



NEWS

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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STATEMENT OF COMMISSIONER AJIT PAI ON THE RELEASE OF MISLEADING INCENTIVE AUCTION DATA

Today, the Incentive Auction Task Force released a Public Notice that is supposed to give the public meaningful insight into how the FCC will determine the initial spectrum clearing target for the upcoming broadcast incentive auction. Unfortunately, the Public Notice presents misleading data about the impairments that would result under the Commission's proposed approach to determining that target. This only heightens my concern that we are heading down the wrong path.

To start, the simulations provided are not even based on the methodology proposed by the Commission last December. For example, the Commission proposed that the initial clearing target would allow up to 20% of spectrum nationwide to be impaired. But today's Public Notice does not simulate that approach. Instead, it analyzes clearing targets based on an impairment methodology that the Commission never considered, let alone proposed.¹ Back in December, I noted the arbitrary nature of the Commission's 20% figure and suggested that we take a different path.² But my concern was rejected out of hand, and on a party-line vote the Commission voted to plow ahead with the 20% proposal. Curious, then, that the proposal is now treated like a black sheep.

Having now run simulations based on a different approach, one would assume that the Public Notice at least provides an accurate picture of those results. But unfortunately, this is not the case. The Public Notice does not take account of *any* interference from *any* Mexican TV station into *any* part of the United States. This is far from reality. Indeed, the evidence in the record suggests that interference from TV stations in Mexico could result in significant impairments to major U.S. markets. So the spectrum blocks that today's Public Notice presents as clean in theory may well be impaired if not entirely unusable in practice.

Perhaps more troubling, though, is the Public Notice's explanation for why the FCC is not accounting for interference from any Mexican TV stations. Other parties have attempted to make such estimates. But the Public Notice doesn't do so, it says, "[d]ue to insufficient data." In other words, we are not including those Mexican stations because, among other things, we do not know where they are located! This admission is astonishing. Even though it has been over three years since Congress passed the Spectrum Act, and even though under the current timeline we're less than a year from the start of the incentive auction, the FCC still does not have basic information about the location of TV stations along the U.S.-Mexico border. This is not a great sign.

¹ See Public Notice at para. 2 (describing a new "one license block nationwide" approach to determining an initial clearing target).

² See *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, GN Docket No. 12-268, AU Docket No. 14-252, Public Notice, 29 FCC Rcd 15750, 15911-14 (2014) (Dissenting Statement of Commissioner Ajit Pai), <http://bit.ly/1eggNdL>.

There's also a stunning lack of transparency that pervades the data being released today. For instance, in running the simulations, the FCC made assumptions about which broadcasters are likely to participate in the auction and which ones are not. That's a key factor in determining whether particular clearing targets can be met. So what are those assumptions? What broadcasters does the FCC assume are participating? And on what data did the FCC rely in reaching that conclusion? The Public Notice offers no clue.

Finally, the manner in which this Public Notice is being released underscores yet again the need for FCC process reform. Both Commissioner O'Rielly and I asked the Chairman's Office to allow all Commissioners to have input into this document and to cast an up-or-down vote. Why? Because it deviates dramatically from the proposals the Commission made last December, seeks comment on an entirely new approach for reaching an initial clearing target, and presents misleading data on top of all that. Nonetheless, our requests were denied, and the Chairman's Office directed staff to release the item over our objections. This isn't how the FCC used to operate. And this isn't how it should operate. I welcome the ongoing efforts in Congress, including bipartisan efforts that resulted in legislation this very day, to ensure that important decisions are made by the Commission as a whole rather than staff acting at the direction of the Chairman's Office.