

## **Handout for 2015 Public Radio Super-Regional Meeting**

### **Top Seven Things Public Radio Needs to Know About the TV Spectrum Auction**

1. Not me! Radio (including public radio) spectrum is not included in the TV spectrum auction. While this is obvious to those of you in the public radio industry, it is NOT so obvious to your key stakeholders, donors, members and listeners. Be prepared to message on this point.
2. Eye popping! The FCC auction opening bid prices for many TV stations are, well, eye popping in amount. Be prepared to explain Point 1 above (Not me!) in the context of these big numbers.
3. Don't talk to me! Anti-collusion. For joint licensees, those on the public radio side need to be aware of (and not run afoul of) the FCC's anti-collusion rule. This is a very tough, strict rule. It runs counter to the way public broadcasting usually communicates (i.e., in a sharing, collaborative way). Bottom line -- the rule prohibits communications about a station's bids or bidding strategies during a "quiet period" for the auction. See attached one-page handout giving a high-level overview of the anti-collusion rule.
4. Repack (Ugh). For at least 3-4 years post-auction (perhaps more, looking at the NAB's recently released study), the FCC and the TV broadcast industry will be focused on "repack" of remaining TV broadcast channels into a smaller portion of the TV band. This will be a big, all-consuming, Herculean effort, as it will involve changes to many, many TV stations (and their towers, transmission plants and equipment, etc.).
5. Reimbursement – What about me? While Congress allocated \$1.75 billion for the TV Broadcast Relocation Fund, these funds are available only to TV broadcasters relocated to new channels as part of repack.
6. Dislocation – Have a Plan B. The TV repack will undoubtedly result in the dislocation of radio station transmitting antennas and related hardware as towers are modified or constructed. Right now, it is impossible to predict exactly how repack will affect any individual public radio station, but if you are on a tower with a TV station, you should be prepared to pursue a Plan B in the event of a permanent or temporary dislocation.
7. Disruption. The repack will disrupt equipment and services for broadcast stations, particularly in terms of vendors and advisors, which will impact radio, too. (Stated another way, TV repack will suck up all available air in terms of towers, equipment and related services.) For example, for those with radio-only projects, it will be hard to find qualified RF consulting engineers, qualified tower structural engineers, and qualified installers who aren't up to their eyeballs in TV repack work. Equipment orders, tower leasing negotiations, (really, tower anything), zoning and such will take longer, as the whole broadcast supply chain will be hyper-focusing on TV.

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**Overview of FCC Anti-Collusion Rule**  
**Prohibited Communications**

In general, the anti-collusion rule (also called the “prohibited communications rule”) prohibits broadcast station license holders, including the station’s officers, employees and governing board members, from communicating, directly or indirectly, any auction participant’s bids or bidding strategies, to any other auction applicant (TV broadcast licensee or wireless company) during a specific “quiet period.”

**Why.** The purpose of the rule is to reinforce federal antitrust law, deter collusive auction conduct and anticompetitive behavior, and assure confidence in the auction process.

**Who.** The anti-collision rule applies to all TV broadcast stations in the United States and to all forward auction participants (e.g., wireless carriers). It applies to a station whether or not the station participates in the spectrum auction. It applies to the station, its officers, employees and governing board members.

**When.** The rule applies during a so-called “quiet period”. The quiet period will begin on December 18, 2015 at 6 pm (Eastern time), which is the deadline for broadcasters to submit applications to participate in the spectrum auction. The quiet period will continue until the spectrum auction results are publicly announced, which is projected to be 3<sup>rd</sup> Q 2016, at the earliest. Thus, the quiet period will last at least six months.

Note that while the rule applies during the “quiet period,” there are legal, business and proprietary reasons why it is important for stations and staff not to discuss auction plans outside of executive sessions now. Among the reasons, disclosure of information about a station’s plans could give potential auction competitors a strategic advantage.

**What.** The rule prohibits communications that “directly or indirectly” communicate any incentive auction applicant’s bids or bidding strategies.

**What is an indirect communication?** The anti-collision rule also covers inadvertent or unintended communications. The FCC has previously advised auction participants to exercise caution when making public statements about bids or bidding strategies and when engaging in business negotiations or discussions where such information might be directly or indirectly communicated.

**What should I do if I am asked, during the quiet period, about my station’s auction participation, bids or bidding strategies?** You should respond that you cannot talk about the auction and report the communication immediately to your station CEO/GM, who can consult with counsel as needed about whether a prohibited communication has been made.