model and software that the Commission will use.

Third, the Commission must assure licensees that their participation in the incentive auction process will be kept confidential, except as disclosed or authorized by the licensee itself. Public knowledge regarding such participation could cause a station to lose advertisers, its network affiliation, its syndicated programming relationships, its employees and viewers.

Fourth, the Commission must take into full consideration the nation's continuing need for a ubiquitous, free, local, and reliable "First Informer" emergency alert system. History has shown repeatedly that broadcasters play an important and reliable role in timely disseminating critical public-safety information. The Commission has a duty in this proceeding to avoid undermining this important role. For these reasons, the State Associations urge the Commission to apply these four principles in formulating its incentive auction rules and policies.

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To: The Commission

**JOINT COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters,

Pennsylvania Association of Broadcasters, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and the Wyoming Association of Broadcasters (collectively, the “State Associations”), hereby file these Joint Comments in response to the above-captioned Notice of Proposed Rulemaking.¹

Introduction

The Interest of the State Broadcasters Associations in this Proceeding

The State Associations’ interest in this proceeding, on behalf of their respective television station members, is two-fold: 1) protecting the operations, signal integrity and coverage of those television broadcasters which decide not to participate, or participate unsuccessfully, in the incentive or reverse auction process authorized by Congress,² and (2) helping those television broadcasters which decide to participate in the incentive auction process to achieve their business objectives.

This dual focus is fully consistent with the chartered missions of the State Associations which are to protect and advance the best interests of the free, local, over-the-air, radio and television broadcast industries within the borders of their respective states, districts and territories, and at the Federal level. Because the outcome of the NPRM could materially affect, near-term and long-term, their local television broadcast station members by potentially

¹ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions Innovation*, Notice of Proposed Rulemaking, Docket No. 12-268, FCC12-118 (rel. Oct. 2, 2012) (the “NPRM”); *see also* DA 12-1916 (November 29, 2012) (extending, *inter alia*, the comment deadline until January 25, 2013).

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

disrupting and diminishing their operations and altering the established viewing habits and expectations of the people they serve, in terms of the timely availability of news, emergency and other informational programming as well as entertainment programming, the State Associations have the requisite interest to participate in this proceeding.³

In addition to their “standing” interest, the State Associations believe that they possess unique insights that will be helpful particularly in the resolution of a matter that should be central to the public interest determinations that the Commission must make in this proceeding, namely whether the actions to be considered will have the potential to impair, on a nationwide, regional, state, county or local basis, the effective “First Informer” emergency services ubiquitously and reliably provided by the nation’s free, local, over-the-air television broadcast stations. Those insights are based on the personal experiences of the executives who, on behalf of their State Associations, work directly with emergency management representatives and officers at all levels of Federal, state and local government.

At the Federal level, for the last ten years, the late Ann Arnold, former President and CEO of the Texas Association of Broadcasters led a coordinated effort by the National Alliance of State Broadcasters Associations (“NASBA”) and the National Association of Broadcasters (“NAB”) to bring the FCC, FEMA, the National Weather Service, and other engaged parties together for an annual Emergency Alert System (“EAS”) Summit/Forum to discuss ways to improve the efficacy of the EAS and the delivery of life-saving information to the American public. Absent a mandate from Congress, or an imperative from the involved federal agencies, to gather together to address EAS issues, this has been the only platform for the interested parties to engage in any kind of dialogue to effect improvements to the EAS. The system still falls far

³ For the same reasons, the State Associations filed Joint Reply Comments filed in *In re Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235 (April 25, 2011).

short of its desired capability, but, without these dialogues facilitated by Ms. Arnold, NASBA and NAB, our national alert and warning system would still be stuck in its 1950s CONELRAD days. In the context of the present rulemaking, the State Associations hope the Commission recognizes the important role of the free, over-the-air broadcast stations in providing always-on, always-reliable communications capability. Where are the evacuation routes - where are the shelters - where are the water stations - where are the warming places - where can one get a block of ice for the refrigerator - what gas stations are open and have gas - this important information cannot be conveyed through a 160-character cell phone message. Recent emergency situations have inarguably demonstrated that over-the-air broadcast media are the most reliable means of conveying this kind of life-saving information to the public at large. That fact must be given decisional weight in this proceeding.

Congress's Unprecedented Challenge for the FCC in this Proceeding

Congress has delegated to the Commission the unprecedented challenge of solving a problem that Sir Winston Churchill might have described as “a riddle, wrapped in a mystery, inside an enigma.” Specifically, the Commission has been charged with designing a system that will encourage (i) *enough* television broadcasters, particularly in spectrum congested markets, to participate in an incentive auction even before such broadcasters know how much spectrum will be needed in their markets and the effect repacking may have on them if they do not successfully participate in the reverse auction process, and (ii) *enough* bidders to bid *enough* money in the forward auction for television spectrum in those markets to pay the “prices” sought by the television stations even before such bidders know how much television spectrum will in fact be available through a combination of surrendered and repacked spectrum.

The State Associations applaud the Commission's commitment and efforts generally to facilitate "the expansion of our nation's wireless networks, the improvement of wireless broadband service, and the inclusion of all Americans in the growing wireless broadband environment."⁴ As the Commission recognizes, wireless networks support "critical economic, public safety, health care, and other activities."⁵ The State Associations believe that Congress' grant of authority to the Commission to conduct incentive auctions is an "innovative tool to free up broadcast television spectrum" for wireless broadband use and has the potential, if conducted properly, to be a "win-win" situation for all parties.⁶

Discussion

Pursuant to the Spectrum Act, in October 2012, the FCC launched this proceeding seeking public input on how best to design and implement this country's (and, in fact, the world's) first incentive spectrum auction.⁷ The incentive auction will be comprised of two separate but interdependent auctions – a reverse auction which will determine the price at which television station licensees will be willing to voluntarily relinquish spectrum usage rights, and a forward auction which will determine the price wireless companies and others will be willing to pay to acquire licenses for flexible wireless use.⁸ The "lynchpin" tying the auctions together is the "repacking" process. Repacking will involve reorganizing and re-assigning channels to those broadcast stations that do not successfully participate in the reverse auction process, and thus

⁴ NPRM at ¶ 2.

⁵ *Id.* at ¶ 1.

⁶ *Id.* at ¶ 3

⁷ Statement of Chairman Genachowski, NPRM at 190.

⁸ "The Broadcast Television Spectrum Incentive Auction," FCC Staff Summary, DOC-318455A1 (January 16, 2013) ("FCC Incentive Auction Summary").

will not be relinquishing their spectrum usage rights in order to create contiguous blocks of cleared spectrum suitable for flexible wireless broadband use.⁹

The complexity of the challenge faced by the Commission is well illustrated by the length and intricacy of the NPRM itself. In fact, the text of the NPRM is so replete with difficult, detailed questions about this complex technical and policy matter that one's problem solving instinct for seeking a rational pathway to a fair and reasonable resolution of this proceeding must begin with the identification of certain goals and principles that should guide the Commission in resolving this proceeding. The State Associations are pleased that the Commission in its NPRM adopted that approach as a framework for its analysis.¹⁰ For the reasons that follow, the State Associations submit that the goals and principles set forth in the "Discussion" section of these Joint Comments should be accepted as a supplement to those proposed by the Commission in order to more fully reflect Congress' intent in enacting the Spectrum Act.

Discussion

I. Principle No. 1: The Commission's Responsibilities Are Clear and Its Discretion Is Limited.

Under the Spectrum Act and the Communications Act,¹¹ the Commission's responsibilities are clear and its discretion is limited. The Spectrum Act is designed to provide the Commission, subject to certain terms and conditions, with primarily one new regulatory tool, specifically, authority to conduct a reverse auction which is intended to increase the amount of television spectrum available for wireless broadband usage. Under this authority, the Commission may only "encourage a licensee to relinquish *voluntarily* some or all of its license spectrum usage rights . . . by sharing with such licensee a portion" of the proceeds of the forward

⁹ FCC Incentive Auction Summary, at 6; *see also* NPRM at ¶¶ 35-71 and Appendix C.

¹⁰ NPRM at ¶ 10.

¹¹ The Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.* (the "Communications Act").

competitive bidding auction.¹² Furthermore, Congress has budgeted \$1.75 billion to reimburse licensees for their reasonable costs in modifying their facilities as a result of any repacking ordered by the Commission, thereby establishing a de facto limitation on the scope of any repacking.¹³ It is also important to note that in recognizing the complexity of the matter, including the need for international spectrum coordinations and approvals, Congress has given the Commission until 2022 to complete this auction process.¹⁴ Thus, rather than signaling the need for overriding speed, Congress obviously contemplated that the Commission would engage in whatever multiple stages of public and governmental participation and evaluation, over whatever period of time, are needed to “get it right the first time,” given that established viewing habits and expectations of their constituents are likely to be affected by the Commission’s final decisions.¹⁵ Thus, there is no rational basis for setting an arbitrary, early deadline for the completion of a process that Congress itself recognized could require as much as a *decade* to craft and implement. If the Commission does not exercise due caution and fulfill its statutory responsibilities pertinent to this proceeding, the Commission will have undermined the “voluntary” predicate for the Spectrum Act and the goal of Congress will not be achieved.

To provide but two examples that could undermine the “voluntary” predicate for the Spectrum Act, if the Commission were not completely faithful to, or were tentative or ambiguous about, its commitment to implementing Congress’s charge that the Commission use “all

¹² Spectrum Act, § 6402 (emphasis added).

¹³ *Id.*

¹⁴ *Id.* § 6403(g)(2)(C).

¹⁵ Given the United States’ international coordination responsibilities, and the adverse effect on the auction process if such process were to begin ahead of a mutually agreeable resolution of those coordinations, the State Associations submit that the FCC’s tentative proposal to conduct the auction by 2014 is too aggressive. By comparison, the DTV transition, which freed up 108 MHz of spectrum, involved *more than a decade* of planning and implementation. The State Associations submit there is no need to rush the auction process and, in fact, doing so may lead to inferior auction performance, less than optimum spectrum clearing results, and adverse consequences for the affected television stations and the citizens they serve. Instead, the State Associations urge the Commission to eliminate as much uncertainty as possible prior to conducting the auctions, and disseminate all relevant information to potential auction participants well in advance of such auctions.

reasonable efforts” to preserve a station’s coverage area and population,¹⁶ a television broadcaster may reasonably conclude that the potential adverse effects of repacking on its station’s operations going forward are so great that it has no realistic business option except to participate in the incentive auction and even accept a bid that is not reasonable. A television broadcaster might also be influenced to forego continued station ownership and elect to participate in the incentive auction because it has little or no confidence that the repacking cost reimbursement regime established by the Commission will assure full and prompt reimbursement for all direct and indirect costs incurred or to be incurred. The State Associations submit that, in both scenarios, the actions of the Commission, promoting such “involuntary” behavior, would be viewed as contrary to the intent of Congress as expressed in the Spectrum Act.

The Commission’s discretion in this proceeding relating to repacking is also delimited in another important way by the Communications Act. There is nothing in the Spectrum Act that suggests Congress intended to eliminate or dilute the Commission’s overarching obligation to insure that, in the broadcast context, “the distribution of licenses, frequencies, hours of operation, and of power among the several States and communities” is “fair, efficient and equitable.”¹⁷ The Commission has historically sought to advance this “Section 307(b)” goal by providing as many communities as possible their own local broadcast outlets.¹⁸ This priority has been a fundamental tenet of the Commission’s allocation schemes and applies to all broadcast stations. Where that objective cannot be obtained directly by full-power stations, the Commission has

¹⁶ Spectrum Act, § 6403(b)(2).

¹⁷ 47 U.S.C. § 307(b).

¹⁸ See, e.g., *Turner Broadcasting System, Inc. v. FCC*, 114 S. Ct. 2445 (1994) (“In the Communications Act of 1934, Congress created a system of free broadcast service and directed that communications facilities be licensed across the country in a ‘fair, efficient, and equitable’ manner. Congress designed this system of allocation to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern.”) (citations omitted).

recognized the importance of television translators and low power television stations to serve that role.¹⁹ There are potentially thousands of television translator and LPTV stations, and hundreds of thousands of citizens who rely upon those stations, that may be adversely impacted by this proceeding. The Commission should take their existence and the continued need for their service into full and favorable consideration under the goal of Section 307(b) as it exercises its discretion to repack stations in a circumscribed way.

II. Principle No. 2: Television Broadcasters Must Be Able to Make Truly Informed Decisions Whether To Participate in the Incentive Auction Process.

The Commission must ensure that television station licensees have access to sufficient information that is publicly available, far enough in advance, to make truly informed judgments about the pros and cons of participating in the incentive auction. Such a requirement entails not only a process that is transparent, but also a process which clearly resolves on the public record all issues that could reasonably be deemed to be factors potentially and materially influencing a licensee's decision to participate in the auction process. At bottom, a fully transparent process that reasonably resolves all the issues in a comprehensive and clear way, is critical to the efficacy and fundamental fairness of the Commission's rule making process here.

As reflected below, the outstanding Comments to be filed by the NAB and by the Affiliates Associations in this proceeding well illustrate how comprehensive, detailed and clear the Commission's resolution of the issues must be and how those issues should be evaluated and resolved, consistent with the letter and spirit of the Spectrum Act and the Communications Act.

¹⁹ See, e.g., *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*, 19 FCC Rcd 19331, at ¶ 3 (2004) ("The Commission created low power television stations to bring television service, including local service, to viewers 'otherwise unserved or underserved' by existing service providers.").

International Spectrum Coordination and Approval: There are hundreds of television stations whose spectrum usage rights in the United States are subject to international coordination and approval by Canada or Mexico. Any repacking of their spectrum is likely to have a cascading effect on hundreds of other stations well beyond those international borders. Successful coordinations, along with all required approvals, should be conditions precedent to the adoption of any final order in this proceeding and before the commencement of any auctions thereunder. The absence of such coordinations and approvals prior to those milestones will create so much uncertainty that no licensee will be able to make an informed, reasoned judgment whether to participate in the reverse auction. Furthermore, no licensee which may be subject to repacking should have to wait possibly years to determine precisely how it may be impacted by repacking. Congress explicitly recognized this dilemma when it stated in the Spectrum Act that the Commission’s authority to “make such reassignments of television channels” in this context, is “subject to international coordination along the border with Mexico and Canada.”²⁰ Those robust and definitive coordination efforts should begin now.

Based on the DTV Table of Allotments,²¹ the State Associations estimate that approximately one-third of the television stations in the United States are affected by border coordination issues – specifically, approximately 795 television stations near the Canada border and 115 stations near the Mexico border. In a letter dated November 15, 2011, New York Senator Charles Schumer alerted Secretary of State Hillary Clinton to the “profound effect” that the repacking could have on television stations in New York City, Albany, Elmira, Buffalo, Rochester, Syracuse, Watertown and Plattsburgh due to their proximity to the Canada border and

²⁰ Spectrum Act, § 6403(b)(1)(B).

²¹ See *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 23 FCC Rcd 4220, at Appendix B (2008); see also 47 C.F.R. § 73.622.

the need for speedy negotiations with Canada.²² Almost a year later, Senator Schumer, in a letter dated September 21, 2012 raised the concern with Chairman Genachowski that the band plan “the FCC adopts for remaining television ... not adversely affect the ability of our constituents to continue receiving the free local programming they currently receive” and urged the Commission “to work closely with Canadian officials to ensure that the public can continue to view these local broadcast stations without interference.”²³ The Congressional Delegation for the State of Washington, in a December 21, 2012 letter to Chairman Genachowski eloquently described the potential for lost service from affected border stations:

There are 37 full power TV stations in Washington State. As many as 14 of these could have no place to be relocated when repacking occurs, meaning that they could be forced to cut power or lose viewers. Of the 17 full power stations in the Seattle/Tacoma market, as many as 10 could have no place to go. In Spokane, of the ten stations in that market, four of them could be forced to move and cut their power and viewership. This could be harmful for the stations and the people who invest in them, but devastating to the hundreds of thousands of people that rely on free, over the air television.

We cannot ignore our treaty obligations; however, it would be patently unfair to force residents of Washington State – including our constituents – to lose access to local broadcast television signals they currently receive for free.²⁴

The constituent concerns voiced by these Senators and Congressmen well illustrate the concerns of constituents living in the other northern border States of Idaho, Montana, North Dakota, Minnesota, Wisconsin, Michigan, Ohio, Pennsylvania, Vermont, New Hampshire and Maine, as well as those who live in areas of California, Arizona, New Mexico and Texas, which will require coordination with Mexico.

Notwithstanding the number of stations potentially affected, the Congressional concerns already raised, and the speed with which the Commission seeks to move ahead with the auction process, the State Associations understand that to date, discussions with Canada and Mexico

²² See Exhibit A, attached hereto.

²³ See Exhibit B, attached hereto.

²⁴ See Exhibit C, attached hereto.

about the use of television spectrum for U.S. based wireless broadband along their borders have been only preliminary. Indeed, both Canada and Mexico are still undergoing the transition to digital television.²⁵ Thus, it is not clear how long coordination will take and what mutual accommodations, if any, will need to be made. Such uncertainty needs to be eliminated sooner rather than later as it is likely to have a material adverse effect on the willingness of wireless companies to participate in a robust way in the forward auction without which Congress' goals for the reverse auction, as well as the forward auction, will not be achievable.

Another dimension to the international coordination/approval issue is the effect that any post-auction coordination would have on the timeline for payment to television broadcasters that successfully participate in the reverse auction process. If the United States government does not have in hand, before the commencement of the auction process, a definitive mutually agreed upon blueprint for coordination/approval under which the implementation of various repacking permutations would have been cleared in advance with Canada and Mexico, successful television station auction participants would risk that payment of their winning bids could be delayed potentially years pending the outcome of substantive negotiations and approvals. For these reasons, the State Associations submit that full and mutually agreeable coordination with Canada and Mexico was intended by Congress as a condition to commencing the auction process and that those coordinations/approvals should start now in earnest.

Absence of Repacking Data in the Record: Compounding the uncertainty that the need for international coordination and approval already injects into the proceeding is the complete lack of information or data in the NPRM that would inform interested parties on how the Commission intends to approach the difficult task of determining the feasibility of various

²⁵ NPRM at ¶ 35 n. 78.

repacking scenarios. The State Associations strongly support the NAB's position that the Commission place in the public record, for review and follow-up comment, the repacking modeling and software that the Commission is considering using for the repacking process. Given the likelihood that the reverse auction and the forward auction will be conducted virtually simultaneously, and that the repacking scenarios will be considered and selected dynamically at the same time, it is critical that the public have, at this stage of the proceeding, a meaningful opportunity to evaluate the software that the Commission is considering using for that purpose. The public's need for that information and data now is also dictated by due process considerations, given that the Spectrum Act purports to deny stations, whose operations become subject to repacking, the right of appeal.²⁶

The “All Reasonable Efforts” Standard: In connection with its repacking authority, the Commission is required to “make all reasonable efforts to preserve, as of the date of the enactment of [the Spectrum] Act, the coverage area and population served by each broadcast television licensee, as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology of the Commission.”²⁷ The State Associations fully support these positions of the NAB: (i) the statutory phrase “make all reasonable efforts to preserve” was intended by Congress to mean that, with respect to a particular station, the station's coverage area and population covered will remain the *same* absent extraordinary circumstances; (ii) the statutory phrase “coverage area and population served by” each broadcast station was intended by Congress to mean the *same* coverage area and the *same* population served by each station; and (iii) that, as among the three interference-related options presented by the Commission, Option 2 should be favored so long as the Commission caps the amount of

²⁶ Spectrum Act, § 6403(b)(1)(B).

²⁷ Spectrum Act, § 6403(b)(2).

additional interference at 1% which would, for example, allow two or more new station reassignments to cause up to an aggregate of 1% additional interference to the existing station.

The State Associations also urge the Commission to protect the area and population covered, or projected to be covered, by the facilities of all full-power and Class A whether such facilities were in operation before or after the date of enactment of the Spectrum Act so long as the facilities in question, whether or not fully constructed, were the subject of a construction permit granted by the Commission before the commencement of the reverse auction process. This way, the Commission will have prevented the resolution of this proceeding from, in effect, nullifying its prior actions in granting, post the enactment date but prior to the reverse auction, construction permits based on public interest determinations. The statutory “as of enactment” language, the State Associations submit, may be fairly read to include *not only* those facilities in operation by the date of enactment, but also those facilities which were authorized by the Commission after the enactment date in the exercise of its independent public interest discretion to authorize new or modified facilities prior to the reverse auction.

The Commission’s Lead 600 MHz Band Plan: The NAB has conducted a very thorough technical analysis of the band plans that the Commission has under consideration and has begun working collaboratively with a number of major wireless industry stakeholders.²⁸ The State Associations are very pleased with the progress achieved by the parties, to date, in attempting to reach a consensus band plan. Accordingly, the State Associations respectfully defer to, and support, the NAB with respect to this very complex, technical matter.²⁹ The *sine qua non* of broadcasting is the integrity of a station’s signal. If that signal is not reliably

²⁸ See Letter to Gary Epstein and Ruth Milkman from the Rick Kaplan (NAB), Joan Marsh (AT&T, Inc.), Peter Pitsch (Intel Corporation), Dean Brenner (Qualcomm), Kathleen Ham (T-Mobile), and Charla Rath (Verizon Wireless), GN Docket No. 12-268 (January 24, 2013).

²⁹ NAB Comments.

interference free, viewers (and listeners) will turn away and the licensee's effort to warn, to help, to inform and to entertain will be wasted. For that reason, the Commission must safeguard from harmful interference the spectrum currently used and to be used by all television broadcasters.

Reimbursement for Repacking Related Costs: Reimbursement for all reasonable repacking related costs must be assured and prompt. For the reasons set forth in the NAB's Comments, the State Associations support these positions:³⁰ No station that is subject to being repacked by order of the Commission should have to bear any portion of the cost of such repacking. Accordingly, the Commission should regard the \$1.75 billion budgeted by Congress for reimbursement as a statutory limitation on the scope of repacking in which the Commission may engage. Given the international coordination aspects of this proceeding, the number of stations that may be affected by repacking, the detailed nature of the contemplated reimbursement regime and the unpredictability of construction, the State Associations agree that the statutory three-year deadline for completion of the forward auction should be tied to the date on which the final licenses are granted to winning bidders. For the same reasons, the Commission should allow at least thirty (30) months for a "repacked" station to complete the required modifications, subject to exceptions where, despite the vigorous efforts of a station, the station's licensee has not been able to secure all necessary governmental and non-governmental permits and consents.³¹

In terms of the reimbursement process itself, the NAB is providing the Commission with a comprehensive package of proposals that (i) fairly and uniformly identifies the types of

³⁰ NAB Comments.

³¹ Given the time constraints established by the Spectrum Act, the speed with which stations may have to react after the issuance of a repacking order, and to avoid delay to the proceeding that might be occasioned by needless issues and litigation, the Commission should make clear that any applicant, which is subject to mandatory repacking, need not have "reasonable assurance" of a new or modified transmitter site or other facilities before it may file its application for construction permit.

expenses that should be subject to reimbursement, (ii) establishes reasonable timetables for providing expense estimates and final cost figures, (iii) appropriately take into account the possible needs for true-ups and the return of funds, and (iv) efficiently administer the reimbursement funds.³² In the opinion of the State Associations, the NAB's proposals properly balance the need to fully protect those broadcasters who are forced to modify their facilities while, at the same time, preventing waste, fraud and abuse.

III. Principle No. 3: A Licensee's Participation in the Incentive Auction Process Must Be Kept Confidential Except as Disclosed or Authorized by the Licensee.

In the event a television broadcaster is unsuccessful in its bid to sell its station usage rights, the Commission must ensure that the station's decision to participate in the reverse auction process will remain confidential in perpetuity unless the licensee self-discloses its participation or otherwise authorizes the Commission to disclose its identity. Confidentiality of a station's decision to participate in the incentive auction is critical to the economic well-being of the station.

A publicly disclosed station decision to participate in the incentive auction could be construed by competitors and others as a statement by the licensee that it is no longer committed to invest in the station's programming and operations going forward. If such information were made publicly available in this very competitive media environment, the station would risk losing its advertisers, its network affiliation, its syndicated programming relationships, its employees, and its viewers, resulting in a rapid downturn in its business. Thus, no station that was unsuccessful in its bid to sell its usage rights would logically want the fact of its participation in the reverse auction to become public. Similarly, a station that is successful in its bid to sell its usage rights should be entitled to confidentiality of its decision until such time as

³² NAB Comments.

the Commission's designation of the station's successful bid had become a final order and payment of the station's bid is assured and imminent.

IV. Principle No. 4: In Adopting Repacking, the Commission Must Take into Full Consideration the Nation's Continuing Need for a Ubiquitous, Free, Local, Reliable, "First Informer" Broadcast Service

Television broadcasters are most concerned that the outcome of this proceeding not materially adversely affect the existing, reliable, interference-free, over-the-air coverage provided by their stations' signals, whether or not they are required to change frequencies or otherwise modify their facilities. The integrity and reliability of their over-the-air signals are critical to what they do and who they are. Without such guaranteed signal integrity and coverage, the station's public trustee role is undermined; its public service mission is jeopardized; and the value of its FCC license is diminished.

Television broadcasters are also concerned that this proceeding not end up undermining a nationwide communications system that is extremely efficient in its "one to many," reliable, distribution architecture, a system that, without requiring the payment of a fee, assures all residents within a station's coverage area the timely availability of emergency, news and other informational, as well as entertainment, programming. Those benefits and established public expectations must not be eroded or compromised as a result of this proceeding.

The highest public interest worth of a station is exemplified by the role it often plays as a "First Responder" or "First Informer." In fact, the State of Nevada, and soon the State of Illinois, has a law on their books formally declaring their local broadcasters to be "First Informers."³³ All broadcast stations are part of our Nation's EAS through which the President and the Governors of the various States and territories can speedily and reliably reach residents

³³ For the Nevada law, see Nev. Rev. Stat. § 414.310 *et. seq.* (2012); for the bill passed by the Illinois legislature that awaits its governor's pen, see H.B. 5528, 98th Gen. Assem. (Il. 2013).

anywhere within the borders of the United States. Whether emergency information is sent through or outside EAS, the broadcast industry has demonstrated, time and time again, its responsiveness and reliability as “First Informers” in the face of tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings, changes in bus schedules, and more.

In its review of the communications infrastructure failures that occurred during the derecho storm of last year, the Commission cited approvingly the examples of the broadcast industry’s important “first informer” contributions during the storm. Quoting the NAB, the Commission recognized “[t]he key role broadcasters played during and following the derecho ... [and] as in many times of crisis, broadcasters served as ‘first informers,’ providing the public with information on the storm’s path, the damage it caused, and its effects on other communications services. Even where citizens affected by the storm lost commercial power, many could still receive radio and television broadcasts on battery-powered devices.”³⁴ The experiences of the State Associations are identical. For that reason, the State Associations urge the Commission, in any repacking process, to remain mindful that there are millions of citizens, many of whom are minorities, who rely exclusively upon the over-the-air signal of their local broadcast stations to receive lifesaving information and that broadcast television stations have an unparalleled ability reliably to alert the public they serve in the event of an emergency. The Commission has a duty in this proceeding to avoid undermining the “First Informer” service of broadcasters who are ready to alert the public to impending emergencies and to helping them through those difficult times.

³⁴ “Impact of the June 2012 Derecho on Communications Networks and Services,” Report and Recommendations, DOC-318331A1, at 14 (January 2013).

Conclusion

Based on the foregoing, the State Associations urge the Commission to resolve this proceeding consistent with the principles set forth in these Joint Comments.

Respectfully submitted,

NAMED STATE BROADCASTERS ASSOCIATIONS

By: /s/
Richard R. Zaragoza
Tony Lin
Paul A. Cicelski

Its Attorneys in this Matter

PILLSBURY WINTHROP
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037

(202) 663-8000

Dated: January 25, 2013

EXHIBIT A

Congress of the United States
Washington, DC 20515

September 21, 2012

Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Genachowski,

We are writing to you regarding the television broadcast incentive auction that Congress authorized as part of the Middle Class Tax Relief and Job Creation Act of 2012. As you know, Congress adopted this measure to permit those television licensees that want to exit the broadcast business to do so voluntarily, thereby freeing up frequencies which will be reallocated for wireless broadband services.

We understand this is the largest overhaul of spectrum our country has ever seen, and appreciate that the Federal Communications Commission is pursuing a thoughtful and comprehensive process. Increasing the amount of spectrum allocated to wireless broadband fulfills a vital national goal. However, it is equally important that the FCC protects the ability of the public to continue to receive free over-the-air television signals from those television stations that will continue to provide their service to our constituents after the auction is completed.

Reallocating broadcast spectrum to broadband will affect a large number of U.S. television markets, including many in New York. For this reason, the bandplan the FCC adopts for remaining television must not adversely affect the ability of our constituents to continue receiving the free local programming they currently receive. Thus, it remains incredibly important for the FCC to allow stakeholders the opportunity to review and comment on any repacking proposal before it is finalized.

Additionally, we encourage you to continue to work closely with Canadian officials to ensure that the public can continue to view these local broadcast stations without interference. The United States and Canada are bound by treaty obligations to coordinate with each other with respect to channel assignments to protect the television viewing public in each country.

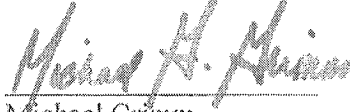
Again, we commend you on your efforts thus far. We urge you to continue on the side of disclosure as you implement this important new statute, allowing enough time for all interested parties to determine how they may be affected.

We thank you for your attention to this request, and look forward to your response.

Sincerely,



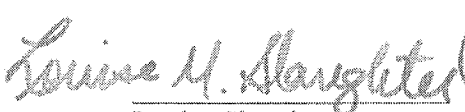
Eliot L. Engel
Member of Congress



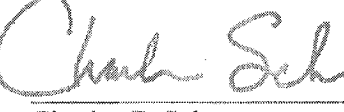
Michael Grimm
Member of Congress



Bill L. Owens
Member of Congress



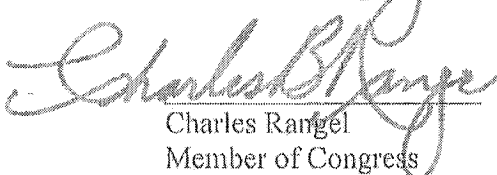
Louise Slaughter
Member of Congress



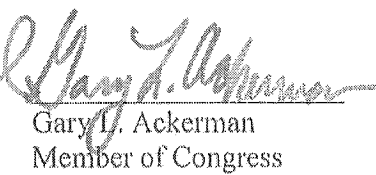
Charles E. Schumer
United States Senator



Kirsten Gillibrand
United States Senator



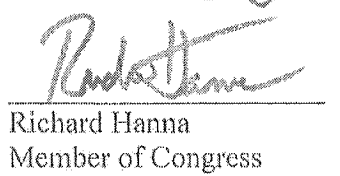
Charles Rangel
Member of Congress



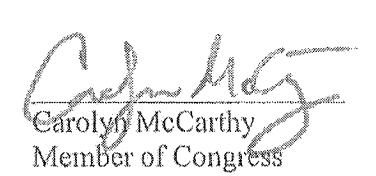
Gary L. Ackerman
Member of Congress



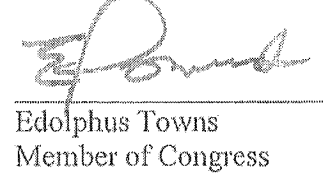
Chris Gibson
Member of Congress



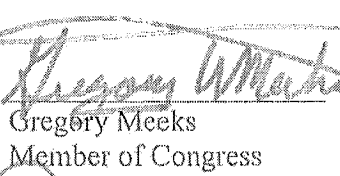
Richard Hanna
Member of Congress



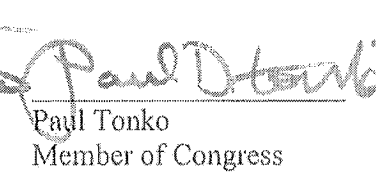
Carolyn McCarthy
Member of Congress



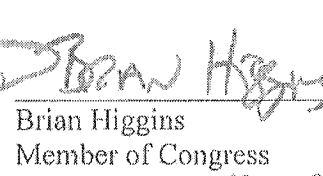
Edolphus Towns
Member of Congress



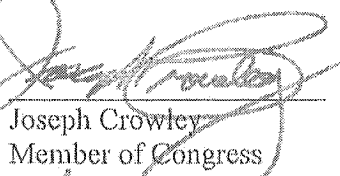
Gregory Meeks
Member of Congress



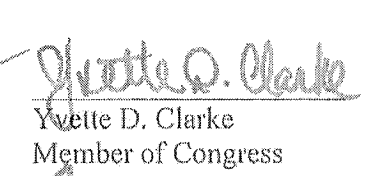
Paul Tonko
Member of Congress



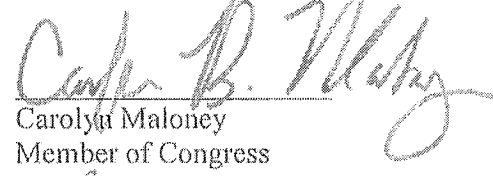
Brian Higgins
Member of Congress



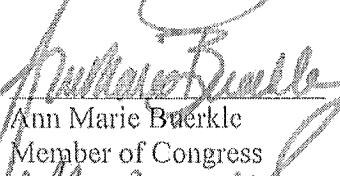
Joseph Crowley
Member of Congress



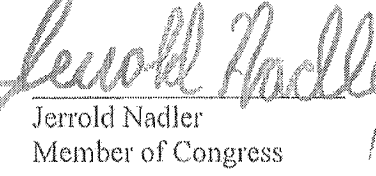
Yvette D. Clarke
Member of Congress



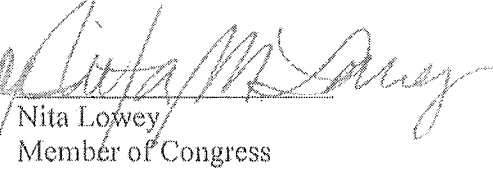
Carolyn Maloney
Member of Congress



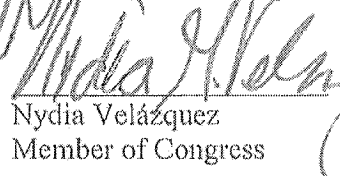
Ann Marie Buerkle
Member of Congress



Jerrold Nadler
Member of Congress



Nita Lowey
Member of Congress



Nydia Velázquez
Member of Congress

EXHIBIT B

United States Senate

WASHINGTON, DC 20510

COMMITTEES
BANKING
DEMOCRATIC POLICY & COMMUNICATIONS
FINANCE
JUDICIARY
RULES

November 15, 2011

The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Madam Secretary:

I write to call your attention to an international negotiation issue with Canada that is of serious concern for many New York Broadcasters. As you may be aware, Congress is currently considering several different proposals concerning the treatment of unused broadcast spectrum. For example, I have joined Senators Rockefeller, Gillibrand, and others in calling for the allocation of the D-block of spectrum to public safety in order to create a national, interoperable public safety network; as you are undoubtedly aware, the creation of such a network is one of the remaining recommendations of the 9/11 Commission that we have yet to implement. Our proposal calls for the funding of this network through voluntary auctions of spectrum currently used for broadcast television. Other proposals call for similar, voluntary auctions without the public safety component. However auctions are ultimately realized, it may be necessary for the Federal Communications Commission (FCC) to "repack" or assign television stations to new channel numbers. This is a process similar to that used for the transition to digital television in 2009.

Unfortunately, many of the channels that could be used to reassign television stations in New York are subject to an existing international agreement with Canada. U.S. television stations licensed to communities within 250 miles (450 Km) of the border must protect Canadian stations from interference. This arrangement limits the ability of the United States to reassign or "repack" television stations following a voluntary incentive auction, and has particularly profound effect in New York. For example, the FCC's current goal of reclaiming 20 TV channels (120 MHz of spectrum) could affect TV stations in New York City, Albany, Elmira, Buffalo, Rochester, Syracuse, Watertown and Plattsburgh.

To help ensure New York's citizens continue to maintain access to free, over-the-air television, I would ask that you swiftly explore a new arrangement with the government of Canada. Specifically, we need to determine whether additional TV channels in the UHF band can be made available for use by television stations licensed to communities in the United States, particularly those states along our northern border. Importantly, we need to determine whether channels will be available for broadcasters *before* the FCC auctions the spectrum for alternate broadband uses and attempts to reassign television stations to new channels, because, once lost, the spectrum cannot be reclaimed.

Such an exploration is also necessary because when the spectrum now used for television is reallocated for other broadband related purposes, there will be inconsistent uses along the Canadian border. We must ensure that Canadian TV operations do not interfere with new broadband assignments in the United States, and that these new uses do not interfere with Canadian operations. One potentially fruitful forum for engaging in this conversation and reaching an expeditious agreement would be the current talks involving shared border management between yourself and Canadian Foreign Minister John Baird. These talks are slated to lead to imminent announcements of new areas of cross-border cooperation and, thus, there is no better time to try to reach an agreement on cross-border management of broadcast spectrum.

As you know, providing our public safety officials with the most advanced communications equipment is vitally important for our national security and the welfare of our citizens. A national public safety network must be achieved, however, with the least disruption possible to those broadcasters who choose not to participate in the FCC's voluntary incentive auctions of spectrum. Revising our agreement with the Canadian government prior to any auction will help to resolve this difficult issue. I respectfully request that the State Department give this matter the utmost attention.

Sincerely,

A handwritten signature in cursive script, reading "Charles Schumer". The signature is written in dark ink and is positioned above the printed name.

Charles Schumer
United States Senate

cc: Philip L. Verveer, Deputy Assistant Secretary of State and U.S. Coordinator for International Communications and Information Policy; Julius Genachowski, Chairman Federal Communication Commission

EXHIBIT C

Congress of the United States
Washington, DC 20515

December 21, 2012

The Honorable Julius Genachowski
Chairman
The Federal Communications Commission
445 12th Street SW
Washington DC 20554

Dear Mr. Chairman:

I am writing to you with respect to the broadcast incentive auction that Congress authorized as part of the Middle Class Tax Relief and Job Creation Act of 2012. In particular, I am concerned about the Notice of Proposed Rulemaking you just announced that will establish procedures to repack broadcast television bands of frequencies and effectively relocate existing TV channels in Washington State to different channels. As you develop the rules for this process, we want to ensure that residents of Washington State will continue to receive their free local over the air broadcast television signals.

Channel assignments of television stations in markets across the northern border of the United States must be carefully coordinated with Canadian stations to ensure that the public can view these signals without interference. The United States and Canada are bound by treaty obligations to coordinate with each other with respect to channel assignments to protect the television viewing public in each country. This means that when TV channels in Washington State are moved to clear a spectrum band for auction to cell phone companies, there will be fewer places to relocate them because the Canadians have rights to a number of the border channels.

There are 37 full power TV stations in Washington State. As many as 14 of these could have no place to be relocated when repacking occurs, meaning that they could be forced to cut power and lose viewers. Of the 17 full power stations in the Seattle/Tacoma market, as many as 10 could have no place to go. In Spokane, of the ten stations in that market, four of them could be forced to move and cut their power and their viewership. This could be harmful for the stations and the people who invest in them, but devastating to the hundreds of thousands of people that rely on free, over the air television.

We cannot ignore our treaty obligations; however, it would be patently unfair to force residents of Washington State – including our constituents – to lose access to the local broadcast television signals they currently receive for free.

In order to protect our constituents, it is incumbent upon the Federal Communications Commission to keep the public informed of its plans and activities as openly and transparently as possible. We therefore request that the commission commit itself to a transparent process, promptly disclosing, on an on-going basis, all the information it has available with respect to any new bandplan it may adopt. Stakeholders need the opportunity to review and comment on this bandplan before it is finalized. Further, we also request that the commission promptly disclose, also on an on-going basis, the nature of contacts it or its staff may have with Canadian authorities in regards to repacking the broadcast television band in northern border markets, including the disclosure of a summary of the matters discussed. Lastly, we ask that you work closely with the Washington State Broadcasters Association and the National Association of Broadcasters as this process unfolds.

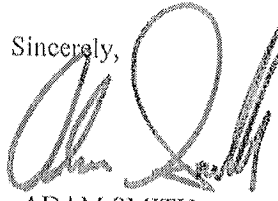
Freeing up frequencies for wireless broadband services is an important policy objective, which we supported. But that objective cannot – and should not – be achieved by depriving residents of

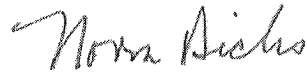
television markets along the northern U.S. border of access to the television signals that they have enjoyed for years for free. Depriving these citizens of access to local television programming would do them an enormous disservice and undermine the trust that Congress placed in the commission when it passed the statute earlier this year.

Thank you for your attention to this matter. We look forward to hearing from you before the Commission votes on this NPRM.

Sincerely,


JIM McDERMOTT
Member of Congress


ADAM SMITH
Member of Congress


NORM DICKS
Member of Congress