



**Hearing on**  
**“The Broadcast Incentive Auction: Update on  
Repacking Opportunities and Challenges”**

**United States House of Representatives  
Committee on Energy and Commerce**

***Subcommittee on Communications and  
Technology***

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**Statement of Rick Kaplan  
General Counsel and Executive Vice President,  
Legal and Regulatory Affairs**

**National Association of Broadcasters**

Good morning Chairmen Walden and Blackburn, Ranking Members Pallone and Doyle and members of the Subcommittee. My name is Rick Kaplan, and I am the General Counsel and Executive Vice President of Legal and Regulatory Affairs at the National Association of Broadcasters (NAB). On behalf of NAB, I appreciate the opportunity to appear before you today to discuss the impact on TV and radio broadcasters and their viewers and listeners of the unprecedented repacking of nearly one thousand TV stations to accommodate the new 600 MHz wireless band.

NAB has worked closely with this Subcommittee for more than five years on the legislation authorizing the incentive auction and its subsequent implementation. One of the fundamental elements underpinning our collaboration has been Congress's commitment that broadcasters and their viewers would be held harmless following the auction. In practice, this means that non-participating broadcasters would remain on the air, serve the same viewers after the auction as they did before and not be required to incur costs when being assigned new frequencies.

I should be clear about three points up front. First, broadcasters are not seeking any money from Congress beyond what it takes to make us whole. We are not and have never sought for Congress or the FCC to subsidize upgrades beyond our current operations.

Second, broadcasters are not proposing a new repacking deadline or even a blanket, open-ended extension of the FCC's current 39-month repacking window. That framework has been set and the transition is underway. What we are seeking, however, is for Congress to make clear that no individual station should go off the air or have a significant reduction in service if circumstances beyond its control prevent its transition

at the assigned time. It is difficult to see how anyone can object to that request, even my counterparts in the wireless industry.

Third, now is the time for Congressional action. Stations are already well into the transition process, with the first group set to move to their new channels by the end of November 2018. Stations are incurring costs today and face the uncertainty of how much of their required costs are going to be covered. In addition, stations currently must contemplate what to do if they are faced with the possible FCC death penalty if circumstances beyond their control prevent them from meeting their transition deadline.

These issues demand Congress's attention not only because they comport with the spirit of the Spectrum Act that set the incentive auction in motion; but also, because of the critical role broadcasters play in serving communities across the country. It should not take a devastating event, such as the floods caused by Hurricane Harvey, to remind us just how indispensable broadcast TV and radio are to our nation's safety and well-being. For communities big and small and of all backgrounds and views, local broadcasters and national broadcast networks combine to provide critical news and information to keep the public aware and engaged. That's just what we do. It is in our DNA. So it should surprise no one when a broadcast journalist stands in the midst of rising floods both reporting the news and putting herself at great personal risk to save someone's life.

As is now well-documented, the prior FCC focused nearly all of its attention on the forward and reverse auction. This approach left the current FCC with a herculean repacking task. Most notably, the prior Commission's failure to treat Congress's \$1.75 billion TV broadcaster relocation fund as a budget has resulted in more stations being

moved than can be reimbursed by the existing fund. Further, it also all but guaranteed that the FCC's arbitrary 39-month deadline for repacking – a timeframe the Commission established years before we knew the auction's outcome – would be inadequate.

Under Chairman Pai's leadership, the current Commission is focused on the right issues and is working hard to ensure a smooth and efficient process. However, Congressional action is necessary to ensure its ultimate success.

Relocating nearly a thousand TV stations to new channels represents a mammoth logistical challenge for broadcasters as well as the FCC. As my counterparts on this witness panel can attest, resource constraints are real. There also will be complications both predictable and unanticipated, such as weather events or accidents.

These are not merely hypothetical threats or worst-case scenarios. Indeed, broadcasters are already encountering challenges the FCC had not anticipated. For example, as part of its post-auction repacking plan, the FCC moved 32 TV stations to Channel 14. These are costly and consequential moves. Channel 14 is immediately adjacent to spectrum used by land mobile, including public safety, operations. Thus, TV stations will be required to spend significant sums beyond what was anticipated to mitigate this additional interference. Additionally, history has demonstrated that the full extent of that interference cannot be known until after the Channel 14 station is built.

Even broadcasters not being repacked are feeling the pinch. Hundreds of FM radio stations now face new costs and significant service disruptions to their listeners where they are co-located with TV stations. Radio stations were able to handle such challenges during the DTV transition because they had time to accommodate their TV

brethren. Under the current repacking construct, however, they do not have that luxury. Low power TV and translators are also caught in the crosshairs.

When weighing the equities, ensuring that broadcasters and their viewers and listeners are held harmless, plainly takes precedence over adding to the already considerable spectrum stockpile of a pair of companies. A close analysis demonstrates that, in nearly all cases, spectrum from this auction will not be used to extend service to currently unserved areas; but rather, to supplement existing service. And that assumes the spectrum is actually put to use at all. Yet, absent congressional action, the collateral damage will be existing broadcasters who are forced off the air.

Fortunately, broadcasters have every incentive to work towards a swift transition. Working together, NAB believes there are three concrete steps Congress can take to protect viewers and listeners, and help ensure that the repack proceeds efficiently and effectively for all involved.

First, Congress should allocate additional funding to ensure that repacked broadcasters are made whole for the channel changes that paved the way for a successful auction. This auction would not have been possible without repacking, yet the stations incurring the cost and burden of moving receive no benefit. Television stations that are being involuntarily relocated should not be forced to pay for what is already an enormous disruption, which can serve only to reduce their ability to invest in programming and local news.

Second, Congress should ensure that no station is forced to go off the air or reduce service due to circumstances outside its control. Unfortunately, the current FCC rule leaves broadcasters exposed. If stations encounter challenges that make it

impossible to meet their deadlines despite their best efforts, I think we can all agree that their viewers should not be left in the dark.

Third, the repack must take into account the costs and need for coordination associated with TV and radio stations which themselves were not repacked, but which due to their proximity to repacked TV stations must reduce power or transmit from an alternate facility for some period of time. These stations' viewers and listeners should not be dismissed as collateral damage solely because the FCC's original repacking plan did not take them into consideration.

NAB continues to believe that with the right Congressional and FCC leadership, the repack can be successful. We are committed to doing our part to see that happen. This includes providing consumer education to ensure our viewers know how to find us after repacking, and tools they need to understand how and when to rescan their TV sets.

We are grateful to bipartisan Congressional leaders for their attention to this issue and to Ranking Member Pallone and his cosponsors for their proposed legislative solution. We look forward to continuing to work with you to help this transition proceed as smoothly as possible for all stakeholders – most critically the viewers and listeners who rely on our signals every day.

Thank you again for the opportunity to discuss these issues. I look forward to your questions.