

**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)
)

**REPLY COMMENTS OF THE
EXPANDING OPPORTUNITIES FOR BROADCASTERS COALITION**

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EXECUTIVE SUMMARY

In the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”), Congress authorized a novel approach for spectrum allocation, eschewing the traditional top-down model, where government agencies allocate spectrum based on their priorities and perceived needs, and replacing it with a market-driven approach that allocates spectrum based on the relative value of that spectrum to potential buyers and sellers. Under this approach, if an existing spectrum holder values its spectrum less than a potential acquirer, the existing holder will sell its spectrum to the acquirer. Thus, as envisioned by Congress, the profit motives of broadcasters will serve as the mechanism to effect an historic reallocation of spectrum from television broadcasting to wireless broadband to meet surging consumer demand. As an added benefit, excess revenues (particularly revenues generated from markets where repacking existing broadcasters alone will yield the spectrum desired for wireless broadband) will be used to fund important initiatives such as the creation of the long-discussed national broadband public safety network and deficit reduction.

Despite the many complicated issues addressed in the *Notice of Proposed Rulemaking*, there are only two essential components of a successful incentive auction: (1) a sufficient supply of broadcasters – particularly in the nation’s largest, most spectrum-constrained markets – willing to sell their spectrum if the price is right; and (2) sufficient demand from wireless providers to meet, on an aggregate level, the price expectation of buyers. The Congressional Budget Office and private sector economists all agree that IF the Commission attracts sufficient broadcaster participation, secures 120 MHz, auctions it all, and does not restrict participation by any wireless carriers, there will be plenty of money to fund relocation expenses, fund FirstNet and other government projects, and to contribute to deficit reduction.

Commenters in this proceeding universally recognize that the participation of willing broadcasters is the linchpin of a successful incentive auction. As such, the FCC's primary focus should be convincing broadcasters that their price expectations are likely to be met in the reverse auction. The greatest driver of broadcast participation will be price, and broadcast and wireless commenters agree that the Commission must offer initial bid prices sufficiently high to attract widespread broadcaster participation. But while high initial prices will pique broadcaster interest, they are not enough to command sufficient participation. Instead, broadcasters must also believe that they can *realize* prices that meet or exceed their expectations. Recent comments by some FCC staff and consultants suggesting that the Commission downwardly manipulate prices based on some pre-conceived notion of a "reasonable" price for broadcasters threaten to diminish broadcaster expectations, reduce auction participation, and escalate the risk of a failed auction.

Similarly, any restriction on the participation by wireless providers in the forward auction could reduce broadcaster expectations and participation. Willing sellers understand that their ability to realize their full price expectations is contingent upon the forward auction generating sufficient revenues. Restricting forward auction participation, especially by the largest providers – Verizon Wireless and AT&T – would create a daisy-chain effect, reducing broadcaster expectations and participation, the amount of spectrum transferred for mobile broadband use, auction proceeds, and available funding for public safety and deficit reduction.

Giving away billions of dollars' worth of reclaimed spectrum for free in the name of "unlicensed" spectrum also threatens to reduce broadcaster expectations and undermine the incentive auction. The purpose of the incentive auction is to utilize market-forces to dictate the efficient distribution of scarce spectrum resources. Syphoning off some of that spectrum (for

which the FCC may pay large sums) for unlicensed use will artificially distort demand and disrupt the market-based mechanisms. Accordingly, the Coalition strongly opposes any proposal that does not result in the auction of *all* spectrum reclaimed in the reverse auction.

The Coalition continues to believe that the FCC can and should reallocate 120 MHz of broadcast spectrum for wireless broadband; raise billions of dollars in surplus funds for the construction of a national public safety broadband network; and raise additional funds for deficit reduction. To achieve these goals, however, the Commission must commit to satisfying broadcaster expectations through the recommendations contained in these Reply Comments and the initial comments submitted by the Coalition.

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The Expanding Opportunities for Broadcasters Coalition (the “Coalition”) submits these reply comments to encourage the FCC to adopt rules in this proceeding that advance the Commission’s goal of encouraging widespread participation by broadcasters in the incentive auction.¹ The Coalition is composed of broadcasters who are the licensees or hold rights to acquire more than 40 stations in the nation’s largest, most spectrum-constrained markets. These broadcasters recognize the potential benefit that could come from a successful auction and are committed to working with the FCC to achieve that result. At the same time, these broadcasters are cognizant of the fact that there are alternatives to auction participation should the rules adopted by the Commission not allow them to realize the fair market value of their spectrum as repurposed for wireless broadband. This coalition of broadcasters has been the leading center of broadcast industry support for the FCC’s proposed auction, but is extremely concerned about

¹ Pursuant to the Public Notice issued on December 18, 2012 (DA 12-2040), these comments represent the views of a coalition of broadcasters who desire to remain anonymous at this time. The Coalition’s name and mailing address are provided in accordance with Section 1.419 of the Commission’s rules. *See* 47 C.F.R. § 1.419(d).

proposals from some Commission staff and consultants that suggest straying from the core mandate of the Spectrum Act – a market-based reallocation of spectrum.

I. INTRODUCTION

In its opening comments, the Coalition emphasized that the FCC can achieve Congress' goals of (1) reallocating spectrum for mobile broadband use; (2) funding construction of a national public safety broadband network; and (3) raising additional funds for deficit reduction, but it can only do so with widespread participation by broadcasters – especially in the largest, most spectrum constrained markets. The initial comments contained broad agreement from a cross-section of the communications industry that the participation of willing broadcasters is critical to the success of the incentive auction. It is evident from these initial comments that three factors will greatly influence the success of the incentive auction. *First*, the Commission must offer adequate incentives to willing broadcasters to elicit their participation and thus maximize the amount of spectrum reclaimed in the reverse auction. *Second*, the agency must maximize revenues in the forward auction by allowing unrestricted participation by all wireless carriers. *Third*, the FCC must further maximize forward auction revenues by auctioning every usable megahertz of reclaimed spectrum, including guard bands. These seemingly simple concepts will ensure that the closing conditions are met and that Congress' objectives for the incentive auction are realized.

On the other hand, the Commission can greatly undermine the likelihood of a conducting a successful incentive auction by raising doubts about whether the prices to be paid to selling broadcasters truly will be set by the market forces of an auction or whether some FCC staff and consultants will seek to manage those prices based on their preconceived notions of “reasonable” prices. Through meetings and attendance at Commission related events, Coalition members have received the impression that some FCC staff and some FCC consultants are spending

considerable time developing strategies to “manage” the auction results to reduce payments to broadcasters. This is not the statutory scheme and is not the way to attract broadcasters to the auction. It is a prescription for a failed auction.

To avoid this result, the Commission must both: (1) adopt policies and procedures for the incentive auction that encourage widespread broadcaster participation; and (2) communicate those policies in a manner that assures broadcasters that their contribution to the auction will be valued and their expectations will be realized. Just last week, Senate President pro tempore Patrick Leahy declared that “no station should be forced to give up its right to spectrum without its consent and without fair compensation.”² A voluntary incentive auction will not succeed unless broadcasters are convinced that they will receive the value of their spectrum as repurposed for wireless broadband and as determined by the market forces of the auction, not by bureaucratic edict.

II. THE COMMISSION MUST FOCUS ITS EFFORTS ON ADOPTING POLICIES THAT WILL BRING BROADCASTERS TO THE AUCTION TABLE

The single most important factor that must guide all FCC planning for the incentive auction is ensuring that a sufficient number of broadcasters – especially those in the markets with the greatest spectrum demand and the least amount of available spectrum – elect to participate. In pursuing this goal, however, the Commission is bound by the Congressional directive that the agency “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.”³ Through this language, Congress provided two guiding principles for the design of the reverse auction: (1) that broadcaster participation must be

² See Bryce Baschuk, *Leahy, Hatch Stump for Retrans, Broadcaster Spectrum Rights*, Communications Daily, Mar. 6, 2013, at 1.

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6403(a)(1), 125 Stat. 156 (2012) (the “*Spectrum Act*”) (emphasis added).

voluntary, and (2) that the agency should harness market forces, in the form of high initial offer prices, to elicit participation by each licensee of a full power or Class A television station.

A cross-section of commenters from the broadcast and wireless industries recognized that, given the voluntary nature of the incentive auction, the burden is on the FCC to make participation attractive for broadcasters.⁴ Participation by broadcasters in the reverse auction is essential to creating the necessary supply of spectrum for auction to wireless providers. The simple fact is that if broadcasters elect not to participate, or if the expectations of participating stations are not met, the incentive auction will fail. Although there are many markets where the Commission can generate enough spectrum through repacking to satisfy forward auction demand, wireless carriers will not pay top dollar for those markets unless they are part of a nationwide band that includes more spectrum-constrained markets where broadcaster participation is required.⁵ As such, it is incumbent upon the agency to make participation attractive to broadcasters in those markets.

The record developed in the initial comments demonstrates that the FCC can best fulfill the statutory directives and encourage widespread participation by conducting a descending clock auction paired with initial bid prices that are sufficiently high to reflect the value of each 6

⁴ See, e.g., Comments of Prospective Reverse Auction Participant, Docket No. 12-268 at 2-3 (Jan. 25, 2013) (“Comments of Prospective Reverse Auction Participant”) (“the success of the spectrum auction depends on the FCC providing sufficient incentives [to broadcasters] who are open to relinquishing their spectrum under the right conditions”); Comments of Telecommunications Industry Association, Docket No. 12-268 at 6 (Jan. 25, 2013) (“TIA Comments”) (“If this first-ever incentive auction is to fulfill policymakers’ hopes, it must begin by attracting a significant number of broadcasters intrigued by the prospect of monetizing some or all of their spectrum holdings.”); Comments of United States Cellular Corp., Docket No. 12-268 at i (Jan. 25, 2013) (“U.S. Cellular Comments”) (“The Commission also should pursue every reasonable opportunity to increase the amount of spectrum made available in all markets.”); Comments of Verizon and Verizon Wireless, Docket No. 12-268 at 20 (Jan. 25, 2013) (“Verizon Comments”) (“In order to achieve Congress’s objective of promoting wireless broadband deployment by maximizing the amount of spectrum that will be made available for flexible use, the Commission must encourage broad participation by broadcasters.”); Comments of Vision Communications, Docket No. 12-268 at 10 (Jan. 23, 2013) (“Vision Comments”) (“In order to provide nationwide spectrum to a forward auction bidder, the Commission will need to encourage broadcast bidders to participate in the reverse auction.”).

⁵ See, e.g., TIA Comments at 15 (“The importance of attracting the participation of broadcasters in the largest markets cannot be overstated – fully clearing many stations from the TV band in top markets is essential to the success of the forward auction.”).

MHz of spectrum to the incentive auction, without any arbitrary “scoring.” A descending clock auction not only will simplify the process of participating, but also will allow for price discovery by broadcasters and wireless providers alike, as envisioned by Congress. High initial bid prices, meanwhile, will encourage broadcasters to enter the auction, thus permitting the agency to determine the most efficient allocation of spectrum without artificial constraints on supply.

A. As Long As The Commission Resists “Scoring” Stations On Any Basis Other Than A Uniformly Applied Measure Of Each Station’s Effect On Spectrum Clearing, A Descending Clock Auction With Intra-Round Bidding Provides The Best Mechanism For Encouraging Broadcaster Participation in the Reverse Auction.

The initial comments reflect widespread agreement with the Coalition’s view that a multiple dynamic bidding process in the form of a descending clock auction will result in the greatest broadcaster participation and the most efficient transfer of spectrum for mobile broadband use.⁶ As described in the expert report attached to the *NPRM*, in a descending clock auction, the Commission would establish initial bid prices that would represent a high end starting point for the reverse auction.⁷ The Commission would propose subsequent bids to broadcasters, as appropriate, in descending amounts, and a broadcaster would remain in the auction until either: (1) it declined the bid; or (2) the station is “frozen.”⁸ Once every station is frozen or has exited (meaning that the clearing target has been met), the auction would stop and the current assignment and prices would become the “conditional outcome” pending satisfaction of the closing conditions.⁹

⁶ See Comments of Expanding Opportunity for Broadcasters Coalition, Docket No. 12-268 at 5-6 (Jan. 24, 2013) (“Coalition Comments”).

⁷ See Paul Milgrom, Lawrence Ausubel, Jon Levin, Ilya Segal, *Incentive Auction Rules Option and Discussion*, *NPRM* App. C (Sept. 12, 2012) (“MALS Integrated Auction Proposal”).

⁸ *Id.*

⁹ *Id.* at 2-3 (noting that once the clearing target has been met and there is no excess supply, “the auction ends”).

As many commenters recognized, the simplicity of a descending clock auction will make participation more attractive for broadcasters.¹⁰ In a descending clock auction, broadcasters would not be required to commit to the cost of determining the most ideal bid price in advance of the auction, as they would need to do under a sealed bid approach.¹¹ Rather, a critical component of the descending clock auction is price discovery, including providing broadcasters, prior to each round, with information about current supply.¹² Perhaps even more importantly, a descending bid approach can increase participation by utilizing high initial offer prices to lure broadcasters that otherwise might have assumed that the FCC would not even have considered meeting their pricing expectations.¹³

To fulfill the requirements of the Spectrum Act and obtain the most efficient spectrum allocation, however, a descending clock auction must include intra-round bidding at each offer point, including the opening offer.¹⁴ As a practical matter, intra-round bidding will enable the

¹⁰ See Comments of Consumer Electronics Association, Docket No. 12-268 at 30 (Jan. 25, 2013) (“CEA Comments”) (recognizing that descending clock auction will “simplify bidding, reduce costs, and provide flexibility to bidders”); Comments of Mobile Future, Docket No. 12-268 (Jan. 25, 2013) (“A descending clock auction design appears to simplify the auction process for broadcasters and potentially lower the costs associated with their participation in the auction.”); Prospective Reverse Auction Participant at 5 (“Dynamic bidding will encourage broadcaster participation by allowing broadcasters to enter the auction at a price at which they are comfortable without committing to any final price.”); TIA Comments at 13 (descending clock “should be the simplest mechanism for broadcasters because it would require less investment of time and resources on their part”); Verizon Comments at 28 (“A descending clock auction simplifies broadcasters’ bidding strategies into a sequence of ‘In’ or ‘Out’ decisions, potentially encouraging bidder participation.”).

¹¹ See Coalition Comments at 6; see also TIA Comments at 14 (recognizing that “upfront cost issues may be quite important to the type of TV licensees that reportedly are interested in participating in the auction: those who own so-called ‘independent’ stations not affiliated with a major broadcast network, religious stations, noncommercial educational stations, and Class A low-power stations.”).

¹² See MALS Integrated Auction Proposal at 11 (“Stations also may be given additional information, for instance information about what fraction of channels are filled in UHF and VHF in the station’s local area given the current assignment.”).

¹³ See CEA Comments at 30; Prospective Reverse Auction Participant Comments at 5 (“High opening bids will encourage participation from broadcasters who may otherwise have concluded that their exit price would be too high.”).

¹⁴ Consistent with the goal of attracting widespread participation, the FCC must also determine the amount of compensation that each broadcaster would be willing to accept for relinquishing its spectrum rights. See Spectrum Act § 6403(a)(1). Through this requirement, Congress prohibited the Commission from predetermining auction results by artificially limiting the amount it would pay to broadcasters. Rather, Congress required, consistent with the goal of reallocating as much spectrum for mobile broadband use as possible, that the agency attempt to identify a price at which each broadcaster would be willing to sell. This form of reverse auction price discovery will permit

FCC to establish high initial offer values while implementing large decrements, thus minimizing the total number of rounds in the reverse auction. But intra-round bidding also is required to fulfill the Congressional mandate of determining the amount of compensation that each broadcast television licensee would accept to relinquish its spectrum.¹⁵ For example, if Station A's hypothetical reserve price to relinquish its spectrum is \$1,100 and the initial offer to that station in a descending clock auction is \$1,000, Station A will reject the offer and the Commission never will know the price at which Station A would have relinquished its spectrum. Not only would this result run afoul of the statutory requirement to determine the value at which each station will relinquish its spectrum, but it also would constitute bad economic policy. If the marginal value to Wireless Provider Z of an additional 6 MHz of spectrum in Station A's market exceeds \$1,100, then the most efficient result would be to reallocate Station A's spectrum for wireless use. With intra-round bidding, the licensee of Station A, in rejecting the FCC's initial offer, could specify that it would be willing to sell at \$1,100, potentially resulting in an additional 6 MHz of spectrum that could be reallocated for mobile broadband. In subsequent rounds, intra-round bidding will provide broadcasters with an opportunity to specify an exact price at which they would be willing to relinquish their spectrum rather than just dropping out if the offer for that round is too low.

A descending clock auction with intra-round bidding is preferable to a single sealed bid auction for three reasons. *First*, as described in further detail below, because the Commission will determine the initial offer in a descending clock auction, broadcasters who had not planned

the FCC, as auctioneer, to determine the most efficient allocation of spectrum within the constraints imposed upon it by Congress.

¹⁵ Some stations, such as those owned-and-operated by the major broadcast networks, may choose not to participate even with high initial bid prices and intra-round bidding. Nevertheless, the Commission could satisfy its statutory obligation as to those stations using the proposed approach by determining that there is no reasonable price at which the licensees of those stations would relinquish their spectrum.

to participate might be enticed to enter the auction. This inducement would be absent with a single sealed bid approach. *Second*, in a descending clock auction, a broadcaster would not have to determine the specific price at which it would exit. The broadcaster could instead follow the agency's offers and make a simple yes or no determination without electing to submit intra-round bids. *Third*, even broadcasters that do specify a specific price through intra-round bidding would have the benefit of price discovery, allowing them to make a more accurate and flexible determination about the price at which to relinquish their spectrum.

The alternatives proposed in the initial comments would fail to achieve the same benefits as a descending clock auction with intra-round bidding. An ascending clock auction, where broadcasters would elect their reserve price as the price increases,¹⁶ would be inferior to a descending clock auction for the following reasons: (1) an ascending clock auction, by definition, would fail to offer the high initial starting price necessary to attract widespread broadcaster participation;¹⁷ (2) this procedure would require broadcasters to determine the price at which to enter the auction, which could prove more difficult than determining whether to continue accepting offers once a higher price point has been met; and (3) a descending clock auction, by working off of clearing targets, provides a mechanism for the Commission to pursue the goal of reallocating at least 120 MHz of spectrum. Meanwhile, the suggestion that broadcasters should submit non-binding, sealed bids in advance of the auction¹⁸ would both unnecessarily delay the auction and increase the costs to broadcasters of participating in the auction. Moreover, as the Coalition indicated in its initial comments, requiring broadcasters to

¹⁶ See Comments of MetroPCS, Docket No. 12-268 at 6-7 (Jan. 25, 2013).

¹⁷ Cf. Reply Declaration of Jeffrey A. Eisenach ¶¶ 8-10 ("Eisenach Reply Decl.") (recognizing that some broadcasters may not participate in the auction if their expected return does not exceed their reserve price).

¹⁸ See Comments of National Religious Broadcasters, Docket No. 12-268 at 14-15 (Jan. 25, 2013).

disclose their reserve price in advance of the auction will only breed further distrust among broadcasters, reducing reverse auction participation.¹⁹

For the same reason, the Commission should reject the single-pass proposal advanced by AT&T. As even AT&T acknowledges that proposal would force broadcasters to unnecessarily disclose their reserve prices. In addition, as Dr. Eisenach notes, the single-pass approach would deprive broadcasters of valuable information, making it impossible for them to reoptimize their bidding strategies as the auction proceeds and ultimately resulting in a less efficient auction outcome.²⁰

There is one important caveat to the Coalition's support for the descending clock auction. The descending clock will provide broadcasters with a chance to realize the fair market value of their spectrum only if the Commission refrains from imposing arbitrary or discriminatory "scoring" of stations or discounting of entire classes of stations. As described in further detail below, the only valid basis for scoring stations is a uniformly applied and nondiscriminatory measure of each station's impact on the Commission's efforts to clear spectrum for wireless broadband. The wireless carriers will be buying spectrum – not broadcasting businesses. It would be arbitrary, capricious and a clear violation of the Spectrum Act for the FCC to attempt to "manage" the prices paid to broadcasters based on any metric other than the station's impact on spectrum clearing. It does not matter to a wireless carrier whether the spectrum it receives was previously occupied by a full power or a Class A station or a station with high or low ratings. 6 MHz of spectrum is 6 MHz of spectrum.

The Spectrum Act mandates that participating stations be paid based on the value of their spectrum as determined by the auction – not as managed by some FCC staff or consultants. To

¹⁹ See Coalition Comments at 7.

²⁰ See Eisenach Reply Decl. ¶¶ 34-36. Dr. Eisenach also notes that there is no evidence that a single-pass approach is necessary to address issues of computational complexity. See *id.* ¶ 37.

fulfill that mandate, the Commission should implement a descending clock auction with intra-round bidding for the reverse auction.

B. The Commission Must Deliver A Clear And Consistent Message That Initial Reverse Auction Prices Will Meet or Exceed Broadcaster Expectations.

The initial comments reflect widespread agreement that: (1) the participation of willing broadcasters is necessary to achieve a successful incentive auction that results in the reallocation at least 120 MHz of spectrum for mobile broadband use while raising funds for a national broadband public safety network and deficit reduction; and (2) the most effective way to attract a large number of broadcasters is to offer opening bids that meet or exceed their expectations. The FCC must not wait until the auction begins to make its intentions clear; rather it must clearly and promptly articulate its desire to offer high initial bids and to facilitate channel sharing to recognize the full benefit of this approach.

1. The Commission Must Offer High Initial Reverse Auction Bid Prices.

Several commenters agreed with the Coalition that, given the voluntary nature of the incentive auction, the FCC must establish initial bid prices that are sufficiently high to attract any broadcaster that would consider relinquishing its spectrum. Verizon and Verizon Wireless, which have no direct interest in maximizing broadcaster revenue, recognized that “[t]he initial reverse auction reserve price for each of the exit, channel sharing and VHF relocation options must be high enough to ensure that broadcasters will have incentive to participate in the first instance.”²¹ Similarly, U.S. Cellular encouraged the FCC to “set a high reserve price” to “incentivize broadcaster participation.”²² To accomplish this goal, TIA suggested setting opening bids “at a level sufficient to prompt the boards of publicly traded broadcast licensees to

²¹ Verizon Comments at 28.

²² U.S. Cellular Comments at 9.

fulfill fiduciary obligations by at least considering auction participation.”²³ Read together, the unequivocal message from spectrum buyers and their representatives is that supply, not price, will determine the outcome of the incentive auction.

Any attempt by the Commission to interfere with market forces and artificially limit reverse auction prices to increase surplus funds will prove counterproductive. As the Coalition explained in its opening comments, the agency will have no problem assembling at least 120 MHz of broadcast spectrum in most markets without spending a penny to reclaim spectrum from broadcasters.²⁴ But the value of that spectrum in a forward auction is inextricably linked to the FCC’s ability to sell it as part of a regional or national block that includes the major markets. Thus, by attracting broad participation in the largest markets, the Commission will unlock the value of spectrum assembled in the rest of the country through repacking alone, resulting in the greatest reallocation of spectrum for mobile broadband use and the largest surplus to fund the public safety broadband network and deficit reduction.

In addition to offering high initial bid prices, the Commission should commit to paying broadcasters whose reverse auction bids are accepted promptly after the completion of the auction. For broadcasters, expeditious payments will create more certainty and address the time-value of money, thus encouraging broadcaster participation.²⁵ Once the FCC has accepted a broadcaster’s bid, it has fundamentally altered that station’s business model and must not renege on payment for any reason, including pending litigation and/or non-payment by a forward

²³ TIA Comments at 16.

²⁴ Commission Comments at 9.

²⁵ See Comments of Tribune Company, Docket No. 12-268 at 9-10 (Jan. 25, 2013).

auction bidder.²⁶ As one commenter noted, expeditious payments to broadcasters will also benefit successful wireless bidders by expediting the clearing of broadcast spectrum.²⁷

Any concern that offering high initial bids to broadcasters will result in “windfall” profits to station owners is misguided. A “windfall” only would occur if a broadcaster sells his 6 MHz of spectrum at a price that is higher than the market price for that spectrum. But several commenters agreed with the Coalition that a well-designed descending clock auction will vitiate this possibility “because, if broadcaster interest is significantly greater than expected, the Commission would lower these prices as the auction progressed.”²⁸ Thus, as an anonymous broadcaster who expressed interest in participating noted, “There is no such thing as an opening bid price that is too high.”²⁹ Rather, high bid prices will help establish the market value for spectrum. As the agency noted in its *National Broadband Plan*, it is that “gap in economic value between spectrum used for wireless broadband and spectrum used for over-the air broadcast television” that will serve as the impetus for reallocating spectrum in an incentive auction.³⁰ The agency’s role in this process should be to facilitate the discovery of market prices; interfering with that process will only reduce broadcaster participation and, consequently, the amount of spectrum reallocated for mobile broadband use and the amount of funding available for a national public safety broadband network and deficit reduction.

2. The Commission Should Communicate Critical Reverse Auction Policies, Including Initial Bid Prices, Well In Advance of the Auction.

In addition to establishing policies that encourage widespread broadcaster participation, it is critical that the FCC communicate those policies as early as possible, and well before initial

²⁶ See *id.*

²⁷ See TIA Comments at 16.

²⁸ See, e.g., U.S. Cellular Comments at 9.

²⁹ See Prospective Reverse Auction Participant at 6.

³⁰ See Federal Communications Commission, Connecting America: The National Broadband Plan 89 (2011) (“*National Broadband Plan*”).

applications are due. The Commission, through its “Learn Everything About Reverse-Auctions Now Program” (LEARN), clearly recognizes the benefits of maintaining a constant and transparent dialogue with broadcasters.³¹ For this information to be effective, however, it must quickly transition from a general description of the auction process to specific details about how the auction will work for a given station. As Verizon and Verizon Wireless noted, prompt decision making will “provide broadcasters with more certainty and thus enable them to begin planning for the auction.”³²

To obtain the full benefit of establishing high initial bid prices, the agency should announce its initial bid before stations must apply to participate in the auction. As discussed above, high initial bid prices will expand reverse auction participation and allow the FCC to reallocate the maximum amount of spectrum consistent with the closing conditions. For this to work, however, broadcasters must know about these initial bid prices with sufficient time to make educated auction decisions. Accordingly, the Commission should develop an opening bid for every broadcast station and communicate that bid to licensees as soon as possible.

The agency also should publicly announce, in a timely matter: (1) critical details of its repacking model; (2) the initial spectrum clearing target; and (3) how it will address “impaired” licenses. Each of these issues is critical for broadcasters to evaluate their expected returns, and thus whether to participate in the auction. *First*, the Commission must provide broadcasters with an opportunity to test the agency’s repacking software, which will play a central role in the reverse auction by determining when a given station should be “frozen” because it no longer can be repacked.³³ Because this measure of a station’s preclusive effect could greatly influence

³¹ See FCC, Incentive Auctions – LEARN, <http://www.fcc.gov/learnprogram> (last visited Mar. 10, 2013).

³² Verizon Comments at 21.

³³ See MALS Integrated Auction Proposal at 9-10. The FCC’s auction experts refer to the repacking software as the “Feasibility Checker.”

station values, it is essential that broadcasters receive a sufficient opportunity to utilize the software. *Second*, consistent with the *National Broadband Plan* and Congressional expectations, the FCC should promptly announce an initial clearing target of no less than 120 MHz of spectrum in each market. The initial comments reflect broad support for pursuing at least 120 MHz of spectrum for mobile broadband use, and the Commission should not deviate from this target without at least trying to clear 120 MHz.³⁴ *Third*, the agency should announce how it will address impaired markets where a national spectrum target cannot be met. Moreover, if the agency already has identified markets where recovering 120 MHz will be impossible, it should disclose those markets now so potential forward and reverse auction participants can adjust their expectations accordingly.³⁵

3. The Commission Should Look For Ways To Encourage, Not Discourage, Channel Sharing.

The Coalition continues to believe that successful channel shares are essential to fulfilling the Commission's dual goals of reallocating spectrum for mobile broadband use while also preserving a vibrant over-the-air broadcast service.³⁶ For many broadcasters, relinquishing spectrum is only desirable if they can remain on the air in another form. Accordingly, the agency's proposal to allow stations to share channels has the potential to expand the number of broadcasters that participate in the reverse auction. It is evident from the initial comments, however, that the greatest impediment to channel sharing will be the inability of interested broadcasters to find willing channel sharing partners.

³⁴ See Comments of Cisco Systems, Inc., Docket No. 12-268 at 4-10 (Jan. 25, 2013); Comments of High Tech Spectrum Coalition, Docket No. 12-268 at 6; Verizon Comments at 22-23.

³⁵ See Letter from Rick Kaplan, National Association of Broadcasters to Gary Epstein *et al.*, at 3 (Mar. 7, 2013) (public disclosure of encumbered markets "will allow bidders to take into account any impairment that might exist").

³⁶ Coalition Comments at 20.

An overly restrictive reading of Section 307(b) of the Communications Act would threaten to severely reduce participation in the reverse auction by limiting options for stations that would be willing to relinquish their spectrum rights if they could identify an alternative to remain on the air. Several broadcasters expressed in their comments a desire to channel share but also a corresponding concern that the proposed auction policies would limit their ability to find a suitable sharing partner.³⁷ A key impediment is the FCC’s plan to adhere to an outdated interpretation of Section 307(b). As proposed in the *NPRM*, the agency not only would permit, but would encourage a station to relinquish its spectrum and stop providing any service to the public. However, the Commission would forbid that same station from relinquishing its spectrum, but continuing to serve the public by sharing spectrum with another station in the same DMA. This illogical result cannot be what Congress intended when it directed the FCC to “provide a fair, efficient, and equitable distribution of radio service.”³⁸ Rather, as Entravision notes, the agency has the flexibility to modify its Section 307(b) analysis in response to “overarching public interest concerns.”³⁹ Whereas, here, Congress clearly has expressed its desire to reallocate spectrum from broadcast to mobile broadband use, it would not be in the public interest to interpret Section 307(b) in a way that impedes that goal.

Limiting channel sharing to stations within the same DMA would increase the viability of the channel sharing option without producing a wholesale reorganization of the broadcast television service. Under this proposal, stations would be able to participate in the incentive auction while continuing to serve many of the same viewers that they already serve with their existing over-the-air signal, thus producing what Chairman Genachowski has described as a

³⁷ See Comments of Broadcaster for the Promotion to Channel Sharing Arrangements, Docket No. 12-268 at 4-5 (Jan. 25, 2013); Comments of Entravision Holdings, LLC, Docket No. 12-268 at 8 (Jan. 25, 2013) (“Entravision Comments”); Comments of Broadcast Licensee, Docket No. 12-268 at 5 (Jan. 25, 2013).

³⁸ See 47 U.S.C. § 307(b).

³⁹ Entravision Comments at 11.

“win-win-win”: more spectrum for mobile broadband, more revenue for a national broadband public safety network and deficit reduction, and two stronger broadcast stations, bolstered by incentive auction revenues.⁴⁰

C. **The Commission Must Adopt Policies That Breed Interest, Not Distrust, Regarding Expected Reverse Auction Outcomes.**

In developing additional rules for the reverse auction, the FCC must take care not to adopt policies that will discourage broadcaster expectations, and therefore broadcaster participation. Many broadcasters remain skeptical, fearing that the ultimate goal of the incentive auction is to take as much broadcast spectrum as possible without providing fair compensation to broadcasters for the market value of their spectrum as repurposed for wireless broadband. For potential sellers, then, proposals to arbitrarily restrict auction eligibility, “score” the bids of certain stations at a fraction of those by their same-market counterparts, utilize “reference pricing” or “enterprise value,” and change how a station’s coverage area is determined are proxies for diminishing the available return to broadcasters from participating in the incentive auction.⁴¹ If this perception persists, it could prove fatal to the agency’s efforts as broadcasters pursue other options for their spectrum. To correct this perception, then, the Commission should, through both its policies and its words, reaffirm that reverse auction participants will have an opportunity to realize their expectations and obtain the market value of any spectrum that they relinquish in the reverse auction.

⁴⁰ See Dave Seyler, *Genachowski Sees Triple Win Ahead Via TV Spectrum Auction*, RBR-TVBR, Oct. 21, 2010, available at <http://rbr.com/genachowski-sees-triple-win-ahead-via-tv-spectrum-auction/>.

⁴¹ For example, at a recent conference, one economist associated with the FCC’s auction consultants exclaimed that, “UHF stations are worthless.” This statement is false and completely at odds with the “incentive” structure that Congress created for the incentive auction. Another economist affiliated with the Commission’s consultants argued that stations should accept their enterprise value in the reverse auction because “they have no alternatives.” That statement also is incorrect. Stations have other options, including the option to simply wait for a future auction conducted under the FCC’s general auction authority pursuant to Section 6402 of the Spectrum Act. See Eisenach Reply Decl. ¶ 12.

1. The Commission Must Not Impose Any Arbitrary Restrictions Upon Reverse Auction Participation.

The initial comments contain tremendous support for allowing all full power and Class A stations to participate in the reverse auction to the maximum extent permitted under the Spectrum Act. The *NPRM* proposes to “entertain bids to relinquish only the spectrum usage rights associated with the license held by such stations as of February 22, 2012.”⁴² Commenters have identified three primary classes of stations whose participation would improperly be precluded or otherwise restricted under the Commission’s proposal: (1) Class A eligible stations that were unable to obtain a license by February 22, 2012;⁴³ (2) stations that filed applications for construction permits or modifications before February 22, 2012;⁴⁴ and (3) stations with unique and exceptional circumstances that demand modification of their facilities after February 22, 2012.⁴⁵

The Commission should revisit the ill-advised and arbitrary restriction contained in the *NPRM*. First, many broadcasters expended substantial effort and expense to prepare and file their applications and construct their stations in reliance upon the FCC’s grant of those applications. Second, excluding willing sellers from relinquishing their full spectrum rights in the incentive auction would be inconsistent with Congress’ desire to reallocate the most efficient amount of spectrum for mobile broadband use. The Commission can accommodate these concerns without overly-complicating the auction by accommodating all circumstances where: (1) the broadcaster applied for a construction permit before February 22, 2012; (2) the agency

⁴² *NPRM* ¶ 73.

⁴³ See Comments of Action Community Television Broadcasting Network, Inc., Docket No. 12-268 at 2 (Jan. 25, 2013); Comments of United Communications Corp., Docket No. 12-268 at 5-6 (Jan. 25, 2013).

⁴⁴ See Comments of Casa En Denver, Docket No. 12-268 at 3 (Jan. 25, 2013); Comments of Connecticut Public Broadcasting, Docket No. 12-268 at 3 (Jan. 25, 2013).

⁴⁵ See Comments of TTBG, Inc., Docket No. 12-268 at 2-3 (Jan. 25, 2013).

granted the application; and (3) the broadcaster constructed the proposed facility prior to the incentive auction.

2. The Commission Must Not Discriminate Among Broadcast Spectrum Covering the Same Forward Auction Geographic Area.

The initial comments included no support for the Commission’s proposal to “score” reverse auction bids based on any factor other than that station’s preclusive effect on the reallocation of spectrum, and for good reason.⁴⁶ By arbitrarily assigning a lower “score” to a station, the agency is effectively telling that station that it is less important to the auction and that it needs to lower its expectations, thus discouraging the broadcaster from participating. This is exactly the wrong message for the FCC to send to willing broadcasters. In fact, as a recent report by SNL Kagan observed, “spectrum is spectrum.”⁴⁷ And in its efforts to maximize the amount of spectrum available for wireless use in the forward auction, the Commission should be looking to reclaim all of the spectrum that it can rather than seeking to extract every last dollar at the expense of discouraging broadcaster participation.

Not only is arbitrary scoring undesirable because it will discourage potential bidders through its complexity and the message that it will send to broadcasters, but it also will not materially affect auction outcomes. As Vision Communications observed in its comments, there is no need for scoring because “the marketplace . . . will decide how much a station’s spectrum in a given market will be worth in the reverse auction.”⁴⁸ This is particularly true under the descending clock auction proposed in the *NPRM* and the *MALS Integrated Auction Proposal*. After each round of the auction, the Commission will run its repacking model, at which time it would “freeze” the bids of stations that cannot be repacked. Thus, the repacking process

⁴⁶ See *NPRM* ¶¶ 41-50.

⁴⁷ See Robin Flynn, *Latest Spectrum-Related TV Station Deals Yield Higher Value Benchmarks*, SNL Kagan: Broadcast Investor (Feb. 25, 2013).

⁴⁸ Comments of Vision Communications, Docket No. 12-268 at 4 (Jan. 23, 2013).

automatically will account for the preclusive effect that each station has on clearing a market. Stations with a lesser preclusive effect would receive successive declining bids until either the agency meets its clearing target, the station cannot be repacked, or the licensee withdraws from the auction.

Although it is difficult to make any conclusions based on a repacking model that the FCC has yet to disclose, because repacking will serve as a proxy for the type of scoring envisioned by the Commission, imposing an arbitrary scoring formula on top of the descending clock auction will result in a “double penalty” for some of the stations that are most likely to participate in the reverse auction, such as Class As and independent full power stations located outside the center of a market. In the initial round, these stations would receive offers that are lower, perhaps significantly lower, than other stations in the same market. In successive auction rounds, these “scored” stations would see their values continue to fall as other stations in the same market were frozen. Thus, where Station A initially was scored at 80% of the value of Station B, if Station B is frozen early in the auction, Station A’s value as a percentage of Station B would continue to fall. While this approach may appear to be profit maximizing, it is not. *First*, if the Commission’s self-imposed scoring mechanism undervalues a station, that station will drop out, forcing the agency to pay more for the same spectrum. *Second*, the possibility of this double penalty will lead to fewer stations participating in the reverse auction, less supply of spectrum for the forward auction, and the strong possibility that the FCC will not be able to satisfy the statutory closing conditions. Accordingly, the agency should refrain from imposing its own scoring judgments upon the initial bids and instead allow the amount that each broadcaster receives for relinquishing its spectrum to be determined by the price discovery process.

D. The Final Auction Rules Should Account for Broadcasters Contributing Multiple Stations To The Reverse Auction.

Broadcasters interested in relinquishing spectrum rights for multiple stations provide the Commission with an opportunity to quickly and easily achieve supply thresholds that will greatly increase the likelihood of a successful reverse auction. At the same time, however, multi-station owners present unique auction-design challenges to account for the added variable of economies of scale. To encourage multi-station owners to participate in the auction and submit stations in several highly-desirable markets, the FCC should: (1) allow package bidding in the reverse auction; and (2) provide volume credits for reverse auction participants.

1. The Commission Should Adopt Rules To Facilitate Package Bidding in the Reverse Auction.

In the *NPRM*, the Commission proposes including provisions for “package bidding” in the forward auction so a single bidder can bid on a group of licenses without the risk of winning only certain licenses that would be inconsistent with its business plans.⁴⁹ The Coalition strongly encourages the Commission to facilitate package bidding in the reverse auction as well. Just as wireless licenses are complementary, so too are broadcast licenses, which benefit from economies of scale. As Dr. Eisenach explains in the attached declaration, the prospect of being left with a smaller number of stations that will now be more expensive to operate could either deter broadcasters from participating in the reverse auction altogether or cause them to alter their bidding behavior to avoid losing value in the auction.⁵⁰

To account for this factor, the Commission should allow a multi-station owner to submit a contingent bid for two or more stations, whereby the FCC’s acceptance of one station would be contingent on its acceptance of the remaining stations. The agency then would evaluate the

⁴⁹ *NPRM* ¶ 62.

⁵⁰ Eisenach Reply Decl. ¶¶ 14-20.

value of the bid as a whole, ultimately determining whether to accept all of the stations or to decline all of the stations. While this may result in the Commission accepting some stations that it otherwise would not have accepted, it would only do so if the total price of those stations that it most desired was at or below the market price for those stations. Thus, under this approach, the agency would recover more spectrum than it otherwise might have at the same price while the broadcaster would be able to bid freely without having to account for the risk that the FCC might accept some of its stations, but not others.

2. The Commission Should Offer Volume Credits To Multi-Station Owners.

Given the need for a critical mass of broadcast stations to participate in the auction, the Commission should offer a bonus on the final selling price – effectively a reverse bidding credit – to broadcasters that relinquish more than one station in the reverse auction. As Dr. Eisenach explains, an incentive auction is, effectively, a multi-sided market with network effects.⁵¹ For this market to succeed there must be a sufficient supply of spectrum from the reverse auction both in terms of total number of markets and quantity per market. The Commission can help facilitate this supply by offering a financial incentive to station owners with multiple stations in desirable markets that relinquish those stations in the reverse auction.

III. THE COMMISSION SHOULD ADOPT ADDITIONAL AUCTION RULES DESIGNED TO MAXIMIZE BOTH THE AMOUNT OF SPECTRUM RECLAIMED AND TOTAL AUCTION REVENUES

In adopting additional rules for the incentive auction, the Commission must be mindful of the interrelationship between the various components of the auction. Proposals seemingly limited to the forward auction could ultimately adjust the expectations of potential reverse auction participants and have a drastic effect on the amount of spectrum available for reallocation. Several commenters have proposed self-serving rules for other aspects of the

⁵¹ Eisenach Reply Decl. ¶¶ 21-24.

auction that, while innocuous on their face, could substantially alter the incentive auction dynamic. Accordingly, in evaluating proposed auction rules, the FCC should ask whether each rule will lead to a net increase in the amount of spectrum reclaimed and a net increase in the total forward auction revenues. If the answer to either of these questions is no, the agency should reject the proposal and instead focus on proposals that will advance the Congressional objectives, as originally articulated in the *National Broadband Plan*.

A. The Commission Should Adopt A Flexible Band Plan That Maximizes The Amount of Spectrum Cleared Nationwide.

The Commission must adopt a band plan that will result in the most efficient allocation of spectrum. Most commenters agreed that some form of a variable band plan will provide the FCC with the necessary flexibility to maximize spectrum reallocation and auction revenues.⁵² Along those lines, the Coalition continues to believe that the band plan should not serve as an obstacle to clearing spectrum that otherwise could be reallocated given broadcast and wireless carrier interest.⁵³

The lowest common denominator approach proposed by the broadcast networks, NAB, and others unnecessarily would restrict the amount of spectrum transferred from broadcast to mobile broadband use in the name of preventing interference.⁵⁴ This approach amounts to deploying a cleaver when a scalpel would suffice. To the extent that a variable band plan raises the prospect of co-channel interference between nearby wireless and broadcast operations, the Commission should address this issue on a market- or regional-basis, not by handcuffing its ability to auction the most efficient amount of spectrum nationwide.

⁵² See, e.g., Comments of AT&T Inc., Docket No. 12-268 at 32-33 (Jan. 25, 2013) (“AT&T Comments”); Comments of the High Tech Spectrum Coalition, Docket No. 12-268 at 6 (Jan. 25, 2013) (the goal of the band plan should be national uniformity, but the Commission should accommodate variability, where necessary); T-Mobile Comments at 11-12; U.S. Cellular Comments at 4-6.

⁵³ See Coalition Comments at 13.

⁵⁴ See, e.g., Comments of CBS Corporation et al., Docket No. 12-268 at 10 (Jan. 25, 2013); Comments of National Association of Broadcasters, Docket No. 12-268 at 34, 39 (Jan. 25, 2013).

B. The Commission Must Not Adopt Any Closing Conditions That Could Threaten The Success of the Auction.

Congress was unambiguous in the Spectrum Act that the *only* closing condition for the incentive auction is that total forward auction revenues must be sufficient to fund: (1) incentive payments to broadcasters; (2) the costs of the auction; and (3) a \$1.75 billion fund for broadcaster relocation. The Coalition continues to believe that this condition should be measured on a national basis, not through sub-auctions for specific markets.⁵⁵ Not only is this approach consistent with the text of the Spectrum Act, but it will provide the FCC with the greatest flexibility to utilize spectrum in the largest markets to unlock the value of spectrum in smaller markets throughout the country.

There is no basis for the agency to impose any closing conditions other than the condition outlined in the Spectrum Act. Sinclair's proposal to condition auction closing on a full reimbursement of repacking costs runs directly contrary to the language of the statute.⁵⁶ Congress determined in the Spectrum Act that reimbursements to broadcasters should not exceed \$1.75 billion.⁵⁷ While the Coalition encourages the Commission to adopt an efficient repacking model that will minimize broadcaster relocation costs, it does not believe that these costs should serve as an impediment to a successful auction. Moreover, as described in *supra*, Section IV, although the FCC should make all reasonable efforts to coordinate with Canada and Mexico in advance of the auction, the failure to complete such coordination should not serve as a basis for delay.

⁵⁵ See Coalition Comments at 12-13.

⁵⁶ See Comments of Sinclair Broadcasting, Docket No. 12-268 at 14 (Jan. 25, 2013).

⁵⁷ Spectrum Act § 6402.

C. The Commission Must Not Restrict Any Interested Wireless Provider From Participating in the Forward Auction.

The Coalition continues to believe that the unhindered participation of Verizon Wireless and AT&T is necessary for the forward auction to generate sufficient revenues to compensate willing broadcasters and, therefore, to transfer the most efficient amount of spectrum for wireless broadband use. Restricting Verizon Wireless and/or AT&T from participating in the auction will lower the expected value to broadcasters of participating in the auction, causing fewer broadcasters to offer their spectrum in the first instance. As a result, there not only will be reduced overall demand, but reduced supply as well, resulting in less spectrum changing hands – and a very real risk that the forward auction will fail and there will be no new spectrum allocated for consumer use of wireless devices, no surplus to fund a national broadband public safety network, and no surplus for deficit reduction. In short, Congress’ objectives will be frustrated and America’s role as a leader in mobile broadband deployment will be undermined.

This proceeding simply is not the proper forum for the FCC to resolve issues pertaining to spectrum aggregation. The FCC only has one opportunity to conduct a broadcast incentive auction under its Section 6403 authority, and it should not waste this opportunity to advance the self-serving interests of competitors to Verizon Wireless and AT&T. If the FCC does adopt a new spectrum screen in its complementary proceeding on that issue, the Coalition supports AT&T’s proposal that carriers should be permitted to participate in this auction and choose for themselves which spectrum to divest.⁵⁸

D. The Commission Must Auction All Spectrum Reclaimed In The Reverse Auction, Including Guard Band Spectrum.

The FCC must resist proposals to give away billions of dollars’ worth of spectrum in the 600 MHz band for unlicensed use, as these proposals could alter the economics of the incentive

⁵⁸ See AT&T Comments at 79.

auction and threaten the ability of the auction to fulfill Congressional expectations. Although the Coalition recognizes the many benefits of unlicensed spectrum, the incentive auction is the wrong context in which to allocate spectrum for unlicensed use. Rather, in implementing its incentive auction authority, the Commission should remain focused on satisfying the statutory closing conditions and creating surplus revenue to fund the nationwide public safety network and deficit reduction, all of which the allocation of unlicensed spectrum would put at risk.

Giving away for free spectrum that is of tremendous value is antithetical to the concept of an incentive auction. Just 5 MHz of nationwide spectrum in the incentive auction could garner in the range of \$4.2 billion based on valuations from the auction of the comparable 700 MHz B-block. These funds are critical to the FCC's ability to compensate broadcasters, cover the costs of the auction, and reimburse broadcasters for relocation costs. Even the specter that forward auction funds will not be sufficient to satisfy these conditions could discourage broadcasters from taking the risks attendant in participating in the reverse auction. And even if this additional funding is not necessary for the auction itself, every dollar of potential auction proceeds squandered is a dollar that will not be available to fund a public safety broadband network or deficit reduction.

The FCC has numerous other avenues through which it can promote unlicensed spectrum without jeopardizing the conduct or goals of the incentive auction. For example, other provisions of the Spectrum Act direct the FCC and NTIA to make 195 MHz of spectrum available for unlicensed use.

In addition to these policy considerations, the Commission is bound by the Spectrum Act to auction all spectrum reclaimed in the reverse auction. Section 6403(a)(1) specifically authorizes the agency to compensate broadcasters "in order to make spectrum available for

assignment through a system of competitive bidding.”⁵⁹ Similarly, Section 6403(b)(1) directs the FCC to evaluate and reallocate broadcast spectrum, including spectrum made available in the reverse auction, “[f]or purposes of making available spectrum to carry out the forward auction.”⁶⁰ The clear import of these provisions is that Congress intended for the FCC to auction all broadcast spectrum recovered. Contrary to the arguments of some supporters of allocating 600 MHz spectrum for unlicensed use, Section 6407 does not absolve the Commission of this obligation. There, Congress provided that “[t]he Commission *may* permit the use of [] guard bands for unlicensed use.”⁶¹ But this does not alter the requirement in Section 6403 that the agency subject such spectrum to competitive bidding. Moreover, the statute manifestly prohibits the FCC from creating guard bands any larger than “technically reasonable to prevent harmful interference between licensed services outside the guard bands.”⁶²

While several commenters make a case for the benefits of unlicensed spectrum, the record does not justify the FCC ignoring its Congressional mandate and risking the failure of the incentive auction to make this particular spectrum available for unlicensed use. The Commission must remain focused on maximizing forward auction revenues by auctioning all spectrum recovered through the reverse auction and repacking, and identify other opportunities to increase the availability of unlicensed spectrum.

IV. THE COMMISSION MUST NOT ALLOW BORDER ISSUES TO DELAY THE INCENTIVE AUCTION

The initial comments reflect great concern among interested parties in the FCC’s efforts to coordinate spectrum issues with Mexico and Canada. The Coalition agrees with the many commenters who urged the Commission to move swiftly to complete its international

⁵⁹ Spectrum Act § 6403(a)(1).

⁶⁰ *Id.* § 6403(b)(1).

⁶¹ *Id.* § 6407(c).

⁶² *Id.* § 6407(b).

coordination efforts.⁶³ Nevertheless, there is no economic or statutory reason to allow a failure to enter into a final agreement with Mexico and Canada to delay the auction.

The Commission can, consistent with its past practices, auction encumbered spectrum that is not available for immediate use. In the 700 MHz auction, the Commission did just that.⁶⁴ At the time of the auction, spectrum in the lower 700 MHz A Block was occupied by broadcasters and would continue to be unavailable to winning bidders until the completion of the digital transition. Nevertheless, the Commission successfully auctioned A Block licenses, generating almost \$4 billion in revenue for the Treasury.⁶⁵ Given the scarcity of spectrum in many border areas, the Commission can expect equal success offering encumbered licenses in areas where further international negotiation is required.

Moreover, contrary to NAB's suggestion, the Spectrum Act does not require the FCC to complete international coordination before conducting the incentive auction.⁶⁶ Section 6403(b)(1)(B) merely states that the repacking and reallocation of broadcast stations is "subject to coordination along the border with Mexico and Canada."⁶⁷ It does not specify what form such coordination must take, and there is no reason to believe the *completion* of agreements with Mexico and Canada is required. In fact, because the Communications Act already provides the Commission with authority to "[a]ssign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station

⁶³ See, e.g., AT&T Comments at 49; Comments of CTIA—The Wireless Association, Docket No. 12-268 at 41 (Jan. 25, 2013).

⁶⁴ See, e.g., *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd. 15908 ¶ 79 (2005) (acknowledging that "much of the Upper and Lower 700 MHz spectrum is currently encumbered by television broadcasters, and may remain so until the end of period when broadcasters convert from analog to digital transmission systems").

⁶⁵ See *Auction of 700 MHz Band Licenses Closes*, Public Notice, DA 08-595 (Mar. 20, 2008).

⁶⁶ See NAB Comments at 11-17.

⁶⁷ Spectrum Act § 6403(b)(1)(B).

shall use and the time during which it may operate,”⁶⁸ it is not clear that the FCC must rely on its spectrum act authority at all to repack or reassign licenses in border areas. As such, there is no statutory basis to delay the incentive auction if international coordination is incomplete.

V. **THE COMMISSION SHOULD UPDATE ITS OET 69 SOFTWARE BUT SHOULD NOT MAKE SUBSTANTIVE CHANGES THAT YIELD DIFFERENT COVERAGE RESULTS**

On February 4, 2013, the Commission released new software to perform the interference analysis described in OET Bulletin No. 69 (“OET 69”). The Commission announced that the new software, titled “TVStudy”, would be utilized to predict coverage of full power and Class A stations in connection with the incentive auction. The Commission sought comment on TVStudy and specifically asked whether it should continue to assume coverage within “flagged cells” - cells where results may be uncertain.

The Coalition fully supports the Commission’s decision to update its software to facilitate timely calculations on modern systems. However, the Coalition urges the Commission to refrain from implementing substantive changes that would yield different coverage results. In particular, the Coalition opposes any change in the assumed coverage of “flagged cells”. Broadcasters have been making decisions relating to the incentive auction based on the current substantive provisions and assumptions of OET 69. This is simply the wrong time to introduce substantive changes. Moreover, the Commission’s suggestion that it might treat flagged cells as not covered falls into the disturbing pattern of policy suggestions by some FCC staff and consultants that seem designed to disadvantage broadcasters. Given that the Commission's goal should be to encourage and incentivize broadcaster participation in the auction, this is not the time to introduce substantive changes in OET 69 - especially changes that reduce predicted coverage.

⁶⁸ 47 U.S.C. § 303(c).

