

“Incentive Auctions: A Path Forward”
Remarks of Rick Kaplan, Executive Vice President, Strategic Planning
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Good afternoon everyone, and thank you, Patrick, for that kind introduction and for inviting me to speak to this distinguished group today. Clearly Chris Guttman-McCabe was unavailable, so I'll do my best to stand in for him.

The subject of my remarks today, the FCC's implementation of the Spectrum Act, fits squarely within the Institute's core mission, as our nation's spectrum policy plays a critical role in enhancing public discourse, an arena which the Institute strives to empower and protect.

Spectrum Policy

One of the many sad things about my life these days is that I have come to find talking about spectrum very exhilarating. It's been a long journey to this point from my days as a basketball agent and crisis communications consultant for athletes.

Things have changed so dramatically that when my wife mentioned last week that she was excited about March Madness, I assumed she had suddenly taken an interest in the Commission's March 12 deadline for incentive auction replies.

But the fact is, I am where I am, and someone foolishly thought it would be a good idea to give me a microphone, so spectrum it is. My lone recommendation is that if you've got some work to catch up on, and you don't really care about spectrum, now would be the time to creatively place your smartphone in your lap just under the table, pretend you are deeply considering the many interesting points I am making, and attempt get some actual work done.

You can't talk about spectrum today without considering the FCC's preparations to conduct the world's first-ever incentive auction. The impending auction is notable not only due to its novelty, but also because of its extremely high degree of difficulty.

With Passover is just a week away, I thought I might ask, “Why is this auction different from all others?” For starters, as part of the process, the Commission will conduct a first-of-its-kind, “reverse” auction that, in a manner that would make Monty Hall proud, offers TV broadcasters cash in exchange for their spectrum licenses. The Commission will also undertake the most robust and complex repacking of broadcast television stations. Whereas during the DTV transition the Commission relocated approximately 100 stations, and those moves were orchestrated over several years, in this instance, the Commission is likely to relocate *many hundreds* of stations, and attempt to sort through that process in a matter of minutes or hours.

The auction also faces a slew of tough economic, engineering and policy choices, including:

- How much spectrum should be allocated to licensed versus unlicensed services?
- How will the Commission attract volunteers and know how much to pay them?
- How can we expedite the statutorily-mandated coordination process with Canada and Mexico to free up spectrum along the borders?

- What does the band plan look like, including whether the Commission should favor FDD or TDD operations?
- How is the Commission going to administer the \$1.75 billion TV Broadcaster Relocation Fund, designed to cover all broadcaster and MVPD relocation costs, and to do so within a mere three years of the auction closing?
- If the auction winners don't deploy their spectrum immediately, should the Commission allow the existing users continue to operate on it and/or allow unlicensed uses on that spectrum as well?

The breadth and depth of these critical issues, among many others, lead me to one simple conclusion: If the Commission insists on holding this auction – and does so – in 2014, *the auction will almost certainly fail.*

You may be thinking, “Rick, that’s a bold statement. You are a great guy and all, and let’s face it, you are generally right about most things, but how can you be so sure in this case?”

First, let me be clear that, if NAB had a say – and lord knows, we don’t – we would love to see the auction held tomorrow and it go off without a hitch. The longer the auction process drags on, the more we lose. The last thing we want is this proceeding hanging over our heads any longer than it must. Our aim is to see this auction done right and then we can get on with the business of serving our local communities in our traditional as well as new and innovative ways.

I am most fearful, however, of a failed auction. And by “failed” I mean there is either not enough participation to enable a basic, nationwide commercial wireless band plan, or an outcome that results in widespread harmful interference among services.

There is no question that a rushed auction could lead to fewer volunteers. Under the remarkably strained “LEARN” acronym (apparently “GET OUT” didn’t work or was trademarked), the Commission has been diligently attempting to convince broadcasters that their future as broadcasters is not as shiny as the cash the FCC plans on waiving in front of them to exit the business. Let’s face it, that money will come in handy given the kind of resources one needs these days to pay those steep cable and smartphone bills.

There is a general consensus that, for the auction to be successful, the FCC must ensure it’s as easy as pie for broadcasters to participate. It will require the release of the basic information broadcasters actually need to make decisions, such as, “Does the FCC want a volunteer in my market?,” and if so, “How much might I get paid?,” and then, “Where do I go to participate and how exactly is it going to work?” None of those questions have been answered, and the descending clock (so to speak) is ticking.

But even more relevant to this discussion than whether there will be enough broadcasters willing to take the money and run, is how, from a technical standpoint, the Commission is going to pull this thing off.

If we take a step back, the only thing that’s *easy* about spectrum policy is that it’s easy to see how often we struggle to get it right. Our recent past is littered with best-laid spectrum plans that have gone often gone awry.

Just consider the lower 700 MHz band plan. Because of poor planning and likely a lack of attention to the engineering realities associated with placing high power television broadcast operations adjacent to commercial wireless operations, *one-third* of the paired spectrum in the

lower 700 MHz band is lying basically fallow. Today marks five years to the day the 700 MHz auction closed, and there is no realistic solution to the resulting interference and interoperability challenges in sight. The 700 MHz problem is one that could have been avoided, and by the way, despite arguments to the contrary, it has almost nothing to do with AT&T.

Another prime example is LightSquared. The Commission had the best intentions in trying to make use of the L-Band by green-lighting the innovative and promising LightSquared business plan. But wow, did that take a wrong turn, and go down in flames. The result? A wide swath of essentially unused spectrum, save for the GPS receivers that apparently have an impenetrable Star Wars-like force field around what otherwise would be billions of dollars worth of spectrum for mobile broadband.

On the flip side, when the Commission has taken its time and not succumbed to political pressures to rush spectrum to market, the results have been promising. A great example is the Commission's decision in early 2012 not to grant DISH's request for a waiver seeking to expand its ability to deliver mobile services terrestrially in the S-Band. Rather, the Commission commenced a rulemaking to take a more fulsome look at the band and its neighbors. Through that rulemaking, the Commission fleshed out critical issues to arrive at a more comprehensive, long-term and smarter spectrum outcome.

This auction is no different. If anything, it has many more potential pitfalls that must be avoided.

As most of you know, basically every commenter who discussed the FCC's proposed band plan, which featured "splitting" wireless uplink and downlink operations and interspersing high power television between them, said it wouldn't work. Now let's be clear, these companies, organizations and associations did not merely disagree with the *policy choice* – in fact many agreed – but they concluded after much study, that the plan would lead to massive interference between broadcast and mobile broadband operations. (I should note here that *one* company did support the band plan, and that was DISH. But let's be honest, DISH likely supported the band plan merely because Sprint didn't.)

Based on its overwhelming public rejection, I sincerely doubt that the FCC will pursue its split plan.

There is a much bigger issue, however, looming on the horizon that threatens to undermine the entire auction, and that's the NPRM's proposal to have different or "variable" band plans in adjacent markets throughout the country. In plain terms what this means is that in some markets one channel may be used for television broadcasting and in others that *same* channel may feature wireless operations.

The whole point of this variability is that it allows an auction design that repurposes different amounts of spectrum in different markets.

There is just one problem with this approach. Like it's cousin, the "split" plan, it simply doesn't work. If you force broadcasters and wireless carriers to share channels in adjacent markets, one will interfere with the other. It's basic engineering.

The best way traditionally to deal with that problem is to ensure there is enough geographic separation between the two services. Essentially you attempt to make sure that the operations of one are far enough from those of the other. But in this case, if you do that, the separation needs to be so great that the new wireless license areas will need to be significantly reduced in size, rendering a large number of the new licenses worthless.

Of concern is that the NPRM doesn't even acknowledge this fundamental problem. And while NAB raised this issue in great detail in our initial comments, and Verizon and AT&T flirted with it, no one – and I mean *no one* – addressed it in their replies. Now, if we are wrong, that would be a tremendous relief. But without any evidence to the contrary, I fear that we are right. And so here we all sit, apparently one year away from the most complicated auction in world history, and we have yet to even acknowledge, let alone address, a fundamental engineering problem at the core of the auction.

The good news, however, is that there is a way to solve this problem. The trouble is that it involves tossing aside the opinions of highly credentialed economists that the Commission has engaged to run the auction. Those economists love variability, and have organized their design around it.

Let me stipulate one thing up front: I will *never* win any kind of prize for economics. Indeed, the height of my economics career was sleeping through my freshman year macroeconomics midterm and subsequently having to drop the class.

Despite that disclaimer, I do think there is a fairly simple solution to the variability problem that will yield nationwide, as opposed to market-by-market, bands of spectrum for mobile broadband. If you remember, creating nationwide bands for mobile broadband was supposed to be the whole point of this exercise anyway.

In our comments, NAB proposed four basic steps to maximize the likelihood of achieving useable and worthwhile nationwide bands of spectrum for the wireless industry.

- *First*, the Commission should lay out a number of nationwide repacking scenarios. This involves looking at options for repacking, and focusing in particular on the moving pieces in the more congested markets.
- *Second*, from these scenarios the Commission can determine how many stations it needs to participate to achieve certain spectrum clearing targets, and where those stations must be.
- *Third*, the Commission should estimate how much it would, under each scenario, raise nationwide in a forward auction.
- *And finally*, the Commission should take its nationwide estimate and use those funds to ensure it entices volunteers in the markets where it really requires participants.

Is what I described the “perfect” auction? No. Will it win somebody a Nobel Prize in economics or at least produce some groundbreaking academic work on auction design? Unlikely. Does it create the ideal amount of competition among participants? Probably not. Does it potentially leave some spectrum on the table? Probably.

But will it *work*? There certainly are no guarantees, but this proposed approach relies on rather than ignores key information the Commission has up front, and gives the Commission a much greater chance of success. Robust nationwide bands of paired spectrum is what we should be aiming for, and what we've proposed likely gives us the best shot at achieving that goal.

The other major area that has garnered a lot of attention in the record and in the press is the relationship between licensed and unlicensed spectrum in the post-auction 600 MHz band plan.

I am a big believer that, in most multi-faceted policy debates in Washington, there is a “sweet spot” – a realm where most stakeholders can reasonably agree there is a fair outcome. Everyone

wins a little, everyone loses a little. It's a spot where everyone can tolerate a loss because they are ultimately getting the core of what they reasonably want.

With respect to accounting for licensed and unlicensed spectrum, I firmly believe there is such a sweet spot.

At the outset, it has become clear that the most logical and realistic commercial wireless band plan will maximize *licensed* spectrum. This statement is not a commentary or a "war" on unlicensed spectrum. Indeed, I am a big believer in setting aside appropriate spectrum for unlicensed use. The issue here is that, given the imperative that this auction generates a great deal of revenue to pay for itself and Congressional priorities, there is little room for error. The Commission must look to maximize revenue and that means not doing gymnastics to open up new wide swaths of spectrum for unlicensed use.

That's not to say that the Commission shouldn't allow any unlicensed use – to the degree it doesn't interfere with licensed operations – in the guard bands. It should. But the fact is, the size of the guard bands and the duplex gap – separating wireless uplink and downlink operations – should be not one megahertz larger than they need to be for interference purposes.

What's fascinating to me is many seem to have forgotten that unlicensed already has a home in the 600 MHz band – long before any auction occurs. Just two years ago, the Commission authorized *in the very same band*, what the Chairman called, the "first significant release of unlicensed spectrum in 25 years." This unlicensed reservation is more popularly known as "white spaces," a regime that allows unlicensed use in the areas between full power television channels throughout the country.

In my view, the FCC should spend less time trying to increase the size of guard bands in the upcoming auction and more time protecting and cultivating the unlicensed TV white spaces use in which it and many private companies have already invested. The irony here is that, if the FCC becomes so hungry to repack broadcasters as tightly as possible to free up every last megahertz for mobile broadband, it will *eliminate* the significant unlicensed opportunities it just "unleashed" just a couple of years ago. Why waste everyone's time with freeing up white spaces only to ensure their evaporation?

Smart policymaking dictates that the Commission preserve white spaces by limiting repacking only to what is needed for a solid nationwide commercial wireless band plan. This means paired spectrum that can be put to use right away. Let's not mess around with sub-optimal reservations for "supplemental downlink" operations that are not even in use domestically or a market-by-market approach that can't work. Indeed, this band plan plugs in nicely to the auction design proposal I offered earlier – first choose your number – somewhere between 60 and 84 megahertz, maximize it for licensed use, and then preserve and possibly even enhance 600 MHz unlicensed operations in the TV bands.

FCC Process

Now that I have solved the world's problems, I want conclude with a word about the Commission's process going forward.

If there ever was a time for the Commission to demonstrate its ability to meaningfully engage with stakeholders and conduct a process that is open and transparent, this is it. You have a number of very committed companies, organizations and associations working constructively to help the Commission solve some of these very complex economic, engineering and policy

challenges. We also know that Congress is watching closely, having strong interests in both the incentive auction and the functioning of the agency.

For this proceeding, a run-of-the-mill notice and comment rulemaking won't do the trick. The Commission can't afford to get this one wrong, and thus needs to be as engaged as ever with industry and the public at large to ensure its decision-making is sound. In practice, this means not simply digesting the comments and replies and then churning out a Report and Order with the final answer.

For example, the Commission must put its revised band plan out for public comment again. The first round alone demonstrated why it's important to have the outside world weigh in. And there really is no justification – other than some artificial deadline – why that wouldn't happen. Indeed, it's to the Commission's advantage; why take the risk of getting it wrong again?

It also means establishing a working group or task force with industry to tackle issues such as international coordination and the relocation fund. These issues are challenging and require all hands on deck. A comment-and-reply process alone won't suffice.

I therefore urge the Commission to work closely with all stakeholders in this process. We are extremely engaged and willing to lend our expertise to help make the auction a success. The world indeed will be watching, and if we are serious about leading the world, this is one process we must do correctly.

Thank you.