



**Hearing on “Promoting Broadband, Jobs and Economic Growth Through  
Commercial Spectrum Auctions”  
United States House of Representatives  
Energy and Commerce Committee  
Subcommittee on Communications and Technology**

**June 1, 2011**

**Statement of Todd F. Schurz  
President and CEO, Schurz Communications, Inc.  
On Behalf of the  
National Association of Broadcasters**

Good morning Chairman Walden, Ranking Member Eshoo, and the members of the Subcommittee. Thank you for the invitation to testify before you today about the important issues surrounding spectrum auctions and the nation's broader spectrum policy. I am Todd Schurz, President and CEO of Schurz Communications, and I am appearing before you today on behalf of the National Association of Broadcasters. NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission ("FCC") and other federal agencies, and the Courts.

Schurz Communications owns television and radio stations in six states. We also own cable systems in Maryland and Florida, publish newspapers, and are an investor in 4G wireless broadband services as well. As a broadcaster, a cable operator, a broadband Internet service provider, and a wireless broadband investor, we know the value of innovation in all of our lines of business. Schurz understands bandwidth constraints and the necessity for efficiencies needed to provide new, innovative, services like HD, 3D and high speed data to consumers at affordable prices.

I am also a member of the board of the CBS Television Networks Affiliates Association. The CBS Television Network Affiliates Association represents the 180 independently owned and operated television stations that are affiliated with the CBS Television Network. These stations are strongly committed to local journalism and to other local services. They seek to maintain, strengthen, and innovate the important local role played by local CBS affiliates. As with the television stations that Schurz operates, spectrum is the oxygen they need to provide these essential services.

At Schurz, each one of our television stations is invested in its community and strives to serve it every day with locally-responsive programming, including local news and information on emergencies and severe weather events. Spectrum is the lifeblood of our efforts, and it is essential to our ability to innovate in the future. We use multicast channels to provide additional diversity of choice to our communities of license, and we are aggressively pursuing the deployment of Mobile DTV service. Mobile, in particular, is a priority for Schurz -- we were a founding member of the Mobile 500 Alliance, which will roll out mobile service across the country, as well as the Open Mobile Video Coalition that represents the industry in launching this exciting new service.

Schurz plans to be a broadcast company for the long run. We are a fifth-generation family business with a long-term perspective – we began in radio in 1922 and television in 1952. We will be serving our communities on broadcast spectrum long after any auctions take place, should Congress choose to authorize them, and we are looking toward a long future of service to our communities. In the future we envision, we will innovate across multiple platforms to serve our viewers – high definition, multicast, mobile, and new technologies such as 3D and other advanced services. This promise cannot be realized if a post-auction process diminishes service areas or prevents us from effectively serving our viewers. In the communities we serve, in tornado alley and elsewhere, maximizing service is not a luxury – it can be a matter of life or death. With other broadcasters, we regularly deliver life-saving messages to those who receive our broadcast services over the air and through other video

platforms, and, when the storms pass, Schurz broadcast stations play key roles in our communities' recovery.

NAB is confident that this Subcommittee recognizes the vital services, including public safety services, provided by our nation's system of local television broadcasting. No other information platform can match the reach, reliability, or efficiency of free, over-the-air broadcasting. Broadcasting serves as the backbone of our information and entertainment ecosystem. Whether delivered directly to viewers over-the-air or retransmitted to homes by cable, wire, satellite, or the Internet, local broadcasting is the primary source of local news among *all* Americans, and that local reporting role is becoming more important over time as newspaper circulation continues to decline. Broadcasters offer ubiquitous access to local news, sports, weather, emergency alerts and information, entertainment, and other programming.

Today, broadcasters are offering free local high definition television ("HDTV"), diverse programming on multicast channels, and innovative new services such as mobile digital television ("mobile DTV"). Broadcasters also advance public safety by providing critical information during local and national emergencies, and mobile DTV provides a means of distributing public safety information to an unlimited number of viewers at the same time, even when cellular networks go down or experience delays. It has even been observed that "homeland security depends on

broadcast” because of this ability to blanket “an unlimited number of users with the same information” simultaneously, without “clogs.”<sup>1</sup>

Expanding access to broadband, including access to mobile wireless communications services, is a worthy goal. NAB supports that goal, and we believe that it can and should be achieved without compromising the public’s existing broadcast service or the public’s ability to benefit from innovative and competitive services that broadcasters will provide in the future. We pledge to continue working constructively with Congress, the Administration, and the FCC to fashion a comprehensive plan for promoting the best possible broadcast and broadband systems.

At the outset, I would like to reiterate the position that we made clear nine months ago: NAB does not object to an incentive auction process that is truly voluntary in all important respects and that serves the public’s interest in preserving and enhancing present and future broadcast services. For an auction process to be truly voluntary, however, broadcasters must not be coerced into participating in an incentive auction, nor should they face penalties for not participating, such as reduced interference protection, relocation to inferior channel allotments, diminished service areas, or onerous taxes in the form of spectrum fees.

I and the NAB thank Congress for its past recognition of local television broadcasting’s undisputed strengths and the role it plays in the nation’s local communities. In fact, it was the need to ensure viewers’ continued, uninterrupted

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<sup>1</sup> Tom Wolzien, “Homeland Security Depends on Broadcast,” *TVNewsCheck* (April 4, 2010) (also observing that “broadband circuits – wired or mobile – can clog up and the information-carrying data can’t pass” when “many people need something at the same time”).

access to local broadcast television service that led Congress, in 2009, to delay the nationwide transition to digital television for several months.<sup>2</sup> We hope that Congress will continue to recognize the key role that broadcasting plays in our nation's communications ecosystem as it moves forward with changes to our national spectrum policy.

The remainder of my testimony is in two parts. In the first part, I describe the key components of sound spectrum policy that should guide future legislative and FCC actions on commercial spectrum auctions. In the second part, I suggest concrete ways in which Congress, through legislation and its oversight authority over the FCC, should protect the public interest in efficient use of all spectrum devoted to public and private use and help ensure that Americans have both the finest broadband and the finest broadcast systems in the world.

### **Policy Principles To Consider With Respect to Future Spectrum Auctions**

As Congress considers spectrum auctions and related issues, it should be guided by principles that protect the interests of the American public. These principles will help to ensure that American consumers do not lose out on the unique and varied offerings of local television broadcasters; are not deprived of broadcast television service (however delivered to the consumer) due to reduced service areas, inferior spectrum allotments, or increased interference; continue to benefit from broadcast

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<sup>2</sup> See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009). And in connection with that transition, television broadcasters worked with the government to repack into a narrower band of spectrum and free some 108 MHz for other uses. The government, in turn, has auctioned some of the recovered spectrum to wireless service providers and allocated a portion to public safety.

innovation; and are not harmed by the imposition of spectrum taxes or other coercive measures that diminish the ability of local broadcasters to provide robust service to the public. To achieve these goals, Congress must make certain that broadcaster participation in incentive auctions is truly voluntary in all respects and that broadcasters who wish to continue to provide local service are not handicapped in doing so.

**(1) American consumers must not lose access to the digital offerings currently provided by television broadcasters.**

Stations that choose *not* to participate in an incentive auction should remain able to provide their viewers with the many offerings made possible with digital technology and the benefits of the DTV transition. These offerings include crystal-clear HDTV programming and diverse multicast programming, such as foreign-language offerings, 24-hour educational programming for children, and highly localized channels that target and serve the specific needs of individual communities. Barely one month ago, a new multicast network (“Bounce TV”) aimed at serving African American audiences was announced. As one of its executives reported, “the more than 14 million African American TV households have just a few dedicated cable channels – and no over-the-air networks.... Bounce TV will fill the need for an over-the-air television network exclusively for African Americans.”<sup>3</sup> The channel already has reached agreements with broadcasters in nearly 30 markets for its Fall launch, and continues to

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<sup>3</sup> Jon Lafayette, “EXCLUSIVE: Bounce TV, New Broadcast Net Aimed at African Americans, To Launch in Fall,” *Broadcasting & Cable* (April 3, 2011).

negotiate with additional broadcast partners.<sup>4</sup> Many existing multicast channels also provide Spanish-language and other programming for the Hispanic community.<sup>5</sup>

Broadcasters also are rolling out innovative mobile DTV services, which enable viewers to receive live, local broadcast television programming—including local news, weather, sports, emergency information, and entertainment programming—on an “on the go” basis on mobile-DTV capable devices (including hand-held devices, mobile phones, and laptop and tablet computers). Over 70 stations have commenced offering mobile DTV service, and hundreds of stations across the country have announced plans to continue the nationwide roll-out of mobile DTV in the near-term. Mobile DTV is a reliable and spectrally efficient means of disseminating emergency information to viewers. Following the recent earthquake and tsunami in Japan, residents reported that the country’s mobile television service was a lifeline source of information, particularly in the wake of cellular network and power outages.<sup>6</sup> For high-demand live programming, such as NFL football games and other major sporting events, mobile DTV’s one-to-

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<sup>4</sup> Harry A. Jessell, “Bounce Set to Jump Into the Multicast Game,” *TVNewsCheck* (May 10, 2011), available at <http://www.tvnewscheck.com/article/2011/05/10/51130/bounce-set-to-jump-into-the-multicast-game>.

<sup>5</sup> See Justin Nielson, “TV Stations Multiplatform Analysis ’11 Update: Multicasting Expands Programming Options, Mobile DTV Goes Live,” *Broadcast Investor* (SNL Kagan, Jan. 27, 2011) (as of end of 2010, 71% of commercial television stations were multicasting, “doubling the channel options for viewers with 1,240 additional digital channels, of which 142 are Spanish-language network affiliates”).

<sup>6</sup> See, e.g., Michael Plugh, “What I Left Behind In Japan,” *Salon.com* (March 22, 2011), available at [http://www.salon.com/life/feature/2011/03/22/japan\\_i\\_left\\_behind/index.html](http://www.salon.com/life/feature/2011/03/22/japan_i_left_behind/index.html). See also Live Blog: Japan Earthquake, *The Wall Street Journal* (March 11, 2011, 8:06 a.m. posting of Chester Dawson) (“Unable to use cell phones, many used their smartphones to tune into television broadcasts and find out what had happened. ‘It’s very convenient being able to watch live TV when the phones are down,’ said Minoru Naito, an employee of Royal Bank of Scotland in Tokyo. ‘Otherwise, we’d have no idea what is going on.’”).

many architecture provides distribution means and quality better than wireless broadband systems could ever provide. These new and innovative services provide unique benefits to consumers and much-needed competition in the video marketplace, including in the growing mobile video marketplace.

Stations should not be deprived of the ability to offer these services to their viewers through the incentive auction process or through the “repacking” of broadcasters into a smaller television spectrum band following an auction. Accordingly, any legislation that authorizes incentive auctions should ensure that broadcasters’ participation is truly voluntary, and should, at a minimum, provide for the following:

- *Broadcasters who are willing to participate in an incentive auction should be permitted to do so in exchange for a share of auction proceeds. At a minimum, a broadcaster should be able to set a “reserve price” for agreeing to participate in the auction (that is, the minimum amount of compensation for which the broadcaster voluntarily would incur the direct and opportunity costs of giving up all of its spectrum, channel-sharing, or moving to the VHF spectrum band).*
- *Legislation should ensure that stations are not forced to share channels, move to the VHF spectrum band, or convert to a cellularized architecture. Congress should recognize that changes to existing broadcast licenses, such as channel-sharing (arrangements whereby more than one broadcaster makes use of a single broadcast channel); relocation from the UHF spectrum band to the VHF band; or converting broadcasting to a cellularized transmission architecture, would impair a broadcaster’s ability to provide, and viewers’ ability to receive, HDTV service, multicast offerings, mobile DTV services, and other new services.*
- *A station that does not want to give up its spectrum should not be compelled to do so. Any station moved to another channel because of repacking or otherwise adversely affected by an incentive auction should receive full compensation for all costs incurred.<sup>7</sup> Participation in an incentive auction also could be coerced,*

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<sup>7</sup> These costs include, but are not limited to, tower/antenna/transmitter/transmission line costs; other equipment costs; installation/construction costs; costs for upgrade/replacement/relocation of associated translator and booster stations; consumer education costs; and all other costs directly or indirectly associated with repacking. We support the creation of a “Broadcaster Relocation Fund,” to be funded with the proceeds from an auction of broadcast television spectrum, and the establishment of a set date for payment of relocation costs.

or future service could be undermined, if legislation does not provide for prompt compensation to be provided to broadcasters for the costs associated with relocating their facilities to new channels and/or sites. Similarly, even though a broadcaster did not have to relocate to a new channel, that broadcaster may incur equipment modification or other costs as a result of the repacking of the broadcast bands. All such costs should be fully reimbursed by the government.

**(2) American consumers must not lose access to broadcast television services due to signal strength degradations or other impairment.**

As was described to this Committee during its April 12 spectrum hearing, a repacking of the television bands has the potential to harm, and in some cases to wholly disenfranchise, viewers. For example, changing a station's channel—particularly changing a station's channel from the UHF spectrum band to the VHF spectrum band—could substantially harm viewers' ability to receive the station's free, over-the-air broadcast programming and could impair the reception of stations' signal by cable systems that retransmit those signals to their subscribers. Such a move also could deprive the station's viewers of the ability to receive emergency information and other programming through services such as mobile DTV.

As demonstrated during the recently completed digital transition, reducing a station's power level, tower height, interference protection, and/or transmission site also could seriously harm the public's ability to receive that station's signal. In fact, this Committee heard first-hand from Bob Good, Assistant General Manager, Director of Operations, and Chief Engineer for WGAL-TV, about the problems that can occur for a local station from broadcast band repacking. WGAL continues to struggle with the technical and service impacts of being repacked during the DTV transition, and viewer relationships with that station have been impaired for nearly two years. And as Bob pointed out to this Committee, he is not sure that WGAL ever will be able to serve all of the viewers who could see WGAL's signal before the DTV transition.

Stations that choose not to participate in a voluntary incentive auction must not be subjected to degradation of their service areas or reduced interference protections. Relatedly, Congress should ensure that any move of a television station from the UHF spectrum band to the VHF spectrum band (or from the high VHF spectrum band to the low VHF spectrum band) is done solely on a voluntary basis. Without such protections in any spectrum auction legislation, viewers would be at risk of serious service disruptions and permanent losses to their service. Further, without such protection, the risk of these harms could compel stations to participate in an incentive auction, although they would not do so if they were assured that their service areas and population coverage would not be degraded, interference protections were preserved, and their community of license maintained.

We also note that many viewers receive the programming of full-power broadcast stations through the signals of low-power translator and booster stations, both in rural areas and in urban areas. NAB urges Congress to provide for protection of these stations, ensuring, just like for full-power stations, that they are able to replicate their service to the public following any repacking of the television broadcast band.<sup>8</sup>

**(3) Consumers must continue to benefit from video innovation.**

Broadcasting's "one to many" architecture provides the most spectrally efficient means of delivering high quality local programming to viewers, whether those viewers are using wide-screen HDTV television sets or mobile-DTV-enabled handheld

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<sup>8</sup> A repacking, if it occurs, should be geared towards minimizing service disruptions and maximizing the public's broadcast television service, including by accommodating VHF to UHF channel moves, if desired by current VHF stations.

devices. Broadcasting and wireless broadband are *complementary*, not “either/or,” communications systems. In this regard, NAB notes two important facts: (1) two-thirds of the projected new wireless demand is for distribution of mobile video services<sup>9</sup> and (2) broadcast programming is by far the most popular programming for American viewers—in the 2009-2010 television season, broadcast programming represented 98 out of the top 100 programs.<sup>10</sup> Broadcasters are well-positioned to meet mobile video demand in a spectrally-efficient manner, and can help to offset capacity demands made on the networks of wireless Internet providers. Thus, broadcasting is an asset not just for those viewers that rely directly on broadcast services but also for wireless Internet providers and their customers, who will benefit due to mobile DTV’s ability to “off-load” high-demand content and free up network capacity. And additional innovations are on their way, including delivery of on-demand programming.

For broadcasters to continue to bring these services to the public, and for broadcasters and investors to invest in developing and rolling out innovative new services, broadcasters need assurances that they will be able to depend on their spectrum allocations in the future. Mere months after completing the transition to digital television and narrowing the television band by some 108 megahertz of spectrum, broadcasters now face new proposals to reallocate up to 120 MHz of additional spectrum and to require additional costly and disruptive changes to their channel

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<sup>9</sup> Cisco recently forecast that “[t]wo-thirds of the world’s mobile data traffic will be video by 2015.” *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010–2015*, at 2.

<sup>10</sup> Broadcast programs were also 302 of the top 312 programs. TVB, “TV Basics” at 11, *available online at*: [http://www.tvb.org/media/file/TV\\_Basics.pdf](http://www.tvb.org/media/file/TV_Basics.pdf).

assignments. Uncertainty with respect to the availability of spectrum for broadcast services, and the instability of the broadcast spectrum allocation generally, complicates the ability of local broadcasters to grow, invest, innovate, and hire new workers, to the detriment of the public. Congress must ensure that broadcasters can depend on their spectrum allocations for many years into the future without facing additional threats to their continued spectrum use. Thus, any legislation on incentive auctions should include a sunset on the authority of the FCC to use those auctions to repurpose broadcast spectrum and further protections against additional reallocations of broadcast spectrum to other services.

**(4) Americans must not lose access to quality local television because of new spectrum taxes or other coercive measures.**

Onerous new spectrum taxes would make it increasingly difficult for stations to finance local programming, operations, and newsgathering efforts. Spectrum taxes would undermine the public's local broadcasting service, and Congress therefore should ensure from the outset that stations that choose to continue broadcasting will not be subject to such taxes. Indeed, the prospect of burdensome new spectrum taxes could coerce stations into participating in an incentive auction.

Congress also should prohibit other measures that would undermine the public's broadcast service and that could pressure stations into participating in an incentive auction. As described above, such measures would include forced channel-sharing and forced moves from UHF to VHF channels, or losses in service area, signal contour, population coverage, or interference protections. Participation in an incentive auction also could be coerced, or future service could be undermined, if legislation does not provide for prompt compensation to be provided to broadcasters for the costs

associated with relocating their facilities to new channels and/or sites. Finally, legislation also should clarify that broadcasters that do choose to participate in an incentive auction will be permitted to set reserve prices and will be compensated promptly after the auction is completed.

### **A Roadmap For The Future of Spectrum Policy**

The reality is that spectrum auctions are just one part of a broader debate about how the Federal government allocates spectrum amongst competing services. Using legislation and its oversight authority over the FCC, Congress should ensure that the FCC employs a holistic approach that considers the many interrelated issues implicated by its spectrum policies and proposals. In comments that it filed in March with the FCC, NAB outlined a five-part roadmap for the future of spectrum policy that I summarize below. The roadmap includes constructive, concrete steps that will help in achieving Congress's and the Administration's overarching goals of expanding broadband access without compromising the public's local television service.<sup>11</sup>

#### **(1) Assess the wireless industry's capability to deploy resources more effectively.**

A key first step for addressing the capacity demands of wireless services is to determine how various technologies and techniques could enhance the ability of the wireless industry to use its current spectrum holdings more efficiently. An overemphasis on spectrum reallocation is counterproductive and could harm

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<sup>11</sup> Comments of NAB and the Association for Maximum Service Television, Inc., Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235 (March 18, 2011). See *a/so* Reply Comments of NAB and the Association of Maximum Service Television, Inc., Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235 (April 25, 2011).

consumers, and we support legislation that would require an open-minded and frank assessment of how the wireless industry can improve its system capacity.<sup>12</sup> Some possibilities for deploying existing wireless spectrum more efficiently include upgrading network technology, adopting network management practices, and using more efficient consumer architecture (such as picocells, femtocells, and wi-fi). And other wireless carriers are moving forward with market-based means of addressing their projected future spectrum needs, as AT&T's proposed acquisition of T-Mobile shows.<sup>13</sup> In addition, as described above, broadcast architecture can play an important and complementary role in our communications infrastructure. Congress should ensure that broadcasting's spectrally-efficient role is leveraged, not minimized, in order to meet the communications needs of the future.

Congress also should ensure that the FCC critically tests the wireless industry's spectrum needs projections. A key factor in projected mobile data growth rates is the spread of smartphones, the market for which is approaching saturation. Thus, a recent Cisco Visual Networking Index analysis predicts that growth rates in mobile data will fall by 60% to 80% over the coming years.<sup>14</sup> In light of such projections,

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<sup>12</sup> See the Reforming Airwaves by Developing Incentives and Opportunistic Sharing Act ("RADIOS Act"), S. 455, 112th Cong. (2011).

<sup>13</sup> See Rebecca Arbogast and David Kaut, "AT&T/T-Mo Deal Tough, But Not Unthinkable and AT&T Benefits for Even Trying," Stifel Nicolas (March 21, 2011) at 2 (noting that, if the two companies can satisfy spectrum needs by joining forces, it would reduce demand for spectrum and also possibly lower auction revenue estimates).

<sup>14</sup> David Burstein, "Cisco: U.S. Mobile Data Growth Falling 60-80%," *Fast Net News* (March 29, 2011), available online at <http://www.fastnetnews.com/a-wireless-cloud/61-w/4040-cisco-us-mobile-data-growth-falling-60-80>. See also Jonathan Healey, "Spectrum Crisis? What Spectrum Crisis?" *The Los Angeles Times* (April 1, 2011) ("A new projection by networking equipment kingpin Cisco predicts that demand for mobile bandwidth will increase at a slower and slower rate in the coming years, as the penetration of smartphones slows. That makes (continued...)

analysts are indicating that mobile data growth rates are “manageable” if needed wireless “network upgrades” are planned and made – and that these mobile data growth “numbers certainly don’t suggest a ‘crisis.’”<sup>15</sup>

A recent report issued by Uzoma Onyeije, a former FCC staffer who focused on wireless broadband issues while at the Commission, reached similar conclusions regarding the existence of a spectrum crisis.<sup>16</sup> According to Onyeije, “Wireless carriers do not suffer from a nationwide spectrum crisis; they face a capacity crunch in a limited number of locations.”<sup>17</sup> And in fact, carriers already have a number of tools at their disposal to address capacity constraints without additional spectrum reallocation. And proper utilization of marketplace solutions, combined with rational limited changes to spectrum policy by the Commission (like reclaiming spectrum from warehousers, conducting a thorough spectrum inventory, increasing licensee flexibility, and establishing receiver standards), “will easily meet demands on wireless network capacity.”<sup>18</sup> Clearly, Congress should consider all these technological and marketplace developments, which show that there are additional ways to address wireless network

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sense.... Once everyone has an iPhone, an Android phone or the equivalent, much of the growth goes away.”).

<sup>15</sup> Burstein, “Cisco: U.S. Mobile Data Growth Falling 60-80%,” *Fast Net News*.

<sup>16</sup> Uzoma Onyeije, *Solving the Capacity Crunch: Options for Enhancing Data Capacity on Wireless Networks* (April 2011), available at [http://www.nab.org/documents/newsRoom/pdfs/042511\\_Solving\\_the\\_Capacity\\_Crunch.pdf](http://www.nab.org/documents/newsRoom/pdfs/042511_Solving_the_Capacity_Crunch.pdf)

<sup>17</sup> *Id.* at i.

<sup>18</sup> *Id.* at iii.

capacity issues that are less disruptive and less potentially harmful than wholesale spectrum reallocations.<sup>19</sup>

## **(2) Undertake spectrum inventory and usage studies.**

NAB supports the proposals in numerous pieces of legislation that would require a detailed and comprehensive review of how spectrum is being used today, including measurement of actual spectrum utilization, not just licensing or build-out data.<sup>20</sup> In fact nearly a year ago, the President directed government agencies to inventory usage of spectrum allocated to them so that the Administration can better understand how the Federal government actually utilizes its spectrum.<sup>21</sup> This effort has assisted the National Telecommunications and Information Administration (“NTIA”) in its effort to begin identifying federal spectrum that can be reallocated for commercial wireless use. A similar detailed review of commercial spectrum usage just makes sense

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<sup>19</sup> For example, according to James Taiclet, chief executive of American Tower Corp., a large independent owner and operator of cell sites, “AT&T and other wireless operators could *double the amount of capacity they supply with current spectrum* by investing more in new wireless equipment on existing cell towers.” Spencer Ante and Amy Schatz, “Skepticism Greets AT&T Theory,” *The Wall Street Journal* (April 4, 2011) (emphasis added). In fact, in announcing its intent to acquire T-Mobile, AT&T stated that the transaction would enable it to “gain cell sites equivalent to what would have taken on average five years to build without the transaction,” and that the transaction would “increase AT&T’s network density by approximately 30 percent in some of its most populated areas, while avoiding the need to construct additional cell towers.” See <http://www.mobilizeeverything.com/home.php>

<sup>20</sup> See, e.g., the RADIOS Act and the Spectrum Inventory and Auction Act of 2011, H.R. 911, 112th Cong. (2011).

<sup>21</sup> Memorandum of June 28, 2010, “Unleashing the Wireless Broadband Revolution,” 75 FED. REG. 38387 (July 1, 2010).

from an overall spectrum policy perspective, and it is not just broadcasters that are calling for such spectrum inventory/usage studies.<sup>22</sup>

A complete combined inventory of the spectrum currently managed by the FCC and NTIA would facilitate future efforts to maximize spectrum-use efficiency. Importantly, it also would help to inform the current debate over spectrum needs. It would demonstrate broadcasting's high spectral efficiency and could reveal areas where other licensees could use their spectrum holdings more efficiently. Wireless carriers have been slow to deploy much of their current spectrum holdings,<sup>23</sup> and a spectrum inventory would quantify how much additional under-utilized spectrum could be put to use in the near to immediate term future and help to avoid compromising the public's free, over-the-air broadcast service unnecessarily.

**(3) Assess the harms of reallocating spectrum from broadcasting to wireless services.**

Broadcast television service offers a diverse and competitive alternative to pay-television service, and mobile DTV is an evolving competitive alternative to other mobile video offerings. Interest in and reliance on free, over-the-air television service is increasing, as some consumers are "cutting the cord" with pay television providers and relying on the expanded digital offerings of broadcast stations supplemented with online

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<sup>22</sup> See, e.g., Google Inc. Comments, Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies, ET Docket No. 10-237 (Feb. 28, 2011), at 5-7 (calling "[a] comprehensive inventory of Federal and non-Federal spectrum usage" a "necessary step.").

<sup>23</sup> See, e.g., Sam Churchill, "Phony Spectrum Scarcity," *DailyWireless.Org* (June 18, 2010) (indicating that wireless carriers are sitting on as much as \$15 billion in spectrum that has yet to be deployed); Dave Burstein, "70-90% of AT&T Spectrum Capacity Unused" (March 22, 2011), available at <http://www.fastnetnews.com/a-wireless-cloud/61-w/4193-70-90-of-atat-spectrum-capacity-unused>

video. Seven percent of current pay television subscribers are considering canceling their service, according to a recent *Consumer Reports* survey,<sup>24</sup> and Convergence Consulting Group estimates that between 2008 and the end of 2011, 2.07 million U.S. television subscribers will have cut the cord.<sup>25</sup> In 2010, the number of exclusively over-the-air television households increased, and in some communities, over-the-air viewing is highly prevalent.<sup>26</sup> Many other households that subscribe to pay-television service have additional receivers that rely on over-the-air reception. Moreover, virtually every viewer that subscribes to pay-television service relies on the retransmission of local television broadcasts for their local news and information.<sup>27</sup>

Diminishing the spectrum available for broadcast television, including for mobile DTV service, will diminish the competition and diversity of services available to American consumers. It also would lead to a slower, more expensive, and less efficient system for delivering news-oriented video content. Congress and the FCC must weigh

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<sup>24</sup> Todd Spangler, "Survey: 7% of Pay-TV Subs Pondering Pulling the Plug," *Multichannel News* (April 5, 2011).

<sup>25</sup> Don Reisinger, "Study: More TV Viewers in U.S. 'Cutting the Cord,'" *CNET News* (April 6, 2011) (between 2008 and 2009, 550,000 households cut the cord and, in 2010, one million households did the same).

<sup>26</sup> See Jason Bazinet, Kristina Warmut, Michael Rollins, and Kevin Toomey, Citigroup Global Markets, "Video, Data, & Voice Distribution" (March 2, 2011), at 3 (indicating that 14.7% of households rely entirely on over-the-air service). And the Hispanic population—the most-rapidly growing population in the United States—relies heavily on over-the-air service. In major Hispanic markets such as Houston and Dallas, 44 and 50 percent of the population, respectively, relies on over-the-air television. See Comments of Univision Communications, Inc., Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235 (March 18, 2011), at 2-3.

<sup>27</sup> Despite the emergence of new media platforms, local television news is in fact "the top source of news for Americans." Pew Research Center, "Understanding the Participatory News Consumer" (March 1, 2010), at 11. On a typical day, 78% of Americans get news from a local television station. *Id.* at 3.

and understand the public policy harms of reallocating spectrum away from free, over-the-air television before taking irreversible steps down that path.

**(4) Explore other means of expanding broadband access.**

NAB has encouraged the FCC to study additional means of expanding broadband access, and we urge Congress to do likewise. Some possibilities include affording current broadcast licensees with flexible spectrum usage rights and the ability to participate in the secondary spectrum markets.<sup>28</sup> Alternatives such as these deserve consideration, as they may provide a quicker and more efficient means of making additional spectrum available for wireless services.

**(5) Proceed on a comprehensive and holistic basis.**

Meeting the broadband and broadcast needs of the future will not be a simple task. The FCC and stakeholders will need to consider and address numerous issues as we move forward. Not only are the issues complex, they are interrelated. As it oversees the FCC in this process, Congress should ensure that the FCC keeps the broader picture in mind. For example, as described above, incentive auction procedures cannot be considered in a vacuum. The incentive auction is integrally related to other proposals, such as those concerning channel sharing and repacking of the broadcast television band. Congress should also consider the extent to which

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<sup>28</sup> Economists and policy analysts have increasingly come to agree that flexible rights for licensees, coupled with a vibrant secondary market for these rights, are the most efficient way to repurpose spectrum. See, e.g., Jeffrey A. Eisenach, Ph.D., *Spectrum Reallocation and the National Broadband Plan* (Oct. 2010). Indeed, the FCC has acknowledged that its own regulatory restrictions have “limited [broadcasters’] flexibility to evolve their business model or industry structure over time in response to changing consumer preferences and habits.” FCC, “Spectrum Analysis: Options for Broadcast Spectrum” (OBI Technical Paper No. 3, June 2010), at 10.

technological advancements and other marketplace developments can solve wireless network capacity issues without wholesale, disruptive spectrum reallocations. The public deserves the benefit of a comprehensive approach in which the FCC asks the right questions and considers public comment holistically before drawing conclusions about particular issues on the basis of an incomplete or hurried process. In addition, good governance requires transparency for the FCC's proposals for repacking and conducting the incentive auction, as well as for the technical tools it intends to use to implement these proposals.<sup>29</sup>

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NAB appreciates Congress's leadership on these important spectrum policy issues. We stand ready to participate constructively in this process to ensure that the American public's broadcast service, including free, over-the-air television service and innovative new offerings such as mobile DTV, remains viable and vital; to ensure that any incentive auction and spectrum reallocation process is truly voluntary; and to promote action based on sound spectrum management principles that explore all options to address future capacity needs. The public's interest in a robust broadcasting system, including the free, local, and competitive service that it provides, is at stake.

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<sup>29</sup> According to the FCC, its "Allotment Optimization Model" is essential to determining "how many stations in which markets could participate voluntarily in an incentive auction in order to make progress towards freeing 120 megahertz with the minimal possible impact on service areas and consumers, or potentially develop[ing] alternative scenarios to meet the spectrum objective." FCC, "Spectrum Analysis: Options for Broadcast Spectrum" (OBI Technical Paper No. 3, June 2010) at 5. This model is not yet completed and has not been released to the public.