

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	
Commission’s Rules to Establish Rules for Digital)	MB Docket No. 03-185
Low Power Television and Television Translator)	
Stations)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum through Incentive))	
Auctions)	
)	
Amendment of Part 15 of the Commission’s Rules)	ET Docket No. 14-175
to Eliminate the Analog Tuner Requirement)	

Filed electronically through ECFS

To: The Commission

COMMENTS OF INTERNATIONAL COMMUNICATIONS NETWORK, INC.

1. International Communications Network, Inc. (“ICN”) hereby submits, by counsel, comments in response to the *Third Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceedings, 29 FCC Rcd 12536 (2014).¹ ICN is owned by an African American and Hispanics, and is the licensee of digital low power television (“LPTV”) station KSDY-LD in San Diego, California (Facility ID 56830), serving Spanish and English-speaking communities with multiple program streams. In the shadow of the coming Incentive Auction and broadcast station repack into a smaller band of spectrum, KSDY-LD, which operates on Channel 50, and all of LPTV and the diversity of media ownership the industry embodies are endangered – especially in major markets such as San Diego, near an international border. ICN supports the Commission’s stated goals of mitigating for LPTV stations negative impacts of the auction and

¹ The NPRM was published at 79 FR 70824 (Nov. 28, 2014). The Media Bureau extended the deadline for initial comments by *Order*, DA-1727, released December 1, 2014.

repacking process while ensuring continued programming delivery to viewers served by LPTV. But, ICN urges additional actions that are necessary in practice to preserve and to protect LPTV, including improving the international coordination process and making sure that stations that have survived multiple truncations of the TV spectrum do not continue to bear the risk of extinction.

2. KSDY-LD is one of only a handful of independent,² minority-owned television stations still operating in a large U.S. market. For fifteen years, ICN, led by majority-owner and African American Maxwell C. Agha and governed by stockholders, officers and directors who, but for Mr. Agha, are all Hispanic, has offered programming aimed at helping the Latino community in Southern California stay connected with its people and culture, while keeping up with news and trends in the local community and the world. The station operates 24 hours a day, seven days a week, and serves the unique interests and needs of the Spanish- and English-speaking populations of the San Diego area with programming on multiple digital streams.

3. The announced overarching purpose of this proceeding, which ICN strongly supports, is the preservation of the LPTV service. Inherent in that aim is the preservation of the opportunities LPTV offers for minority ownership, which serves broaden the base of media ownership that stimulates competition and diversity of voices in marketplace that has exhibited the opposite trend, with one merger after another, since the turn of the century.³ In seeking to ensure continued ownership and programming diversity, the Commission must put some real

² ICN's owners do not have interests in any other mass media.

³ “[LPTV] was primarily intended to provide opportunities for locally-oriented television service in small communities, both rural and individual, within larger urban areas. LPTV presents a less expensive and very flexible way of delivering programming tailored to the interests of viewers in small localized areas, providing a means of local self-expression. In addition, LPTV has created abundant opportunities for new entry into television broadcasting and has permitted fuller use of the broadcast spectrum.” <http://www.fcc.gov/encyclopedia/low-power-television-lptv>.

muscle behind which might otherwise be only platitudes to craft regulations and policies to protect stations like KSDY-LD in the post-auction LPTV repacking environment.

4. First, the Commission must develop a streamlined approach to interference and application approval coordination with the government of Mexico. KSDY (analog) was first licensed on Channel 61 but had to move when Channels 60-69 were removed from television broadcasting. It spent nearly a decade struggling to find a new channel, having one application after another dismissed, and after finally finding a good channel (38), losing it to Mexico to accommodate a Mexican station that the U.S. Government wanted relocated to avoid interference to non-broadcast radio operations vital to national security. Now digital KSDY operates on Channel 50, which it is again likely to lose with no prospect of reimbursement of the costs it will incur.

5. The international coordination aspects of another displacement are especially intimidating. LPTV stations are small businesses and do not have the resources of large media companies to sustain the uncertainty of a protracted delay in obtaining Mexican coordination of displacement applications – and Mexican coordination is a notoriously opaque and lengthy, often *years-long*, process. Indeed it would be naïve to assume that any border area LPTV stations will survive post-repack at all if displacement forces them off the air for years while waiting on piecemeal Mexican approval. The Commission should, at the very least, negotiate and establish with Mexico a simplified coordination procedure that presumes that an application may be granted after notice and a short wait, absent affirmative intervention by the other government, if it meets a rational interference threshold with respect to existing stations on both sides of the border.

6. Second, priority should be afforded to independently-owned and -programmed LPTV stations in assigning whatever channel capacity remains available after the repack. In particular, the Commission's proposal to give priority to digital replacement translators ("DRTs") should be abandoned and indeed rejected. As they are permitted only to rebroadcast a full-power parent station, DRTs do nothing to increase or enhance diversity of ownership or programming. If there are not enough channels to accommodate all current LPTV stations in a market after the re-pack, ICN urges that priority be given to truly independent voices in a market, favoring independently-owned stations over LPTV stations owned, controlled, or programmed by entities which own or control full power or Class A outlets with overlapping service areas and thus already have assurance that their voices will be preserved.

7. Finally, this should be the last time that LPTV stations are tossed into the wind in a spectrum reorganization. The shrinking of the television broadcast band and the repack of remaining stations in congested markets threatens the very existence of LPTV, the opportunities LPTV affords to small businesses and minority operators, and the diversity and creativity of programming that LPTV stations provide. The prospects are bleakest near international borders. The Commission has the opportunity to take affirmative steps now, in this proceeding, to ensure that LPTV stations will be able to survive and thrive in a post-repack world. ICN urges the Commission to allow LPTV stations that provide a specified level of service to declare their eligibility for permanent status prior to the Incentive Auction. After the auction and repack, those that made a timely declaration should be permitted to apply for permanent status and be offered priority over LPTV stations which failed to make such declaration.

8. The Commission certainly has statutory authority to create more primary LPTV stations, especially if the qualifying criteria are the same ones used for Class A stations in 2000. Congress specifically gave the Commission authority to upgrade qualifying LPTV stations in the *Community Broadcasters Protection Act of 1999*, codified at 47 U.S.C. § 336(f). While the Commission has thus-far refused to open more than one window of opportunity for LPTV stations to upgrade to Class A status, there can be no dispute that the statute allows further upgrades, as the Commission is given broad discretion in Section 336(f)(2)(B) of the Communications Act to determine *without a time limit* which stations may qualify for Class A primary service protection.⁴ The Commission may have *chosen* not to use this authority in the past, but the authority remains part of the law and not only may, but indeed should, be used now.

9. LPTV stations can be allowed to qualify for post-repack primary status without disrupting the Incentive Auction or the repack itself and without adding any strain on the Commission's resources prior to the repack. Grant of primary status would be a game-changer for the industry, providing the basic protections against interference and the assurance of permanence that is necessary to justify continued capital investment in the industry. A small step by the Commission would be a lifeline for an industry in peril.

⁴ There is no date or time limit in 47 USC § 336(f)(2): “For purposes of this subsection, a station is a qualifying low-power television station if—(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.”

10. The upcoming Incentive Auction and repack of the broadcast spectrum is a threat to the entire existence of LPTV. ICN urges the Commission to recognize that it has a duty to protect and preserve the LPTV service by mitigating the negative impacts of the repack, as well as an opportunity to offer a future for this important source of diverse, community-based free programming and minority and small business participation in an increasingly homogenous corporate media landscape. ICN urges the Commission to consider its obligations and the mitigating steps ICN has suggested to help achieve both objectives.

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