

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

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
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)	
Policies Regarding Mobile Spectrum Holdings)	WT Docket No. 12-269
)	
Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 And 1002)	AU Docket No. 14-252
)	
)	
Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Spaces Devices and Wireless Microphones)	MB Docket No. 15-146
)	

**PETITION FOR RECONSIDERATION OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ hereby seeks reconsideration of certain aspects of the Commission's Public Notice in the above-captioned proceedings.² We recognize the tremendous effort the Commission's staff has made to address an extensive and complex record, and our petition requests reconsideration only of targeted, limited issues that do not require revisiting fundamental aspects of the Commission's auction design. First,

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

² *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, MB Docket No. 15-146, FCC 15-78 (Aug. 11, 2015) (Procedures PN).

the Commission should reconsider its decision to relocate stations in the duplex gap. The FCC's decision, which will eliminate the use of the duplex gap for wireless microphones in markets where the duplex gap is impaired, fails to address the Commission's own argument for preserving the duplex gap for wireless microphones – some exclusive spectrum is required to cover breaking news and emergencies that cannot possibly be coordinated in advance. Second, the Commission should reconsider its standard for market variability in light of recent progress the Commission has made in international coordination with Canada and Mexico. The Commission's current standard allows far too much variability given the way foreign impairments will be treated at certain clearing targets. Reconsideration of both of these issues need not delay the commencement of the auction in any way, as both issues can be addressed through software settings and do not require reevaluation of the Commission's auction design.

I. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO RELOCATE BROADCASTERS IN THE DUPLEX GAP

In the Procedures PN, the Commission determined that it will almost certainly relocate certain repacked TV stations in the duplex gap in the wireless band.³ The result of this about face is that the Commission is no longer committed to preserving any exclusive use spectrum for wireless microphones broadcasters use to cover breaking news and emergencies. Worse, the Commission's proposed "solution" to this problem will not only not alleviate the challenges now faced by TV stations covering breaking news, but also it will inevitably force additional translators and low power stations off the air after the auction, resulting in viewers losing service altogether. The Commission should reconsider this decision. Significantly, the

³ *Id.* at ¶ 28.

Commission can easily revert to its original decision to protect the duplex gap while maintaining its schedule for the auction commencing on March 29, 2015.

In their comments throughout the proceeding, NAB and other broadcasters stressed the need to maintain *some* exclusive use spectrum for wireless microphones.⁴ The Commission agreed in its framework order, although it reduced the amount of exclusive spectrum for that purpose from 12 to 4 MHz. While not ideal, broadcasters have spent the last year planning to make the best use of this reduced – although still exclusive – allocation.

The FCC's change of course in the Procedures PN – determining that will not reserve that 4 MHz in every market – deals a serious blow to broadcasters covering breaking news in cities and towns across the country. The Commission's new decision to relocate stations in the duplex gap fails to address this issue; it does not discuss or even acknowledge the pressing need for exclusive spectrum for wireless microphones. The only "solution" the Commission proposes is the reservation of not one, but two channels in the television band for use by unlicensed white space devices and unlicensed wireless microphones.

In drawing this conclusion, the Commission states:

[W]ireless microphone advocates maintain that lack of access to the duplex gap in areas where it is subject to impairment will limit the public's access to the benefits these services provide. We propose to address this concern by requiring demonstration of the availability of a second television channel in accordance with the procedures proposed in the Vacant Channel NPRM in geographic areas where the duplex gap is subject to impairment.⁵

⁴ See, e.g., Reply Comments of Radio Television Digital News Association, GN Docket No. 12-268, AU Docket No. 14-252 (filed March 13, 2015); Reply Comments of the National Association of Broadcasters at 5-6, GN Docket No. 12-268, AU Docket No. 14-252 (filed March 13, 2015). See also Letter from Rick Kaplan to Marlene H. Dortch, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252 (filed July 23, 2015).

⁵ Procedures PN at ¶ 32.

But as the Commission acknowledges, this 6 MHz channel will be *shared* between unlicensed operations and wireless microphone users. It is not reserved for wireless microphone operators that are covering breaking news. Thus, it is in fact not a solution to the problem created by placing TV stations in the duplex gap. The Commission needs to finish its work and either determine not to place stations in the duplex gap or develop an actual solution for wireless microphones in impaired markets. Claiming that a 6 MHz shared channel does the job is specious.

Moreover, the Commission's proposal to reserve a second channel further penalizes the broadcasting industry for the Commission's auction design and policy choices. The proposed solution of allocating an additional television channel to unlicensed use and wireless microphones would provide more spectrum for those users at the direct expense of displaced low power television and television translator stations and their viewers, as well as, existing full power stations and new entrants. Forcing broadcasters to cannibalize their own service to continue to operate and serve their communities is not a balanced outcome.

The Commission asserts that this problem will not be widespread, but it is wholly unwilling to commit to any limitations in its ability to impair the duplex gap. The Procedures PN cites the simulations the staff released purporting to demonstrate that no more than six or seven markets could be subject to impairments in the duplex gap, but the Commission refused to limit impairments to the duplex gap to just six or seven markets, or, indeed, to accept any limitations at all.⁶ As a practical matter, broadcasters have no way of knowing how

⁶ Procedures PN at ¶ 31, citing Letter from Gary M. Epstein to Marlene H. Dortch, GN Docket No. 12-268, WT Docket No. 12-269, AU Docket No. 14-252, Appendix at 3-5 (filed July 10, 2015).

many markets will actually be affected by this decision and thus how widespread the problem will be, let alone which markets will be affected.

On reconsideration, the Commission should preserve the duplex gap for use by licensed wireless microphones and unlicensed operations by protecting the duplex gap from any impairment. NAB believes the Commission can address this issue entirely through software settings that designate the duplex gap as unavailable for relocating broadcast television stations. Addressing this issue thus will not delay the commencement of the auction or unduly burden Commission resources.

II. THE COMMISSION SHOULD REDUCE THE AMOUNT OF IMPAIRMENT PERMITTED

The Commission has recently announced framework agreements with both Canada and Mexico that mark significant progress towards international coordination that will allow border stations to successfully relocate to their new channels.⁷ We appreciate the Commission's progress in this critical matter, and look forward to additional details and developments. In the immediate term, however, these agreements warrant reconsideration of the level of impairment the Commission will permit in the auction.

The Procedures PN adopted a standard to limit market variability to the equivalent of one paired block of spectrum nationwide.⁸ This is a scaled mechanism that permits no more than 8 percent impairment at a clearing target of 144 MHz, and up to 20 percent impairment at clearing targets of 72 MHz or less. At a clearing target of 84 MHz, the standard would

⁷ See Gary Epstein, Incentive Auction Task Force Chair, and Mindel DelaTorre, International Bureau Chief, *International Coordination with Canada for a Successful Incentive Auction* (Aug. 14, 2015), <https://www.fcc.gov/blog/international-coordination-canada-successful-incentive-auction>; Mindel DelaTorre, International Bureau Chief, and Gary Epstein, Chair of the Incentive Auction Task Force, *International Cooperation with Mexico for a Successful Incentive Auction* (July 24, 2015), <https://www.fcc.gov/blog/international-cooperation-mexico-successful-incentive-auction>.

⁸ Procedures PN at ¶ 39.

permit up to 14 percent impairment. Foreign impairments may contribute significantly to these levels, and how those foreign impairments are counted may have a significant impact on the clearing target the Commission ultimately sets.

The agreement with Mexico, for example, contemplates the relocation of all Mexican television stations below channel 37. As a result, in setting the initial clearing target for the auction, the Commission will not count impairments from any existing Mexican stations operating above channel 37, on the assumption that those stations will eventually relocate below channel 37. For an 84 MHz clearing target, then, Mexican stations contribute no impairment to U.S. wireless operations, adding nothing to the 14 percent level of permissible impairment.⁹

On the northern border, the Canadian framework agreement provides that all Canadian broadcasters will be repacked in the broadcast portion of the band, regardless of the spectrum clearing target. Thus, the Commission will include no Canadian impairments in calculating its initial clearing target on the assumption that Canadian stations located in the 600 MHz band will all move to new channels in the broadcast band at some point in the future.

We commend the Commission for its progress. However, we respectfully submit that this progress warrants reconsideration of the level of impairment the Commission will permit. Plainly both Canada and Mexico recognize the importance of eliminating variability and impairments; the Canadian agreement ensures an unimpaired wireless band at any clearing target, and the Mexican agreement ensures an unimpaired wireless band at an 84 MHz

⁹ At higher clearing targets, however, Mexican stations located below channel 37 may contribute to the nationwide level of impairment.

clearing target. Unfortunately, leaving the current scale in place in the United States will allow the Commission to add significant, and permanent, domestic impairments, while staying under its threshold, because Canadian and Mexican impairments will be counted at zero.

Both AT&T and NAB advocated for an impairment standard that would essentially ignore the border region for impairment calculation purposes, and allow an additional three percent impairment in the rest of the nation.¹⁰ This proposal reflected the fact that domestic impairments created by relocating U.S. broadcasters in the 600 MHz band will be permanent impairments. Foreign impairments, on the other hand, are different. They are temporary and subject to eventual resolution.

The agreements the Commission has announced reflect that difference. They provide for band plans that will eventually resolve existing foreign impairments. Rather than merely making up the lost foreign impairments with new, permanent domestic impairments, the Commission should take advantage of the framework provided by these agreements and lower its nationwide impairment standard significantly. We urge the Commission to reconsider its nationwide standard for market variability, and adopt the three percent proposal submitted by AT&T and NAB in this proceeding. Again, this modification will not delay the auction in any way, as the Commission can simply lower the level of impairment its software will permit in repacking television stations.

Finally, we note that the Commission's treatment of operating Canadian and Mexican stations as contributing zero impairments, because they will eventually move, is optimistic. We are aware of no funding mechanism in Canada and Mexico for these stations to transition,

¹⁰ See Letter from Joan Marsh to Marlene Dortch, GN Docket No. 12-268 (May 1, 2015); Letter from Rick Kaplan to Marlene H. Dortch, GN Docket No. 12-268 (May 12, 2015).

and there is no guarantee they will be able to move in a timely fashion. If there are delays in moving these stations, domestic broadcasters and wireless carriers could easily be subject to unanticipated interference. If the Commission refuses to lower its nationwide impairment standard, it should at least treat operating Canadian and Mexican stations as though they exist, and consider them in assigning U.S. broadcasters new channels.

III. CONCLUSION

NAB and other broadcasters have repeatedly stressed to the Commission the importance of reserving some amount of exclusive use spectrum for wireless microphones broadcasters rely upon to serve their communities. The Commission's decision to allow licensed wireless microphones access to a portion of the duplex gap on an exclusive basis, while imperfect, at least provided broadcasters with assurance they would have some reliable spectrum to turn to during emergencies and breaking news. On reconsideration, we urge the Commission to protect the duplex gap from any impairment, and preserve it for use by licensed wireless microphones. We also urge the Commission to take advantage of the progress it has made towards international coordination by lowering the nationwide standard for market variability to reflect the framework agreements reached with Canada and Mexico, which will largely constrain foreign impairments.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1771 N Street, NW
Washington, DC 20036
(202) 429-5430

A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal flourish extending to the right.

Rick Kaplan
Patrick McFadden

Bruce Franca
Robert Weller

September 10, 2015