Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Expanding The Economic And Innovation Opportunities Of Spectrum Through Incentive Auctions	)	**GN Docket No. 12-268**
	)	
Incentive Auction Task Force And Media Bureau Seek Comment On Post-Incentive Auction Transition Scheduling Plan	)	**MB Docket No. 16-306**

COMMENTS

Northeast Gospel Broadcasting, Inc., Grace Worship Center, Inc., EICB-TV West, LLC, the National Translator Association, and the Advanced Television Broadcasting Alliance (collectively, the "LPTV & Translator Parties") respectfully submit these Comments on the Post-Incentive Auction Transaction Scheduling Plan (the "Plan") released on September 30, 2016.[1] The public notice accompanying the Plan provided interested parties to submit comments with respect to the proposed Plan no later than October 31, 2016.

As set forth in the Plan, the Commission's proposed transition schedule would establish ten "phases" during which full-power and Class A television stations will be required to construct their post-Incentive Auction facilities. The Commission will assign each transitioning station a construction deadline that falls within one of these 10 phases, with the goal that stations assigned to the early phases will clear their spectrum for reassignment to forward-auction winners within 24 months. In fact, stations assigned to the first three phases (expected to be more than 360 stations) are to have completed construction no later than 24 months after the Commission releases the "Auction Closing and Channel Reassignment PN" (the "Reassignment PN").[2]

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[1] *See Comment Sought on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, DA 16-1095 (rel. Sept. 31, 2016). *See also* 81 Fed. Reg. 73044 (rel. Oct. 24, 2016) ("Public Notice").

[2] *Plan*, Figures 4 & 5.

Absent from the Plan is any substantive discussion of the impact of the 10-phase transition schedule on low-power television ("LPTV") and television translator ("TV Translator") stations that operate on the spectrum to be transitioned to forward-auction winners well before the 39-month construction deadline. In fact, the only mention of the likely disastrous impact of the Plan on LPTV and TV Translator stations is contained in a footnote in the Public Notice. Specifically, the Public Notice stated that LPTV and TV Translator stations experiencing displacement by temporary channel assignments "could file for a new channel during the post-auction LPTV displacement window."[3]

However, the post-auction LPTV displacement window will only occur after "full power and Class A stations have submitted their construction permit applications and had an opportunity to request alternate channels or expanded facilities."[4] There will be two such windows, the first window will be limited to full-power and Class A television stations that cannot construct stations that meet the technical parameters in the Reassignment PN, and a second window will permit all other stations that were assigned a new channel in the Reassignment PN.[5] Thus, even if the two full-power and Class A television station filing windows are opened shortly after the initial construction permit filing deadline (i.e., three months after Reassignment PN), it is likely that LPTV and TV translators will not be able obtain displacement relief in the first 12-18 months after the Reassignment PN.

In light of this delay, the LPTV & Translator Parties request that the Commission unequivocally provide the following relief when it adopts the final, multi-phase Plan:

1. Permit LPTV and TV Translators to obtain authorization to operate on temporary channels during the transition;

2. Permit LPTV and TV Translators to remain silent for more than 12 months pursuant to the FCC's discretionary authority in Section 312(g) of the Communications Act "to promote equity and fairness;" and

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[3] *Public Notice*, ¶ 24.

[4] *Id.*, nt. 71.

[5] *See* 29 FCC Rcd 6567, 6793-6794 (2014).

3. Permit LPTV and TV Translator licensees and permittees to specify a transmitter site location in its displacement application that is up to 250 miles from the facility's current transmitter site location.

The requested relief will provide LPTV and TV Translators the necessary flexibility to continue their valuable programming to the public during this unprecedented (and, in some cases, business-ending) disruption. Further, by affirmatively incorporating the request relief into the Plan, the Commission will provide some certainty to LPTV and TV Translator permittees and licensees. Finally, the requested relief will create an opportunity for these licensees to preserve their investment in their authorizations, and will not cause any disruption to the Commission's overall transition plan.

DISCUSSION

1. THE COMMISSION'S PLAN DELAYS ABILITY FOR LPTV AND TV TRANSLATORS TO OBTAIN DISPLACEMENT RELIEF.

As set forth in the Plan, the Commission will provide three months for full-power and Class A television licensees to submit their construction permit applications after the Reassignment PN is released. Subsequent to that window, the Commission will open two sequential windows for full-power and Class A television licensees to submit construction applications that deviate from their facilities set forth in the Reassignment PN. Once those two windows have closed, the Commission will open third window, this time for LPTV, TV Translators, and Digital Relief Translators to submit applications for new channels to remedy their displacement caused by full-power and Class A television licensees.

While the Commission has not yet indicated the timing for the two post-Reassignment PN filing windows for full power and Class A television stations to enhance their facilities, it is likely that the LPTV and TV Translator stations will not be able to file for displacement relief until 8-12 months after the Reassignment PN has been released:

- Reassignment PN released – Day Zero;
- Deadline for full-power and Class A facilities to file initial construction permits – Day 90;

- Deadline for First Priority full-power and Class A facilities to file construction permit applications – Day 120-150;
- Deadline for Second Priority full-power and Class A facilities to file construction permit applications – Day 180-210;
- Deadline for LPTV and TV Translator displacement applications – Day 240-270;
- Likely issuance of first LPTV and TV Translator displacement applications – Day 300-330;

This is significant because, as noted in the Plan, the Phase 1 construction deadline will be approximately 12 months after the issuance of the Reassignment PN, and the Phase 2 construction deadline will just a few months later.

Therefore, it is possible that television spectrum in the geographic areas assigned to Phase 1 and Phase 2 will be turned over to the 600 MHz wireless service providers within 24 months after the Reassignment PN. It is also likely LPTV and TV Translators operating on that very same spectrum will have had less than 12 months to find a new displacement channel and construct their modified facilities.

Moreover, when one factors in the spectrum that will be assigned during Phase 3 and Phase 4 of the Plan, it is clear that there will be a significant number of the 5,768 licensed LPTV and TV Translator stations that wish to continue providing service, but will have no more than 18 months after the Reassignment PN to identify, file, and construct new facilities.[6] While the Commission has indicated that these stations may continue to operate until the 600 MHz wireless licensees provide notice of their initiation of service, the Commission must provide operating LPTV and TV Translator stations with adequate relief under the Plan so that the licensees may preserve their service and adequately plan for their future.

2. THE COMMISSION SHOULD AUTHORIZE THE USE OF TEMPROARY CHANNELS BY LPTV AND TV TRANSLATORS.

In light of the timing issues discussed above, the Commission must incorporate into the Plan the ability for LPTV and TV Translators to utilize temporary channels when faced with

[6] *See Broadcast Station Totals As Of September 30, 2016*, Public Notice, rel. Oct. 19, 2016.

displacement by full-power and Class A television stations. The Commission tentatively concluded in the Public Notice to not permit the use of temporary channels for full-power and Class A stations, finding that the benefits of using temporary channels would be offset by confused viewers, additional demands on resources, and an increase in the overall cost of the transition.[7]

However, for a LPTV or TV Translator licensee that is confronted with the sole option of turning off its station due to displacement, the additional burdens of a temporary channel may be worth enduring so to ensure its continued service to the public. Furthermore, because LPTV and TV Translator licensees are not entitled to reimbursement funds, it will be vital that these stations remain in operation for as long as possible so to earn sufficient revenue to pay for the costs associated with their involuntary displacement.

As such, the Commission must include in the Plan specific procedures for LPTV and TV Translators to obtain authority to operate on temporary channels "anywhere in the post-auction VHF or UHF television bands, as well as in the new 600 MHz wireless band" on a non-interfering basis.[8] Such relief should be provided by permitting a LPTV or TV Translator licensee to submit an STA Request with the Commission, and upon a demonstration that the proposed facility would not cause interference to any licensed full-power or Class A television station. Such authority would expire upon the initiation of service by the 600 MHz wireless band licensee or a licensed full-power or Class A station. As discussed below, the authorization should also permit the licensee to operate from any site up to 250 miles from its current license authorization.

By providing this relief, the Commission would provide valuable assistance to LPTV and TV Translator licensees that seek to continue to provide service to the public. It would also provide a source of revenue for affected licensees that must self-fund their displacement relief.

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[7] *Public Notice*, ¶ 20.

[8] *Id.*, ¶ 21.

3. THE COMMISSION MUST PERMIT LPTV AND TV TRANSLATOR STATIONS RELIEF TO REMAIN SILENT FOR MORE THAN 12 MONTHS.

In the event that a displaced LPTV or TV Translator station is unable to find a new channel on which to operate, the Commission must incorporate unequivocal language in the final Plan that permits such stations to remain silent for more than 12 months. Section 312(g) of the Communications Act, as amended, provides the Commission the discretion to permit stations to remain silent for more than 12 months "to promote equity and fairness."[9]

The LPTV & Translator Parties submit that there is little more inequitable and unfair than being a licensee finding itself displaced, and then being required to fund its own displacement relief. The Commission has made this unfortunate determination in the Incentive Auction proceeding, and the LPTV & Translator Parties do not wish to relitigate this question in the instant proceeding.

Instead, the LPTV & Translator Parties simply request that the Commission incorporate an unequivocal statement into the Transition Scheduling Plan's final language that LPTV and TV Translators licensees, upon finding themselves displaced by a (i) full-power television, (ii) Class A television, or (iii) 600 MHz wireless licensee, are permitted to file for authority to remain silent until such time that the licensee can find and reconstruct its station on an available channel, or until the construction deadline for new digital LPTV and TV Translator stations.[10]

4. THE COMMISSION MUST PROVIDE ADDITIONAL DISPLACEMENT RELIEF TO LPTV AND TV TRANSLATOR STATIONS.

Finally, the Commission's final Transition Scheduling Plan must provide relief to those LPTV and TV Translators licensees that wish to specify a new transmitter site within 250 miles from their currently authorized transmitter site location. Currently, the Commission's rules

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[9] *See* 47 U.S.C. § 312(g).

[10] *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Report and Order, 30 FCC Rcd 14,927, 14,936 (2015)(*i.e.*, 51 months after the release of the Reassignment PN).

limit LPTV and TV Translator site change proposals to no more than 30 miles from the reference coordinates of a station's community of license. In light of the substantial number of LPTV and TV Translators that will be seeking displacement relief, coupled with the reduction in the overall amount of spectrum that will be available during the 39-month transition period, it is likely that some LPTV and TV Translator stations will not be able to find an available channel and transmitter site from which to operate that is 30 miles or less from its community of license. As such, it is likely that many stations may be forced to permanently cease operations due to this 30-mile limitation.

When faced with the possible reduction in the number of operating stations in another broadcasting service – namely the AM broadcasting service – the Commission authorized FM translators to move up to 250 miles to serve as fill-in stations for AM facilities. The Commission found it necessary to do so because the AM band was experiencing increased interference, and the Commission determined that the relaxation of the minor change rule for FM translators served the Commission's goal to preserve the AM band.

In the instant proceeding, the Commission is faced with an even more severe threat. More than 5,000 licensed LPTV and TV Translator stations are facing significant disruptions to their operations, with many stations likely to be permanently forced off-air due to the requirements set forth in Commission's final Transition Scheduling Plan. For those LPTV and TV Translator stations that face the cessation of their service within 12-18 months after the release of the Reassignment PN, the additional flexibility of changing a station's transmitter site more than 30 miles may very well be the difference between the continued operation of the station or the cessation of operations and service to the public.

Therefore, the LPTV & Translator Parties respectfully request that the Commission incorporate language into the final Transition Scheduling Plan that permits LPTV and TV Translator stations to relocate their transmitter sites up to 250 miles from their currently authorized location. By granting such relief, the Commission will be ensuring that this valuable

broadcast service will survive the transition to the new post-auction band plan, much as it did to preserve the AM band when it was faced with a similar threat to its existence.

CONCLUSION

The Commission has made several past decisions that have placed LPTV and TV Translator stations in a precarious long-term position. Rather than relitigate those decisions, the LPTV & Translator Parties request that the Commission incorporate specific language into the final Transition Scheduling Plan to afford LPTV and TV Translators the necessary relief to face future displacement challenges. By incorporating language into the final Transition Scheduling Plan to permit LPTV and TV Translator stations to (i) use temporary channels, (ii) remain off-air for more than 12 months if necessary, and (iii) specify transmitter sites up to 250 miles from their currently-authorized location, the Commission will extend a much needed lifeline to these broadcast services that find themselves in a perilous position.

None of these requests would undermine the Commission's stated goals for the final Transition Scheduling Plan, and they would provide much-needed regulatory relief to LPTV and TV Translator stations. Therefore, the LPTV & Translator Parties respectfully request that the Commission incorporate the requested relief into the final Transition Scheduling Plan.

Respectfully submitted,

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