

**United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology**

**Hearing on
*Oversight of Incentive Auction Implementation***

**Testimony of Preston Padden
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Introduction and Summary

Thank you Chairman Walden, Ranking Member Eshoo and members of the Subcommittee. My name is Preston Padden, and I am the Executive Director of the Expanding Opportunities For Broadcasters Coalition. Our Coalition represents more than 70 television Stations interested in participating in the Incentive Auction under the right conditions. We are cheerleaders for a successful Auction in 2014.

Chairwoman Clyburn has provided great leadership in moving the Auction forward with an admirable commitment to openness and transparency.¹ Commissioners Pai and Rosenworcel are very constructively engaged in Auction issues and both have offered insightful comments and suggestions.² Auction Task Force Chair Gary Epstein and Bureau Chiefs Ruth Milkman, Bill Lake and Julius Knapp –all people of great experience and integrity – are working diligently to develop recommendations for the auction design and Rules.

¹ See Prepared Remarks of FCC Acting Chairwoman Mignon L. Clyburn to CTIA 2013 (May 21, 2013), *available at* <http://www.fcc.gov/document/remarks-fcc-acting-chairwoman-mignon-l-clyburn-ctia-2013>.

² See Prepared Remarks of FCC Commissioner Jessica Rosenworcel to CTIA 2013 (May 22, 2013), *available at* <http://www.fcc.gov/document/commissioner-rosenworcel-speech-ctia-2013>; Opening Remarks of FCC Commissioner Ajit Pai at CTIA 2013 Panel “Spectrum Incentive Auctions: Step Right Up!” (May 22, 2013), *available at* <http://www.fcc.gov/document/commissioner-pais-speech-ctia-2013>.

Maximizing The Prospect Of A Successful Incentive Auction

The number one challenge facing the FCC is to make sure that payments to broadcasters are sufficiently large to induce a substantial number of TV spectrum sellers to participate in the Auction. The Incentive Auction will not succeed, and the policy goals underlying the Middle Class Tax Relief and Job Creation Act of 2012 (the “Spectrum Act”) will not be fulfilled, unless a sufficient number of TV spectrum sellers voluntarily walk through the front door of this Auction. If a large number of TV Stations offer to sell their spectrum, the FCC will succeed in reallocating 120 MHz of spectrum and in raising the revenues necessary to pay the selling TV Stations, to pay the repacking expenses of non-participating Stations, to fully fund FirstNet, and to contribute to deficit reduction. However, if an insufficient number of TV spectrum sellers participate, the auction will fail at its inception and there will be no need to debate other issues such as band plans and wireless carrier eligibility.

The “Incentive” that Congress chose to effect this historic transfer of spectrum from broadcasting to wireless broadband is payments to TV Stations. If Stations are offered prices that meet or exceed their

expectations for the value of their spectrum, as repurposed for wireless broadband, they will sell. The prospect of large payments will attract spectrum sellers. But, the converse is true as well. The prospect of smaller prices will discourage participation. All TV Stations enjoy a range of attractive alternatives other than participating in the Incentive Auction – from continuing to operate profitable enterprises, to selling their stations in a hot M&A market, to awaiting the next incentive auction or even an opportunity to sell their spectrum directly to one or more wireless providers who are willing to pay more for the spectrum than the FCC.

To be sure, economists and lawyers easily could construct Rules and Auction designs, such as “scoring” stations and “weighting” the Auction that would have the effect of limiting payments to potential TV spectrum sellers. But, this would lead to less spectrum being offered, less spectrum being reallocated, and less revenue being generated.

Making sure that payments meet the expectations of TV spectrum sellers is not a partisan issue. Prominent legislators of both parties have expressed their concerns about counterproductive notions of diminished incentives. On March 13, 2013, Chairman Walden issued a

Statement noting, “Without broadcasters there is no spectrum to auction,” adding that “it would be foolhardy to limit the incentives from the get go.”³ On June 4, 2013, the Chairman Emeritus of the full Committee, Congressman Dingell, wrote a letter asking the FCC to estimate the effect of “scoring” and “weighted auction” proposals on the number of participating TV spectrum sellers and on the amount of spectrum recovered.⁴

It is important to remember that the FCC will be buying spectrum, not TV station businesses. Scoring based on characteristics of the Station is irrelevant to the Auction. And, the Spectrum Act authorizes the FCC to pay Stations based on “competitive bidding” – not based on scoring. Finally, as we understand the FCC’s likely Auction design, it will freeze those Stations with the greatest clearing/repacking impact at high priced early rounds of the Auction while Stations with lesser clearing/repacking impact continue to descend to lower priced rounds, thereby automatically paying more to the Stations most important to the FCC’s clearing goal. Simply put, the FCC should offer the same high

³ See Press Release, Rep. Greg Walden, *Keeping the Incentive in Incentive Auction* (Mar. 13, 2013).

⁴ See Letter from Rep. John Dingell to Hon. Mignon Clyburn, Acting FCC Chairwoman (June 4, 2013).

initial prices to all Stations in the same market and rely on the statutorily prescribed Auction to discipline final prices.

Price is only part of the equation. Broadcasters have received only a very limited amount of information regarding Auction design and Rules since the FCC adopted its Notice of Proposed Rulemaking last September. This information vacuum could severely disrupt the incentive auction as television stations pursue other alternatives that provide greater certainty and, potentially, more lucrative returns. The recent sales of entire station groups, including stations in some of the largest markets with the greatest spectrum needs, demonstrate that broadcasters are rife with opportunity.

Our Coalition believes that the goal, first articulated in the FCC's National Broadband Plan, of reallocating 120 MHz nationwide, is readily attainable in the great majority of the country. If there are border markets where the FCC cannot recover 120 MHz, those markets should not artificially restrict the transfer of spectrum and the corresponding incentive auction revenues in the rest of the country. Instead, our Coalition supports a variable band plan, which would avoid a "lowest-

common-denominator” limitation by allowing the FCC to recover as much spectrum as practicable in all areas.

The FCC also should maximize the amount of spectrum available in border areas by continuing its productive discussions with Mexico and Canada. At the same time, the final conclusion of those discussions should not serve as an obstacle to holding the Auction in 2014. The FCC previously has conducted Auctions without final resolution of border issues, and it should do the same here.

Another excellent idea from the National Broadband Plan is channel sharing – where two stations that currently occupy 12 MHz of spectrum could relinquish one of the channels at auction and consolidate into a single, 6 MHz channel. This will enable the FCC to recover much needed spectrum while strengthening stations that elect to share. But Congress and the FCC must not allow rules from a bygone era to interfere with this win-win solution. Under the FCC’s existing rules, channels would be limited to sharing “partners” that deliver a broadcast signal over their city of license. So a television station could go off the air entirely, with no objection, but that same station would be unable to relinquish its spectrum and share with another station in the

same Designated Market Area that does not cover the original station's city of license. This makes no sense and is antithetical to Congress' goals in adopting the Spectrum Act. The FCC should allow Stations to "channel share" with any other Station in their DMA and to change their city of license to match the host sharing partner.

Finally, the clear Congressional priorities of funding FirstNet and making a dent in the deficit militate against restricting participation in this Auction by any wireless carriers. We need robust competition among all wireless carriers to assure that the Auction produces the maximum revenues possible. Concerns about market concentration should be left to another proceeding, on another day, especially given that such concerns may well have been obviated by the recent dramatic marketplace strengthening of Sprint and T-Mobile.⁵

Conclusion

We appreciate this opportunity to discuss one of the most important issues shaping our nation's communications future. Our members want to be a part of the solution to the issues driving this

⁵ See, e.g., Joan Engebretson, *New Sprint, T-Mobile Plans Threaten AT&T, Verizon Dominance*, Telecompetitor (July 12, 2013, 10:55 a.m.), available at http://www.telecompetitor.com/new-sprint-t-mobile-plans-threaten-att-verizon-dominance/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+Telecompetitor+%28Telecompetitor%29.

auction, and we look forward to continuing to work with the Committee and the FCC to make the incentive auction a reality.