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

In the Matter of	)	
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268
	)	
Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002	)	AU Docket No. 14-252

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

February 20, 2015

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Summary

With the AWS-3 auction having just yielded an unprecedented $40 billion, the FCC is in prime position to hold an exceptionally lucrative broadcast TV spectrum incentive auction in early 2016. Not only did the AWS-3 auction demonstrate that spectrum is a constantly appreciating asset, but the AWS-3 auction's simple and elegant design also established a blueprint for success.

Unfortunately, the FCC has to date taken a wholly different tack with respect to the incentive auction, adding layers of unnecessary complexity and uncertainty to of an already inherently complicated auction. The auction rules and procedures should not be dictated by what is most intriguing from an academic perspective or by attempting to address every conceivable ancillary issue that could arise. Rather, the FCC should follow its own roadmap for auction success by keeping the incentive auction rules simple, reducing the amount of government tinkering in the market-based process Congress envisioned and striving for a framework that embraces the auction's enormous potential rather than being driven by an irrational fear of failure.

NAB understands that the Commission has invested significant time and energy into the rules and procedures proposed in the Comment Public Notice. That effort was certainly not in vain. Much like the creative and innovative band plan proposed at the start of the auction process in 2012, however, some critical features of the Commission's framework simply do not withstand real-world scrutiny and should be substantially changed or eliminated altogether. Specifically, to achieve the simplicity, clarity and certainty necessary to conduct a successful auction, NAB recommends that the FCC focus on at least three key areas as it finalizes the auction rules:

First, to maximize participation in the reverse auction, the Commission must not adopt its misguided proposal of Dynamic Reserve Pricing. Rather, the FCC should assure broadcasters that it will not interfere with market results by artificially depressing payouts to participating broadcasters. Broadcasters interested in participating in the auction are interested precisely because they see a great opportunity in the thriving spectrum market. Interfering with that market through government price-fixing mechanisms will surely undermine broadcaster interest, a cornerstone of the auction.

Second, the Commission must focus on establishing a lasting band plan that fosters innovation, avoids widespread harmful interference and strives to be the model for the world. The FCC's current proposal to permit a whopping *20 percent* variability across the country leads to unnecessary complexity and will harm the auction and its many stakeholders in innumerable ways. More "kind-of-almost-nearly-near-nationwide" than "near-nationwide," the FCC's current approach does not merely account for a rogue market along the border unable to meet the spectrum recovery figures of all other markets, but rather builds in a different series of band plans for some of the most significant markets in the country. As demonstrated below, not only will this approach lead to countless disputes for many years following the auction – all to the detriment of consumers – but also it will reduce the amount of money available to pay broadcasters in the reverse auction.

The failure with the 700 MHz band plan should give the Commission considerable pause before implementing such a fragmented band plan. The 700 MHz experience has taught us that when we operate with blinders and ignore the long-term impacts of our band plan decisions, other countries have no incentive to adopt our plan thus hampering our opportunity to achieve global scale. Moreover, the Commission spent years trying to dig out from the interference caused between the 700 MHz A block and TV channel 51, and thus should understand the consequences of sweeping interference issues under the rug.

At the very least, the FCC must more carefully cabin the amount of variability it may employ during the auction. If the FCC is truly concerned about the odd outlying market – such as a border market where recovery may be limited by treaty obligations – serving as the lowest common denominator, then it should constrain variability to those instances. “Near nationwide” – as with “near” anything – should mean 97, 98, or 99 percent of the country, and thus the FCC should change its variability formula to allow variability covering no more than three percent of the country’s population.

The main reason to employ a variable band plan is because the Commission is fearful that it won’t raise enough money to pay broadcasters. A so-called “lowest-common-denominator” exists only where the FCC cannot come up with enough of a financial incentive to clear enough stations in a certain market. Following the AWS-3 auction, the Commission has every reason to be confident that the auction will be a success. Not only have wireless carriers like AT&T and Verizon and spectrum speculators like DISH demonstrated that they see great value in a spectrum asset, but the AWS-3 auction reduced the incentive auction’s FirstNet closing burden by $7 billion. Accordingly, the FCC should embrace the great opportunity it has, not develop policies with long-term negative consequences simply because it is afraid to fail.

Third, in the forward auction, the way to maximize bidding is to maximize the value of what the Commission offers. The Commission must offer wireless carriers as much nationwide, paired, unencumbered spectrum as possible while complying with its statutory obligations. Relocating television stations in the wireless portion of the new 600

MHz band is not only bad for broadcasters and their millions of viewers, but also has a dramatic impact on the amount of spectrum available for auction, particularly in areas where the demand for additional spectrum is high. Forward auction revenues are critical to the success of the auction, and the Commission should not assume that wireless carriers will bid the significant sums required if they are offered uncertain blocks subject to otherwise avoidable operational limitations.

Broadcasters have more at stake in this auction than any other industry. As the Commission has noted on many occasions, the auction presents a unique opportunity for broadcasters who are considering participating. Moreover, for the vast majority of the industry that will continue to serve their communities (whether as participants or not), an auction that ensures a stable future is imperative. That is why it is essential for the Commission to reduce the unnecessary complexity it has already introduced into the auction and to embrace this rare and exciting opportunity for success.

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COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] hereby responds to the Commission's Public Notice seeking comment on procedures and design issues for the broadcast spectrum incentive auction.[2] To give this auction the best chance to succeed, we urge the Commission to allow market forces to determine the outcome of the auction, to be as transparent as possible in the preparation for and conduct of the auction, to simplify its overly and unnecessarily complex auction procedures, and to focus on offering wireless carriers unimpaired, usable, paired blocks of spectrum in the forward auction.

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[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] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, GN Docket No. 12-268, AU Docket No. 14-252, FCC 14-191 (rel. Dec. 17, 2014) ("Comment PN").

I. <u>THE COMMISSION SHOULD ENCOURAGE BROADCASTER PARTICIPATION IN THE REVERSE AUCTION BY ASSURING BROADCASTERS IT WILL TREAT THEM FAIRLY.</u>

Ultimately, two factors will drive broadcaster participation in the reverse auction. The first is information concerning the financial opportunities the auction will actually provide – not just opening bid prices, which will inevitably be reduced in the reverse auction, but also estimated payouts. The second is trust that the Commission will treat broadcasters fairly and allow them to realize those financial opportunities.

The Commission has been making great progress in its broadcaster outreach efforts. The FCC has released helpful information, including estimates of potential high-end compensation figures and proposed opening bid prices. The FCC has also begun to venture outside Washington to make itself available for questions about the auction.

We support the Commission’s efforts in this regard. NAB further agrees with the Commission that estimating a station’s value to the auction requires consideration of both interference and population served, and we have no objection to the FCC’s proposal for including both in calculating opening bid prices.[3] In light of the tremendous success of the AWS-3 auction, however, we recommend the Commission consider incorporating the results of that auction in its opening bid prices and its average unit price benchmark for the final stage rule.

Other aspects of the Comment PN are creating unnecessary challenges for the Commission in generating broadcaster interest. In particular, the FCC’s proposal to use “Dynamic Reserve Pricing” to lower prices offered to broadcasters that would otherwise have winning bids is ill-advised and contravenes the Spectrum Act. The Commission

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[3] Comment PN at ¶ 96.

should abandon this proposal in its entirety or, at a minimum, substantially restrict its application.

Dynamic Reserve Pricing is perhaps the single best way to undermine broadcasters' trust in a market-based auction. This complex and unnecessary mechanism has already made broadcasters suspicious that the Commission does not intend to let them realize gains from market prices. Under the current proposal, broadcasters that cannot be repacked in the television band – which would normally mean their bids would be accepted – will instead be subject to ongoing reductions intended solely to drive their prices down from market-clearing levels. "Come to the auction, you have a chance to realize a great financial return," is an attractive sales pitch. "Come to the auction, you have a chance to make what we in the government consider an acceptable amount of money," will not be nearly as effective. The FCC's intrusions into the auction process through Dynamic Reserve Pricing will only sow distrust of the auction among broadcasters and discourage participation.

It is not even clear, moreover, the precise problem Dynamic Reserve Pricing is intended to address. It cannot be intended to address any supposedly insufficient competition between participating broadcasters in particular markets. The Commission has expressly rejected the argument, advanced by Sinclair Broadcast Group, that the Spectrum Act requires more than one competing broadcast bidder in each market. According to the FCC, the structure of the auction means that "regardless of their pre-auction geographic or channel location, all participants in the reverse auction will compete to receive incentive payments from the same limited source—the aggregate proceeds of the forward auction."[4] That is, reverse auction participants will be competing for a share of a nationwide pool of money from the forward auction. According to the Commission, then, even if there is only one broadcast participant in a market, competition serves to establish a market price for that participant's spectrum.

At a more fundamental level, Dynamic Reserve Pricing cannot be justified as a mechanism to avoid paying "too much" to broadcasters in the reverse auction. The Commission is not tying opening bid prices to the going concern value of television stations because it is not buying television stations in the reverse auction – it is buying spectrum assumed to be worth orders of magnitude more to wireless carriers. The question of whether a bid exceeds the value a broadcaster could realize if it sold its station to another broadcaster is therefore irrelevant. In addition, no station in this auction can "hold out" or "extort" unreasonable prices based on its lucky spectral position. The Commission has already set a cap on broadcaster compensation by structuring the reverse auction as a descending clock auction. The most a broadcaster participating in the auction can receive in the reverse auction for its spectrum is the opening bid price, *which is set by the Commission itself*, based on factors that already take into account a station's value to the auction.

Given the recent success of the AWS-3 auction and the MHz-pop values set in that auction, it is entirely reasonable to offer broadcasters high potential prices reflecting the most recent market values for spectrum. But why would the Commission feel the need to adopt a non-market mechanism to lower the amount it offers to stations? Is the

[4] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* Report and Order, 29 FCC Rcd 6567, ¶ 414 (2014) ("Incentive Auction Report and Order").

Commission saying that its opening bid prices are wildly unrealistic and it wants to manipulate the market to ensure it never has to pay them? Or is the Commission saying it does not want to pay broadcasters a market price; rather, it wants to pay only a price it deems appropriate based on unknown, arbitrary considerations?

In reality, the Commission is unlikely to be "forced" to pay any one station its opening bid price if the Commission has lower-cost alternatives. If the FCC does not want to pay a particular broadcaster in a particular market a particular price, it may be able to accept bids from other stations in neighboring markets; after all, according to the Commission, all stations are competing for the same nationwide pool of resources.

In sum, Dynamic Reserve Pricing solves no identifiable problem. Certainly the Commission has done nothing to demonstrate that the problem is even real. The Commission has established an auction framework where the most any broadcaster can ever receive is a price the FCC itself sets, and where competition is ensured because broadcasters in different markets compete against each other for the same limited pool of resources. Telling broadcasters that the FCC is unwilling to pay the prices for spectrum the FCC itself sets will repel rather than attract broadcasters to the reverse auction. The FCC should abandon Dynamic Reserve Pricing in its entirety because it serves no legitimate purpose and will only depress broadcaster participation in the auction.[5]

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[5] To avoid arbitrary and capricious decision making, the FCC not only must show that its policies actually promote the purposes for which they were adopted, but that a regulatory problem existed in the first instance. *See, e.g., ALLTEL Corp. v. FCC*, 838 F.2d 551, 560-61 (D.C. Cir. 1988) (court found FCC rule to be arbitrary and capricious where neither the Commission nor any party showed that a hypothesized problem existed); *Home Box Office v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) ("a regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist") (citations omitted); *Bechtel v. FCC*, 10 F.3d 875, 880-81 (D.C. Cir. 1993) (FCC

Nevertheless, if the Commission is intent on imposing another complex and unnecessary element to its auction, it should tightly constrain the application of that mechanism only to edge cases. As it stands, the only limit on the application of Dynamic Reserve Pricing in the first stage of the auction is the 20 percent impairment cap which, as discussed in greater detail below, is hardly a meaningful limiting factor. If the FCC must implement Dynamic Reserve Pricing, it should adopt a cap for its application, tying it to the three percent cap on impairment NAB recommends. Thus, NAB urges the Commission to cease application of Dynamic Reserve Pricing if this three percent threshold is reached.

Finally, the FCC has indicated that the auction will not occur until auction software is thoroughly vetted. In the spirit of openness and transparency, that vetting should be public. The complexity of the issues raised in the Comment PN only underscore the importance of public testing. Ultimately, no stakeholder is well-served by an auction that fails or stops mid-stream due to software issues, or by a lack of confidence in software developed entirely in a black box. The Commission should promptly re-commit to publicly releasing its software, and publicly testing it, well in advance of the auction.

II. THE COMMISSION SHOULD ESTABLISH A NATIONWIDE HARMONIZED BAND PLAN THAT BEST SERVES WIRELESS USERS AND TV VIEWERS.

A truly successful broadcast TV spectrum incentive auction will not only use monetary incentives to voluntarily repurpose broadcast TV spectrum, but will also result in a broadcast/wireless band plan that is sound, durable and can reasonably be adopted

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policy found arbitrary and capricious because FCC had no evidence that it accomplished the agency's purposes). The adoption of Dynamic Reserve Pricing would fail this test.

by the rest of the world. This means avoiding, to the greatest extent possible, a patchwork of band plans across the country that inevitably will lay the foundation for decades of interference disputes and conflicts. To avoid these serious problems, NAB continues to believe that all stakeholders – broadcasters, wireless carriers and tax payers – are best served by a nationwide band plan. This is not a novel concept; indeed, most every other FCC-developed band plan is nationwide.[6] Such a plan would allow the FCC to offer predictable, truly fungible blocks of spectrum to wireless carriers in the forward auction, would tremendously reduce the potential for inter-service interference and would provide stability and certainty for all users going forward. This approach would also avoid needlessly appropriating additional spectrum in rural markets where it is not needed for commercial wireless use, and would come at the expense of low power and translator stations that would be forced off the air through repacking.

To date, the Commission has suggested that it cannot employ a nationwide band plan because it fears the so-called "lowest common denominator." This newly identified phenomenon would occur where the incentive auction fails to incent one or more needed broadcaster volunteers off the air, thus reducing the amount of spectrum available for wireless use in a given market. The Commission has, in turn, built its entire suite of band plans around its lowest-common-denominator concern, letting its jitters dictate the future of the broadcast/wireless 600 MHz band.

The first question, which certainly begs re-posing, is whether this fear is misplaced. NAB cannot fathom how the Commission can develop its plan around a

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[6] Moreover, in the instances where some variations are permitted, they are extremely narrow and focused.

concern of market failure in the wake of the wildly lucrative AWS-3 auction, which concluded just one month ago. That auction, which raised more than $40 billion, should give the Commission the solace it needs to refrain from taking the extraordinary step of building in substantial variability – and thus decades of uncertainty – to its already complex auction.[7]

Even if the FCC cannot shake its worry about an outlying market somehow failing to clear a reasonable amount of spectrum to match the rest of the nation, any variability should be severely cabined. Indeed, the FCC very publicly insisted that variability would be circumscribed, and introduced the notion that it would pursue a "near nationwide" band plan covering the "vast majority" of the country to prevent the worst consequences of variability.[8] A near-nationwide plan, while not ideal, would at least limit the potential for inter-service interference and mitigate service disruptions to over-the-air television viewers, including those who rely on low power and translator stations for service.

Despite insisting that it would only use variability in the rarest of cases – thus a "near nationwide" plan for the "vast majority" of the nation – in its Comment PN the FCC betrays its public guarantees. The FCC proposes that a band plan is nearly nationwide if it covers 80 percent of the country.[9] Not 99 percent, 98 percent or even 95 percent. *80*

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[7] One very recent study suggests that the incentive auction is likely to raise $60-80 billion or more. Comments of Expanding Opportunities for Broadcasters Coalition at 11, AU Docket No. 14-252, GN Docket No. 12-268 (filed Feb. 19, 2015).

[8] Ruth Milkman, *A Band Plan that Serves the Public Interest* (June 21, 2013), available at: http://www.fcc.gov/blog/band-plan-serves-public-interest ("We're looking for a consistent amount of spectrum in the vast majority of the country - there may be less in constrained markets, but we aren't contemplating clearing more in rural markets."); *see also* Incentive Auction Report and Order at ¶ 45, n. 95.

[9] Comment PN at ¶ 37.

percent. Thus, according to the Commission's math, 80 percent is nearly 100 percent. If the FCC adopts its proposal, the variability exception will have swallowed whole the rule of a unified, nationwide band plan.

The Comment PN does not stop there. The confounding 80 percent figure is not even 80 percent. The FCC proposes to measure variability against "weighted" population, a confusing and newly developed measure that counts people differently depending on the market in which they are located. For example, the actual population of Buffalo is 1,135,509.[10] Under the weighting proposal, however, the population of Buffalo counts as only 50,358.[11] Put differently, each person is Buffalo counts for only four percent of themselves, according to the FCC's formula. Wireless impairments in Buffalo, and many other communities, therefore, have virtually no impact on whether the Commission is approaching its proposed 20 percent cap on variability. That means the Commission's near nationwide plan is not only not near 100 percent, it may not even be nearly 80 percent. Moreover, because impairments in the uplink portion of the band are only counted as 50 percent impairment, uplink impairments can easily cover more than 40 percent of the actual population.

Consider a straightforward example. The weighted populations of the New York and Los Angeles Partial Economic Areas ("PEAs") represent 20.7 percent of the nation's total weighted population. Under the proposed 20 percent standard, with a nationwide target of 126 MHz that provides a band plan with ten wireless channel blocks, nine of ten wireless channel blocks in these two PEAs could be completely impaired. In other words,

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[10] Comment PN at Appendix F.
[11] *Id.*

the Commission would still comply with its proposed standard while only having one channel block available for sale in the forward auction in New York and Los Angeles. Alternatively, *all uplink blocks in these markets could be impaired*, and the impairments would measure only 10.4 percent of weighted population, leaving plenty of room for additional impairments in places like San Francisco, Los Angeles, Chicago, and Miami. Setting aside the question of whether such a band plan that provides almost no new spectrum in New York and Los Angeles could fairly be described as "near-nationwide," could such an auction ever be considered a success? Given the value of spectrum in these markets in other auctions, could such an auction even close?

If the FCC is intent on introducing some variability into the band plan, then it should limit that variability to a standard that is truly near-nationwide. To achieve this, the FCC should take two steps. First, *the FCC should allow impairments covering no more than three percent of actual national population*. This standard would allow the FCC flexibility to avoid undue constraints resulting from existing treaty obligations, yet still ensure that the myriad problems associated with variability will be limited to just a few challenging markets, which may be harmonized in the long run. Alternatively, it would allow for some variability in either New York or Los Angeles, the two largest wireless and television markets in the United States.

Second, *the Commission should adopt limits on variability in the amount of paired spectrum among markets*. As it stands under the current proposed rules, the FCC could repurpose 144 MHz of spectrum in Oregon and 0 MHz in New York City. The maximum variation from market to market in the amount of paired spectrum offered for sale in the forward auction should not exceed 20 percent. This standard would allow the FCC to recover additional spectrum above the so-called least common denominator level while not gratuitously taking spectrum in markets with little or no demand at the expense of low power and translator stations and their viewers.

It is important for the FCC to seize this opportunity for a successful auction. Beyond the massive complexity the FCC is proposing to introduce into the process as a result of variability, the FCC's proposal undermines any conceivable definition of success, as discussed below.

III. THE COMMISSION SHOULD ADOPT A BAND PLAN AND SPECTRUM CLEARING TARGET THAT MAXIMIZES THE AMOUNT OF PAIRED, UNENCUMBERED, NATIONWIDE SPECTRUM THAT CAN BE AUCTIONED.

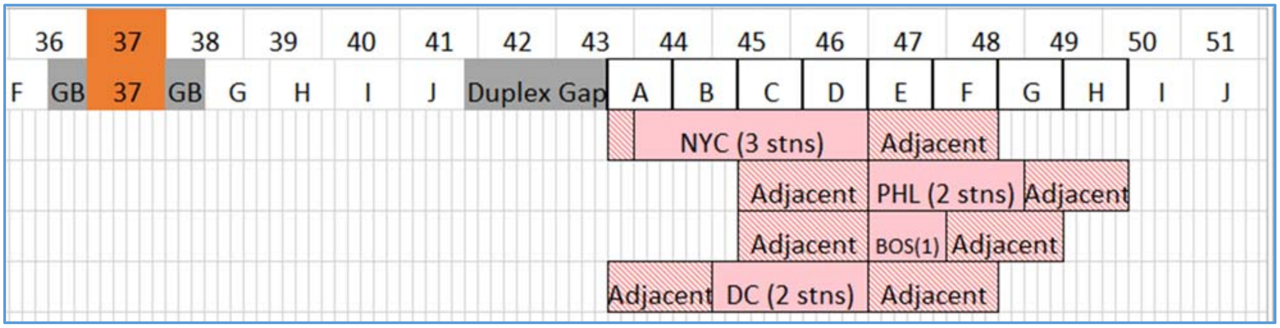
While many have observed that the success or failure of the auction is highly dependent on the participation of broadcasters, there is another important consideration: active and high bidding by wireless carriers in the forward auction. The economics of the incentive auction, including the FCC's ability to pay broadcasters for the spectrum recovered in the reverse auction and its ability to further deficit reduction, are completely dependent on a successful forward auction that raises significant funds. Success in the forward auction, in turn, depends entirely on the value of the spectrum the FCC offers. To maximize value in the forward auction, and thus to maximize the chances for success of the entire incentive auction, the Commission must offer as much paired, unencumbered, nationwide spectrum as possible. The Commission's current proposals will not achieve this end.

As NAB detailed above and in previous filings, a variable band plan will restrict the operation of television stations stranded in the wireless portion of the band, create the potential for widespread inter-service interference, create decades of conflicts between broadcasters and wireless carriers that will dwarf today's thorny Channel 51 issues, and needlessly displace translator and low power stations in Western and rural areas with no demand for new wireless spectrum. However, the risks associated with the FCC's proposed kind-of-almost-nearly-near-nationwide band plan do not end there, but also extend to the success of the forward auction. Impairments created by relocating television stations in the wireless band can cover very large areas, resulting in tremendous losses of value for the forward auction.

To illustrate this concern using the FCC's ISIX methodology, NAB has analyzed the effect that just a few impairments can have on spectrum available for auction in the critical Northeast corridor. For purposes of this analysis, we assumed a spectrum clearing target of 126 MHz. This would ordinarily create ten paired blocks of nationwide spectrum for the forward auction. We further assumed, for purposes of the analysis, a few television stations in these markets cannot be repacked in the television band, either because they were assigned to the 600 MHz band in establishing the spectrum clearing target, or because they dropped out of the reverse auction when prices fell below acceptable levels.

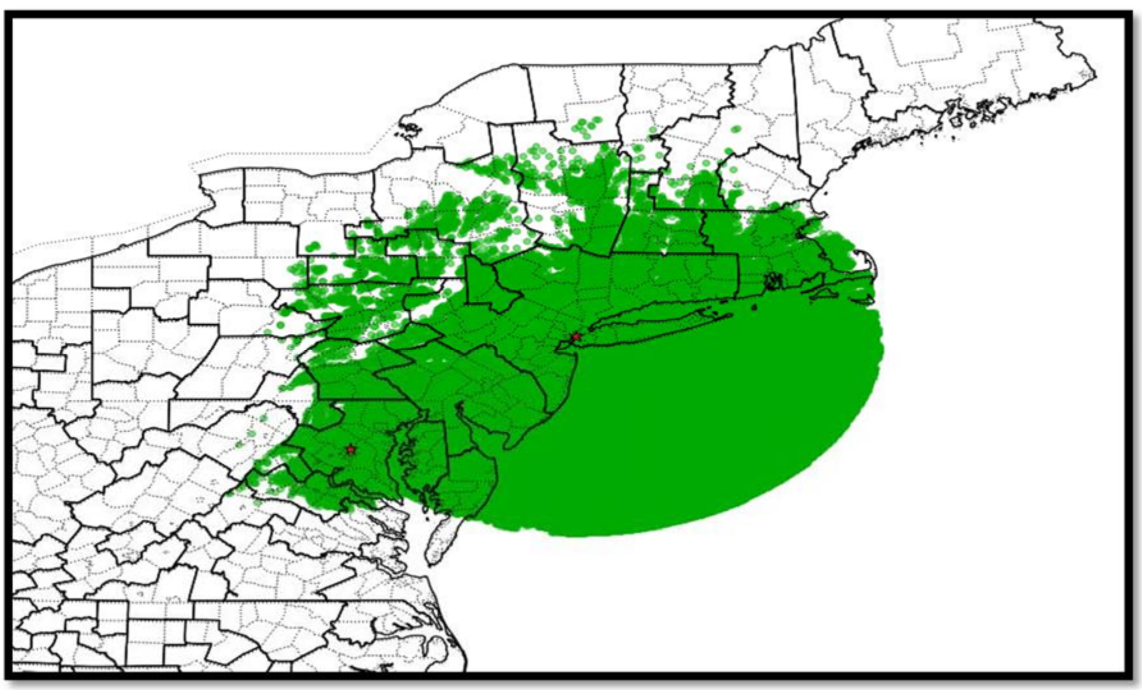
MARKET	**TOTAL UHF STATIONS**	**STATIONS REPACKED IN THE 600 MHz BAND**
New York	24	3
Philadelphia	23	2
Boston	20	1
Washington (Baltimore)	20 (7)	2

Even when these stations are repacked as tightly as possible in the 600 MHz band, the effects are dramatic. If the stations are assigned in the uplink band, the result looks like this:



NAB continues to analyze the specific effects on the amount of spectrum the Commission could offer in each market based on this scenario. But, as shown below, even very limited impairments can easily result in the FCC's only being able to auction a few blocks of paired spectrum in much of the Northeast corridor. This result would be devastating for the auction.

The following map shows the impairments that would occur just on Channel Block A from New York and Washington, DC stations located in the uplink band:



In this sample scenario, NAB estimates the New York and Washington stations would create greater than 50 percent impairments in a total of 14 PEAs with a combined population of 52.8 million and a weighted population of 54 million. In fact, such a scenario would result in impairments in eight of ten channel blocks and impact the ability to sell channel blocks in up to 35 PEAs as shown below.

Block	PEAs With >50% Impairment	Weighted Pops Impaired (M)	Percentage of Total U.S. Weighted Pops
A	14	54.0	23.2%
B	29	59.8	25.7%
C	35	62.4	26.8%
D	26	60.0	25.8%
E	24	59.9	25.8%
F	27	60.4	26.0%
G	22	59.2	25.5%
H	1	8.2	3.5%
I,J	0	0	0
TOTAL		**423.9**	**18.2% (9.1% with uplink discount)**

This outcome is wholly compliant with the Commission’s proposed 20 percent standard for a “near-nationwide” band plan. But what is the Commission actually left to auction to wireless carriers if just two paired blocks are available in major markets throughout the Northeast corridor?

PEA	Block A	Block B	Block C	Block D	Block E	Block F	Block G	Block H	Block I	Block J
NYC	X	X	X	X	X	X	X	Y	Y	Y
PHL	X	X	X	X	X	X	X	X	Y	Y
BOS	X	X	X	X	X	X	X	Y	Y	Y
WAS/ BAL	X	X	X	X	X	X	X	Y	Y	Y

This is what a failed auction looks like. An auction offering little spectrum in the highest demand markets will generate little interest on the part of wireless carriers, it will generate little bidding and it may not raise enough funds to close. It certainly will not raise as much money as a forward auction that avoids impairments in the wireless portion of the band and allows the Commission to offer more blocks of paired spectrum in the forward auction. Clearly, a better approach would limit variability and develop a band plan based on the number of volunteer broadcast stations that are *successful* in the auction, rather than the total number of initial volunteers, including those that drop out. This will result in less variability, more usable spectrum, and higher auction proceeds.

Above, we discuss the negative ramifications of the Dynamic Reserve Pricing proposal for the reverse auction. The proposal also has serious implications for the forward auction. Due to the size of the area and the number of channels that can be impaired by just one television station being relocated in the wireless portion of the band, the Commission should avoid creating impairments through the use of Dynamic Reserve Pricing. Relocating a station to the wireless portion of the band, rather than simply buying the station out, even at a price the Commission considers "too high," is the ultimate example of pennywise, pound-foolish policymaking.

Finally, to ensure a successful forward auction, the Commission should provide wireless carriers with as much information as possible concerning possible impairments. For example, the Comment PN seeks comment on a threshold for determining whether a county is "impaired" for purposes of determining impairments for a given clearing target, and specifically proposes a threshold within the range of 10-20 percent. Whatever impairment threshold is set for purposes of sale at auction, NAB has repeatedly expressed its concerns that actual impairments may vary considerably. NAB accordingly recommends that the Commission identify for bidders in the forward auction *all* counties with *any* non-zero impairment. Not only will this aid transparency for wireless carriers bidding in the forward auction, it will prevent disputes as to whether or not carriers understood their future obligations with respect to inter-service interference.

IV. CONCLUSION.

While NAB has disagreed with certain limited aspects of the Commission's proposals for conducting the incentive auction, we broadly agreed with important principles we believed the Commission had established. These include allowing market forces to determine the outcome of the auction, rather than intrusive central planning by a government bureaucracy; a truly near-nationwide band plan that does not result in the Commission needlessly displacing low power and translator stations in rural and Western markets to recover excess spectrum for which there is no demand; and offering wireless carriers generic, essentially fungible blocks of spectrum in the forward auction.

Unfortunately, the Comment PN represents a significant retreat from these principles. Instead of market forces, the Commission has proposed Dynamic Reserve Pricing: an egregious intervention virtually guaranteed to reduce broadcasters' trust in the process and eagerness to participate. Instead of a near-nationwide plan, the Commission proposes an elusive standard that makes the concept of “near-nationwide” more of a branding exercise than a reality. And instead of generic blocks of spectrum, the Commission will offer different categories of licenses with broad differences in the level of impairment, and thus may be severely restricting the amount of spectrum it can offer in the forward auction. We urge the Commission to re-commit to the important principles outlined above, to ensure that the auction can still be a success for all stakeholders.

Respectfully submitted,

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