In the Matter of

Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AU Docket No. 14-252

GN Docket No. 12-268

COMMENTS OF LOCAL MEDIA TV HOLDINGS, LLC

I. INTRODUCTION AND SUMMARY.

The Commission states that it is “striving to make the reverse auction design simple and transparent from the perspective of the broadcaster bidder.” LMTV shares these goals and submits these comments in the spirit of cooperation and goodwill to help the Commission achieve them. The success or failure of the auction hinges on broadcaster participation. Trust in the process - achieved through simplicity and transparency - will drive participation. LMTV exhorts the FCC to adopt auction procedures and rules that are straightforward and transparent and to avoid creating an overly complex process that risks alienating broadcasters, the lynchpin of a successful auction.

First, LMTV urges the Commission to adopt procedural rules that enhance the information available to participating broadcasters at every critical point during the reverse auction. Transparency is essential to generating the participation needed for a successful

1 Local Media TV Holdings, LLC (“LMTV”), the parent company of eight Class A broadcast television stations, hereby submits comments in response to the Commission’s Public Notice in the above-captioned proceeding. See Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, Public Notice, FCC 14-191 (2014) (“Auction PN”).

2 Auction PN, ¶ 3.
auction. Second, the success of the AWS-3 auction demonstrates that the FCC should set the highest clearing target possible. Third, the Commission should base its auction prices on the market-based, mathematical inputs of the Feasibility Checker. Emphasizing population served, a metric for which the Feasibility Checker does not account, introduces distortion and inefficiency into the auction process, could cost the U.S. Treasury millions of dollars, and arbitrarily favors stations with larger population coverage. Nonetheless, should the FCC keep population served in its scoring equation, the metric must be minimized. Finally, LMTV supports rules tailored for maximum flexibility in channel sharing arrangements, including arrangements that can be entered into after the auction.

II. TRANSPARENCY IS CRITICAL TO THE SUCCESS OF THE SPECTRUM AUCTION.

The structure and scope of the Incentive Auction is unprecedented, and the Commission has only one opportunity to get it right. LMTV agrees with Chairman Wheeler that “spectrum auctions are new for most broadcasters” and that “[r]obust participation by broadcasters will be critical to the success of the auction.” But the auction can’t be conducted in a black box. As Chairman Wheeler observed, when making “a major sale . . . having more information leads to better decisions.” Information will breed broadcaster trust, which in turn will spur broadcaster participation. The Commission must ensure that its procedures provide broadcasters with as much data as possible, consistent with the Spectrum Act, to make informed decisions about their initial and continuing participation in the Incentive Auction.

At a minimum, the Commission should provide the following information either publicly or to participating broadcasters: (1) the opening price and (if different) the reserve price for each

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4 Id.
station eligible to participate in the auction in advance of bidding commencement; (2) the clearing target at each stage of the reverse auction; (3) if dynamic reserve pricing ("DRP") is adopted, an alert when DRP has been turned off; and (4) at the end of each round of bidding, a summary stating how close the Commission is to its clearing target, or alternatively the number of stations that remain active and the number of stations that were "frozen."

A. Transparency Builds Broadcaster Trust And Is Good Public Policy.

Building extensive transparency into the incentive auction framework not only will facilitate informed decision-making, but it also will help generate the trust that is critical to the success of the incentive auction. In the Incentive Auction Order, the Commission acknowledged "the importance of price discovery to participants," which helps participants "refine and feel more confident in their bidding decisions."\(^5\) Price discovery is essential "in the context of this first-time-ever incentive auction, in which there will be no historical results to guide bidder expectations."\(^6\) This is particularly true in light of the FCC’s repeated assurances that the auction will "harness market forces" to determine how much spectrum to reallocate and at what price.\(^7\) The promise of accurate price discovery will foster confidence among broadcasters.

Conversely, a perception that the Commission is manipulating prices by limiting transparency could cause a number of broadcasters to steer clear of the auction entirely or, at the very least, withdraw prematurely. Put simply, if broadcasters do not trust that the Commission is acting as a neutral auctioneer—allowing market forces to dictate the results of the incentive auction—broadcasters will not show up, and the FCC will not achieve its spectrum reallocation goals.

\(^5\) Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 29 FCC Rcd 6567, ¶ 332 (2014) ("Incentive Auction Order").

\(^6\) Id., ¶ 449.

Additionally, principles of open governance demand transparency. In his January 21, 2009 memorandum on Transparency and Open Government, President Obama committed to “ensur[ing] the public trust” through “a system of transparency, public participation, and collaboration.”\textsuperscript{8} Similarly, the Supreme Court has recognized that “[p]ublic disclosure . . . promotes transparency and accountability . . . to an extent other measures cannot.”\textsuperscript{9} The importance of openness and transparency apply equally, if not more, to an independent agency such as the FCC. As the Fourth Circuit Court of Appeals eloquently stated, “[w]ithout . . . transparency, public confidence in the essential workings of democracy will suffer.”\textsuperscript{10} Thus, in an auction where so much is at stake, such openness is essential for public confidence in the agency’s conduct.

\textbf{B. The Commission Must Pursue Transparency In The Reverse Auction Process.}

The Commission’s commitment to transparency must extend beyond the awareness campaign for the auction and to the auction process itself. While the Commission states that it is “committed to providing broadcasters with information about the incentive auction process and the financial opportunities it represents,”\textsuperscript{11} advertising the jackpot for a slot machine doesn’t change the odds of winning.

With that in mind, LMTV opposes the Commission’s proposal “that the auction system will offer each reverse auction bidder only the prices for options specific to it(s) stations.”\textsuperscript{12} Instead, the Commission should publicly release the opening and reserve price of each auction-eligible station. LMTV applauds Chairman Wheeler’s “commit[ment] to ensuring broadcasters

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\item \textsuperscript{9} \textit{Doe v. Reed}, 561 U.S. 186, 188 (2010).
\item \textsuperscript{10} \textit{Project Vote/Voting for Am., Inc. v. Long}, 682 F.3d 331, 339 (4th Cir. 2012).
\item \textsuperscript{11} \textit{Auction PN}, ¶ 3 n.9.
\item \textsuperscript{12} \textit{Auction PN}, ¶ 77.
\end{itemize}
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have all the information they need to make an informed business decision about whether and how to participate in the Incentive Auction.” LMTV encourages the Commission to provide as much information as possible. Broadcasters should be on equal footing. Many broadcasters do not have the resources to understand and process the formulas provided by the Commission or to calculate the prices being offered to other stations in the market (and thus, better understand their own importance to the success of the auction). Moreover, releasing such information runs no risk of collusion or confidentiality concerns and is consistent with the Spectrum Act.

Additional actions to bolster transparency would facilitate broadcaster participation. First, the Commission should publicly announce its clearing target after it runs its optimization software to calculate the target. Providing such information to forward auction bidders but not to reverse auction bidders runs afoul of the Administrative Procedure Act. It is prohibited for the FCC to “appl[y] different standards to similarly situated entities and fail[] to support this disparate treatment with a reasoned explanation and substantial evidence in the record[.]” Next, a summary of bidding action in each round should be released. Broadcasters must have confidence in their ability to make informed reasoned decisions about the price they will accept for their spectrum. Forcing broadcast participants to operate in a void does not generate confidence in this auction. LMTV supports the anonymized disclosures set forth by the Expanding Opportunities for Broadcasters Coalition (“EOBC”) in Attachment A of its August 14, 2014 ex parte presentation. LMTV believes that the Commission can generate summaries of auction participation that will protect the identity of the participating stations. For instance, LMTV proposes that the agency should provide a countdown to how close it is to meeting its clearing target for a particular market (i.e., “based on current bids, the FCC has met 80% of its

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13 June 25 Blog Post.
clearing target). And to clarify one of EOBC’s proposal, the Commission should not only provide information on its progress toward lifting DRP (if DRP is adopted), it should announce when DRP is turned off.

III. THE COMMISSION MUST ACCOUNT FOR MARKET-BASED DEMAND AND INCLUDE RELEVANT FACTORS IN ITS PRICE CALCULATIONS.

The enormous success of the AWS-3 auction demonstrates that the value of spectrum is substantial. LMTV agrees with EOBC that because “the Commission’s formula to calculate opening prices was devised before bidders paid record-breaking prices in the AWS-3 auction,” the “opening prices should be increased to reflect the current market reality.”

The FCC’s target in the AWS-3 auction was $10.6 billion – the record $44.9 billion in bids quadrupled that figure, “a boon for taxpayers and a sign of the growing cost of supporting Americans’ smartphone habit.” As EOBC stated, it is clear that “in light of the unmistakable price signals from the AWS-3 auction, the Commission’s primary focus must be on attracting the greatest number of broadcasters possible to participate in the Incentive Auction.” To do so, (1) the initial clearing target must be as high as possible – at least 126 MHz; and (2) minimum reserve pricing in major markets should be consistent with the value established in the AWS-3 auction, which is much greater than the proposed $1.25 per MHz-pop.

Attracting greater participation starts with higher opening bids that match demonstrated market demand, but it doesn’t end there. The Commission will use a “Feasibility Checker” that rightly relies on mathematical formulas to clear spectrum based on a station’s domain constraints and interference constraints. With this in mind, LMTV proposes that the Commission also

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19 See Auction PN, ¶ 47
consider the relative domain file for a station, which serves as an input to the FCC’s Feasibility Checker, when calculating a station’s “volume” and opening bid. In the formula, Domain is calculated by adding 1 to the number of channels excluded from a station’s domain file in its home band.\textsuperscript{20} Conversely, among the inputs in the Feasibility Checker, interference-free POPs is not considered, nor should it be. Interference-free POPs is not relevant to a station’s value in the auction, and including it as a factor to calculate reverse auction prices arbitrarily favors stations with larger population coverage. LMTV agrees with EOBC that “the use of POPs Scoring prioritizes the wrong stations and will lead the Commission to pay more money for a station with a smaller (in some cases substantially smaller) impact on the repacking process.”\textsuperscript{21} That impact is determined by a station’s preclusive effect. The Feasibility Checker considers relevant factors only – so should the Commission’s price calculations.

The FCC must use a scalpel, not a hammer in clearing spectrum for the forward auction. By attaching undue weight to Interference-free POPs, the agency risks paying some stations unnecessarily and having harder-to-repack stations drop out prematurely. And importantly, inefficiently clearing spectrum through use of Interference-free POPs would reduce funds targeted for the U.S. Treasury.

That said, if the Commission moves forward with including Interference-free POPs in the scoring formula, the weight of the metric should be reduced to the greatest extent possible. By significantly reducing the weight attached to Interference-free POPs in the scoring formula, the FCC can clear the needed spectrum rather than any spectrum.

\textsuperscript{20} The Domain number for Low VHF stations would be (excluded channels between channels 2 and 6) + 1. The Domain number for high VHF stations would be (excluded channels between channels 2 and 13) + 1. The Domain number for UHF stations would be (excluded channels between 2 and 51) + 1. This calculation mirrors the frequencies analyzed in the Commission’s interference calculations.

\textsuperscript{21} \textit{Id.}
Finally, LMTV agrees with Commissioner Pai that “the 20 percent threshold for the amount of spectrum that could be impaired in our ‘near-nationwide’ band plan” was proposed “arbitrarily,” “with no real explanation,” and “without seeking comment on what the appropriate percentage would be.” Seeing this as a call for input, LMTV suggests that impairment should not be an option in major markets and that the Commission should use every alternative to clear impairment-free spectrum. This is especially true where the FCC can clear spectrum by paying the broadcaster’s bid price rather than creating an impairment. LMTV encourages the Commission to look at the costs and benefits of the big picture -- by impairing spectrum blocks in major markets, the agency will lose more revenue from selling impaired spectrum in the forward auction in these congested markets than it will gain from reduced payments to exiting broadcasters in the reverse auction. By extension, if the Commission adopts DRP, LMTV urges the Commission to discontinue DRP in large markets as early in the auction as possible, and to impair as little 600 MHz spectrum as possible.

LMTV also urges the Commission to promulgate auction rules that allow it to clear the highest band plan possible. In other words, the Commission should preserve mechanisms to buy out more stations in large markets if demand for such spectrum occurs in the forward auction. Based on bidding patterns in the AWS-3 auction, LMTV believes this to be likely.

IV. MAXIMUM FLEXIBILITY FOR CHANNEL SHARING WOULD INCREASE SPECTRUM CLEARING EFFICIENCY

LMTV supports the EOBC’s call that the Commission “reconsider the channel sharing-related rules and procedures adopted in the Incentive Auction [Order], which fall short of providing the necessary flexibility to broadcasters who might be interested in pursuing this

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22 Incentive Auction Order, Dissenting Statement of Commissioner Ajit Pai, at 1.
option.”23 Entering into a channel sharing agreement (“CSA”) will be a complex undertaking, and the agency has underestimated the amount of time needed to finalize such an agreement, particular given its unprecedented nature. For that reason, EOBC believes that the FCC “should permit broadcasters to negotiate CSAs before or after the completion of the auction.”24 Determining the right channel sharing partner depends on more information than just opening prices. For example, it is possible that a station with a higher opening price will be paid less when the auction closes than a station with a lower opening price. As with LMTV’s other proposals contained herein, such flexibility and transparency will provide broadcasters with the necessary information to make informed choices, leading to maximum efficiency.

V. CONCLUSION

Nearly two years ago, LMTV submitted comments to the Commission supporting incentive auction proposals designed to “maximize broadcaster participation through simplicity and transparency.”25 For the reasons provided herein, LMTV repeats that call again.

Respectfully submitted,

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February 20, 2015

23 EOBC, Petition for Reconsideration, at 4 (Sept. 12, 2014).
24 Id., at 7.