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## National Broadband Plan Proposes Significant Challenges for Television Broadcasters

by John K. Hane, Scott R. Flick and Paul A. Cicelski

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*The National Broadband Plan (“NBP”) proposes immediate and sweeping steps that, if adopted, could displace many television broadcasters from their existing spectrum. Specifically, FCC staff proposes a “voluntary” surrender by some television broadcasters of their spectrum as well as repacking of the spectrum to minimize the portion dedicated to television broadcasting. An expected flood of FCC proceedings and possible surprises still to play out are likely to keep television broadcasters playing catch-up. The growth of both broadband and broadcasting are not necessarily incompatible goals if the proper mechanisms are put in place. However, the current version of the NBP places the broadcast industry in a defensive position by assuming that broadband can only grow by displacing television broadcasters.*

Pillsbury will host a conference call for clients and friends on Wednesday, March 24 at 2 pm EDT to discuss the broadcast spectrum changes proposed in the NBP. Please contact Liliam Aguila at [liliam.aguila@pillsburylaw.com](mailto:liliam.aguila@pillsburylaw.com) or 202.663.8336 for the conference telephone number and password.

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### Introduction

Details of the NBP, released yesterday, have been widely reported. This Alert summarizes the highlights, but focuses on what the NBP means for television broadcasters and what is likely to happen next. A more detailed analysis of the reallocations proposed by the FCC will be discussed in a separate Pillsbury Client Advisory.

## Highlights

The NBP proposes a fast-track rulemaking process that will focus on five steps for reducing the spectrum used for television broadcasting. The FCC reportedly will circulate a draft working paper soon, leading to one or more notices of proposed rule making relating to these steps. The proceedings would address:

- Shrinking the service areas of television stations to reduce spectrum usage and facilitate aggressive repacking of broadcast licenses.
- Establishing rules for two stations to share one 6 MHz channel. These rules would apply to both voluntary and forced sharing arrangements.
- Setting rules for an auction of broadcast spectrum by 2012 or 2013, with band clearing by 2015.
- Exploring technical, policy and other options to reclaim broadcast spectrum if service area shrinkage, voluntary give-backs, and repacking do not free up the desired quantity of spectrum for wireless broadband.
- Taking other steps to encourage efficiency of spectrum usage in the television band, including spectrum fees, digital conversion of LPTV stations, and rule changes to improve television broadcast service in the VHF bands, which will need to accommodate many of the re-packed stations.

## The FCC's Message: The Commission Does Not Need Congressional Authority to Undertake Wholesale Restructuring and Reduction of the Television Broadcast Service

The Broadband Task Force has previously expressed frustration with broadcasters' generally cool reception to the prospect of turning in spectrum for a share of auction proceeds. The tone and substance of the NBP reflect the task force's response to that coolness. In the text and the subtext, the NBP takes the position that the FCC does not need congressional authority to shrink service areas, reduce licenses to less than 6 MHz, force channel sharing, require broadcasters to adopt costly changes to their technical facilities or impose financially damaging spectrum fees.

Whether or not the FCC chooses to attempt these steps and whether or not they are politically viable, the subtext is that the FCC believes it already has the necessary tools at its disposal and may be prepared to use them.

## What Happens Next?

Expect to see many rule making proceedings launched and hearings scheduled in the coming weeks and months. The deadlines will be short and the issues will be challenging. It is likely that broadcasters will face pressure from other sources too, both from inside the Administration and from some in Congress. Reallocation proponents have already drafted proposed legislation to advance their cause, and their allies in the House and Senate will circulate and introduce bills to that end. Many members of Congress are skeptical of a broadcast reallocation, particularly given that Congress is currently considering legislation that would require the Federal government, as a threshold matter, to determine what spectrum is currently being used and the efficiency of that usage.

The FCC has created extensive models to analyze various reallocation scenarios. The models have not been made available to broadcasters, but the NBP indicates that summaries of the results will be released

at a later date. Those models will reveal the extent of service area reductions and other technical changes that the NBP anticipates. The models will show significant reductions in broadcast spectrum usage in the dozen or so largest markets, but the ripple effects will probably extend to most, if not all, markets nationwide. The models will probably show more stations packed into the VHF bands and most or all stations above Channel 30 being packed into the lower UHF and the VHF bands.

Stations already in the VHF band or in the lower UHF bands may not be immune from these proceedings. Channel changes, reduced service areas, or other adverse factors may come into play for all stations in order to accommodate band clearing.

We recommend that broadcasters obtain and analyze these models at the first opportunity to assess the likely impact upon their stations. More generally, broadcasters need allies at the FCC and in Congress, and allies include voting members and influential staff members. Broadcast trade associations are ramping up for the broader questions being raised in these proceedings, but each television station licensee, with the assistance of their engineering and regulatory advisors, needs to make its own assessment of the likely impact on it of the various approaches the FCC is considering. In that regard, this process will be similar to navigating the DTV transition, where stations have to keep an eye on both the big picture changes as well as each station's individual legal and technical situation.

The idea of an upside for individual stations from such spectrum reallocation seems unlikely, even for those inclined to "sell" their spectrum, given the number of ways such auction proceeds would need to be divided (assuming Congress allows the licensee any share of auction proceeds at all). Overall, some of the NBP's recommendations represent a huge negative for the broadcast industry. However, even while asserting that it will implement some of its stated goals by regulatory force, the Broadband Task Force has acknowledged that it needs the cooperation of broadcasters to achieve the best results for all. If substantial reduction in broadcast service nationwide is a topic of credible debate, then substantial reform of broadcast regulations should be on the table as well.

*To participate in next Wednesday's conference call (**March 24 at 2 pm EDT**) to discuss the broadcast spectrum issues raised by the NBP, please contact Liliam Aguila at [liliam.aguila@pillsburylaw.com](mailto:liliam.aguila@pillsburylaw.com) or 202.663.8336 for the conference telephone number and password. We will take questions from participants on the call. Please feel free to send questions in advance to Ms. Aguila or to your regular Pillsbury contact.*

If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work or any of the authors below.

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