

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Expanding the Economic and Innovation) GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)
Auctions)
)

**REPLY OF ADVANCED TELEVISION BROADCASTING ALLIANCE TO
CTIA’S OPPOSITION TO PETITIONS FOR RECONSIDERATION**

Advanced Television Broadcasting Alliance (“ATBA”) hereby responds to the Opposition to Petitions for Reconsideration filed by CTIA – The Wireless Association (“CTIA”) in GN Docket No. 12-268.¹

The CTIA Opposition mischaracterizes ATBA’s Petition for Reconsideration.² Although CTIA contends that ATBA encouraged the FCC to “base its auction scheduling and processes around consideration of LPTV issues,”³ ATBA made no such proposal. ATBA instead contended that the FCC has a general public interest obligation to consider the loss of service occasioned and to make reasonable efforts to mitigate that impact.⁴ In other words, ATBA’s position is that the FCC should not destroy LPTV and translator service in the interest of conducting the auction a bit sooner. Contrary to CTIA’s contention, ATBA’s request is inherently reasonable – that the FCC must take account of the costs of its actions before deciding if those actions are in the public interest. Like ATBA, Congress has recognized the importance of the impact on the spectrum auction on

¹ See Opposition and Reply of CTIA – The Wireless Association to Petitions for Reconsideration, GN Docket No. 12-268 (filed November 12, 2014) (“CTIA Opposition”).

² See ATBA Petition for Reconsideration, GN Docket No. 12-268 (filed September 15, 2014) (“ATBA Petition”).

³ CTIA Opposition at 18.

⁴ ATBA Petition at 5.

LPTV stations and has directed the Government Accountability Office (“GAO”) to conduct a study of the impact of the spectrum incentive auction on LPTV licensees and their communities.⁵

In addition, CTIA argues that the Spectrum Act did not obligate the FCC to give any consideration to the impact of the auction and repacking on LPTV stations.⁶ ATBA disagrees.⁷ But in any event, ATBA’s contention that the FCC must consider the impact of the auction on LPTV stations is grounded in the FCC’s general obligation to protect the public interest and to ensure that its decisions are based on reasoned decisionmaking. The FCC has held for decades that the diversity of broadcast voices is an overriding public interest objective.⁸ Therefore, it would not be reasonable for the FCC to take action that will eliminate hundreds or thousands of diverse voices without assessing how many will be eliminated. Certainly, that would not be when there is no clearly defined and quantifiable gain for the public interest, as is the case here.

Finally, CTIA also argues that “out of core” LPTV stations have known for years that they were allowed to operate only on an interim basis.⁹ However, the facts of the example cited by CTIA are distinguishable from the currently proposed auction. In that case, the FCC supported its decision to move LPTV stations because there had been

⁵ See Letter from Representatives Joe Barton & Anna Eshoo to Gene Dodaro, Comptroller General of the United States (October 1, 2014), *available at* http://joebarton.house.gov/uploads/LPTVletter_100114.pdf.

⁶ See CTIA Opposition at 18.

⁷ See ATBA Petition at 6.

⁸ See *FCC v. Nat’l Citizens Committee for Broad.*, 436 U.S. 775, 780 (1978) (with respect to ownership, “diversification . . . serves the public interest by promoting diversity of program and service viewpoints.”); *1998 Biennial Regulatory Review*, 13 FCC Rcd 11276, ¶ 3 (1998) (the FCC has “traditionally defined” the public interest “in terms of our competition and diversity goals”); *Television Ownership Rules*, 14 FCC Rcd 1290, ¶¶ 40-41 (1999) (“we must ensure that diversity and competition are protected”).

⁹ CTIA Opposition at 19-20, n.54.

“sufficient time to begin the process” to move channels.¹⁰ The FCC limited its description in that transition date to those low power television stations located on channels 52-69, and did not make a blanket statement about all LPTV stations.¹¹ The incentive auction at issue here is easily distinguished. Congress did not authorize the present auction until 2012,¹² so there is no way that LPTV licensees have had ample time to know they would lose their channels, and certainly not the “fourteen years of advance notice” that the FCC found to be an adequate justification in its 2013 proceeding.¹³ To the contrary, Congress provided the FCC with ten years to conduct the auction¹⁴ and required the FCC in several different places in the statute to preserve existing service.¹⁵ However, the FCC is steamrolling ahead to have the auction completed in less than half of that time.¹⁶ As noted in the ATBA Petition, the FCC’s decision to require all re-assigned full power stations to cease broadcasting on their pre-auction channel within 39 months of the close of the auction indicates that the FCC is rushing the completion of the Auction.¹⁷ Because of well-documented resource shortages¹⁸ it will be impossible during that period for LPTV licensees to construct displacement facilities, even if available

¹⁰ *Amendment of Parts 73 and 74 to Establish New Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 28 FCC Rcd 14412, ¶ 5 (2013) (“LPTV Order”).

¹¹ *Id.*

¹² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) (“Spectrum Act” or “Act”).

¹³ LPTV Order at ¶ 5.

¹⁴ 47 U.S.C. § 1452(f)(3).

¹⁵ See, e.g., 47 U.S.C. § 1452(b)(1)(B) (reassignments subject to border coordination); 47 U.S.C. § 1452(b)(2) (FCC “shall make all reasonable efforts to preserve . . . the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69. . .”).

¹⁶ Federal Communications Commission, *Incentive Auction Progress Report*, October 24, 2014, <http://www.fcc.gov/blog/incentive-auction-progress-report> (last visited November 21, 2014) (predicting that the auction will be conducted in 2016).

¹⁷ ATBA Petition at 6.

¹⁸ See, e.g., Widely, *Response to the Federal Communications Commission for the Broadcaster Transition Study Solicitation*, GN Docket No. 12-268 (filed March 20, 2014); Comments of GatesAir, Inc. at 4-6; Comments of Stainless LLC at 2; Comments of Dielectric LLC at 3; Comments of American Tower Corp. at 3-4, all filed in GN Docket. No. 12-268 (filed April 21, 2014).

channel assignments are found, resulting in unnecessary loss of service to viewers who have few or no other options.¹⁹ CTIA's argument that it is somehow reasonable and fair – and ostensibly in the public interest – for LPTV stations to always be prepared to lose their licenses without advance notice (and for thousands of them to be simultaneously subject to sudden death) does not square with rational decision making, fairness, or (most important) the FCC's obligation to regulate in the interest of the public.

ATBA encourages the FCC to take action in accordance with the positions expressed herein.

Respectfully submitted,

**ADVANCED TELEVISION
BROADCASTING ALLIANCE**

/s/

By: Louis Libin
Executive Director

382 Forest Avenue
Woodmere, NY 11598
(516) 374-6700

Dated: November 24, 2014

¹⁹ ATBA Petition at 7.