effect on the economy of $100 million or more. b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Regulatory Flexibility Act: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on such small entities. This analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The CSB has considered the impact of this rule under the Regulatory Flexibility Act, and certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act: The CSB reviewed this rule to determine whether it involves issues that would subject it to the Paperwork Reduction Act (PRA). The CSB has determined that that the rule does not require a ''collection of information'' under the PRA.

Unfunded Mandates Reform Act of 1995: The rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($128 million in 2006, adjusted annually for inflation).

List of Subjects in 40 CFR Part 1600

Administrative practice and procedure.

Dated: July 22, 2015.

Rick Engler,

Board Member.

Accordingly, for the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1600 as follows:

PART 1600—ORGANIZATION AND FUNCTIONS OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

■ 1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301, 552(a)(1); 42 U.S.C. 7412(r)(6)(N).

■ 2. Amend § 1600.5 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 1600.5 Quorum and voting requirements.

* * * * *

(b) *Voting.* The Board votes on items of business in meetings conducted pursuant to the Government in the Sunshine Act. Alternatively, whenever a Member of the Board is of the opinion that joint deliberation among the members of the Board upon any matter at a meeting is unnecessary in light of the nature of the matter, impracticable, or would impede the orderly disposition of agency business, such matter may be disposed of by employing notation voting procedures. A written notation of the vote of each participating Board member shall be recorded by the General Counsel who shall retain it in the records of the Board. If a Board member votes to calendar a notation item, the Board must consider the calendared notation item at a public meeting of the Board within 90 days of the date on which the item is calendared. A notation vote to schedule a public meeting may not be calendared. The Chairperson shall add any calendared notation item to the agenda for the next CSB public meeting if one is to occur within 90 days or to schedule a special meeting to consider any calendared notation item no later than 90 days from the calendar action.

(c) *Public Meetings and Agendas.* The Chairperson, or in the absence of a chairperson, a member designated by the Board, shall schedule a minimum of four public meetings per year in Washington, DC, to take place during the months of October, January, April, and July.

(1) *Agenda.* The Chairperson, or in the absence of a chairperson, a member designated by the Board, shall be responsible for preparation of a final meeting agenda. The final agenda may not differ in substance from the items published in the Sunshine Act notice for that meeting. Any member may submit agenda items related to CSB business for consideration at any public meeting, and the Chairperson shall include such items on the agenda. At a minimum, each quarterly meeting shall include the following agenda items:

(i) Consideration and vote on any notation items calendared since the date of the last public meeting;

(ii) A review by the Board of the schedule for completion of all open investigations, studies, and other important work of the Board; and

(iii) A review and discussion by the Board of the progress in meeting the CSB's Annual Action Plan.

(2) *Publication of agenda information.* The Chairperson shall be responsible for posting information related to any agenda item that is appropriate for public release on the CSB Web site no less than two days prior to a public meeting.

[FR Doc. 2015–18318 Filed 8–5–15; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GN Docket No. 12–268; FCC 15–69]

Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this *Second Order on Reconsideration,* the Commission addresses petitions for reconsideration of our Order adopting rules to implement the broadcast television spectrum incentive auction. Based on the rules we adopted in the *Incentive Auction R&O,* we are now developing the detailed procedures necessary to govern the auction process. As we have stated before, our intention is to begin accepting applications to participate in the incentive auction in the fall of 2015, and to start the bidding process in early 2016. We issue this *Order* now in order to provide certainty for prospective bidders and other interested parties in advance of the incentive auction. We largely affirm our decisions in the Incentive Auction R&O, although we make certain clarifications and modifications in response to issues raised by the petitioners.

DATES: Effective September 8, 2015, except for the amendment to § 73.3700(c)(6) which contains new or modified information collection requirements that have not been approved by Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Aspasia Paroutsas, (202) 418–7285, or by email at *Aspasia.Paroutsas@fcc.gov,* Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Order on Reconsideration* in GN Docket No. 12–268, FCC 15–69, adopted on June 17, 2015 and released on June 19, 2015. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of Second Order on Reconsideration

1. Market Variation

1. We deny ATBA's and the Affiliates Associations' petitions for reconsideration of the decision to accommodate market variation as necessary in the 600 MHz Band Plan. First, Affiliates Associations argue that we ''should consider focusing resources on recovering sufficient spectrum in the most constrained markets to allow a truly national plan, even if that means accepting a lower spectrum clearing target.'' We disagree. Because the amount of UHF spectrum recovered through the reverse auction and the repacking process depends on the extent of broadcaster participation and other factors in each market, we must have the flexibility to accommodate market variation. We agree with CTIA that market variation is essential to avoiding the ''lowest common denominator'' effect of establishing nationwide spectrum offerings based only on what is available in the most constrained market despite the availability of more spectrum in the vast majority of the country. Allowing for market variation also will enable us to ensure that broadcasters have ample opportunity to participate in the reverse auction in markets where interest is high.

2. Second, we disagree with ATBA's claim that accommodating market variation will result in reclaiming and repurposing more spectrum than for which there is demand. The purpose of accommodating market variation is to prevent constrained markets from decreasing the amount of repurposed spectrum that will be available in most areas nationwide, not to increase the amount that is repurposed in areas that lack broadcaster participation and/or demand from wireless carriers. Further, the Middle Class Tax Relief and Job Creation Act of 2012 (''Spectrum Act'') ensures a voluntary, market-based auction by requiring the forward auction to raise enough proceeds to satisfy the minimum proceeds requirements—in particular, the winning bids of reverse auction participants—before licenses can be reassigned or reallocated. In other words, the Commission cannot repurpose any spectrum through the incentive auction process unless there is sufficient demand for the spectrum from wireless carriers participating in the forward auction. While ATBA expresses concern about displacement of LPTV stations in rural and underserved areas where they claim demand for wireless spectrum will be minimal, there are critical advantages to having a generally consistent band plan, including limiting the amount of potential interference between broadcast and wireless services and helping wireless carriers achieve economies of scale when deploying their new networks. Accordingly, the Commission must recover spectrum in rural areas as well as urban ones. As we noted in the *Incentive Auction R&O,* however, ''[i]n no case will we offer *more* spectrum in an area than the amount we decide to offer in most markets nationwide.''

3. As we explained in the *Incentive Auction R&O,* 79 FR 48442, August 15, 2014, we fully recognize the advantages of a generally consistent band plan. Nevertheless, the flexibility to accommodate a limited amount of market variation is absolutely necessary to address the challenges associated with the 600 MHz Band Plan. In affirming this threshold decision, we make no determination on the issues related to market variation, including how much market variation to accommodate, on which we sought comment in the *Incentive Auction Comment PN.* We will resolve those issues in the forthcoming *Incentive Auction Procedures PN.* Accordingly, we decline to address the Affiliates Associations' request for clarification regarding issues related to market variation. Likewise, NAB's arguments that market variation will unnecessarily complicate the auction are untimely because we have not yet adopted the final auction procedures. We likewise decline to address the timing and status of auction and repacking software, as these matters will be addressed in the Incentive Auction Procedures PN.

2. Guard Bands

4. We deny ATBA's and Free Access' petitions to reconsider the size of the guard bands. We also deny Free Access' petition to reconsider incorporating remainder spectrum into the 600 MHz guard bands. First, we agree with Google/Microsoft and WISPA that the guard bands adopted in the *Incentive Auction R&O* are permitted under the Spectrum Act. As Google/Microsoft and WISPA point out, ATBA and Free Access apply an incorrect standard for determining guard band size. In the *Incentive Auction R&O,* we specifically rejected suggestions that the ''technically reasonable'' standard in the statute requires us to restrict guard bands to ''the minimum size necessary'' to prevent harmful interference. The Spectrum Act clearly permits the Commission to establish ''technically reasonable'' guard bands in the 600 MHz Band. Petitioners provide no basis to revisit our interpretation of the ''technically reasonable'' standard set forth in the *Incentive Auction R&O.*

5. Second, ATBA claims that the record does not support adopting guard bands larger than three megahertz. This claim is without merit. Most commenters supported guard bands within the size range we adopted, with some commenters recommending much larger guard bands. Furthermore, the guard bands are tailored to the technical properties of the 600 MHz Band under each spectrum recovery scenario, as well as to the unique goals of the incentive auction. Our technical analysis, provided in the Technical Appendix of the *Incentive Auction R&O,* corroborated our conclusion that the guard bands adopted are technically reasonable to prevent harmful interference.

6. Third, ATBA claims that the Commission is improperly using the auction as a ''means to reallocate spectrum'' from licensed services to unlicensed services. We disagree. As discussed above, the Spectrum Act allows us to establish ''technically reasonable'' guard bands to protect against harmful interference. We considered a number of factors in creating the guard bands, including the technical properties of the 600 MHz Band, the need to accommodate different spectrum recovery scenarios (because we will not know in advance of the auction how much spectrum will be repurposed), the need to generate sufficient forward auction proceeds, and the problems that would be associated with auctioning ''remainder spectrum.'' Therefore, we reject the argument that we are sizing the guard bands solely to facilitate unlicensed use. The fact that the Spectrum Act allows us to make guard bands available for unlicensed use does not mean that we are reallocating spectrum from licensed services to unlicensed use.

7. Additionally, we deny Free Access' petition to reconsider incorporating remainder spectrum into the 600 MHz guard bands. In the *Incentive Auction R&O,* we determined that adding remainder spectrum to the guard bands would enhance interference protection for licensed services and avoid unduly complicating the bidding procedures. Further, incorporating the remainder spectrum creates guard bands that, under every band plan scenario, are no larger than ''technically reasonable.'' Because the guard bands we establish by incorporating the remainder spectrum will be no larger than ''technically reasonable,'' we have complied with the requirements of the Spectrum Act.

3. Band Plan Technical Considerations

8. We dismiss, and on alternative and independent grounds, we deny Artemis' petition for reconsideration. We agree with Mobile Future that Artemis should have raised its arguments previously, and that not doing so is grounds for dismissing its petition. While Artemis asserts it could not have made its claims before because it was still in the process of testing when the *Incentive Auction R&O* was issued, Artemis concedes that it has been developing its technology for over a decade. It has not shown why it was unable to raise these facts and arguments before adoption of the *Incentive Auction R&O.* Furthermore, during the course of the proceeding, the Wireless Bureau released a *Band Plan PN,* which provided sufficient detail about the band plans under consideration (including both FDD and TDD options) to allow Artemis to comment on those that could potentially impact its technology. In addition to the original comment cycle, we released a number of supplemental public notices on key issues, and received additional ex parte filings until the Sunshine Notice took effect and the *Incentive Auction R&O* was adopted. Even if, as Artemis claims, it was still testing its technology when the *Incentive Auction R&O* was issued, it has not adequately explained why it could not have raised its claims regarding the need for minimum spectrum efficiency requirements or about the alleged advantages of TDD earlier. Accordingly, we find that grant of the Artemis petition is not warranted under section 1.429(b)(1) because it does not ''relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission.'' Artemis also appears to justify its petition on the grounds that it ''could not anticipate the final technical details of the 600 MHz plan until the *Incentive Auction R&O* was published,'' or that ''no one could have known that TDD was so highly efficient for high-order multiplexing,'' or that it is ''new knowledge'' that pCell and high-order spatial multiplexing are more efficient with TDD or can achieve LTE-compatible high spectrum efficiency gains. Although it has not explicitly asserted that reconsideration is warranted under section 1.429(b)(2) of our rules, Artemis would not succeed on this claim. Artemis has not demonstrated that the facts underlying its petition could not reasonably have been known prior to our adoption of the *Incentive Auction R&O,* particularly given that we specifically sought comment on a possible TDD framework (among other band plans) in both the *Incentive Auction NPRM* and in a *Band Plan PN.* Furthermore, Artemis has not explained why it lacked the knowledge to file an ex parte with the Commission concerning spectral efficiency after it publicly announced its pCell technology, which was prior to the adoption of the *Incentive Auction R&O.*

9. But even if its petition had been appropriately filed at this juncture, we would deny it on alternative and independent grounds because we also find that Artemis has failed to demonstrate that its petition to modify the 600 MHz band plan to allow TDD warrants reconsideration under the public interest prong of the rule. As Mobile Future points out, we already considered whether to adopt a TDD-based framework for the Band Plan, ''and chose to adopt an FDD-based plan after the proposal received overwhelming support in the record.'' Furthermore, we disagree with Artemis' claim that because we evaluated FDD against TDD ''in light of [then] current technology,'' Artemis' findings on the spectral efficiencies of its technology compel us to reconsider our decision. Artemis has not established that it is in the public interest to reconsider our decision and modify our FDD Band Plan to allow for TDD-based operation on the description of its technology. Artemis' arguments for adopting a TDD framework for the 600 MHz Band are not independent arguments for the adoption of TDD. Rather, Artemis argues that to achieve high spectral efficiency, carriers must use technology like its technology, which works most effectively with TDD networks. In fact, Artemis admits its technology can work in an FDD environment, just not as efficiently. Furthermore, as we noted above, in deciding on a paired uplink and downlink Band Plan supporting an FDD-based framework, we weighed a number of technical factors, including ''current technology, the Band's propagation characteristics, and potential interference issues present in the band,'' as well as considering our central goal of allowing market forces to determine the highest and best use of spectrum, our desire to support a simple auction design, and five key policy goals. Further, we declined to allow a mix of TDD and FDD in the 600 MHz Band because it ''would require additional guard bands and increase the potential for harmful interference both within and outside the Band.'' In arguing that TDD is preferable to FDD, Artemis fails to address the vast majority of the factors we considered in adopting the 600 MHz Band Plan. In short, Artemis has not proven that it is in the public interest to reconsider our 600 MHz Band Plan and grant it the relief it seeks. In its ex parte filing, Artemis raises some additional points to support its arguments. To the extent these are not mere unsupported assertions, we find they are not new arguments, but ones that have already been raised by commenters in the underlying record and already considered in reaching our conclusions in the *Incentive Auction R&O.*

10. In addition, we find Artemis has failed to demonstrate that it would be in the public interest to grant its petition for reconsideration to implement spectrum efficiency standards in the 600 MHz Band. We agree with CTIA that for the 600 MHz Band, spectrum efficiency rules ''are unprecedented, are not required under the Spectrum Act, and are unnecessary.'' The Commission has generally found it unnecessary to implement spectrum efficiency standards for auctioned spectrum bands because the competitive bidding process itself is considered an effective tool for promoting efficient spectrum use. Moreover, consistent with the Spectrum Act's directive, we have adopted ''flexible use'' service rules for the 600 MHz Band. Flexible use allows licensees to pursue any technology most expedient for achieving their operational goals in responding to marketplace pressures and consumer demand. In mobile broadband spectrum bands similar to the 600 MHz Band where the Commission has followed a policy of ''flexible use,'' the Commission has not adopted spectrum efficiency standards. Rather, in cases where the Commission has adopted spectrum efficiency standards, it has done so because those spectrum bands were not subject to competitive bidding and/or the licenses granted were non-exclusive, shared spectrum licenses.

Indeed, as CTIA notes, the 600 MHz technical rules ''are modeled after requirements in other spectrum bands that have allowed spectrum to be put to its highest and best use and promote the public interest . . . [and] have proven highly successful, and there is no basis to depart from this framework in the 600 MHz band.'' We agree. We note that, although we do not find it necessary to mandate these requirements, licensees can voluntarily choose to use Artemis' technology or similar technology to improve their spectral efficiency.

A. Repacking the Broadcast Television Bands

1. Implementing the Statutory Preservation Mandate

a. OET–69 and TVStudy

11. *Use of TVStudy.* In the *Incentive Auction R&O,* the Commission adopted the use of *TVStudy* software and certain modified inputs in applying the methodology described in OET–69 to evaluate the coverage area and population served by television stations in the repacking process. The Affiliates Associations seek reconsideration of those decisions, arguing that the Spectrum Act's reference to the methodology described in OET–69 prohibits the Commission from changing either the implementing software or inputs to the methodology.

12. In addition, the Affiliates Associations, as well as Cohen, Dippell and Everist, P.C. (''CDE''), complain that the use of *TVStudy* produces different results than the old software, and that we failed to address in the *Incentive Auction R&O* potential losses in coverage area. CTIA, in its Opposition, supports the Commission's use of *TVStudy* to determine coverage area and population served of broadcast stations. We decline to consider at this time the Affiliates Associations' and CDE's requests. The arguments the Affiliates Associations and CDE raise are the subject of a recent decision by the United States Court of Appeals for the DC Circuit. We will take appropriate action regarding these arguments in a subsequent Order.

13. *Vertical Antenna Pattern.* When the OET–69 methodology was developed, the regulatory framework for the digital transition of LPTV stations, including Class A stations, had not yet been established. The Commission subsequently amended its rules to allow for use of OET–69 to evaluate Class A stations. In so doing, the Commission determined that the assumed vertical antenna patterns for full power stations in Table 8 of OET–69 were not appropriate for Class A stations because they could underestimate service and interference potential. The Commission adopted an assumption that the downward relative field strengths for digital Class A stations are double the values specified in Table 8 up to a maximum of 1.0. Thus, when processing digital Class A station applications, the Commission doubles the Table 8 values for purposes of predicting interference. In addition, the Commission's rules do not call for the use of any vertical pattern when predicting digital Class A coverage area. This distinction between full power and Class A stations is not reflected in the *TVStudy* software, which uses the same vertical antenna patterns for Class A and full power stations.

14. Expanding Opportunities for Broadcasters Coalition (''EOBC'') urges the Commission to revise the vertical antenna pattern inputs for Class A stations in *TVStudy* to conform to the Commission's rules in order to avoid underestimating the coverage areas of a number of Class A stations. EOBC claims that revising the antenna pattern inputs in *TVStudy* will eliminate population losses that appear in the *TVStudy* results when compared with those of the legacy OET software. For example, EOBC indicates that *TVStudy* shows a 95.7 percent population loss for KSKT–CA which disappears when the correct inputs are used. No other commenters commented on EOBC's request.

15. We agree with EOBC, and revise the vertical antenna pattern inputs for Class A stations in *TVStudy* to reflect the same values we use when evaluating Class A license applications. The Commission previously has determined that those vertical antenna pattern settings better represent the performance characteristics of antennas used by Class A stations and, therefore, we conclude that they will enable more accurate modeling of the service and interference potential of those stations during the repacking process. Therefore, *TVStudy* will use no vertical antenna pattern when calculating Class A stations' protected contours and will double the vertical antenna pattern values included in Table 8 of OET–69 (to a maximum value of 1.0) for calculating interference. We note that our modified approach will reduce or eliminate the differences in results that EOBC observed between *TVStudy* and *tv process,* the Media Bureau's application processing software.

16. *Power Floors. TVStudy* uses minimum effective radiated power (''ERP'') values, or power floors, to replicate a television station's signal contours when conducting pairwise interference analysis in the repacking process. When *TVStudy* is used to conduct this analysis, it uses each station's specific technical parameters and a set of default configuration parameters. Its power floor for full power stations is set to one kilowatt for stations on low-VHF channels, 3.2 kilowatts for stations on high-VHF channels, and 50 kilowatts for stations on UHF channels. Similarly, its power floor for Class A digital TV stations is set to 0.07 kilowatts for stations on VHF channels and 0.75 kilowatts for stations on UHF channels. These power floors, which were established for full power stations during the digital television (''DTV'') transition, originally were intended to ensure that all stations would be able to provide service competitively within their respective markets prior to knowing the precise technical details about how their digital television stations would eventually be constructed. In other words, they were set high to protect stations' ability to ''grow into'' the power level needed to replicate their analog service areas. In comparison, section 73.614 of our rules specifies a power floor of 100 watts for full power stations (our rules do not specify a power floor for Class A stations).

17. EOBC observes that use of these power floors in *TVStudy* produces some anomalous results when replicating particular stations' contours on different channels in the context of the pairwise interference analysis. EOBC provides as an example a full power station licensed to operate on channel 18 with an ERP of 1.62 kW. When *TVStudy* replicates that station's contour on a different channel, it uses a minimum ERP of 50 kW, which makes the station appear more resistant to interference than it actually is. EOBC requests that the Commission either rationalize the use of power floors or eliminate them. No other commenters commented on EOBC's request.

18. We will reduce the power floors in *TVStudy* to address the issue raised by EOBC. Specifically, we will reduce the power floors in *TVStudy* to 100 watts for full power stations and 24 watts for Class A stations. A 100 watt power floor for full power stations accords with our rules. Our rules do not provide for a minimum ERP for Class A stations, but we find that a 24 watt value is reasonable because it represents the lowest ERP of any Class A station currently licensed. We do not anticipate that these lower power floors will reduce our repacking flexibility significantly.

19. The modified power floors we adopt will allow replication of stations'

existing coverage areas on different frequencies without artificially inflating their ERP values. Currently, when it replicates a television station's signal contour on a different channel, *TVStudy* assigns the station a default ERP value if the value necessary for replication is below the power floor. Because the default value exceeds the value actually required to replicate the station's contour, the use of power floors artificially inflates a station's predicted coverage area in such situations. The result is inaccuracy: The station's signal is predicted to be stronger than it actually would be, so *TVStudy* predicts coverage in areas that in fact would not receive service, and does not predict interference from undesired signals in other areas. Pursuant to EOBC's request, we adopt modified power floors to correct such inaccuracies.

20. We decline to adopt EOBC's alternative request to eliminate the use of power floors in *TVStudy.* Power floors remain necessary with regard to stations presently operating with very low power levels. Otherwise, their assigned ERP values on new frequencies, particularly on lower frequencies, might be unreasonably low. For example, due to differences in signal propagation between VHF and UHF channels, the signal of a UHF station operating with a low power level could be replicated on a VHF channel with a power level of less than 10 watts or even a fraction of a watt. We are concerned that the signals of such stations within their service contours, in the event that they were assigned to new channels, might be so weak as to not be adequately receivable by the stations' existing viewers due to noise and other environmental considerations. Furthermore, if such stations are full power stations, their ERP values would not comply with the minimum specified in our rules.

b. Preserving Coverage Area

21. We grant Disney's, Dispatch's, and CDE's requests for reconsideration regarding the preservation of coverage area and affirm that we will make all reasonable efforts to preserve the coverage areas of stations operating pursuant to waivers of HAAT or ERP, provided such facilities are otherwise entitled to protection under the *Incentive Auction R&O.* We agree with Disney, Dispatch, and CDE that there is no basis to deny a station protection for its existing coverage area in the repacking process merely because its licensed facilities were authorized pursuant to a waiver of our technical rules.

c. Preserving Population Served

22. We dismiss Block Stations' Petition for Reconsideration of the approach we adopted. Under Commission rules, if a petition for reconsideration simply repeats arguments that were previously fully considered and rejected in the proceeding, it will not likely warrant reconsideration. We adopted Option 2 in the *Incentive Auction R&O* based on careful consideration of the record, and of the advantages and disadvantages of each of the options proposed. In particular, we concluded that ''Option 2 provides the most protection to television stations' existing populations served consistent with our auction design needs.'' We specifically declined to adopt Option 1 because it would not preserve service to existing viewers as of February 22, 2012, and because it would require analysis of interference relationships on an aggregate basis rather than on a pairwise basis. Block Stations provide no basis to revisit our analysis or reconsider our approach.

2. Facilities To Be Protected

a. Stations Affected by the Destruction of the World Trade Center

23. We grant NBC Telemundo's request that we extend to WNJU the same discretionary repacking protection afforded to other stations affected by the destruction of the World Trade Center. Based on an examination of the record, we find that WNJU is similarly situated to the five other World Trade Center stations for which we already granted discretionary repacking protection. As with the other five stations affected by the destruction of the World Trade Center, we have permitted NBC Telemundo to elect protection by the Pre-Auction Licensing Deadline of either: (1) its licensed Empire State Building facilities or (2) proposed facilities at One World Trade Center. Providing NBC Telemundo with such flexibility will not significantly impact our repacking flexibility.

b. Pending Channel Substitution Rulemaking Petitions

24. We deny the Bonten/Raycom and Media General Petitions. Petitioners claim that Congress intended for the Commission to grant the pending VHF-to-UHF petitions, but as we explained in the *Incentive Auction R&O,* the language in section 1452(g)(1)(B) is permissive. Section 1452(g)(1)(B) allows the Commission to reassign a licensee from VHF to UHF if either of the two statutory conditions in this provision is met, but it does not mandate such reassignment. If Congress intended to remove our discretion and require us to grant the pending VHF-to-UHF petitions, it would have explicitly provided that the Commission ''shall'' reassign a licensee from VHF to UHF ''if'' a request for reassignment was pending on May 31, 2011. Petitioners offer no basis to revisit our interpretation.

25. We disagree with petitioners' claims that the Commission disregarded the public interest benefits that would result from protecting the facilities requested in the pending petitions and overstated the impact on repacking flexibility. As we explained in the *Incentive Auction R&O,* the exercise of discretion to protect facilities beyond those required by the Spectrum Act requires a careful balancing of numerous factors. We applied those factors and found that there were minimal equities in favor of protecting the facilities requested because the petitioners had not acted in reliance on Commission grants, had not made any investment in constructing their requested facilities, and had not begun operating the proposed facilities to provide service to viewers. On the other hand, we explained that protecting the requested facilities would add new stations to the UHF Band and thereby encumber additional UHF spectrum. Petitioners offer no basis to alter this balancing. While they claim that the number of pending petitions is minimal and speculate that this will not ''significant[ly] effect'' repacking, they fail to acknowledge the minimal equities in favor of protecting *proposed* facilities that have not been constructed and are not serving viewers.

26. Petitioners claim further that we should have weighed the benefits to the public of restoring over-the-air service to pre-DTV transition viewers that would purportedly result from their channel substitution requests. Declining to protect petitioners' proposed facilities in the repacking process, however, does not preclude grant of their petitions after conclusion of the repacking process. Despite petitioners' claim, we did not direct the Media Bureau to ''summarily dismiss'' the pending petitions without public comment. Rather, we directed the Media Bureau to dismiss any of these petitions for which issuance of an NPRM would not be appropriate, such as ''if the proposed facility would result in an impermissible loss of existing service'' or ''the petition fails to make a showing as to why a channel change would serve the public interest.'' Dismissal of channel substitution petitions without issuing an NPRM under such circumstances is consistent with past

Bureau practice. For petitions that are not dismissed, we directed the Media Bureau to hold them in abeyance, rather than granting them now but leaving them unprotected in the repacking process. Petitioners do not dispute our conclusion that allowing VHF stations to move their existing service into the UHF Band on an unprotected basis pending the outcome of the repacking process presents a significant potential for viewer disruption if the station's operations in the UHF Band are displaced.

27. We agree with petitioners that we could protect the requested facilities but preclude them from submitting UHF-to-VHF bids in the reverse auction, but this does not change our ultimate conclusion. Imposing such a condition would prevent the stations from demanding a share of incentive auction proceeds in exchange for relinquishing their newly granted rights, but would not mitigate the detrimental impact on our repacking flexibility of granting protection to the requested facilities. The detrimental impact protecting the proposed facilities would have on our repacking flexibility and fulfillment of auction goals outweighs the minimal equities in favor of protection.

28. We also disagree with petitioners that their requests are similarly situated to the two VHF-to-UHF petitions that were filed before the Media Bureau's May 31, 2011 freeze, both of which resulted in an *NPRM* after that date, and were subsequently granted. As explained in the *Incentive Auction R&O,* the granted petitions involved materially different facts. In one case, the station's tower collapsed, a fact that does not apply to the petitioners. In the other case, the change to a UHF channel resulted in a significant population gain, a fact that likewise does not apply to the petitioners. Moreover, the granted petitions explained why expedited consideration was needed, whereas the petitioners failed to provide a timely explanation of such need. In addition, the granted petitions were granted before the Spectrum Act was passed. In contrast, further action on the pending petitions required consideration of a number of new issues raised by the statute, including issues that the Commission was considering in the pending rulemaking proceeding. Bonten/Raycom assert that the same considerations applied both before and after passage of the Spectrum Act because the Commission was aware that Congress was considering incentive auction legislation when the Media Bureau granted the two VHF-to-UHF petitions. At the time the Media Bureau acted on the two petitions, however, it was unknown whether or when Congress would pass legislation providing for an incentive auction, and there was no basis to predict that any future legislation would specifically address the pending VHF-to-UHF petitions.

29. We also reject petitioners' claim that refraining from processing the pending petitions amounts to a retroactive freeze without notice. The May 31, 2011 freeze was issued at the Bureau level, and the Media Bureau's statement that it would ''continue its processing of [channel substitution] rulemaking petitions that are already on file'' is not binding on the Commission. In any event, the Bureau's statement was made before enactment of the Spectrum Act. To the extent the petitioners relied on the Bureau's freeze as entitling them to move into the UHF Band, such reliance was misplaced in light of Congress's subsequent passage of the Spectrum Act, which seeks to repurpose UHF spectrum for new uses and specifically addresses the pending VHF-to-UHF petitions. Indeed, despite the Media Bureau's statements in its May 31, 2011 freeze Public Notice, the Commission in the 2012 *Incentive Auction NPRM* analyzed section 1452(g)(1)(B) and put the pending VHF-to-UHF petitioners on notice that it proposed to refrain from acting on their petitions.

c. Out-of-Core Class A-Eligible LPTV Stations

30. *Background.* The Community Broadcasters Protection Act of 1999 (''CBPA'') provided certain qualifying LPTV stations with ''primary'' Class A status. The CBPA provided for a two-step process for obtaining a Class A license. First, by January 28, 2000, an LPTV licensee seeking Class A status was required to file a certification of eligibility certifying compliance with certain criteria. If the Commission granted the certification, the licensee's station became a ''Class A-eligible LPTV station.'' Second, a Class A-eligible LPTV station was required to file an application for a Class A license. While the CBPA prohibited the Commission from granting Class A status to LPTV stations operating on ''out-of-core'' channels (channels 52–69), it provided such stations with an opportunity to achieve Class A status on an in-core channel (channels 2–51).

31. Although the Commission's rules implementing the CBPA were adopted in 2000, we explained in the *Incentive Auction R&O* that approximately 100 formerly out-of-core Class A-eligible LPTV stations had obtained an in-core channel but had not obtained a Class A license as of February 22, 2012. We determined that such stations are not entitled to mandatory preservation. We explained that the fact that such stations may obtain a Class A license after February 22, 2012 does not alter this conclusion because section 1452(b)(2) of the Spectrum Act mandates preservation of only the full power and Class A facilities that were actually in operation as of February 22, 2012. With one exception—KHTV–CD, Los Angeles, California—we also declined to exercise discretionary protection to preserve the facilities of such stations.

32. Abacus Television (''Abacus'') and The Videohouse, Inc. (''Videohouse''), the licensees of formerly out-of-core Class A-eligible LPTV stations that filed for and received Class A licenses after February 22, 2012, seek reconsideration of our decision not to protect Class A-eligible LPTV stations that did not hold Class A licenses as of February 22, 2012. They argue that they are entitled to preservation under the CBPA. They further claim that they are similarly situated to KHTV–CD, insofar as they have also allegedly taken steps to remove their secondary status in a timely manner, and therefore should be extended discretionary protection. Moreover, they argue that they are similarly situated to other stations the Commission elected to protect in the repacking process. In late-filed pleadings, the LPTV Spectrum Rights Coalition (''LPTV Coalition'') and Abacus dispute the number of formerly out-of-core Class A-eligible LPTV stations that did not hold Class A licenses as of February 22, 2012.

33. *Discussion.* For reasons set forth below, we dismiss and otherwise deny the Abacus and Videohouse petitions. Asiavision, Inc. (''Asiavision'') and Latina Broadcasters of Daytona Beach, LLC (''Latina'') did not file timely Petitions for Reconsideration of the *Incentive Auction R&O.* Rather, in Oppositions, they present arguments similar to those raised in the Abacus and Videohouse Petitions as to why the Commission should have decided in the *Incentive Auction R&O* to protect their stations in the repacking process. We treat these pleadings as late-filed petitions for reconsideration and dismiss them. Asiavision and Latina did not seek a waiver of the deadline for seeking reconsideration. Moreover, to the extent Asiavision and Latina argue that the Commission should treat all similarly situated Class A stations the same if the Abacus and Videohouse Petitions are granted, their arguments are moot in light of our dismissal and denial of the Abacus and Videohouse Petitions. We will nonetheless treat

these pleadings as informal comments. As an initial manner, petitioners offer no basis to revisit our conclusion that section 1452(b)(2) mandates preservation of only full power and Class A facilities that were actually in operation as of February 22, 2012. The only Class A facilities in operation as of February 22, 2012 were those that were licensed as Class A facilities on that date or were the subject of an application for a license to cover a Class A facility. The license to cover application signifies that the Class A-eligible LPTV station had constructed its facility and was operating consistent with the requirements applicable to Class A stations. We note that some Class A-eligible LPTV stations filed prior to February 22, 2012 an application to convert an LPTV construction permit to a Class A construction permit. We refer to this application below as a ''Class A construction permit application.'' We clarify that a Class A-eligible LPTV station with an application for a Class A construction permit on file or granted as of February 22, 2012 is not entitled to mandatory protection. An application for a Class A construction permit seeks protection of facilities authorized in an LPTV construction permit. Grant of a construction permit standing alone, however, does not authorize operation of those facilities. Nonetheless, for the reasons discussed below, we exercise discretion to protect those stations that hold a Class A license today and that had an application for a Class A construction permit pending or granted as of February 22, 2012.

34. Petitioners do not dispute that, on February 22, 2012, they were not Class A licensees nor did they have an application for a license to cover a Class A facility on file, and thus are not entitled to mandatory preservation. In declining to exercise discretionary protection for such stations, we explained that there were approximately 100 stations in this category and that protecting them would increase the number of constraints on the repacking process, thereby limiting our repacking flexibility. In late-filed pleadings, the LPTV Coalition and Abacus dispute the number of stations in this category. As an initial matter, we dismiss these filings as late-filed petitions for reconsideration, but will treat them as informal comments. The number of formerly out-of-core Class A-eligible LPTV stations that had not filed an application for a license to cover a Class A facility as of February 22, 2012 was readily available via CDBS station records before the deadline for filing Petitions for Reconsideration. Thus, there were no extraordinary circumstances precluding parties from presenting their arguments in a timely fashion. Accordingly, we deny Abacus's Petition for Leave to File Supplemental Reconsideration and the LPTV Coalition's Petition for Leave to Amend. We affirm the statement in the *Incentive Auction R&O* that there are approximately 100 formerly out-of-core Class A-Eligible LPTV stations that had not filed an application for a license to cover a Class A facility as of February 22, 2012. While the LPTV Coalition asserts that they have not been provided with a list of such stations, the stations falling in this category can be identified using the Consolidated Database System (''CDBS''). Parties have provided no data or analysis undermining our findings on the number of stations in this category.

35. We also reject on alternative and independent grounds petitioners' claims that they are entitled to protection under the CBPA. As an initial matter, petitioners' claims are late. To the extent they believe they were entitled to issuance of a Class A license when they were assigned in-core channels, they should have objected several years ago when the Media Bureau issued their in-core construction permits without also issuing a Class A license. In any event, we reject petitioners' view. While petitioners note that the CBPA required the Commission to issue Class A licenses to out-of-core Class A-eligible LPTV stations ''simultaneously'' upon assignment of their in-core channels, in order to effectuate this requirement, such stations were ''require[d] . . . to file a Class A application simultaneously'' with an application for an in-core construction permit. When petitioners filed for construction permits to move to in-core channels, however, they did not file an application for a Class A license or a Class A construction permit. Rather, it was not until January 2013 when petitioners first filed applications for a Class A authorization (*i.e.,* either a Class A license or Class A permit), after they were assigned to in-core channels and after the enactment of the Spectrum Act. Under petitioners' view, the CBPA required the Commission to issue a Class A license when it assigned petitioners in-core channels, even though they had not yet submitted applications for a Class A authorization (either a license or permit). Yet the CBPA provides that the Commission shall issue a Class A license to an ''applicant for a class A license'' that is assigned a channel within the core, thereby requiring the station to have an application on file. Moreover, petitioners' view runs afoul of the Communications Act and the CBPA, both of which require the filing of an application before the Commission may issue a license.

36. Petitioners also note language from the *Class A R&O* stating that the Commission ''will not impose any time limit on the filing of a Class A application by LPTV licensees operating on channels outside the core.'' This language declines to impose a deadline on the simultaneous filing of applications for an in-core LPTV construction permit and a Class A authorization. It does not endorse the filing of an application for a Class A authorization after filing an application for an in-core construction permit. As noted in the *Incentive Auction R&O,* the Media Bureau did grant the applications of some stations that filed applications for Class A authorizations after applying for or obtaining an in-core construction permit if otherwise consistent with the Commission's rules. As a general matter, however, stations that refrained from applying for a Class A authorization until after applying for or obtaining an in-core construction permit are not eligible for the simultaneous grant of a Class A authorization along with the grant of their in-core LPTV construction permit.

37. While petitioners note that the CBPA requires the Commission to ''preserve the service areas of low-power television licensees pending the final resolution of a class A application,'' this provision applies only ''pending the final resolution of a class A application.'' Petitioners, however, did not have applications for Class A licenses or Class A permits that were ''pending . . . final resolution'' on February 22, 2012, thus this provision of the CBPA does not apply.

38. Petitioners also note language from the *Class A R&O* in which the Commission stated that it would ''commence contour protection for [out-of-core stations] upon issuance of a construction permit for an in-core channel.'' This language clarified that protection of a station's contour would not have to wait until the filing of an application for ''a license to cover construction'' of the in-core channel. To implement this approach, the Media Bureau required an out-of-core Class A eligible LPTV station to file an FCC Form 346 for a construction permit for an in-core LPTV facility and, at the same time, an FCC Form 302–CA for a Class a construction permit. When petitioners filed an FCC Form 346, however, they did not file the FCC Form

302–CA and thus were not entitled to contour protection.

39. Petitioners further claim that they are similarly situated to KHTV–CD, a formerly out-of-core Class A-Eligible LPTV station that filed an application for a license to cover a Class A facility after February 22, 2012 but to which we extended discretionary protection. As an initial matter, we dismiss petitioners' arguments on procedural grounds. The *Incentive Auction NPRM* squarely raised the question of which facilities to protect in the repacking process, proposing to interpret the Spectrum Act as mandating preservation only of full-power and Class A facilities that were licensed, or for which an application for license to cover was on file, as of February 22, 2012. Recognizing that it was not a Class A licensee as of February 22, 2012, KHTV–CD put forth in response to the *Incentive Auction NPRM* evidence demonstrating why it should be afforded discretionary protection. Like KHTV–CD, petitioners were not Class A licensees as of February 22, 2012. Unlike KHTV–CD, however, petitioners did not attempt to demonstrate in response to the *Incentive Auction NPRM* why they should be afforded discretionary protection. Rather, on reconsideration, petitioners for the first time attempt to explain why they also should be extended discretionary protection. They have not shown, however, why they were unable to raise these facts and arguments before adoption of the *Incentive Auction R&O*. Indeed, all of the evidence put forth by petitioners, including the date when they were granted a Class A license, preceded adoption of the *Incentive Auction R&O*. Accordingly, we dismiss petitioners' claims that they are entitled to discretionary protection because they rely on facts and arguments not presented to the Commission before the *Incentive Auction R&O* was adopted and petitioners have not attempted to demonstrate compliance with the exceptions for such filings found in section 1.429(b) of our rules.

40. As an alternative and independent ground, we deny petitioners' claims that they are similarly situated to KHTV–CD. First, as described in the *Incentive Auction R&O*, KHTV–CD filed an application for a license to cover its Class A facility just two days after enactment of the Spectrum Act on February 22, 2012. By contrast, despite receiving in-core construction permits in 2009 (Videohouse) and 2012 (Abacus), petitioners did not file applications for licenses to cover their Class A facilities until January 2013, almost a year after enactment of the Spectrum Act. Second, KHTV–CD documented repeated efforts over the course of a decade to locate an in-core channel and convert to Class A status, including filing in July 2001 an initial application for a license to cover a Class A facility. By contrast, petitioners do not document any efforts to locate an in-core channel before 2009, almost a decade after passage of the CBPA. Third, beginning in 2001, KHTV–CD had either an application for a license to cover a Class A facility or an application for a Class A construction permit on file with the Commission in which it certified that it was meeting, and would continue to meet, all Class A operating requirements and applicable full power requirements. By contrast, petitioners did not make these certifications in an application filed with the Commission until January 2013. Petitioners vaguely assert that their service includes ''locally produced, locally originated programming,'' but, unlike KHTV–CD, they do not state, nor did they certify in an application filed with the Commission before January 2013, that they were meeting and would continue to meet, all Class A operating requirements and applicable full power requirements.

41. We also reject petitioners' claim that they are similarly situated to stations in other categories the Commission elected to protect in the repacking process. As an initial matter, with the exception of new full power stations not licensed as of February 22, 2012, all of the stations in these categories were full-power or Class A licensees as of February 22, 2012 and thus entitled to mandatory preservation, unlike petitioners, who remained LPTV licensees as of February 22, 2012. In the *Incentive Auction R&O*, we exercised discretion to protect certain modifications of these licensed full-power or Class A facilities because the impact on repacking flexibility would be minimal while, on the other hand, there were significant equities in favor of preservation. We explained why the balance was different for formerly out-of-core Class A-eligible LPTV stations that had not filed applications for licenses to cover Class A facilities as of February 22, 2012. Petitioners offer no basis to revisit this balance.

42. Based on examination of the record, we will exercise discretion to protect stations in addition to KHTV–CD that hold a Class A license today and that had an application for a Class A construction permit pending or granted as of February 22, 2012. We find that there are significant equities in favor of protection of these stations that outweigh the limited adverse impact on our repacking flexibility. By filing an application for a Class A construction permit prior to February 22, 2012, each of these stations documented efforts prior to passage of the Spectrum Act to remove their secondary status and avail themselves of Class A status. Under the Commission's rules, these stations were required to make the same certifications as if they had applied for a license to cover a Class A facility. Among other things, each was required to certify that it ''does, and will continue to, broadcast'' a minimum of 18 hours per day and an average of at least three hours per week of local programming and that it complied with requirements applicable to full-power stations that apply to Class A stations. Thus, prior to the enactment of the Spectrum Act, such stations had certified in an application filed with the Commission that they were operating like Class A stations. In addition, the licensees of these stations may not have known that the stations were not entitled to mandatory protection under the Spectrum Act. By contrast, as noted above, petitioners did not certify continuing compliance with Class A requirements in an application filed with the Commission until after the enactment of the Spectrum Act, and they had no justification for not seeking discretionary protection in response to the *Incentive Auction NPRM*.

43. As requested by the LPTV Coalition, we clarify certain issues pertaining to those Class A stations that will not be protected in the repacking process. First, as explained in the *Incentive Auction R&O,* if such a station is displaced in the repacking process, it may file a displacement application during one of the filing opportunities for alternate channels. The Media Bureau has delegated authority to determine whether such stations should be permitted to file for a new channel along with priority stations or during the second filing opportunity. Second, such Class A stations are not eligible to participate in the reverse auction and thus may not submit channel sharing bids. We have recently proposed, however, to allow Class A stations to channel share outside of the auction context. Third, such stations are not eligible to receive reimbursement for relocation costs. The reimbursement mandate set forth in section 1452(b)(4) applies only to full power and Class A television licensees that are involuntarily ''reassigned'' to new channels in the repacking process pursuant to section 1452(b)(1)(B)(i). The unprotected Class A stations will not be protected in the repacking process, and thus will be not ''reassigned under

[section 1452(b)(1)(B)(i)]'' as required to fall within section 1452(b)(4).

d. LPTV and TV Translator Stations

(i) Repacking Protection

44. We deny ATBA's, Mako's, and USTV's requests. ATBA's request is incompatible with our auction design: granting it would compromise the basic auction design principle of speed, which ''is critical to the successful implementation of the incentive auction.'' In addition, channel assignments will be provisional until the final TV channel assignment plan is established after the final stage rule is satisfied, so the analysis ATBA advocates during the reverse auction bidding process would not be useful in assessing the potential impact on LPTV service.

45. Moreover, we cannot conclude that we must further analyze the potential impact of the incentive auction on the LPTV service before conducting the repacking process. As we explained in the *Incentive Auction R&O,* the Spectrum Act does not require protection of LPTV stations, which always have been subject to displacement by primary services. Although we have limited discretion to extend repacking protection beyond the requirements of the statute, we have done so only with respect to the facilities of ''broadcast television licensees'' as defined in the Spectrum Act, that is, full-power or Class A stations. Based on careful consideration of the factors relevant to our exercise of discretion, we declined to extend repacking protection to LPTV stations. Accordingly, we deny Free Access' claim that, for a given PEA, we cannot repurpose more spectrum than is vacant before the reverse auction or than is relinquished in the reverse auction, until all LPTV and translator stations are relocated. Such an approach would require protection of LPTV stations in the repacking process, which we decline to do for the reasons stated above and in the *Incentive Auction R&O.* Moreover, despite Free Access' claims, we have already rejected the argument that LPTV stations' spectrum usage rights are protected from taking by the Fifth Amendment. Nevertheless, recognizing the important services provided by the LPTV stations, we adopted a number of measures to mitigate the potential impact of the repacking process on LPTV stations, and initiated a separate proceeding to consider additional measures. In short, we have taken into consideration the potential impact of the repacking process on LPTV stations in this proceeding, and are not required to conduct additional analysis. For the same reasons, we reject ATBA's suggestion that we must consider the potential impact of LPTV displacement on the diversity of broadcast voices before carrying out the incentive auction. LPTV and TV translator stations have always been at risk of displacement by primary services, yet Congress provided specifically that the Spectrum Act does not alter that risk.

46. We also disagree with Mako that our decision not to protect LPTV and TV translator stations in the repacking process ''altered'' LPTV and TV translator stations' spectrum usage rights in contravention of section 1452(b)(5). As explained in the *Vacant Channel NPRM*, we interpret section 1452(b)(5) as a rule of statutory construction, not a limit on the Commission's authority. In any event, LPTV and TV translator stations have always operated on a secondary basis with respect to primary licensees, which may be authorized and operated without regard to existing or proposed LPTV and TV translators. Any LPTV displacement as a result of the incentive auction, therefore, does not ''alter the spectrum usage rights of low power television stations.'' Mako counters that this is the first time that the LPTV industry ''will be subject to losing their station licenses.'' However, LPTV stations have always operated in an environment where they could be displaced from their operating channel by a primary user and, if no new channel assignment is available, forced to go silent. The potential impact of the repacking process is no different.

47. We also disagree with Mako that displacement of an LPTV or TV translator station is a ''revocation'' requiring an order to show cause and a hearing. Displacement does not ''revoke'' LPTV or TV translator licenses for purposes of section 312 of the Act because it does not require termination of operations or relinquishment of spectrum usage rights; displacement requires only that LPTV and TV translator stations vacate the channel on which they are operating. Indeed, displacement is not even a license modification, as LPTV and TV translator stations may be displaced by primary services at any time.

48. We also disagree with Mako's argument that the Commission's conclusion that the CBPA does not protect LPTV and TV translator stations vis-à-vis Class A stations during the repacking process cannot be justified based on the CBPA's ''fail[ure] to 'anticipate' a broadcast television incentive auction would be held at some future point.'' This argument is based on a misreading of the *Incentive Auction R&O.* Our statutory interpretation in the *Incentive Auction R&O* was based on the fact section 336(f)(7)(B) ''grants LPTV and TV translator stations protection against changes to facilities *proposed by Class A licenses,*'' whereas channel reassignments in the repacking process will be carried out by the Commission; Class A licensees will neither initiate such reassignments nor have the right to protest the resulting license modifications. Our interpretation of the statutory language was not based on the fact that Congress could not have anticipated the incentive auction and the repacking process when it enacted the CBPA in 1999. Nevertheless, we note that our interpretation harmonizes the two statutes in a way that Mako's fails to do: reading section 336(f)(7)(B) to require the Commission to protect LPTV and TV translator stations vis-à-vis Class A stations would create tension with the statutory preservation mandate of section 1452(b)(2), which directs the Commission to make all reasonable efforts to preserve the coverage area and population served of Class A stations, not LPTV or TV translator stations.

49. Finally, we also disagree with USTV that ''the FCC clearly erred when it failed to protect stations that Congress identified in the Digital Data Services Act (DDSA) for its LPTV data pilot project.'' In the DDSA, Congress created a project to allow 13 LPTV stations to begin operating with digital facilities prior to the adoption of digital rules for the low power television services. USTV maintains that Congress ''clearly expressed its intention that the 13 stations identified in the DDSA should be permitted to operate so that they can introduce digital data services on low-power TV spectrum.'' USTV further argues that ''the Spectrum Act did not repeal the DDSA or give the FCC authority to abrogate or ignore its provisions.'' Contrary to USTV's argument, stations authorized to operate under the terms of the DDSA remain secondary in nature under the Commission's rules, and nothing in the DDSA, the Commission's order implementing the DDSA, the Commission's rules, or the Spectrum Act mandates that DDSA stations be protected in the repacking process. Furthermore, as USTV points out, the pilot program never materialized, and there are no stations that are currently operating under the program to qualify even if we were to decide to extend discretionary protection to them.

(ii) Measures To Assist LPTV and TV Translators

50. We decline to grant ATBA's request that we reconsider our decision not to allow displaced LPTV stations to operate with alternative technical standards and non-broadcast type facilities. Although we are sympathetic to the objectives and concerns cited by ATBA and WatchTV, grant of ATBA's request would require the creation of new technical standards that, in turn, would require in-depth analysis and complete overhaul of the existing LPTV rules and policies. We conclude that such a supplementary project is infeasible in the incentive auction proceeding. We believe that ATBA's request is appropriately addressed in the rulemaking in MB Docket No. 03–185 that we initiated to address the potential impact of the incentive auction and the repacking process on the LPTV service. Indeed, we invited parties to raise such matters in that proceeding and many commenters have raised this issue there.

51. We affirm our decision to grant a processing priority to displacement applications for DRTs. As we found in the *Incentive Auction R&O*, replacement translators are still an important tool for full power stations to replace service lost in the digital transition. Contrary to WatchTV's assertion, DTS may not work in all cases and digital TV boosters are not authorized by the rules. For these reasons, to ensure that television stations are able to restore service from DRT facilities that are displaced in the repacking process, we affirm our decision to give displacement applications for DRTs a displacement priority.

52. In addition, we reject USTV's contention that we should have provided a displacement priority for the 13 LPTV stations. As indicated above, nothing in the DDSA or the Spectrum Act mandates priority treatment of DDSA stations in the repacking process, and the same applies to the post-auction transition. Moreover, there are no stations operating in the pilot program to qualify for such a priority even if we were to provide one.

e. Other Issues

53. We dismiss and, on alternative and independent grounds, deny the ALF and Beach TV Petitions. As an initial matter, we dismiss the Petitions on procedural grounds. The *Incentive Auction NPRM* squarely raised the question of which facilities to protect in the repacking process and which stations would be eligible to participate in the reverse auction. On reconsideration, petitioners for the first time attempt to explain why they should be protected in the repacking process or allowed to participate in the reverse auction. They have not shown, however, why they were unable to raise these facts and arguments before adoption of the *Incentive Auction R&O*. Indeed, the evidence put forth by petitioners precedes the adoption of the *Incentive Auction R&O*. Accordingly, we dismiss the Petitions because they rely on facts and arguments not presented to the Commission before the *Incentive Auction R&O* was issued and petitioners have not attempted to demonstrate compliance with the exceptions for such filings found in section 1.429(b) of our rules.

54. As an alternative and independent ground, we deny the Petitions because neither petitioner is a ''broadcast television licensee'' entitled to mandatory protection in the repacking process or eligible to participate in the reverse auction. Beach TV is the licensee of an LPTV station that has never filed an application for a Class A license. ALF is a mere applicant for a new full power television construction permit. While we determined that full power or Class A licensees that are the subject of non-final license validity proceedings or downgrade orders will be protected in the repacking process, and may participate in the reverse auction until the proceeding or order becomes final and non-reviewable, this treatment applies to stations that previously held full power or Class A licenses. Beach TV and ALF have never held such licenses. We reject ALF's claim that excluding it from the reverse auction denies it due process. To the extent that ALF believed there was unreasonable delay at any stage in the processing of its application, it had the opportunity to file a petition for writ of mandamus to compel agency action.

55. We also dismiss Beach TV's request that we protect it in the repacking process as a matter of discretion. We explained in the *Incentive Auction R&O* the reasons for declining to extend discretionary protection to LPTV stations, such as Beach TV. As discussed above, we affirm that decision. In addition, as we stated above, we extended discretionary protection only to otherwise eligible ''broadcast television licensees,'' *i.e.,* full power and licensed Class A stations. Moreover, despite its claim, Beach TV is unlike KHTV–CD, a formerly out-of-core Class A-eligible LPTV station that we elected to protect in the repacking process. Unlike Beach TV, KHTV–CD's eligibility for Class A status has never been in doubt and it holds a Class A license. Moreover, unlike Beach TV, KHTV–CD documented repeated efforts over the course of a decade to locate an in-core channel and convert to Class A status.

3. International Coordination

56. We deny the requests for reconsideration by Affiliates Associations, Gannett, ATBA, Block, and CDE as they relate to international coordination. We must, of course, take Canadian and Mexican stations into account in determining the assignment of channels particularly in U.S. markets along the borders, but completion of border coordination is not a precondition to repacking as either a legal or practical matter. International coordination is an ongoing process which by its nature involves negotiation with sovereign nations whose actions the FCC does not control. The Commission is familiar with matters of international coordination, having dealt with similar issues every time it auctions new spectrum licenses. The Spectrum Act affords the FCC discretion regarding how to implement the coordination process, including the timing of that process. As CTIA points out, therefore, we reasonably interpreted the Spectrum Act as not imposing a temporal requirement on international coordination. Because we fully considered and rejected in the *Incentive Auction R&O* the arguments of Affiliates Associations and ATBA that the language of the Spectrum Act should be interpreted as requiring the Commission to complete international coordination prior to the auction or the repacking process, we dismiss these arguments on procedural grounds. Block Stations' request that we reconsider our statutory interpretation because the Spectrum Act does not require that the incentive auction be conducted right away lacks merit: delay in our schedule for conducting the incentive auction is not necessary and would disserve the public interest.

57. We disagree with NAB that, if international coordination is not completed in advance of the auction, stations in border areas risk being forced to go dark. As discussed below, we expect to reach timely arrangements with Canada and Mexico that will enable us to carry out the repacking process in an efficient manner that is fully consistent with the requirements of the statute and our goals for the auction. As we explained in the *Incentive Auction R&O,* however, all that is required as a practical matter in order to carry out the repacking process in the border areas is a mutual understanding with Canada and Mexico

as to how the repacking process in the U.S. will be conducted to protect border stations in all countries from interference, and the requisite information about the location and operating parameters of Canadian and Mexican stations that affect the assignment of television channels in the U.S. The mutual understanding that we anticipate reaching with Canada and Mexico regarding the technical criteria to be used in repacking will enable us to secure timely approval of individual channel assignments for U.S. stations after the auction. Accordingly, we are not persuaded that stations in border areas are at risk of going dark if coordination is not complete. In the unlikely event that a border station has not been able to complete construction on its new channel assignment by the end of the 36-month construction period, that station may request authorization to operate on temporary facilities as provided in the *Incentive Auction R&O.* We will make every reasonable effort to accommodate such requests.

58. We also reject the other arguments of Affiliates Associations, CDE, and NAB regarding border stations. We are not persuaded that border stations face an unfair risk of being deprived of the opportunity for reimbursement in the event that the FCC cannot complete coordination prior to the incentive auction and the repacking process. In the event that international coordination is not completed prior to the commencement of the incentive auction, the reimbursement process we adopted in the *Incentive Auction R&O* will facilitate a smooth transition for border stations that provides a fair opportunity to obtain reimbursement. We fully intend to make initial allocations quickly to help broadcasters initiate the relocation process. If cases occur in which a broadcaster's move to a new channel is delayed because of international coordination, the delay need not jeopardize reimbursement. We expressly provided broadcasters the opportunity to receive initial allocations based on estimated reimbursement costs. We also afforded stations the flexibility to update their cost estimates if they experience a change in circumstances during the reimbursement period. Moreover, our process recognizes that construction for certain stations may run up against the end of the 36-month reimbursement period and therefore includes a final allocation, to be made based on actual costs incurred by a date prior to the end of the three-year period, in addition to a station's estimated expenses through the end of construction. For any relocating station, this final allocation will occur during the statutory reimbursement period, even if construction is not complete until after the end of the three-year reimbursement period. We believe this process will provide sufficient flexibility for any stations that encounter difficulties constructing new facilities located along the borders with Mexico and Canada. We explain in Section IV.C *infra* how the reimbursement process is designed to address problems or delays that may arise for stations in the post-auction transition process.

59. While we regard the confidentiality of the ongoing government-to-government incentive auction coordination discussions as critical to their ultimate success, there are indications that our ongoing coordination efforts are advancing our goal to reach mutual spectrum reconfiguration arrangements with Canada in a manner that is fully consistent with our statutory mandate and our goals for the auction. We note that on December 18, 2014, Industry Canada initiated a consultation (similar to a Notice of Proposed Rulemaking) that proposes a joint reconfiguration of the 600 MHz Band for mobile use. The Industry Canada consultation proposed to adopt the U.S. 600 MHz Band Plan framework and to commit to repurposing the same amount of spectrum as the U.S., as determined in the FCC's incentive auction. Moreover, Industry Canada's consultation also expressly states that Canada would have to make a decision on the harmonized band plan *before* the incentive auction in the U.S. The Industry Canada consultation also proposes harmonizing Canada's approach for developing a TV allotment plan with that of the U.S. It also recognizes the mutual benefits of a joint repacking that takes into consideration broadcasters on both sides of the border and ensures maximum benefits with minimum disruption of broadcast services, resulting in a more efficient reassignment of broadcasting channels and more spectrum being made available for mobile services in both countries. In light of the consultation, we anticipate that our coordination efforts will culminate in an arrangement that captures the mutual benefits to Canada and the U.S. of a harmonized 600 MHz Band Plan approach that will repurpose the spectrum for mobile broadband services and optimize television channel placement on both sides of the border.

60. FCC staff also continues to collaborate closely with Mexico's Instituto Federal de Telecomunicaciones (IFT) on attaining a spectrum reconfiguration arrangement that would incorporate unified objectives regarding spectrum allocation and accommodate television broadcast and wireless services along the common border. As part of Mexico's constitutional reforms adopted in 2012, IFT is committed to completion of Mexico's DTV transition by the end of 2015. The FCC and IFT, through the established coordination process, are assigning Mexican DTV channels below channel 37 to the extent possible while also providing channels for the FCC to use in repacking. Considering the efforts and progress made by both Administrations towards developing a comprehensive solution that involves the best and future use of current television spectrum, we anticipate the eventual completion of an arrangement with Mexico that will enable us to carry out the repacking process in a manner fully consistent with the requirements of the statute and our goals for the auction. In any event, prior to the start of the incentive auction, we will release information regarding the Mexican stations and allotments that will need to be protected in the repacking.

61. Finally, we reject ATBA's requests for reconsideration with regard to LPTV stations in the border areas. Contrary to ATBA's argument, the Spectrum Act places no special limits on displacement of LPTV licensees in border areas. ATBA notes that section 1452(b)(1)(B)(i) provides that the Commission may, subject to international coordination, make ''reassignments'' of ''television channels,'' and argues that ''television channels'' should be read broadly to include LPTV stations. We reject this argument. As an initial matter, nothing in section 1452(b) ''shall be construed to alter the spectrum usage rights of [LPTV] stations,'' which as we have explained have never included protection from displacement by primary services. Moreover, while section 1452(b)(1)(B)(i) refers to the Commission's ''reassignment'' of ''television channels,'' the Commission will not be ''reassign[ing]'' the television channels of LPTV stations. Rather, LPTV stations may be displaced when broadcasters begin operations on their new channels post-repacking and required to locate new channels, but they will not be ''reassigned'' as that term is used in the Spectrum Act. Further, ATBA's concern regarding the risk of LPTV stations being subject to ''double-displacement and double-builds'' is ill-founded. Our post-auction coordination process for relocating stations will require Canada's or

Mexico's concurrence before the Media Bureau issues a construction permit. Once a channel assignment has been coordinated with Canada or Mexico, it is unlikely that the relocating station will be subjected to another coordination.

B. Unlicensed Operations

1. Television Bands

62. We dismiss Free Access' request. In the *Incentive Auction R&O,* the Commission indicated that it intended, following notice and comment, to designate one unused television channel following the repacking process for shared use by unlicensed devices and wireless microphones. The Commission stated that it sought to strike a balance between the interests of all users of the television bands, including the secondary broadcast stations and white space device operators, for access to the UHF TV spectrum. As indicated in the *Incentive Auction R&O,* the final decision on preserving one such television channel, and precisely how to do so, would follow additional notice and comment. Accordingly, we dismiss Free Access' challenge of the Commission's action on this issue in the *Incentive Auction R&O* given the absence of a final decision. On June 11, 2015, the Commission adopted the *Vacant Channel NPRM* proposing to take action to preserve a vacant television channel, following the repacking process, for use by both unlicensed white space devices and wireless microphones. This proceeding provides Free Access with an opportunity to express its concerns to the Commission on the proposal to preserve a television channel for use by unlicensed white space devices as well as wireless microphones.

2. Guard Bands and Duplex Gap

63. We deny Qualcomm's request to reconsider the Commission's decision in the *Incentive Auction R&O* to permit unlicensed white space devices to operate in the guard bands and duplex gap. The Commission determined in the *Incentive Auction R&O* that the part 15 rules provide an ''appropriate and reliable framework for permitting low power uses on an unlicensed basis,'' while also recognizing that a further record would be necessary to establish the technical standards to govern such use in the guard bands and duplex gap. The Commission also emphasized that, ''consistent with the Spectrum Act, unlicensed use of the guard bands will be subject to the Commission's ultimate determination that such use will not cause harmful interference to licensed services.'' Subsequent to the *Incentive Auction R&O,* the Commission initiated a rulemaking proceeding to develop technical and operational rules to enable unlicensed devices to operate in the guard bands and duplex gap without causing harmful interference to licensed services. Specifically, on September 30, 2014, the Commission adopted the *Part 15 NPRM* that proposed rules for unlicensed white space device operation in the TV bands, repurposed 600 MHz Band, guard bands (including the duplex gap), and on channel 37.

64. We disagree with Qualcomm that the Commission's decision is arbitrary, capricious, or otherwise violates the APA. The procedure the Commission is following in this proceeding (first deciding to allow unlicensed use of certain frequency bands, and then proposing specific technical rules) is similar to the procedure the Commission followed in the TV white spaces proceeding (ET Docket No. 04–186). In that proceeding, the Commission decided to allow fixed unlicensed use of certain vacant channels in the TV bands, but did not have a sufficient record to adopt technical rules for such operation. It adopted the *TV White Spaces First R&O and FNRPM* that made the decision but did not adopt any technical rules. Along with this decision, the Commission included a further notice of proposed rulemaking portion proposing specific technical rules, which it followed subsequently with the *TV White Spaces Second Incentive Auction R&O* in which it adopted technical rules. Thus, there is precedent for the Commission's decision to decide first to permit unlicensed operations in a frequency band—in this case in the guard bands and duplex gap—subject to the subsequent proceedings to develop technical rules to allow such operation. Moreover, the Commission has broad authority to decide how best to manage its decision-making process. Also, we disagree that the Commission disregarded Qualcomm's filings alleging that unlicensed use of the guard bands and duplex gap would result in harmful interference to licensed services. The Commission considered them when making its decision, specifically recognizing that parties disagreed on certain assumptions in Qualcomm's technical analysis, and decided that these disagreements would be more appropriately addressed in the rulemaking proceeding that it initiated subsequent to the *Incentive Auction R&O.*

65. We also disagree with Qualcomm's contention that unlicensed operations in the 600 MHz Band would destroy the fungibility of the licensed spectrum blocks and reduce their value. This argument is based on the premise that unlicensed operations in the guard bands and duplex gap will definitely cause harmful interference to licensed services in adjacent bands. As discussed above, we will not permit any unlicensed operations in the guard bands and duplex gap that will cause harmful interference to licensed services.

3. Channel 37

66. *Background.* The current part 15 rules generally prohibit operation of unlicensed devices on channel 37. The Commission ceased certifying new unlicensed medical telemetry transmitters for operation on channel 37 when it established the WMTS as a licensed service under part 95, but it permits previously authorized medical telemetry equipment to continue operating on channel 37. The rules do not allow the operation of white space devices on channel 37. The Commission excluded white space devices from operating on channel 37 to protect the WMTS and the Radio Astronomy Service (''RAS'') since channel 37 is not used for TV service and therefore has different interference considerations than those at issue in the white spaces proceeding.

67. In the *Incentive Auction R&O,* the Commission decided that unlicensed devices will be permitted to operate on channel 37, subject to the development of the appropriate technical parameters for such operations, including the use of the white space databases to protect WMTS operations at their fixed locations. It stated that unlicensed operations on channel 37 will be authorized in locations that are sufficiently removed from WMTS users and RAS sites to protect those incumbent users from harmful interference. In making this decision, the Commission recognized the concerns of WMTS equipment manufacturers and users about the potential for unlicensed operations on channel 37 to cause harmful interference to the WMTS. It also recognized that parties disagreed on the appropriate interference analysis methodology and the ability of the TV bands databases to provide adequate protection to the WMTS. The Commission decided that it would ''permit unlicensed operations on channel 37 at locations where it is not in use by incumbents, subject to the development of the appropriate technical parameters to protect incumbents from harmful interference,'' and that it would consider these issues

as part of a separate rulemaking proceeding ''with the objective of developing reliable technical requirements that will permit unlicensed operations while protecting the WMTS and RAS from harmful interference.''

68. GE Healthcare (''GEHC'') and the WMTS Coalition seek reconsideration of the Commission's decision to allow unlicensed devices to operate on channel 37. The petitioners argue that the Commission should consider whether to permit sharing only after it has completed a full and balanced inquiry into whether operating and technical rules can be developed that assure that harmful interference will not occur to the WMTS. GEHC claims that the Commission's decision to permit unlicensed operations on channel 37 is a policy change and a rule change because the Commission revised section 15.707(a) to permit unlicensed operations in the 600 MHz Band, including on channel 37, and thus its request for reconsideration is appropriate and ripe for review. GEHC and the WMTS Coalition also claim that the Commission's decision is inconsistent with past precedents that WMTS and unlicensed devices could not share the band. The WMTS Coalition states that the Commission has given careful consideration to the advisability of band sharing on channel 37 between unlicensed devices and the WMTS several times over the last twelve years, and that each time it has done so, it determined that channel 37 should not be subject to sharing with unlicensed devices. GEHC argues that the Commission's failure to explain its departure from precedent or how harmful interference to WMTS operations from unlicensed devices will be avoided violates the APA. The WMTS Coalition also argues that the decision to allow sharing is premised upon the unrealistic assumption that current and future WMTS sites can be accurately identified. It states that the geographic coordinates in the WMTS database are not sufficiently accurate for frequency coordination, and that some hospitals have either not kept their data updated or have not registered at all with the database. The WMTS Coalition argues that by determining in advance that sharing of channel 37 will occur, the Commission has tipped the scales away from a balanced analysis of the risks and benefits of allowing sharing. We received oppositions to the GEHC and WMTS Coalition petitions from Google/Microsoft, WISPA, OTI/PK and Sennheiser.

69. *Discussion.* We deny the requests of GEHC and the WMTS Coalition to reverse the Commission's decision to permit unlicensed white space devices to operate on channel 37. The Commission made this decision subject to the development of appropriate technical parameters for such operations, so unlicensed devices cannot operate on channel 37 unless such rules are promulgated. Subsequent to the *Incentive Auction R&O,* the Commission initiated a rulemaking proceeding to develop technical and operational rules to enable unlicensed white space devices to access and operate on channel 37, through use of a database, in a manner that would not cause harmful interference to the WMTS and RAS. Specifically, on September 30, 2014, the Commission adopted a *Notice of Proposed Rulemaking* that proposes rules for unlicensed operation in the TV bands, repurposed 600 MHz Band, guard bands (including the duplex gap), and on channel 37.

70. We disagree with GEHC that the Commission's action to allow unlicensed white space device operation on channel 37 is arbitrary, capricious, or violates the APA. As discussed above, the Commission followed a similar course in the TV white spaces proceeding in which it decided to allow unlicensed white space device operation in particular frequency bands (the TV bands in that case), followed by a proposal to develop the appropriate technical requirements to prevent interference to authorized services in those bands. As with the guard bands, the decision in the *Incentive Auction R&O* was based on the record, recognizing that the parties had different analyses based on different assumptions. The decision is conditioned on developing technical rules to protect incumbent services from harmful interference. As noted above, the Commission has broad authority to decide how best to manage its decision-making process and to order its docket ''as will best conduce to the proper dispatch of business and to the ends of justice.'' Contrary to GEHC's assertion, the changes that the Commission made to section 15.707(a) in the *Incentive Auction R&O* do not allow operation of unlicensed white space devices on channel 37 prior to the development of technical requirements. The purpose of the changes to section 15.707(a) is to allow the continued operation of white space devices in the 600 MHz Band after the incentive auction at locations where licensees have not yet commenced service. The 600 MHz Band as defined in part 27 does not encompass channel 37, so the Commission's changes to section 15.707(a) in the *Incentive Auction R&O* do not allow unlicensed device operation on channel 37.

71. The Commission adequately explained its policy change to allow unlicensed white space devices to operate on channel 37. As discussed above, when the Commission decided in 2006 to exclude white space devices from operating on channel 37 to protect the WMTS and RAS, it noted that channel 37 has different interference considerations than those at issue in the white spaces proceeding. In particular, the white space proceeding focused on unlicensed devices operating on channels used for the broadcast television service, so the Commission developed technical requirements to protect television and other operations in the TV bands, such as wireless microphones. The Commission did not conclude that sharing with the WMTS and RAS was not possible; it simply chose not to address the issue of such sharing in the TV white spaces proceeding. The Commission explained in the *Incentive Auction R&O* that since the time it made the decision to prohibit unlicensed use of channel 37, it has designated multiple TV bands database administrators, has had extensive experience working with their databases, and has a high degree of confidence that they can reliably protect fixed operations. The Commission further explained that the fixed locations where the WMTS is used are already registered in the American Society for Health Care Engineering (''ASHE'') database, and these data could be added to the TV bands databases. The Commission recognized concerns that WMTS location information in the ASHE database may be imprecise or missing, and stated that these could be addressed by establishing conservative separation distances from unlicensed devices and by reminding hospitals and other medical facilities of their obligation under the rules to register and maintain current information in the database. The Commission is currently considering these issues in the *Part 15 NPRM.*

C. Other Services

1. Channel 37 Services

72. *Background.* The WMTS, which operates licensed stations on channel 37 in the UHF Band, is used for remote monitoring of patients' vital signs and other important health parameters (*e.g.,* pulse and respiration rates) inside medical facilities. WMTS includes devices that transport the data via a radio link to a remote location, such as a nurse's station, for monitoring. After the incentive auction, the services that

will operate in the frequency bands adjacent to the WMTS will depend on the amount of spectrum recovered in the incentive auction. If more than 84 megahertz is recovered, there will be three megahertz guard bands on each side of channel 37, with wireless downlink spectrum above and below these guard bands. If exactly 84 megahertz is recovered, there will be a three megahertz guardband above channel 37 to separate this channel from wireless downlink spectrum, while channel 36 will continue to be used for television. If less than 84 megahertz is recovered, channels 36 and 38 will both continue to be used for television.

73. The decision to provide for a three megahertz guard band between WMTS and 600 MHz downlink operations balanced the need to protect WMTS facilities from interference with the need for new 600 MHz licensees to have flexibility to deploy base stations where needed to provide coverage over their service areas. The decision not to require coordination was supported by the Commission's technical analysis, based on protection criteria GEHC provided in its comments. This analysis showed that three megahertz guard bands adjacent to channel 37 requires only reasonably short separation distances to protect WMTS from new 600 MHz operations. The Commission decided not to provide for enhanced protection of WMTS if additional TV stations are placed in channels 36 or 38 as a result of the repacking process. Instead, we chose to rely on the existing DTV out-of-band emission (OOBE) limits, and noted that the extent of potential interference to WMTS would depend in large part on the locations of any TV stations repacked to channels 36 or 38 in relationship to health care facilities.

74. In its Petition, GEHC claims the Commission erred when it relied solely on the three megahertz guard band to protect WMTS from 600 MHz Band operations in adjacent bands, and that GEHC's revised analysis shows that greater separation distances or more stringent limits on power and out-of-band emissions from 600 MHz Band base stations are needed. GEHC makes three main claims to support its position: (1) The FCC's technical analysis inappropriately applied the protection criteria GEHC provided; (2) the FCC failed to consider interference aggregation from multiple WMTS antennas; and (3) the FCC incorrectly converted field strength to received power. GEHC further claims that the Commission ignored key concerns that allowing additional TV stations to be repacked into channels 36 and 38 will reduce WMTS spectrum capacity, increase the number of WMTS facilities that could experience interference from TV operations, cause hospitals to incur additional costs to protect their WMTS operations from harmful interference, and require hospitals to create de facto guard bands to protect their WMTS operations from harmful interference, effectively reducing the amount of usable spectrum on channel 37 for the WMTS. CTIA disagrees with GEHC, noting that their positions would threaten to limit the amount of licensed spectrum made available in the incentive auction and increase the number of new wireless licenses that are encumbered.

75. *Discussion—WMTS and 600 MHz Band services.* While we revise our technical analysis in light of GEHC's Petition, we affirm our conclusion that a three megahertz guard band between 600 MHz operations and channel 37, along with the 600 MHz Band service out-of-band emission limits we adopted, will adequately protect WMTS facilities. GEHC states that the FCC's technical analysis inappropriately applied the protection criteria GEHC provided. More specifically, it states that instead of applying the field strength protection values it provided ''at the perimeter of a registered WMTS facility,'' we applied them at the receiver. GEHC argues that this resulted in the double-counting of building penetration losses and filter rejection in the overload interference analyses and double-counting of building penetration loss in the out-of-band analysis. GEHC's maximum recommended field strength levels at the perimeter of a WMTS facility that were provided in its comments to the *Incentive Auction NPRM* were based on several tables showing a link budget analysis for overload and out-of-band interference. These tables included a term described as ''excess loss (building attenuation, etc.),'' which we included in our analysis. It was unclear from GEHC's comments that these losses had been already considered in developing their recommended field strength limits. However, based on the clarification in its petition, we now agree that these losses should not have been considered in our analysis. Accordingly, we eliminate this factor from our revised analysis shown in Appendix A.

76. While we agree that we incorrectly double-counted building losses in our original analysis, we disagree that we double-counted any WMTS receive filter attenuation outside of channel 37. GEHC developed its recommended field strength limits using the assumption that new 600 MHz licensees would be operating directly adjacent to channel 37. The 600 MHz Band Plan, however, includes three megahertz guard bands adjacent to channel 37. Based on the filter characteristics provided by GEHC, this frequency separation provides an additional 10 dB of signal attenuation. Thus, it was appropriate to include this additional 10 dB of signal loss for filter attenuation in our analysis. This is so even though the receiver which includes the filter is not located at the perimeter of the building, because the goal is to protect the receiver and the filter provides some of that protection. Such excess loss occurs after the point at which GEHC specifies the protection values must be met. But, because that loss is a real phenomenon, GEHC takes it into account when developing its protection criteria. We treat the filter attenuation in a similar manner in our analysis.

77. We also agree with GEHC that we erred by failing to consider interference aggregation from multiple WMTS antennas in our technical analysis. Because most WMTS facilities employ distributed antenna systems (''DAS'') which include many antenna elements, more than a single antenna element may receive an interfering signal. In its comments, GEHC asserted that the analysis therefore should include a 10 dB penalty for aggregating signals from ten WMTS antennas. In its Petition, GEHC states that this scenario is unlikely, and instead recommends an aggregation adjustment of three dB based on signal aggregation from two antennas. Using the revised three dB value provides an additional seven dB of margin, which would allow less stringent field strength protection values than those GEHC proposed. We take this three dB antenna aggregation factor into account in our new analysis shown in Appendix A.

78. Regarding GEHC's claim that we incorrectly converted field strength to received power, we disagree. There are many methods for converting between these units and the choice of which method to use depends on many factors, such as whether the conversion is being used to verify a measurement or to estimate an electric field at some distance from a transmitter. GEHC asserts that the formula we used, which is commonly used in measurement laboratories, unfairly biases our results by three meters (the assumed measurement distance). It states that such bias creates a 37.6 dB disparity, which is equivalent to the free space loss over the first three meters from an antenna at 611 MHz. GEHC's claim fails to recognize that the received power is being generated from a transmitter at a much greater distance than three meters.

Because signal strength attenuates exponentially over distance, the loss in that last three meters is much less than the loss over the first three meters or any other three-meter segment along the signal path. The exact difference will depend on the actual distance of the transmitter from the WMTS facility.

79. We reject GEHC's alternative formula for calculating radiated power and field strength for conducted power measurements. It cites an equation that relates power in the load (*i.e.* power received by the antenna) to the field strength. GEHC then argues an equivalency between that field strength and the transmitter equivalent isotropically radiated power (''EIRP''). GEHC fails to acknowledge that the EIRP is a function of the transmitter power and transmit antenna gain, which is at some distance from the receiving antenna. Thus, the power received by the receive antenna is not the EIRP, but the EIRP less the path loss (*e.g.,* free space loss plus any additional loss that the signal may incur as it propagates from the transmitter to the antenna).

80. We also disagree with GEHC's claims that there are several other, less serious errors in our analysis. For the overload analysis, it states that while we assumed five megahertz channels for the 600 MHz transmitter, we incorrectly considered only that portion of the 600 MHz Band power that falls in the first adjacent six megahertz channels above and below channel 37, effectively ignoring any power in the second adjacent channels. GEHC argues that such a methodology is unrealistic as it inherently assumes that power in the second adjacent channel does not exist or that the receiver's filter perfectly rejects this portion of the power. Based on the surface acoustic wave (''SAW'') filter characteristics GEHC provided, which show attenuation between approximately 40 and 60 dB beyond four to five megahertz of the channel 37 band edges (*i.e.,* into the second adjacent channel), our assumption to only consider the power in the first adjacent channel is reasonable. If we were to consider the power across additional channels, we would also need to consider the full filter attenuation across the channel; instead, we simplify our analysis and assume only 10 dB of attenuation at three megahertz from the band edge. Thus, our power assumptions are conservative. GEHC also states that we should not have integrated the partial power over the entire six megahertz adjacent channel. However, GEHC fails to offer an alternative method. Again, we believe this to be a valid simplifying assumption for the purposes of our analysis.

81. In advocating for specific field strength protection values, GEHC fails to provide information on the relationship between the results of its analysis and those field strength protection values. GEHC does, however, state that those field strength protection values are based on meeting a -37.8 dBm/MHz threshold in its overload (or blocking) analysis and on meeting an I/N ratio of -6 in its OOBE analysis. GEHC's methodology for calculating protection distance based on these protection values is straightforward. Using that same methodology, we show in Appendix A that the separation distance necessary to protect WMTS from 600 MHz operations is reasonably small. The results of our analysis show shorter separation distances than those calculated by GEHC to meet the same protection criteria for overload and OOBE interference. We acknowledge that these distances are larger than those we calculated in our analysis supporting the *Incentive Auction R&O,* but not of such a magnitude that persuades us to alter our conclusion that the vast majority of WMTS stations will not suffer any detrimental effects from the installation of new 600 MHz base stations. It is important to note that this is a worst case analysis and in most installations one or more of the parameters we assumed here will provide additional protection. Thus, we continue to believe that the three megahertz guard band along with the adopted 600 MHz service OOBE limits we adopted will adequately protect WMTS facilities while providing flexibility for new 600 MHz licensees to deploy their systems. Nevertheless, we encourage new 600 MHz licensees to be cognizant of the presence of WMTS facilities when designing their networks and when possible to take measures to minimize the energy directed towards them.

82. *WMTS and Television Services.* We decline to reconsider our decision not to limit the number of television stations that could be repacked in channels 36 and 38. Restricting repacking on channels 36 and 38 would significantly impede repacking flexibility and limit our ability to repurpose spectrum through the incentive auction. Even if channels 36 and 38 continue to be used for broadcast television after the auction, an increase in the number of stations on these channels does not correspond to an increase in the number of WMTS users that would be affected by adjacent channel TV stations. We expect that there will be many locations where TV stations can operate on channels 36 and 38 with minimal or no effect on WMTS users. Any interference that does occur to the WMTS from adjacent channel TV operations can be addressed on an as-needed basis. The potential for an adjacent channel TV station to affect a WMTS installation depends on many factors, including the TV station power and antenna height, separation distance, intervening obstacles (such as terrain, trees or buildings), and the WMTS receive antenna characteristics (such as height, gain, directionality, and location inside or outside a building). While we recognize GEHC's concern that ''hardening'' a WMTS facility against adjacent channel TV emissions involves costs, we note that many WMTS licensees have already taken such action by adding filters to their systems. Thus, we believe that the need for some facilities to take this action does not pose an insurmountable problem, or require a blanket restriction on repacking TV stations into channels 36 and 38. As CTIA points out, WMTS has never been able to rely on those channels being vacant.

83. Finally, we note that the Commission allocated three spectrum bands for the WMTS, including two bands at 1.4 GHz in addition to channel 37. In allocating this spectrum, the Commission recognized that WMTS operations on channel 37 could be affected in some instances by nearby stations on channels 36 and 38, and it stated that WMTS providers could use one of the other allocated bands in these situations. The Commission also stated that manufacturers could design their equipment to provide sufficient protection from adjacent channel interference.

2. LPAS and Unlicensed Wireless Microphones

84. We deny Sennheiser's and RTDNA's petitions requesting that additional spectrum be reserved exclusively for wireless microphone operations. We instead affirm the balanced approach we adopted in the *Incentive Auction R&O* to accommodate wireless microphone operations while also taking into account the interests of other users of the more limited spectrum in the repacked TV bands and the repurposed 600 MHz Band spectrum, including the 600 MHz Band guard bands. Considering the several actions the Commission took in the *Incentive Auction R&O,* as well as the additional actions it now is actively exploring, to accommodate wireless microphone operators' needs following the incentive auction, including the high-end professional-type needs about

which Sennheiser and RDTNA are concerned, we are not persuaded that we should provide any more spectrum exclusively for use by wireless microphone users for these types of operations.

85. The Commission took several steps in the *Incentive Auction R&O* to accommodate wireless microphone operations—including licensed wireless microphone operations—in the spectrum that would remain available for use following the incentive auction. Specifically, it provided for more opportunities for co-channel operations with television stations. It also sought to ensure that at least one channel in the TV bands would continue to be available for wireless microphone operations, stating its intent, following notice and comment, to designate one unused TV channel in each area of the country for use by wireless microphones and white space devices. As discussed above, we recently adopted the *Vacant Channel NPRM* proposing to do this. Licensed wireless microphone operators needing interference-free operations from white space devices will be able to reserve this channel for use at specified locations and times through the TV bands databases. Further, the Commission stated that it would seek comment on ways to update its rules for TV bands databases to provide for more immediate reservation of unused and available channels for use by wireless microphone operators in order to better enable them to obtain needed interference protection from white space device operations at specified locations and times. Shortly following adoption of the *Incentive Auction R&O,* in September 2014, the Commission issued the *Part 15 NPRM* proposing such revisions.

86. The Commission also indicated in the *Incentive Auction R&O* that it planned to take additional steps to ensure that spectrum for wireless microphone users—again including licensed wireless microphone users—would be available following the incentive auction. It provided that wireless microphones would be permitted to operate in the 600 MHz Band guard bands, including the duplex gap, subject to technical standards to be developed in a later proceeding. In the *Part 15 NPRM,* we are following through on that decision, including seeking comment on our proposal to provide licensed wireless microphone operators with exclusive access to four megahertz of spectrum in the duplex gap. Because wireless microphone operators today rely heavily on the current UHF Band, we provided for a transition period that would permit them to continue to operate in the repurposed 600 MHz Band spectrum for up to 39 months following issuance of the Channel Reassignment PN, subject to specified conditions, both to address their near-term needs and to help facilitate the transition of users that currently operate in this portion of the UHF Band to spectrum that is or will be available for their use. In order to accommodate wireless microphone users' long-term needs, the Commission committed to initiating a proceeding to explore additional steps it can take, including use of additional frequency bands. We followed through on this commitment by adopting the *Wireless Microphones NPRM* in September 2014. In light of the above-stated actions, and the need to balance the interests of multiple different UHF Band spectrum users, as well as the goals of the incentive auction, we decline to take action on reconsideration to provide any more spectrum exclusively for use by wireless microphone users.

87. We also deny Qualcomm's petition challenging the Commission's decision to permit wireless microphone operations in the guard bands and duplex gap. The crux of Qualcomm's challenge is that there was insufficient record to decide how wireless microphones could operate successfully in these bands, along with white space devices, in a manner that also ensures that such operations do not cause interference to licensed wireless services in the adjacent bands. For the reasons discussed above with respect to Qualcomm's challenge of the decision to permit unlicensed white space devices to operate in the guard bands and duplex gap (along with wireless microphones), we reject Qualcomm's request. In the *Part 15 NPRM,* we are seeking comment on technical rules that comply with the Spectrum Act and address the potential interference concerns raised in Qualcomm's petition. Qualcomm has the opportunity to present its concerns in that proceeding.

88. Finally, we reject Sennheiser's renewed request that we require forward auction winners to reimburse licensed and unlicensed wireless microphone users for costs associated with replacing equipment as a result of the incentive auction and repurposing of spectrum for wireless services. Sennheiser does not challenge the Commission's conclusion that reimbursement was not contemplated or required by the Spectrum Act. Instead, Sennheiser argues that the Commission has independent authority under the Communications Act to require reimbursement, and challenges the Commission's reasoning that wireless microphone users are not entitled to reimbursement because they operate on a secondary or unlicensed basis. While we agree that the Commission does have independent authority for requiring reimbursements for relocation costs under certain circumstances, we affirm our decision not to require it here. Contrary to Sennheiser's arguments, our rules and policies are clear that licensed wireless microphone operations are secondary, and not primary, in those portions of the current TV bands that will be reallocated for wireless services following the incentive auction. The Commission has never required that primary licensees (here, the 600 MHz Band wireless licensees) moving into a band reimburse users that have been operating on a secondary basis in that band. We also decline to require reimbursement of unlicensed wireless microphone users that currently are operating pursuant to a limited waiver under certain part 15 rules; unlicensed users as a general matter do not have vested or cognizable rights to their continued operations in the reallocated TV bands.

II. The Incentive Auction Process

A. Integration of the Reverse and Forward Auctions

89. We deny the petitions for reconsideration of the average price component of the final stage rule. The final stage rule is an aggregate reserve price based on bids in the forward auction. If the final stage rule is satisfied, the forward auction bidding will continue until there is no excess demand, and then the incentive auction will close. If the final stage rule is not satisfied, additional stages will be run, with progressively lower spectrum targets in the reverse auction and less spectrum for licenses available in the forward auction, until the rule is satisfied.

90. Contrary to petitioners' claims, the Commission clearly stated the reason for the adoption of the average price component in the *Incentive Auction R&O.* The Commission concluded that its reserve price approach would help assure that auction prices reflect competitive market values and serve the public interest. In particular, the Commission stated, ''the first component of the final stage rule's reserve price [the average price component] ensures that the forward auction recovers 'a portion of the value of the public spectrum resource,' as required by the Communications Act.'' The petitioners, T-Mobile and the Competitive Carriers Association (''CCA''), do not demonstrate that this

objective is not a satisfactory explanation for adopting this component.

91. CCA argues that the average price component is unnecessary because forward auction bids that satisfy the costs component (including payments to reverse auction bidders) would represent a price for goods agreed to by willing sellers and buyers of those goods, but this argument is based on an incorrect premise. The forward auction bidders will not be ''buying'' what the reverse auction bidders are ''selling.'' Rather, the Commission will offer new flexible use licenses—unlike existing broadcast licenses—utilizing spectrum from various sources, including the aggregate spectrum relinquished by reverse auction bidders as well as spectrum freed by relocating broadcasters that will continue broadcasting on different frequencies. Consequently, bids to relinquish spectrum in the reverse auction do not intrinsically determine the value of the licenses offered in the forward auction. As a result, CCA has not demonstrated that it was unreasonable for the Commission to establish the average price component to serve public interest objectives of spectrum auctions as required by the Communications Act.

92. T-Mobile contends that the Commission failed to adequately address the inherent risk that forward auction bids may not satisfy the average price component or the risks that an unsuccessful auction pose to wireless competition and the availability of sufficient low band spectrum to meet demand for broadband services. The degree of these risks, however, depends in large part on the final benchmarks used, which the Commission stated that it would decide later based on additional public input. To the extent T-Mobile's argument rests upon the degree of risk posed by a specific average price, therefore, it is premature. Moreover, assessing the reasonableness of any risk to the incentive auction's success requires a proper metric for that success. The incentive auction will succeed if its results serve the public interest, as identified by the Commission and consistent with Congress's statutory mandates. As discussed, Congress mandated the particular objective of recovering a portion of the value of the public spectrum resource in the Communications Act. Neither petitioner takes into account this metric of success when complaining that the average price component risks auction ''failure.''

93. We do not find the petitioners' additional arguments any more persuasive. T-Mobile complains that the use of an ''average'' price benchmark leaves many issues undecided and adds further complexity to an already complex proceeding. As noted in the *Incentive Auction R&O,* however, ''the *Procedures PN* will determine the specific parameters of the final stage rule after further notice and comment in the pre-auction process.'' In its Reply, T-Mobile strains to read the *Incentive Auction R&O* as providing that ''all that remains to be done . . . is for the Commission to announce a price figure[.]'' T-Mobile's list of questions regarding implementation, however, demonstrates that more is required in the pre-auction process than simply announcing a price figure. The *Incentive Auction Comment PN* makes proposals and seeks comment with respect to several such points. Accordingly, T-Mobile's argument does not offer a basis for reconsidering the decision to adopt the average price component of the final stage rule.

94. Finally, CCA contends that the Commission did not articulate a reason for addressing the possibility in the average price component that the spectrum clearing target exceeds the spectrum clearing benchmark, but not the possibility that the actual target falls below the spectrum clearing benchmark. The Commission need not address why the decision it made ''is a better means [to achieving its purpose] than any conceivable alternative.'' Given that the Commission's mandate is to recover ''a portion of the value of the public spectrum resource,'' the average price component need not be designed to take into account MHz-pop prices that might be higher than expected (which would be the effect, if any, of the auction clearing less spectrum than the spectrum clearing benchmark). Put differently, the Commission is not charged with recovering a particular percentage of the spectrum value, so there is no need for the average price component to respond to increasing prices.

B. Reverse Auction

1. Eligibility

95. We reject the arguments of Free Access, LPTV Coalition, and Signal Above that LPTV stations should be allowed to participate in the incentive auction and that we violated the RFA by failing to conduct an independent analysis of the potential economic impact on LPTV stations of either granting or denying them eligibility to participate. Two months after the deadline for filing reconsideration petitions, Free Access filed a Motion for Leave to File Supplement to Petition for Reconsideration (filed Dec. 15, 2014) (''Free Access Motion''), arguing that it discovered additional information after the deadline for filing for reconsideration, that it raised such matters in a letter to the Chairman and to the Chief Counsel of the Small Business Administration (''SBA Letter''), and asking that the SBA Letter be included in the record of this proceeding. We dismiss this filing as a late-filed petition for reconsideration. The Commission may not waive the deadline for seeking reconsideration absent extraordinary circumstances, which Free Access has failed to demonstrate. Accordingly, we deny Free Access' Motion. We will, however, consider the matters raised in Free Access' Motion as informal comments.

96. We affirm our determination that eligibility to participate in the reverse auction is limited to licensees of full power and Class A television stations. This determination is consistent with the Spectrum Act's mandate to conduct a reverse auction specifically for each ''broadcast television licensee,'' which is defined to exclude LPTV stations. Even assuming we have discretion to grant eligibility to the licensees of LPTV stations despite the statutory mandate, granting such eligibility would be inappropriate for the reasons we explained in the *Incentive Auction R&O.* For instance, LPTV stations are not entitled to repacking protection, and we reasonably declined to exercise our limited discretion to protect them. As LPTV stations are not eligible for protection in the repacking process and are subject to displacement by primary services, relinquishment of their spectrum usage rights is not necessary ''in order to make spectrum available for assignment'' in the forward auction. Accordingly, sharing the proceeds of the forward auction with the licensees of LPTV stations would not further the goals of the Spectrum Act; instead, it would undercut Congress's funding priorities, including public-safety related priorities and deficit reduction.

97. Contrary to the petitioners' arguments, nothing in the RFA or any other statute requires the Commission to conduct an independent analysis of the economic impact on LPTV stations of making them ineligible to participate in the incentive auction. The RFA requires a '''statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule.' Nowhere does it require . . . cost-benefit analysis or economic modeling.'' We disagree with Free Access' claim that the Final Regulatory Flexibility Analysis included with the *Incentive Auction R&O* incorrectly stated that ''no comments were received in response to the IRFA

[Initial Regulatory Flexibility Analysis] in this proceeding.'' The IRFA included with the *Incentive Auction NPRM* at Appendix B stated that ''[w]ritten public comments are requested on this IRFA'' and that ''[c]omments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the Notice.'' Although some parties may have raised IRFA-related matters in *ex parte* presentations to staff, these presentations did not constitute formal comments filed in response to the IRFA, were not identified as such, and were not filed by the comment deadline. Nevertheless, the matters that were raised in these *ex parte* presentations (namely that the FCC should undertake a full economic and financial analysis as to whether LPTV participation could result in a more successful incentive auction) were considered by the Commission in this proceeding. Furthermore, many of the filings Free Access mentions simply cite a sentence in the IRFA included with the *Incentive Auction NPRM* as support for the position that LPTV may participate in the auction. Those filings have nothing to do with the analysis in the IRFA of the impact on small entities.

98. Likewise, the APA requires that a rule be ''reasonable and reasonably explained.'' Here, Congress has already determined that LPTV stations are not eligible for the auction, rendering an economic analysis superfluous at best. We fully explained our reasons for declining to protect LPTV stations in the repacking process or to include them in the reverse auction, adopted various measures to mitigate the potential impact of the incentive auction and the repacking process on LPTV stations, and initiated a separate proceeding to consider additional remedial measures. Having demonstrated a ''reasonable, good-faith effort to carry out [the RFA's] mandate,'' no independent analysis of the potential economic impact on LPTV stations of excluding them from reverse auction participation was required of us, nor would such an analysis have been useful or helpful.

2. Bid Options

99. For the reasons set out in more detail below, we affirm our decision to allow NCE stations to participate fully in the reverse auction and find that it is consistent with the Public Broadcasting Act and our NCE reservation policy, taking into account the unique circumstances and Congressional directives with respect to the auction. At the same time, the Commission remains fully committed to the mission of noncommercial broadcasting. The Commission has continuously found that NCEs provide an important service in the public interest, and it has promoted the growth of public television accordingly. In the context of the incentive auction, we emphasize that there will be multiple ways for NCE stations to participate in the auction and continue in their broadcasting missions. The bid options to channel share and to move to a VHF channel will enable NCE stations to continue service after the auction while still realizing significant proceeds. In the channel sharing context, we continue to disfavor dereservation of NCE channels. For those stations that are interested in moving to VHF, we have proposed opening prices that represent significant percentages of the prices for going off the air, and we will afford favorable consideration to post-auction requests for waiver of the VHF power and height limitations. NCEs that participate in the auction under any bid option but are not selected will remain broadcasters in their home band, and we will make all reasonable efforts to preserve their service.

100. Our auction design preserves for each NCE licensee the decision of whether to participate, giving stations that want to participate but remain on the air choices for doing so, without unnecessarily constraining our ability to repurpose spectrum. Our approach gives NCE licensees the flexibility to participate fully in the incentive auction, and we will be able to address any service losses after the auction is complete in a manner consistent with the goals of section 307(b) of the Communications Act and our longstanding NCE reservation policy. On balance, we find that the approach we adopted in the *Incentive Auction R&O* is the best way to uphold the NCE reservation policy while also carrying out Congress's goals for the incentive auction.

101. We agree with PTV that the Commission has a longstanding policy of reserving spectrum in the television band for NCE stations and against dereserving channel allotments. As PTV notes, the Commission's policy originated more than 60 years ago, when the Commission concluded that ''there is a need for non commercial educational stations.'' Indeed, the Commission has historically denied requests for dereservation both where the licensee was in severe financial distress and where the channel was vacant after a number of attempts to provide noncommercial service failed.

102. However, we disagree that our decision reverses the NCE reservation policy. The incentive auction presents unique circumstances that we must take into account in implementing this policy. Congress directed that the Commission conduct a broadcast television spectrum incentive auction to repurpose UHF spectrum for new, flexible uses, but directed that participation in the reverse auction by broadcasters must be voluntary. Thus, the Commission cannot compel participation, but neither should it preclude a willing broadcast licensee, including an NCE station, from bidding. PTV also claims that our analysis that restrictions on participation would be contrary to the statute is flawed. On this, we agree and update our analysis. Section 1452(a)(1) provides that the Commission ''shall conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television usage rights . . . .'' After further analysis, we agree that the language in section 1452(a) is ambiguous and that nothing in section 1452(a) expressly prohibits the FCC from imposing conditions on its acceptance of reverse auction bids in order to serve policy goals, and the Commission did in fact impose certain conditions on acceptance of reverse auction bids in the *Incentive Auction R&O.* Nevertheless, while we agree that we are not statutorily precluded from adopting the PTV proposal, we decline to adopt it for all the policy reasons described above.

103. Most closely analogous to the incentive auction in terms of application of the reservation policy was the digital television transition. There, the Commission preserved vacant reserved allotments where possible, but where it was impossible, the Commission allowed for the future allotment of reserved NCE channels after the transition to fill in those areas that lost a reserved allotment, finding that ''if vacant allotments were retained, it would not be possible to accommodate all existing broadcasters in all areas . . . and could result in increased interference to existing . . . stations.'' In the auction context, we similarly determined that we could not apply the reservation policy during the repacking process itself because there is no feasible way of doing so without creating additional constraints on repacking that would compromise the auction.

104. PTV proposes ''to allow a noncommercial educational station to relinquish its spectrum so long as at least one such station remains on-air in the community or at least one reserved channel is preserved in the repacking to

enable a new entrant to offer noncommercial educational television service in the community.'' While PTV regards its proposal as balanced because it would allow the last NCE to relinquish its spectrum, the two options it puts forward would impose essentially equivalent constraints on our ability to repurpose spectrum. Under PTV's proposal, the auction mechanism would either have to reject the bids of the last NCE station in a market, or it would have to put an additional constraint in the new television band. Rejecting the bid of the last NCE in a market would prevent at least some NCEs from engaging in the auction. And while conditioning the relinquishment of the last NCE's spectrum on the preservation of at least one reserved channel may allow full participation by NCE licensees, it would impose the same constraint on the auction system's ability to repack commercial and NCE stations that remain on the air. The effect would be the same as PTV's first option, reducing the amount of spectrum that can be cleared and the revenue that can be realized in the forward auction. This extra analysis would also compromise the speed at which the auction runs.

105. We conclude that the most effective means of balancing our commitment to noncommercial educational broadcasting and the mandates of the Spectrum Act is to address any actual service losses on a case-by-case basis in a manner that is tailored to the post-auction television landscape. We are considering a number of such measures. For example, we could waive the freeze on the filing of applications for new LPTV or TV translator stations to allow NCE licensees to promptly restore NCE service to a loss area with these stations. Or, if the last NCE station in a given community goes off the air as a result of the incentive auction, the Commission could consider a minor modification application by a neighboring public station to expand its contour to cover that community, possibly by waiving our rules on power and height restrictions, if the licensee can demonstrate that it would not introduce new interference to other broadcasters. In addition, interested parties could file petitions for rulemaking to propose the allotment of new reserved channels to replace the lost service once the Commission lifts the current freeze on the filing of petitions for rulemaking for new station allotments, or the Commission could do so on its own motion.

106. Finally, we disagree with PTV's claim that ''nothing in the *NPRM* or the extensive record in this proceeding 'fairly apprised the public of the Commission's new approach' to reserved channels,'' contrary to the requirements of the APA. The petition states that the ''*Notice*'s discussion of the impact of the incentive auction on noncommercial educational service was limited to channel sharing restrictions aimed at 'preserv[ing] NCE stations and reserved channels.' '' This is incorrect. The *Incentive Auction NPRM* specifically analyzed whether NCEs would be eligible to participate in the reverse auction. It proposed an approach that did not restrict the participation of NCEs operating on reserved or non-reserved channels, noting that the Spectrum Act did not limit eligibility based on commercial status. The *Incentive Auction NPRM* indicated further that NCE participation in the auction would be beneficial, both because it would promote the overall goals of the auction and it would ''serve the public interest by providing NCE licensees with opportunities to strengthen their financial positions and improve their service to the public.'' Adequacy of the notice is demonstrated by comments that PTV submitted in response to the *Incentive Auction NPRM,* which cited section 307(b) and the FCC's historical policies pertaining to loss of service and asked the Commission not to accept license relinquishment bids that would result in DMAs not served by certain NCE stations.

III. The Post-Incentive Auction Transition

A. Construction Schedule and Deadlines

107. We decline to consider at this time the Affiliates Associations, ATBA's, and Gannett's requests regarding the transition period for full power and Class A stations because the arguments the petitioners raise are the subject of a recent decision by the United States Court of Appeals for the D.C. Circuit. We will take appropriate action regarding these arguments in a subsequent Order.

108. We will, however, address ATBA's petition to the extent that it challenges the decision not to ''protect'' LPTV and TV translator stations from displacement during and after the post-auction transition process. We decline ATBA's request that we ''protect all LPTV licenses and construction permits'' during the post-incentive auction transition period and ''for at least two years thereafter,'' which would presumably allow LPTV and TV translators to avoid being displaced during the post-incentive auction transition and two years beyond while repacked stations continue to make modifications to their facilities. The Spectrum Act does not mandate protection of LPTV or TV translator stations in the repacking process, and we declined to grant such protection as a matter of discretion for the reasons explained in the *Incentive Auction R&O.* For the same reasons, we decline to grant LPTV and TV translator stations protection during and after the post-auction transition period. Any such protection would be inconsistent with the secondary status of LPTV stations under the Commission's rules and policies and would seriously impede the transition process, a critical element to the incentive auction's success. Recognizing the potential impact of the incentive auction and the repacking process on LPTV stations, we adopted in the *Incentive Auction R&O* an expedited post-auction displacement window to allow stations that are displaced to file an application for a new channel without having to wait until they are actually displaced by a primary user. In addition, we have initiated a proceeding to consider measures to help LPTV and TV translators that are displaced, including delaying the digital transition deadline, allowing stations to channel share, and other measures. These actions will mitigate the impact of the repacking process on LPTV stations without impeding the post-incentive auction transition process.

B. Consumer Education

109. We grant, in part, Affiliates Associations' petition for reconsideration and modify our consumer education requirements with respect to certain ''transitioning stations.'' We continue to believe that ''[c]onsumer education will be an important element of an orderly post-auction band transition. Consumers will need to be informed if stations they view will be changing channels, encouraged to rescan their receivers for new channel assignments, and educated on steps to resolve potential reception issues.'' At the same time, we agree with Affiliates Association that transitioning stations, except for license relinquishment stations, will be motivated to inform their viewers of their upcoming channel change to prevent disruptions in service. Therefore, we revise our consumer education requirements to provide these stations with additional flexibility.

110. In the *Incentive Auction R&O,* we required that all commercial full power and Class A television transitioning stations air a mix of Public Service

Announcements (''PSAs'') and crawls at specific times of the day. We allowed NCE full power stations to comply with consumer education requirements through an alternate plan. Specifically, we allowed NCE full power stations to either comply with the framework established for commercial full power and Class A television stations or by only airing 60 seconds per day of on-air consumer education PSAs for 30 days prior to termination of operations on their pre-auction channel. Thus, NCE full power stations were given additional flexibility to choose the timeslots for their consumer education PSAs and to not have to air crawls. We conclude that all transitioning stations, except for license relinquishment stations, should have the same flexibility. Therefore, we will allow all transitioning stations, except for license relinquishment stations, to meet the consumer education objectives by airing, at a minimum, either 60 seconds of on-air consumer education PSAs or 60 seconds of crawls per day for 30 days prior to termination of operations on their pre-auction channel. Stations will have the discretion to choose the timeslots for these PSAs or crawls. We will continue to require that transition PSAs and crawls conform to the requirements set forth in the rules.

111. We decline, however, to revise our consumer education requirements for license relinquishment stations. Given that these stations will be going off the air, their incentives are necessarily different from stations that will remain on the air. Specifically, relinquishing stations may be less motivated to inform their viewers of their upcoming plan to terminate operations. Nevertheless, it is critical that viewers of these stations be informed of the potential loss of service so they can take the necessary steps to view programming from another source. As we did with consumer education during the DTV transition, we continue to believe a '''baseline requirement' is necessary and appropriate for license relinquishment stations to ensure the public awareness necessary for a smooth and orderly transition.'' For these reasons, we affirm our decision with respect to consumer education requirements for license relinquishment stations.

C. Reimbursement of Relocation Costs

1. Sufficiency of Reimbursement Fund

112. For the reasons set out below, we deny the requests of Affiliates Associations, Block Stations and NAB that the Commission limit the number of stations that can be repacked based on the availability of $1.75 billion for relocation expenses. We agree with CTIA that the statute merely limits the budget of the Fund to $1.75 billion but does not require that actual costs fall below this level. We affirm the repacking approach adopted in the *Incentive Auction R&O,* which will incorporate an optimization process to determine the amount of spectrum that can be cleared or repurposed based on the feasibility of assigning channels to stations that remain following the reverse auction. We deny NAB's request that the Commission impose additional constraints on provisional channel assignments, which will be made throughout the reverse auction, beyond those mandated by the statute. Imposing the cost-based constraints sought by petitioners is not mandated by the Spectrum Act and would be unworkable because the total cost of any repacking scenario remains unknown. Moreover, by increasing the number of constraints on the repacking process, granting the petitioners' request would limit our ability to recover spectrum through the incentive auction and undermine the goals of the Spectrum Act.

113. We agree that reducing the overall costs associated with the repacking process would be beneficial, not only to broadcasters and MVPDs that will rely on reimbursement from the Fund, but also because any excess in funding would be applied to deficit reduction, consistent with another goal of the Spectrum Act. Accordingly, the Commission has proposed an optimization process that seeks to minimize relocation costs associated with the repacking process by adopting a plan for final channel assignments that maximizes the number of stations assigned to their pre-auction channel and avoids reassignments of stations with high anticipated relocation costs. The proposed optimization process would accomplish the same goals as the proposals made by NAB, without compromising the speed and certainty provided by the repacking process adopted in the *Incentive Auction R&O.* In this regard, we note that Affiliates Associations' and NAB's reliance on estimates that up to 1,300 stations could be reassigned to new channels is misplaced. These estimates do not include any optimization to minimize channel moves and reduce relocation costs in the final TV channel assignment plan. Therefore, these results are not representative of the final number of stations that will be required to move, which we expect to be significantly lower as a result of optimization. Likewise, Affiliates Associations' concern that optimization may not reduce the number of stations repacked enough to bring the total costs below $1.75 billion does not account for the ability of the optimization process to avoid reassignments of stations with high anticipated relocation costs, thereby reducing the total cost of repacking. In light of these initiatives, we have no reason, at this time, to believe the Fund will be insufficient to cover all eligible relocation costs.

114. Contrary to Block Stations' contention, the ''all reasonable efforts'' mandate in section 1452(b)(2) does not require us to limit the number of repacked stations based on concerns about the sufficiency of the Fund. Section 1452(b)(2) applies ''[i]n making any reassignments or reallocations'' under section 1452(b)(1)(B). ''Reassignments and reallocations'' are ''ma[de]'' during the repacking process, and become ''effective'' after ''the completion of the reverse auction . . . and the forward auction,'' specifically upon release of the Channel Reassignment PN. Although the Commission's efforts to fulfill the statutory mandate include post-auction measures available to remedy losses in coverage area or population served that individual stations may experience, the mandate itself does not extend to the reimbursement process, which will occur after the Commission has made the reassignments and reallocations for which the statute provides.

115. We are not persuaded by Affiliates Associations' argument that participation in the reverse auction might become involuntary for broadcasters if there is a risk that they could potentially incur out-of-pocket expenses. As discussed in the *Incentive Auction R&O,* Congress allocated $1.75 billion of the auction proceeds to cover repacking costs. The Spectrum Act expressly provides that broadcasters' participation in the reverse auction is voluntary, but the repacking process is not voluntary. Other than suggesting that the Commission could be ''putting its thumb on the scale'' in favor of auction participation as broadcasters weigh their options, Affiliates Associations offers no evidence that, notwithstanding the $1.75 billion set aside to compensate broadcasters for reasonable relocation costs, broadcasters who would otherwise remain on the air will be motivated to participate in the reverse auction out of concern they will not be fully compensated for their relocation expenses. For the reasons stated above, we believe that the optimization process will enhance the sufficiency of the $1.75 billion Fund by reducing both the overall number of

stations repacked and the number of particularly expensive channel moves.

116. We decline Affiliates Associations' request to reconsider the conclusion that providing additional funding from auction proceeds beyond the $1.75 billion would be contrary to the express language of the Spectrum Act. Our decision is consistent with the Commission's conclusion in previous auctions that it lacks authority to use auction proceeds to pay incumbents' relocation costs. In this case, section 309 of the Communications Act, as revised, requires $1.75 billion of ''the proceeds'' of the auction to be deposited in the Reimbursement Fund, and ''all other proceeds'' to be deposited in the Public Safety Trust Fund and the general fund of the Treasury. While section 1452(i) of the Act provides that ''[n]othing in [section 1452(b)] shall be construed to'' expand or contract the FCC's authority except as expressly provided, that provision does not qualify the specific direction in section 309 as to funding priorities and the amount of proceeds to be dedicated to relocation costs.

117. We also deny requests that we mandate that winning forward auction bidders pay for post-auction expenses. First, we find no merit in the argument of ATBA that wireless carriers should reimburse LPTV stations. We agree with CTIA that the Commission is not obligated to provide reimbursement for displaced LPTV stations given Congress' unambiguous definition of ''broadcast television licensee,'' which includes only full-power television stations and Class A licensees. Because LPTV licensees do not meet the definition of ''broadcast station licensee'' they are not eligible for reimbursement from any source. Second, we disagree with the Affiliates Associations and NAB that there is relevant precedent for requiring winning forward auction bidders to reimburse relocation expenses of repacked broadcasters. Although in previous auctions the Commission has required winning bidders to cover incumbents' relocation costs pursuant to its broad spectrum management authority, in this case the Spectrum Act contains an explicit provision for the Reimbursement Fund. Congress's adoption of a precise amount for such costs indicates its intention to limit the FCC's authority to order additional reimbursements. In any event, it distinguishes the incentive auction from previous auctions in which the Commission has adopted other measures to address incumbent relocation costs.

118. The blanket waiver approach advocated by ATBA is inconsistent with the Commission's obligation to analyze waiver petitions to ensure they comply with the statutory requirements. The Spectrum Act's flexible use waiver provision provides a means of reducing demand on the Fund by conditioning petition grant on an agreement to forgo reimbursement, as well as offering broadcasters flexibility in the use of their licensed broadcast spectrum. In the *Incentive Auction R&O,* we declined to automatically grant service rule waiver requests because we found that, in evaluating a waiver petition, the Media Bureau must determine whether the petition meets the Commission's general waiver standard and complies with the statutory requirements pertaining to interference protection and the provision of one broadcast television program stream at no cost to the public. Similarly, this analysis must be performed for each station seeking a waiver of the Commission's service rules. Therefore, we deny the request of ATBA. We note that a station group may still obtain a waiver for all of its stations if the Media Bureau determines they demonstrate compliance with the relevant statutory provisions.

2. Stations That Are Not Repacked and Translator Facilities

119. We decline to exercise our discretionary authority to allow secondary services such as translator stations to claim reimbursement from the Fund, consistent with our decision not to protect these entities in the repacking process. This decision is consistent with Commission precedent to reimburse only primary services that are relocated, not secondary services that are not entitled to protection. Providing reimbursement for translators or other secondary services out of the $1.75 billion Fund would also reduce the amount available to reimburse repacked Class A and full-power stations for their eligible relocation costs. Therefore, we deny this portion of ATBA's petition.

120. Further, we are not persuaded by Affiliates Associations' argument that we acted inconsistently in declining to reimburse non-reassigned stations directly but allowing MVPDs to be reimbursed from the Fund for expenses related to a particular type of station move (successful high-VHF-to-low-VHF bidders). Although the Spectrum Act does not require reimbursement for either type of expense, they are distinguishable. The MVPD expenses in question arise from our decision to allow high-VHF-to-low-VHF bids, a decision that Congress could not have specifically anticipated. Our exercise of discretion makes MVPDs eligible for reimbursement for the reasonable costs they incur in order to continue to carry broadcast stations that are reassigned as a result of the auction, regardless of the type of bid option exercised by the broadcaster. In contrast, Congress clearly anticipated a distinction between reassigned and non-reassigned broadcasters, expressly providing for reimbursement of the former but not the latter. Moreover, non-repacked broadcasters might nevertheless indirectly benefit from a reimbursement to a reassigned station. We find that our decision was reasonable and will help to preserve limited reimbursement funds.

3. Reimbursement Timing

121. We dismiss on procedural grounds Affiliates Associations' request that we delay the completion of the auction until after forward licenses have been issued. The *Incentive Auction R&O* fully considered the argument by broadcasters that the Commission should delay the close of the forward auction until wireless licenses are assigned. Specifically, we found that this approach would produce uncertainty in the UHF Band transition because the Spectrum Act directs that no reassignments or reallocations may become effective until the completion of the reverse auction and the forward auction. We therefore dismiss the assertion of Affiliates Associations that close of the auction should be contingent on assigning licenses to winning forward auction bidders.

122. We deny the requests of Affiliates Associations and Gannett for reconsideration of certain aspects of the reimbursement process. In adopting a reimbursement process providing that eligible entities receive an initial allocation of up to 80 percent of their estimated expenses, the Commission concluded that this approach should help ensure that broadcasters and MVPDs do not face an undue financial burden while also reducing the possibility that we allocate more funds than necessary to cover actual relocation expenses. Moreover, this approach takes into consideration the practical limitation that the Commission will have only $1 billion (borrowed from Treasury) to allocate at the beginning of the reimbursement process. Nevertheless, we fully intend to make initial allocations quickly to help broadcasters begin the relocation process.

123. We also deny requests that we extend the initial three-month deadline for repacked stations to file construction permits and cost estimates. We find that doing so would postpone the award of initial funding allocations, thus making

it more difficult for broadcasters to meet construction deadlines. The purpose behind these deadlines is to permit broadcasters to begin construction as quickly as possible. Moreover, the statute requires that reimbursements from the Fund be completed no later than three years after the completion of the forward auction, and extending the filing deadline would compress the period within which disbursements could be made. We disagree with Affiliates Associations that the Media Bureau will be unable to approve the cost estimates and construction permit applications of a large number of stations quickly. With respect to construction permit applications, the Media Bureau has the experience and expertise to process these applications quickly and has adopted expedited processing guidelines for certain applications to further accelerate the approval process. We also plan to hire a reimbursement contractor to assist with processing the cost estimates and actual cost submissions throughout the reimbursement period. In order to make initial allocations, we require all eligible entities to file cost estimates at the three-month deadline because allocations will be calculated based on total cost estimates in relation to the amount available to the Commission at the time. To the extent a broadcaster or MVPD is unable to obtain price quotes by the filing deadline, it can use the predetermined cost estimates published in the Catalog of Eligible Expenses as cost estimate proxies. For these reasons, we retain the three-month deadline for eligible entities to file construction permit applications and reimbursement cost estimates.

IV. Other Matters

124. Mako argues that the *Incentive Auction R&O* violates the National Environmental Policy Act of 1969 (''NEPA'') because it did not include an ''Environmental Assessment'' (''EA'') with a ''No Significant Impact'' finding or a full ''Environmental Impact Statement'' (''EIS''). In addition, International Broadcasting Network (''IBN'') argues without any support that Chairman Wheeler should be recused from this proceeding. We find no evidence whatsoever to support IBN's claim that the Chairman should have recused himself from this proceeding and we therefore we reject this request. We reject this argument. The environmental effects attributable to the rules adopted in the *Incentive Auction R&O,* including the potential modification of broadcast facilities resulting from channel reassignments and the build-out of facilities in the 600 MHz Band, are already subject to environmental review under our NEPA procedures. Under those procedures, potentially significant environmental effects of proposed facilities will be evaluated on a site-specific basis prior to construction. Adoption of rules in the *Incentive Auction R&O* has no potentially significant environmental effects—beyond those already subject to site-specific reviews—that the Commission must evaluate in an EA or EIS under NEPA or the Commission's NEPA procedures.

V. Procedural Matters

125. *Final Regulatory Flexibility Act Analysis.* The Commission has prepared a Final Regulatory Flexibility Certification in Appendix C. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA).

126. In 2012, Congress mandated that the Commission conduct an incentive auction of broadcast television spectrum as set forth in the Middle Class Tax Relief and Job Creation Act of 2012 (''Spectrum Act''). The incentive auction will have three major pieces: (1) A ''reverse auction'' in which full power and Class A broadcast television licensees submit bids to voluntarily relinquish certain broadcast rights in exchange for payments; (2) a reorganization or ''repacking'' of the broadcast television bands in order to free up a portion of the ultra-high frequency (''UHF'') band for other uses; and (3) a ''forward auction'' of licenses for flexible use of the newly available spectrum. In the *Incentive Auction R&O,* the Commission adopted rules to implement the broadcast television spectrum incentive auction. Among other things, the Commission adopted the use of *TVStudy* software and certain modified inputs in applying the methodology described in OET–69 to evaluate the coverage area and population served by television stations in the repacking process. Pursuant to the RFA, a Final Regulatory Flexibility Analysis (''FRFA'') was incorporated into the *Incentive Auction R&O.*

127. The *Second Order on Reconsideration* for the most part affirms the decisions made in the *Incentive Auction R&O.* To the extent the *Second Order on Reconsideration* revises the *Incentive Auction R&O,* it does so in a way that benefits both large and small entities, but without imposing any burdens or costs of compliance on such entities. First, the *Second Order on Reconsideration* modifies two of the input values that the Commission uses when applying the OET–69 methodology. Specifically, the *Second Order on Reconsideration* revises the vertical antenna pattern inputs for Class A stations in the *TVStudy* software, which will result in more accurate modeling of the service and interference potential of those stations during the repacking process. It also reduces the minimum effective radiated power (''ERP'') values, or power floors, that the *TVStudy* software uses to replicate a television station's signal contours when conducting pairwise interference analysis in the repacking process, which will result in greater accuracy. Second, the *Second Order on Reconsideration* provides that the Commission will make all reasonable efforts to preserve the coverage areas of stations operating pursuant to waivers of the antenna height above average terrain (''HAAT'') or ERP limits set forth in the Commission's rules, provided such facilities are otherwise entitled to protection under the *Incentive Auction R&O.* Third, in the *Incentive Auction R&O,* the Commission extended discretionary protection to five stations affected by the destruction of the World Trade Center. In the *Second Order on Reconsideration,* the Commission extends this protection to an additional station, WNJU, Linden, New Jersey. Fourth, we exercise discretion to protect stations that hold a Class A license today and that had an application for a Class A construction permit pending or granted as of February 22, 2012. Fifth, we revise our consumer education requirements to provide stations changing channels as a result of the incentive auction and repacking additional flexibility to determine the timeslots to air their consumer education public service announcements.

128. None of these changes to the *Incentive Auction R&O* adopted in the *Second Order on Reconsideration* will impose additional costs or impose

additional record keeping requirements on either small or large entities. Therefore, we certify that the changes adopted in this *Second Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

129. The Commission will send a copy of the *Second Order on Reconsideration,* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Second Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

130. *Congressional Review Act.* The Commission will send a copy of this Second Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

VII. Ordering Clauses

131. *It is ordered,* pursuant to the authority found in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, and sections 6004, 6402, 6403, 6404, and 6407 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, 535, 1404, 1452, and 1454, this Second Order on Reconsideration in GN Docket No. 12–268 *is adopted.*

132. *It is further ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates, *is granted in part and denied in part* to the extent described herein

133. *It is further ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by NBC Telemundo License, LLC, as clarified on April 7, 2015, *is granted* to the extent described herein.

134. *It is further ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by the Walt Disney Company *is granted* to the extent described herein.

135. *It is further ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by Dispatch Printing Company *is granted* to the extent described herein.

136. *It is further ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by Cohen, Dippell, and Everist, P.C *is granted in part and denied in part* to the extent described herein.

137. *It is further ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petitions for Reconsideration filed by Advanced Television Broadcasting Alliance; and Gannett Co., Inc., Graham Media Group, and ICA Broadcasting *are denied in part* to the extent described herein.

138. *It is further ordered* that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. and 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petitions for Reconsideration filed by Abacus Television; American Legacy Foundation; Artemis Networks LLC; Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service; Beach TV Properties, Inc.; Block Communications, Inc.; Bonten Media Group, Inc. and Raycom Media, Inc.; Competitive Carriers Association; Free Access & Broadcast Telemedia, LLC; GE Healthcare; International Broadcasting Network; the LPTV Spectrum Rights Coalition; Mako Communications, LLC; Media General, Inc.; Radio Television Digital News Association; Sennheiser Electronic Corporation; Signal Above, LLC; Qualcomm Inc.; T-Mobile USA, Inc.; U.S. Television, LLC; The Videohouse, Inc.; and the WMTS Coalition *are dismissed and/or denied* to the extent described herein.

139. *It is further ordered* that the Petition for Leave to File Supplemental Reconsideration filed by Abacus Television on November 12, 2014 and the Petition for Leave to Amend filed by the LPTV Coalition on November 12, 2014 *are denied.*

140. *It is further ordered* that the Motion for Leave to File Supplement to Petition for Reconsideration filed by Free Access and Broadcast Telemedia, LLC on December 15, 2014 *is denied.*

141. *It is further ordered* that the Commission's rules *are hereby amended* as set forth in the Final Rules and *will become effective* September 8, 2015 except for § 73.3700(c)(6) which contains new or modified information collection requirements that have not be approved by OMB. The Federal Communications Commission will publish a document announcing the effective date.

142. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Second Order on Reconsideration in GN Docket No. 12–268, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

143. *It is further ordered* that the Commission *shall send* a copy of this Second Order on Reconsideration in GN Docket No. 12–268 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final rules

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as set forth below:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339

■ 2. Section 73.3700 paragraph (c) is revised to read as follows:

§ 73.3700 Post-incentive auction licensing and operation.

* * * * *

(c) *Consumer education for transitioning stations.* (1) License relinquishment stations that operate on a commercial basis will be required to

air at least one Public Service Announcement (PSA) and run at least one crawl in every quarter of every day for 30 days prior to the date that the station terminates operations on its pre-auction channel. One of the required PSAs and one of the required crawls must be run during prime time hours (for purposes of this section, between 8:00 p.m. and 11:00 p.m. in the Eastern and Pacific time zones, and between 7:00 p.m. and 10:00 p.m. in the Mountain and Central time zones) each day.

(2) Noncommercial educational full power television license relinquishment stations may choose to comply with these requirements in paragraph (c)(1) of this section or may air 60 seconds per day of on-air consumer education PSAs for 30 days prior to the station's termination of operations on its pre-auction channel.

(3) Transitioning stations, except for license relinquishment stations, must air 60 seconds per day of on-air consumer education PSAs or crawls for 30 days prior to the station's termination of operations on its pre-auction channel.

(4) *Transition crawls.* (i) Each crawl must run during programming for no less than 60 consecutive seconds across the bottom or top of the viewing area and be provided in the same language as a majority of the programming carried by the transitioning station.

(ii) Each crawl must include the date that the station will terminate operations on its pre-auction channel; inform viewers of the need to rescan if the station has received a new post-auction channel assignment; and explain how viewers may obtain more information by telephone or online.

(5) *Transition PSAs.* (i) Each PSA must have a duration of at least 15 seconds.

(ii) Each PSA must be provided in the same language as a majority of the programming carried by the transitioning station; include the date that the station will terminate operations on its pre-auction channel; inform viewers of the need to rescan if the station has received a new post-auction channel assignment; explain how viewers may obtain more information by telephone or online; and for stations with new post-auction channel assignments, provide instructions to both over-the-air and MVPD viewers regarding how to continue watching the television station; and be closed-captioned.

(6) Licensees of transitioning stations, except for license relinquishment stations, must place a certification of compliance with the requirements in paragraph (c) of this section in their online public file within 30 days after beginning operations on their post-auction channels. Licensees of license relinquishment stations must include the certification in their notification of discontinuation of service pursuant to § 73.1750 of this chapter.

* * * * *

[FR Doc. 2015–19281 Filed 8–5–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192, 193, and 195

[Docket No. PHMSA–2011–0337; Amdt. Nos. 192–119; 193–25; 195–99]

RIN 2137–AE85

Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments; Corrections

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Correcting amendments.

SUMMARY: PHMSA published in the **Federal Register** of January 5, 2015 (80 FR 168), a document containing revisions to the Pipeline Safety Regulations. That document inadvertently removed paragraphs (b)(1) through (b)(4) in 49 CFR 192.153. This document removes that amendment and makes several editorial changes.

DATES: This amendment is effective August 6, 2015.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Mike Israni by phone at 202–366–4571 or by email at *mike.israni@dot.gov*.

Regulatory Information: Cheryl Whetsel by phone at 202–366–4431 or by email at *cheryl.whetsel@dot.gov*.

SUPPLEMENTARY INFORMATION: PHMSA published in the **Federal Register** of January 5, 2015 (80 FR 168), a document containing revisions to the Pipeline Safety Regulations. That document inadvertently removed paragraphs (b)(1) through (b)(4) in 49 CFR 192.153; incorrectly listed a cross-reference in § 193.2321(b)(1); incorrectly formatted the word ''see'' in various sections in parts 192, 193, and 195; and specified an incorrect authority citation in part 193. This document corrects the final regulations to address these issues.

List of Subjects

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas, Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum pipeline safety.

In consideration of the foregoing, PHMSA amends 49 CFR parts 192, 193, and 195 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118 and 60137; and 49 CFR 1.53.

§ 192.55, 192.191, 192.735, 192.923, 192.933, and Appendix B to Part 192 [Amended]

■ 2. In 49 CFR part 192, remove ''(incorporated by reference, see § 192.7)'' and add in its place ''(incorporated by reference, *see* § 192.7)'' everywhere it appears in the following sections:

■ a. Section 192.55(e);

■ b. Section 192.735(b);

■ c. Section 192.923(b)(1);

■ d. Section 192.933(d)(1)(i); and

■ e. Appendix B to part 192.

§ 192.11 [Amended]

■ 3. In § 192.11:

■ a. Amend paragraph (a) by removing ''NFPA 58 and 59'' and adding in its place ''NFPA 58 and NFPA 59''.

■ b. Amend paragraph (c) by removing ''NFPA 58 and 59'' and ''ANSI/NFPA 58 and 59'' and adding in their place the terms ''NFPA 58 and NFPA 59''.

■ 4. In § 192.153, paragraphs (b)(1), (2), (3), and (4) are added to read as follows:

§ 192.153 Components fabricated by welding.

* * * * *

(b) * * *

(1) Regularly manufactured butt-welding fittings.

(2) Pipe that has been produced and tested under a specification listed in appendix B to this part.

(3) Partial assemblies such as split rings or collars.

(4) Prefabricated units that the manufacturer certifies have been tested