BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	Docket No. 12-268
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	

To: The Commission

Comments of
National Religious Broadcasters

National Religious Broadcasters ("NRB"), through undersigned counsel, hereby files comments in response to the Commission's September 28, 2012 *Notice of Proposed Rulemaking* in the above-captioned matter.[1]

Background

National Religious Broadcasters (NRB) is a non-profit association that exists to keep the doors of electronic media open and accessible for religious broadcasters. NRB's many members include a significant number of full power, Class A, and low power television broadcasters that produce and/or telecast religious programming. The public service provided by these broadcasters is uniquely local, often showcasing programming with local churches or non-profits, and providing wholesome, family-oriented viewing choices.

In connection with the incentive auction and spectrum repacking, NRB urges the Commission to adopt procedures that preserve a robust, free over-the-air television

[1] Notice of Proposed Rulemaking, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*; FCC 12-118, rel. October 2, 2012 (hereinafter "*NPRM*").

service so that all Americans continue to have access to the specialized religious and family programming offered by its members.

A. The Commission Should Not Punish Over-the-Air Viewers

The Commission has noted that that a "small but significant segment of the Nation's population relies solely on over-the-air broadcast television stations for video programming service." NPRM, ¶ 13. While the Commission's comment recognizes the value of traditional broadcast stations, we suggest that viewing trends actually illustrate a greater and greater reliance by the public on over-the-air television broadcasts for information, news and entertainment.

According to data from Knowledge Networks' 2011 Ownership Survey and Trend Report, a part of *The Home Technology Monitor*, the number of Americans relying exclusively on over-the-air (OTA) broadcasts in their home had increased to 45.6 million as of that time, up from 42 million the prior year. [2] The following year, in 2012, that number continued to rise to almost 54 million. The research by GfK Media showed that "broadcast-only households skew towards younger adults, minorities and lower-income families" according to media reports. [3] Thus, while the 2010 National Broadband Plan introduced the idea of incentive auctions of spectrum "to help meet the Nation's spectrum needs," NPRM page 3, ¶ 3, the auction process *should not* do so at the expense of an important segment of America's television viewing public.

B. The Threat to Low-Power Television and the Viewing Public

A significant portion of the increasing number of Americans who are choosing to rely primarily upon over-the-air (OTA) broadcasts are those who receive informational

[2] "Over-the-air TV homes increase 10% to 46 million," Rapid TV News.com, August 6, 2011.
[3] http://rbr.com/u-s-over-the-air-tv-viewership-at-54-million/

content from low-power television stations. Further, an important number of NRB member television stations are low-power, and provide valuable religious content to their communities which will not be duplicated in their viewing markets if the spectrum auction or repacking results in their being taken off the air.

When the Working Group on Information Needs of Communities, commissioned by FCC Chairman Genachowski and led by Steven Waldman, issued its report in June 2011 it noted the importance of religious broadcasters: "Although discussion of public broadcasting rarely focuses on religious programming, religious broadcasters have a significant and valuable presence on the airwaves." [4]

However it is clear that the Commission anticipates that certain low-power stations will be forced off the air as a result of the proposed auction. Many of those will likely be smaller religious broadcasters. "Only a limited number of available channels may exist following the repacking process, limiting the relocation options available to displaced LPTV and translator stations." NPRM, ¶358. LPTV stations face the very real potential of losing their stations as a result of the incentive auction.

The specter of LPTV stations disappearing as a result of the Commission's approach in this NPRM, runs directly counter to the long-standing commitment that it has articulated over the years to encouraging and protecting true "localism" in broadcasting. It is hard to imagine any broadcasting entity that is closer to the community, or that meets more of the truly "local" needs of its broadcast market than LPTV stations. As the FCC's

[4] Steven Waldman and the Working Group on Information Needs of Communities, The Information Needs of Communities – The Changing Media Landscape in a Broadband Age, June 2011, page 186.

Working Group on Information Needs of Communities noted: "[l]ow power TV stations can be used to provide locally oriented service to small communities." [5]

The Commission blithely points to Congress' legislation in relegating LPTV stations to sacrificial status. "The Spectrum Act makes full power and Class A broadcast television licensees eligible to participate in the reverse auction, *but not low-power television stations*," (emphasis added). NPRM, ¶ 73. This process leaves no protection for local community low-power stations, nor any assurance that their audiences will have continued service of the same type of viewing content that they had been previously receiving. To the extent that many low-power stations are religious ones, this auction process will fall heavy, particularly against the continuation of religious broadcasting content.[6]

The Commission notes, and should more strongly focus upon, the congressional language in the Spectrum Act that expressly provides that the rights of low-power television should not be altered in the auction process: "Nothing in this subsection shall be construed to *alter* the spectrum usage rights of low-power television stations." [7] (Emphasis added). Obviously any process that engineers a diminishing of low-power spectrum rights would constitute a move to "alter" those rights. A question arises, therefore, as to both the scope and mechanism for enforcement of that provision protecting low-power stations from having their spectrum usage rights altered. The "no-

[5] Id. at page 326.

[6] Ordinary rights of a licensee to protest a license modification under 47 U.S.C. § 316 have been rendered inapplicable to a "modification" that is made by the Commission pursuant to the Spectrum Act, as stated under § 6403 (h) of that Act. Presumably, but not definitely, this would also negatively impact the rights of a license loser to demand a hearing under *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945) and its progeny on the grounds that the situation created constitutes the equivalent of "mutually exclusive" applications for a license. See also: *Bachow Communications, Inc. v. F.C.C.*, 237 F.3d 683 (DC Cir. 2001). But also see n. 7 *infra*.

[7] NPRM, ¶ 74, n. 100, citing Spectrum Act, § 6403 (b) (2).

alter" language is set forth clearly in the Spectrum Act, although the approach in this NPRM seems to side-step that fact. [8]

By ignoring the "no-alter" mandate in the Spectrum Act, The Commission's approach in this proceeding improperly makes low-power television *persona non-grata* during the auction process, thus dropping them into the category of easy prey for extinction while making no counterbalancing provision for their continued survival. The Commission has conceded that the Spectrum Act is the basis for this approach to low-power: "In contrast, the Spectrum Act neither *mandates* protection of low-power television stations during the repacking process nor eligibility for reimbursement," (emphasis added). NPRM, ¶ 74. Yet, the Commission has ignored the low-power protection provisions of that same Act.

Admittedly, low-power stations are ineligible to participate in the auction process. We see that as a mandate *only* that low-power stations not be able to benefit from the revenue gained from a sale of their spectrum, reserving that benefit to Class A and full power stations. There is equity and logic behind our interpretation of congressional intent; Class A and full power stations are likely to have invested more in their start-ups, facilities and equipment and therefore should be in the best position to profit from a sale of their spectrum as a fair return on investment. However, we do not see the Spectrum Act language as a mandate for sweeping aside low-power stations in the repacking

[8] If LPTV stations are given *no protection* in the channel reshuffling, then the enforcement of the rights of low-power stations under the Spectrum Act not to have their rights "altered," would superficially seem to conflict with the other provision in the Act that suspends the ordinary right of a licensee to protest a modification of its license accomplished pursuant to the spectrum reallocation that will result from the reverse and forward auctions. See: n. 6 above. However, all of these sections of the Act can be harmonized logically, by concluding, as we do here, that although LPTV licensees cannot participate in the auction, they must necessarily be given protection in the repacking. For this reason, the approach in this NPRM to give no deference to low-power licensees is, and must necessarily be, incorrect.

process nor as an authorization to doom them to extinction. To the contrary, the "no-alter" mandate from Congress in the Spectrum Act would counsel just the opposite result.

In order for the Commission to adequately fulfill its commitment to "minimiz[e] disruption to broadcast television stations and their viewers," NPRM ¶ 9, page 5, we suggest below approaches that can minimize the damage to low-power television and to their audiences. See: sections C (1) and (2) below.

C. The Threat to Class-A Television Stations and the Viewing Public

In this NPRM, the Commission proposes to permit some leeway for those Class-A stations that have not completed the digital transition "based on the unique circumstances involved;" an apparent reference to the fact that the majority of such stations have not yet completed the conversion. NPRM, ¶ 80. It is proposed that the status of such stations licensed after February 22, 2012, as well as their auction bids, will be "evaluat[ed]" as of the date of the reverse auction. Id. This would also include licensees that hold a "permit or license for low power television digital companion channel to which they have not yet transferred their Class A status." Id. at n. 119.

But what about low power stations that could qualify for a Class A status, but are trying to decide whether to apply for a Class-A license? What assurance has the Commission given that they will be treated equitably regarding the auction repacking? And what criteria will the Commission apply in making that decision? These questions appear to be unanswered.

NRB suggests a remedy for this uncertainty in the following sections, below.

(1) NRB Proposal for Low-Power and Class A Stations: Protection

The dilemma created by the Commission's proposal is illustrated by KDOV, "The DoveTV," a low-power station in Medford, Oregon. The station was awarded NRB's "Low Power TV Station of the Year" at our national 2012 convention. USB USA, Inc. is the licensee of the station. The DoveTV has made substantial investments in the station, and had stated publicly to members of Congress that it is faced with "uncertainty about our future, yet the FCC says we must convert to digital by September 2015 … we have immediate plans to expand our facilities. How can we do that if we are uncertain of even having a station?" [9]

We urge the Commission to grant auction and spectrum protection rights to any low-power station – similar to granting it Class-A license status – where that station can demonstrate that it has met, in fact, the qualifications to apply for Class-A status. We believe that this would be consistent with the Commission's authority under § 6001 (6) (B) of the Spectrum Act, where in that section a "Broadcast Television Licensee" is deemed to include any "low-power television station that has been accorded primary status as a Class A television licensee under section 73.6001 (a) of title 47, Code of Federal Regulations."

(2) NRB Proposal for Displaced Low-Power Stations

NRB also strongly supports the adoption of creative, alternative methods to ensure that the important programming provided by LPTV stations continues to reach viewers. Because LPTV stations have little or no bargaining power, these solutions must provide direct relief to displaced LPTV stations or at a minimum, incentivize other stake

[9] Letter of Perry Atkinson, President, UCB USA, Inc., to Hon. Greg Walden, U.S. House of Representatives, December 20, 2012.

holders to enter into arrangements with LPTV stations that can enable continued distribution of their programming.

NRB specifically proposes that displaced LPTV stations be automatically granted mandatory cable carriage status at their new location/channel upon constructing their new facilities. Such status should not be restricted by the standard criteria to be a "qualified low power television station" under Section 76 of the Commission's rules. Displaced LPTV stations would elect carriage upon completion of post-displacement construction.

Further, to incentivize full power stations to enter into programming arrangements with LPTV stations, NRB proposes that

(a) full power noncommercial television stations be allowed to carry the programming content, including commercial content, of a displaced LPTV station on one of their free, over-the-air digital multicast channels, so long as the main NCE TV channel continues to provide a primarily noncommercial television service;

(b) any full power commercial or noncommercial television station carrying a displaced LPTV station on one of their free, over-the-air digital multicast channels be exempt on that channel from any closed captioning requirements and from the requirement to add an additional three (3) hours of children's core television programming to their quarterly requirement; and

(c) any full power commercial or noncommercial television station that is being repacked as a result of the incentive auction outcome, but that agrees to carry a displaced LPTV station on one of their free, over-the-air digital multicast channels, be entitled to a set amount of additional cash remuneration from the TV Broadcaster Relocation Fund over and above the amount of its relocation reimbursement costs.

With regard to LPTV digital construction, NRB supports a relaxation of the current September 1, 2015 deadline for such stations to cease analog operations and commence digital-only operations. With the incentive auctions looming, and LPTV stations potentially facing a loss of their stations (or at minimum, a displacement) as a result, LPTV stations that have not yet transitioned to digital face a dilemma of potentially spending thousands of dollars on digital conversion, and then being displaced or put off-the-air by the repacking process. It is unrealistic to expect those stations to adhere to a digital transition deadline under such circumstances, and the Commission should reconsider and automatically toll the September 1, 2015 digital transition deadline for all LPTV stations until there is more clarity on the impact that repacking will have on LPTV stations.

D. The Commission Should Reject the Integer Program Algorithm Approach

The Commission has identified two main auction methodologies: first, what it has described as the "integer program algorithm" approach, NPRM, ¶ 44-45, and second, the "sequential" approach, NPRM, ¶ 46. NRB strongly urges the Commission *not* to adopt the former. The Commission has conceded that a computer software program would be devised in that method in order to find the "most feasible solution [that] has the best objective value of all feasible alternatives." Id. Not only would it be hard to imagine an algorithm that would be an adequate substitute for the human discretion and judgment that Congress has vested in the Commission in balancing the various competing interests at stake here; but there is an even more serious problem with the "integer" approach. The Commission notes that such a method "may be less than fully transparent, since the results cannot easily be replicated." NPRM, ¶ 45, page 19. Transparency is paramount,

given the interests at stake which, in some cases, will consist of the very survival or demise of various incumbent television stations.

We join with those members of Congress who have called on the Commission to exercise the highest degree of transparency in the entire auction-engineering process. [10] One Representative predicts that as many as fourteen full-power stations in the state of Washington might be forced to cut power after the repacking process, and in the Seattle market, as many as ten out of seventeen full power stations could literally have no place to go within the channel reassignment. [11]

While the Commission indicates that the "integer" approach is geared to achieve "optimization" by balancing the clearing of the minimum amount of necessary spectrum with the relocation costs of stations, NPRM ¶ 45, still, it has been conceded that the results from that method will only *approximate* a suitable result; the Commission will be forced to "accept solutions that are within a certain tolerance of optimality …" Id. But, what are the acceptable tolerances – or margins of error – that will be deemed acceptable? No answers are apparent within the four corners of the Commission's proposal.

None of this harkens to a standard of transparency about the various underlying values and goals that the Commission would be imputing into this highly complex computer soft-wear process. For these reasons, NRB would oppose the integer program algorithm approach.

As to the "sequential" auction method, we see several uncertainties which restrain NRB from supporting it. First, the Commission proposes that bidders that exit the

[10] "Border State Democrats Call for Transparency From FCC on Channel Repacking," TVTechnology.com, January 2, 2013.
[11] Id.

auction, or have not participated, will be "assigned specific channels in their *pre-auction bands*," NPRM ¶ 46. (Emphasis added). However, "pre-auction bands" is not defined. Does it mean the prior channel assignment of the station, or does it refer to a new television band? Second, in this approach, it is stated that the algorithm will be tasked to determine "which stations should be assigned a channel, starting with stations that do not participate in the auction," with the added caveat that this process will be "based on objective criteria." Id. Unfortunately, we are not told what "objective criteria" will be employed as the baseline in this process. These key terms should all be spelled out so that broadcasters and others can meaningfully respond.

E. The Commission Should Ensure That No Commercial or Noncommercial Television Service Loss Areas are Created During Repacking so that Programming Choices, Including Religious Programming, are Preserved.

In §48 of the NPRM, the Commission asks whether it should consider in the repacking process whether a broadcaster going off the air as a result of the auction would create areas without any commercial or noncommercial television service. The Commission has stood firm against such losses in the past, and we strongly urge the adoption of auction design and repacking procedures that will prevent *any* loss of television service.

Historically, the Commission has viewed *any* loss of television service as *prima facie* inconsistent with the public interest.[12] Nothing should change that view in the auction and repacking context – if anything, the approach should be more stringent given the multiple, simultaneous changes to television service that will occur. The reason for a stringent approach is clear – there is a significant risk of disenfranchising an ever-

[12] *See Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956); *see also Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16507, ¶26 (2010).

growing over-the-air television viewing population by allowing the auction/repacking to create "white" or "gray" areas[13] where the population receives little or no over-the-air television service.

Especially in the auction/repacking context, the Commission should proceed with its historical standard analysis of considering loss of service on a case-by-case basis. Consistent with precedent, this process should not be a "mere comparison of numbers"[14] but a careful examination of (i) the extent of the loss,[15] (ii) whether any "white" or "gray" areas will be created,[16] (iii) whether the loss area is "underserved",[17] and (iv) whether the loss involves specialized programming.[18] We are gravely concerned that the specialized programming offered by independent and religious stations is threatened by spectrum repurposing and the repacking process. Only stringent application of these factors will ensure that the public interest, including access to religious programming, will be preserved.

The Commission should certainly not minimize the importance of over-the-air television viewers by discounting them based upon cable/DBS penetration when considering a loss of service in a market.[19] Doing so would dilute the public interest solely based on the fact that television programming *might* be received in other ways, and place the Commission in the position of deciding that millions of Americans cannot have access to free over-the-air television programming. Instead, from auction design to

[13] The Commission defines "white area" as an area that receives no over-the-air television service, and "gray area" as an area that receives only one over-the-air television service.
[14] *See West Michigan Telecasters, Inc*. 22 FCC 2d 943, *recon denied*, 26 FCC 2d 668 (1970), *aff'd*, 460 F.2d 883 (D.C. Cir. 1972).
[15] *See John McCutcheon d/b/a Communications*, 4 FCC rcd 2079, 2083 n.3 (1989).
[16] *Id*.
[17] *See Cambridge and St. Michaels, Maryland*, 19 FCC Rcd 2592 (AD 2004)
[18] *See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16507, ¶26 (2010).
[19] NPRM, ¶48.

repacking procedures, the Commission must take steps to protect the public interest by preventing the loss of any over-the-air television service – even if doing so increases the complexity of the auction and repacking or limits the efficiency of the outcome.

There should be no debate on whether or how to preserve television broadcasting during spectrum repurposing, and no room for compromise or dilution of the public interest. Instead, the public interest must be as paramount as it has always been, with the preservation of television broadcasting trumping all other competing interests in this auction process, whenever an irreconcilable conflict occurs.

F. The Three Main Auction Process Decisions should be Bifurcated into Three Separate Proceedings

The Commission has identified three main components for this auction process: (1) A "reverse auction" consisting of television broadcast licensees submitting bids to relinquish spectrum in exchange for payments; (2) a "repacking" of the television bands to free up a portion of the UHF band for other uses; and (3) a "forward auction" of initial licenses for flexible use of the newly available spectrum. NPRM ¶ 5.

The Commission's overview of these three elements illustrates the complexity of these components:

> Each of the three pieces presents distinct policy, auction design, implementation, and other issues, and the statute in a number of cases imposes specific requirements for each piece.

Id. While the Commission indicates that "at the same time, all three pieces are interdependent," Id., in the sense that "the amount of spectrum available in the forward auction will depend on the reverse auction bids and repacking," and "our repacking methodology will help to determine which reverse auction bids we accept," nevertheless, we see no impediment to the Commission sequentially staging separate rule-making

proceedings for each component. Further, we see significant reasons why this staging of separate rule-making proceedings is essential.

The Commission notes that, by making all of these components interdependent at this stage, "[w]e *will not know* in advance the amount of spectrum we can make available in the forward auction, the specific frequencies that will be available and, perhaps, the geographic locations of such frequencies," NPRM ¶ 8. (Emphasis added). Thus, by amalgamating all of these components, the Commission, in effect, heads down a blind alley, hoping, but without assurance, that it will obtain an adequate amount of spectrum in the right geographical markets; broadcasters in turn hope, but have absolutely no assurance, that they will receive adequate remuneration for their spectrum and for their relocation costs, and the low-power and also some Class-A licensees will hope, but have no assurance, that they can even stay on the air.

We share Commissioner Robert McDowell's concern about attempting to achieve all of the answers in one rulemaking proceeding,[20] and urge the Commission to break this process down into bite-sized pieces. First, after it has digested the Comments and Reply filings in this proceeding, the Commission should then launch a separate inquiry. It should describe those categories of broadcast licensees that will be *qualified* to submit bids in the reverse auction. The Commission should invite broadcasters to submit confidential, but non-binding bids, with tentative offers that describe the amount of spectrum offered and the price. Further, as an incentive, the Commission should propose a financial bonus or other tangible benefit to such advance tentative bidding broadcasters,

[20] *See Statement of Commissioner Robert M. McDowell*, expressing doubt as to "[w]hether the Commission would be able to finish its work without undertaking a further notice and comment. This being – literally – *the most complex spectrum auction in world history*, I think we should keep all of our options open, including measuring twice before making the cut, as carpenters say."

payable at the eventual reverse auction, when their actual bids in the formal reverse auction, which are accepted, bear a sufficiently close proportion to the prior tentative bid as to both price and quantity of spectrum offered.

In this way, at the end of that next inquiry, the Commission would have a much better idea of those essential things that it cannot now, by its own admission, know in advance under its current plan, namely: "the amount of spectrum we can make available in the forward auction, the specific frequencies that will be available and, perhaps, the geographic locations of such frequencies." NPRM ¶ 8.

After that inquiry, the Commission should publicly reveal the results, to-wit: the sum total of the information gleaned, without revealing the particular tentative, non-binding bids of any particular bidders. The Commission is empowered by the Spectrum Act to "protect the confidentiality of Commission-held data of a licensee participating in the reverse auction …" [21] A reasonable interpretation would also include, within the scope of that section, keeping confidential any preliminary or tentative bidding information from intended bidders.

Thereafter, the Commission could then launch a separate rule-making proceeding inviting comment in light of that information, and regarding such things as the repacking methodology, and other details of the reverse auction process. Lastly, the Commission should institute a final rule-making proceeding on the details of the forward auction.

This bifurcation process will increase transparency at each of the critical junctures of this highly complex process, and would enable the Commission to better forecast the likely success – or failure – of the incentive auction process as a means of achieving its goal to obtain and repurpose television spectrum.

[21] Spectrum Act, § 6403 (a) (3).

G. Auction Control of Total Relocation Costs, Plus a Hybrid Reimbursement Model, Will Make Repacking Less Disruptive to Broadcasters and the Public.

As a threshold matter, the $1.75 billion limit on the TV Broadcasting Relocation Fund imposes an obligation on the FCC to weigh the capped fund in its analysis of which and how many bids to accept in the auction. Prior to the auction, the FCC should investigate and gain a good understanding of the estimated cost to relocate a station due to spectrum repacking. Armed with that information during the auction, the FCC should then limit the types and number of bids that it will accept so that the number of stations to be directly impacted in spectrum repacking, multiplied by the estimated cost for such relocation, does not exceed the $1.75 billion fund cap.

While this approach may mean that less spectrum is repurposed for mobile broadband purposes, it ensures that the FCC can carry out its mandate of preserving broadcast service for the public. Accepting bids that would increase the number of stations that must relocate, and thus drive up the total cost of relocation beyond the limits of the reimbursement fund, would jeopardize a station's ability to relocate, and directly violate the Spectrum Act's mandate that the FCC preserve stations' coverage area and population served.[22]

Reimbursement of relocation costs for those whose bids are not accepted, or who decide not to participate, is critical to maintaining the voluntary nature of spectrum repurposing and access to free over-the-air television broadcasts. In connection with relocation cost reimbursement, the Commission has suggested two reimbursement models – one based on estimated costs and the other on actual costs, with eligible broadcasters required to elect between the two. NPRM, ¶338. Those choosing estimated

[22] Spectrum Act §6403(b).

costs would receive an advance payment based upon a formula, and would then have funds on hand to complete a facility modification. Those choosing reimbursement based on actual costs would have to borrow or have cash on hand to fund their facility modification, and receive payment at the end based on actual, proven expenditures. Id. Reimbursement would come from the capped $1.75 billion TV Broadcaster Relocation Fund. Id.

Because the reimbursement fund is capped, the FCC's proposed reimbursement models force broadcasters to make blind and risky reimbursement decisions. Should they (a) take the advance payment based only on an estimate of their costs so they are at least assured of some reimbursement, even if it is not full reimbursement, or (b) choose to wait until the end of their channel change to obtain actual costs, which would assure full reimbursement unless the capped reimbursement fund is out of money at that point? Neither approach guarantees uninterrupted broadcast service to the American public, and the "choice" mechanism pits the very broadcasters whose service is to be preserved against each other.

NRB opposes the FCC's two model elective approach, and instead proposes a hybrid approach that will ensure that all eligible broadcasters receive the maximum reimbursement amount possible and are treated equally. Under the hybrid approach, each eligible station would be allocated an equal, upfront down payment amount simultaneously with the FCC's public identification of those stations whose facilities are affected by repacking. That allocated amount would be distributed to the station licensee upon the grant of their construction permit for modified facilities. Those funds can be used to make down payments with equipment manufacturers as they order necessary

equipment, and to cover engineering and legal costs associated with the FCC application process and any lease negotiations.

Then, by a set, universal deadline, all stations would submit proof of actual expenses incurred to receive a second "true-up" payment, or to return unused funds. With those submissions, the FCC will be able to determine if there are sufficient funds remaining to fully reimburse all affected broadcasters. If there are sufficient funds, each station receives full reimbursement in accordance with their actual expenses. If there are not sufficient funds to fully reimburse each station, the FCC would then reduce each station's requested reimbursement amounts by equal percentages until the total reimbursement amount for all stations matches the reimbursement fund balance. Stations would then receive that percentage of their requested reimbursement.

The overriding principle behind NRB's "hybrid" approach to reimbursement is fairness – each eligible station affected by the repacking gets the same percentage of their expended costs. This approach also encourages stations to negotiate the best deals on equipment and services, as doing so will increase their chances of receiving full reimbursement. While the FCC's suggestion to prioritize reimbursement requests on a first-come, first-served, or other basis may incentivize broadcasters to speed their construction, such approaches are fundamentally unfair given the limited reimbursement fund and factors outside of a station's control (i.e., zoning or weather) that delay construction/reimbursement.

As to what constitutes "eligible relocation costs", NRB strongly urges that any expense related to a facility modification made necessary from spectrum repacking should be eligible for reimbursement, and that a comprehensive, rather than limited or

"minimum cost", approach be used. The FCC's illustrative list from the microwave relocation and LPTV digital conversion programs in footnote 320 of the NPRM should all be considered as types of relocation costs eligible for reimbursement. In addition, such "soft" costs as (a) FCC filing fees, (b) legal fees for lease negotiations, zoning, and the FCC application process (including channel change requests), (c) zoning application costs, and (d) loan interest and appraisal fees, should also be eligible relocation costs.

H. The Commission Should Fully Protect Outstanding Channel Substitution and Maximization Construction Permits in the Repacking Process.

In furtherance of NRB's position that the Commission take all steps to preserve over-the-air television service, NRB strongly urges the Commission, for the purposes of repacking and interference analysis, to fully protect those construction permits issued to effectuate a channel substitution following a rulemaking proceeding, or to maximize existing full power television facilities – even if not yet built -- so long as the station held a license as of the February 22, 2012 Spectrum Act adoption date. Such stations have already expended time and money, and potentially purchased equipment or made other facility decisions in reliance on the issued permits, and should not now be exposed to interference or a loss of channel simply because of the Spectrum Act's adoption date.

Conclusion

For the above reasons, NRB respectfully submits that the Commission should adopt incentive auction and repacking procedures that prioritize and preserve the continued existence and viability of free over-the-air television broadcasting so that the American public's viewing choices, including the choice of religious programming, are not diluted, and so that incumbent licensees are treated fairly.

Respectfully submitted:

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