



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

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

July 23, 2013

**Statement of Rick Kaplan
Executive Vice President, Strategic Planning
On behalf of the National Association of Broadcasters**

Good morning, Chairman Walden, Ranking Member Eshoo and members of the subcommittee. Thank you for inviting me, on behalf of the National Association of Broadcasters, to testify before you today.

One of NAB's highest priorities is to assist the Federal Communications Commission (FCC or Commission) in successfully conducting the world's first-ever incentive auction. To that end, we have focused specifically on the myriad of engineering challenges inherent in implementing an auction of this magnitude. For example, the auction will be heavily dependent on a repacking framework never before attempted, and may take the unprecedented step of requiring broadcasters to occupy the same channels as wireless carriers in adjacent markets. Throughout the process, NAB has engaged in constructive and fruitful discussions with the wireless and technology industries, as well as the public interest community, to identify potential pitfalls and develop corresponding consensus-based solutions so that the Commission has the best chance for success in this ambitious undertaking.

At the outset, it is important to remember Congress's goals in authorizing the voluntary broadcast incentive auction. It not only envisioned raising revenue for the Treasury, funding a public safety network and generating additional spectrum for mobile broadband, but also preserving a healthy and robust broadcast industry. Congress, and this Committee in particular, understand that broadcasting plays an essential role in the fabric of American life. As we have seen time and time again, the free services that the nation's broadcasters provide to the American public are without equal. Whether it's coverage of Hurricane Sandy, the tornadoes in Oklahoma or the horrific attack in Boston, we all – including the President – turned to local broadcasters for critical, timely

and in some cases, lifesaving information. Indeed, the wireless industry itself refers its customers to local broadcasters to deliver critical information through its mobile telephone alert service. And unlike other services, we remain on the air, reliably available to the public.

Spectrum is the lifeblood of the broadcast industry much as it is for the wireless industry. We are on the cusp of driving new innovations in broadcasting, as we are constantly striving to deliver our local news, and information and unrivaled content to consumers in new, richer formats and on the devices of their choice. To be an innovative force in American life broadcasters, too, need spectrum, and are working every day to help the U.S. lead the world in broadcasting as well as broadband.

The success of this auction is critical for broadcasters, broadband providers and the American public. As Congress conducts its oversight of the incentive auction process, NAB believes that three critical elements will define whether the auction is a success:

First, the Commission must design an auction that maximizes revenue in light of engineering constraints and the other valuable services already operating in the 600 MHz band. The simple truth is that, based in part on the promise of the National Broadband Plan, Congress expects to raise substantial revenue from this auction. The auction must pay for itself, provide compensation for the volunteering broadcasters, pay to relocate the non-volunteer broadcasters and invest in a nationwide interoperable public safety network.

To accomplish this, the Commission must maximize licensed *paired* spectrum, and do so *nationwide*. Anything beyond that – whether it be unpaired spectrum, a

jagged variable band plan or a wide swath of unlicensed spectrum in the middle of the new wireless band – will yield little revenue and drive down overall auction revenues.

By focusing exclusively on paired spectrum – and not gobbling up additional spectrum in markets simply because it can through repacking – the Commission would be achieving at least two additional policy goals. First, maintaining focus solely on maximizing paired spectrum nationwide will prevent the Commission from overreaching and therefore will enable unlicensed services to flourish as part of the TV white spaces. On the other hand, if the Commission repacks broadcasters more tightly to squeeze every last megahertz out of the TV band, many unlicensed spectrum proponents have correctly noted that the Commission will concurrently be eliminating unlicensed TV white spaces use, which the FCC has repeatedly explained is a valuable piece of the 600 MHz equation.

In addition, a measured repacking – one tied to achieving nationwide bands of paired spectrum – minimizes the inevitable negative impact the auction will have on TV translators and low power TV. Every megahertz reclaimed through repacking, especially in the West, threatens to eliminate television service to thousands of viewers who rely exclusively on translators for news, weather and emergency information. The impact is particularly acute in tribal areas, where broadcasting via a translator is often the only link to the region, as neither wireless nor even wireline services may be available.

The same holds for low power TV, which is often a major source of ownership and programming diversity in many markets. These outlets are not formally protected in the Spectrum Act, but their importance is undisputed and the FCC should do everything

it can to keep those stations on the air. A measured repacking is the best way to accomplish that goal and to serve the purpose of the statute.

The ability to maximize revenue is also greatly affected by how much progress the FCC makes in coordinating with Canada and Mexico prior to the auction. By treaty and by the Spectrum Act, the FCC is required to coordinate spectrum frequencies with Canada and Mexico. If this coordination process is not successful, the FCC will leave potentially billions of dollars on the table and risk widespread harmful interference between wireless and broadcast services. To maximize revenues, international coordination must be a priority for the Commission and a plan must be in place *prior to* repacking broadcasters.

Second, a successful auction will preserve and promote a healthy and robust broadcast industry. Some have described the auction as a win-win-win, the final win being for the broadcast industry. Frankly, NAB does not see a “win” for broadcasters who remain on the air and nothing in the incentive auction Notice of Proposed Rulemaking (NPRM) suggests there is one to be had. At this point, we would settle for a win-win-tie.

For those television stations that choose not to participate in the auction, they must be made whole. If a broadcaster is forced to relocate as a consequence of the auction, it must be fully compensated for reasonable expenses. That was the commitment of former FCC Chairman Julius Genachowski and the intention of Congress in creating the TV Broadcaster Relocation Fund. In addition, every television broadcaster, to the greatest extent possible, should have its coverage area and the viewers it serves preserved. Nearly 60 million Americans rely solely on free, over-the-

air television, and that number is growing every year. Congress clearly sought in the Spectrum Act to protect viewers' ability to receive the same stations over the air as they do today, so long as those stations keep broadcasting. Technologies that allow broadcasters to play their critical role informing the public must also be protected, including maintaining exclusive channels for wireless microphone use.

NAB has serious concerns as to whether this goal will be met. To offer some perspective, two of the lone actions taken by Commission staff since the NPRM was issued have hurt or will, if adopted by the Commission, hurt broadcasters. The first, a Public Notice announcing new changes to the long-standing methodology described in OET Bulletin No. 69 (OET 69), has introduced enormous uncertainty into the repacking process, has produced contradictory results, and threatens to seriously reduce the coverage areas and viewers served by stations across the country. In a nutshell, OET-69 is the method by which the Commission calculates the area each broadcaster serves. In the Spectrum Act, Congress expressly forbade the Commission from altering that method for the incentive auction. We encourage Congress to remind the Commission that the Spectrum Act specified the methodology by which the Commission should generate stations' coverage areas, and it expects the Commission to follow the law.

The FCC's Media Bureau has also taken the aggressive step of freezing all new and *pending* applications by television stations to modify their service areas. As a result, a station with an application pending for *years* at the Commission, now arbitrarily has no chance of it being processed because the Media Bureau believes the station might be impacted by decisions in the incentive auction proceeding. NAB believes that

no applications should be frozen, and the Commission should continue to process applications in a routine manner until it makes its final determinations. That is especially true in cases where applications were filed before the Media Bureau's previous May 31, 2011 freeze on channel change rulemaking petitions, which was instituted nearly a year before the Spectrum Act was passed. Both broadcasting and broadband are crucial communications services. Simply because an undefined auction is on the horizon, the Commission should not relegate broadcasters to a frozen in time – or effectively second-class – status. At the very least, the Commission could decide the question of which stations are protected in repacking and to what extent. This action would eliminate the alleged need for a freeze and allow the Commission to move forward with parts of the incentive auction proceeding where the record is complete.

Third, the creation of the 600 MHz band plan must be informed by the interference challenges faced by the Commission in the recent past and should avoid any harmful interference among services. The auction process does not simply end with the final bid. It will take time to determine whether the new band plan is a success. No matter how much money the auction raises, if it ultimately results in millions of consumers – whether wireless or broadcast – experiencing difficulty receiving the signals that power their devices, the auction will be a failure. Therefore, we must have an open and frank discussion about the engineering implications of our band plan choices – including the challenge of employing market variability – and tackle head-on the difficulties presented.

One final point bears mentioning. An essential element in any process, and especially one this complex, is transparency. The process by which the auction is

developed must be with maximum stakeholder participation and information needs to flow both to and from the Commission. While we applaud Acting Chairwoman Clyburn for taking some important recent steps to increase transparency, the agency's record to date is lacking in this area.

For example, in February 2013, an FCC staff presentation (attached) included what the FCC staff believed to be the seven "Key Components" of the voluntary broadcast incentive auction. They are:

- Broadcaster Options
- Reverse Auction Design
- Repacking of Broadcast Stations
- Forward Auction Design
- 600 MHz Band Plan
- Integration of Forward and Reverse Auctions
- Unlicensed Use / TV Whitespaces

This list is remarkable for the fact that, almost a year and a half after passage of the Spectrum Act, the affected industries still have no clear idea how and when the FCC plans to address these key components. Aside from "Broadcaster Options" – which are, for the most part, statutorily mandated -- and a workshop and public notice regarding potential band plan options, the resolution of the remaining key components are still a complete mystery for much of the outside world.

Rather than just providing a high level overview of these issues, it is essential that staff actively and consistently engage with stakeholders to exchange ideas for developing a successful auction. If stakeholders remain in the dark, the odds of success go down dramatically. We and our counterparts in other industries and the public interest community have a great deal to offer, and are eager to contribute to the final outcome.

We thank the Committee for assuming its oversight function in this process. This role is essential, especially to ensure that the Commission faithfully adheres to the statute this body crafted so carefully to achieve a balance between broadcast and broadband. I urge this Committee to continue to hold such hearings, as it sheds a much needed light on the process and will ultimately lead to a better result.

Thank you again for inviting me here today. The NAB is anxious to see a successful incentive auction and will play an active role in ensuring that happens. I look forward to answering your questions.

Attachment



Federal
Communications
Commission

**Stanford Institute for Economic
Policy Research (SIEPR)**

**Incentive Auction
Design Conference**

**Gary M. Epstein
Chair, Incentive Auction Task Force**

February 25-26, 2013



Broadcast Incentive Auction: Legislative Direction

“The Commission 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 in order to make spectrum available for assignment through a system of competitive bidding...”

- Spectrum Act Section 6403(a)(1)



Broadcast Incentive Auction: Objectives

Relieve Spectrum Crunch

- Repurpose maximum amount of UHF spectrum while providing for a healthy broadcast industry

Statutory Fiscal Objectives

- Forward auction proceeds must exceed reverse auction payments
- Cover the repacking reimbursement costs
- Other congressional objectives (FirstNet, deficit reduction)

Promote Wireless Innovation

- Launchpad for advanced wireless networks
- Contiguous unlicensed band

Vibrant and Healthy Mobile Market

- Availability of low-band spectrum for a range of mobile broadband providers



Broadcast Incentive Auction: Design Goals

Simplicity

- Want to make bidding for TV broadcasters simple because their participation is critical to the success of the auction

Efficiency

- Measured in terms of both achieving the optimal auction outcome and closing the auction in a timely fashion

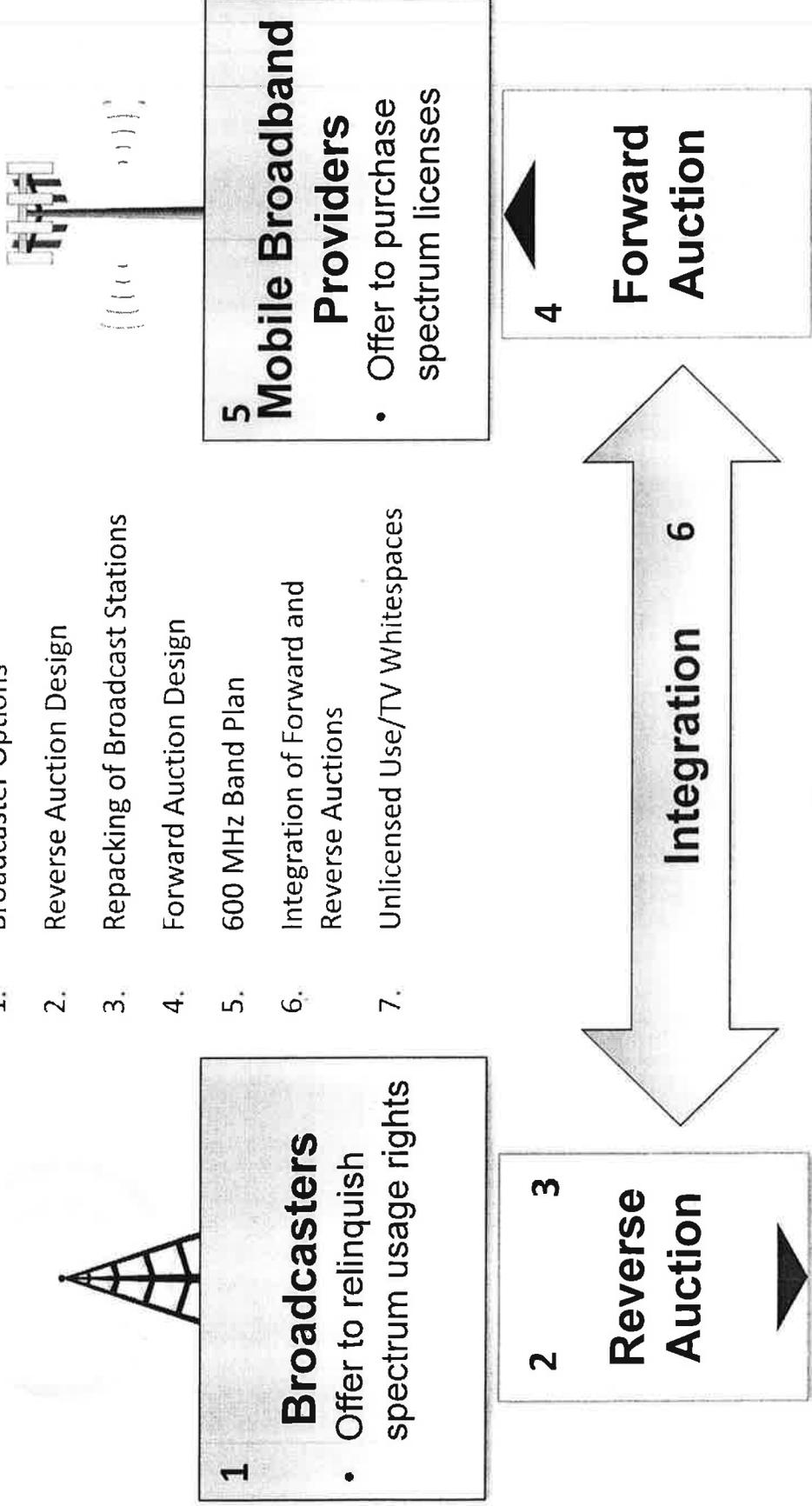
Transparency

- Critical for stakeholder buy-in



Broadcast Incentive Auction: Key Components

1. Broadcaster Options
2. Reverse Auction Design
3. Repacking of Broadcast Stations
4. Forward Auction Design
5. 600 MHz Band Plan
6. Integration of Forward and Reverse Auctions
7. Unlicensed Use/TV Whitespaces





Broadcast Incentive Auction: Process

Incentive Auction Process Timeline

