

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

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

COMMENTS OF WEST VIRGINIA EDUCATIONAL BROADCASTING AUTHORITY

The West Virginia Educational Broadcasting Authority (“WVEBA”), by its attorneys, respectfully submits the instant comments (“Comments”) in the above-captioned proceeding in which the Federal Communications Commission (“FCC” or “Commission”) seeks comment on measures to mitigate the impact of the broadcast incentive auction on low power television and television translator stations, as well as on the deadline for final conversion of such stations to all-digital broadcasts.¹ As an initial matter, WVEBA commends the Commission for its recognition of the important role television translator stations play in the provision of video programming to consumers in rural areas. This is particularly the case with noncommercial

¹ See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power and Translator Television Stations, MB Docket No. 03-185; Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions, GN Docket 12-268 ; Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement, ET Docket No. 14-175, *Third Notice of Proposed Rulemaking*, 29 FCC Rcd 12536 (2014) (“*Third Notice*”). Because WVEBA is the licensee of several low-power television translator stations, these Comments use the term “translator station” to refer generally to the low power and television translator service.

educational (“NCE”) stations, such as those licensed to WVEBA. Accordingly, WVEBA urges the Commission to adopt a second-level processing priority for displacement applications for NCE translator stations, such that only applications for digital television replacement translators (“DRT”) will be processed prior to NCE displacement applications for television translators.² A second-level processing priority as proposed herein will enable NCE translator stations to maximize their ability to plan and fund the transition to a new channel, with as few disruptions to viewers as possible. To further lessen the burdens of the displacement process, the Commission should adopt its proposal to use the Media Bureau’s repacking and optimization software to facilitate the identification of available channels for displaced NCE translator stations, provided that NCE television stations retain discretion to select any available channel for post-repacking operations. Finally, in order to minimize viewer disruptions and avoid burdening translator stations with additional construction costs, WVEBA encourages the Commission to postpone the September 1, 2015 deadline for the low-power and translator digital transition until after the close of the incentive auction and repacking.

I. GIVEN THE CRITICAL ROLE THAT TRANSLATOR STATIONS PLAY IN NCE OPERATIONS, THE COMMISSION SHOULD ADOPT A SECOND-LEVEL PROCESSING PRIORITY FOR NCE DISPLACEMENT APPLICATIONS

As the Commission has long-recognized, NCE broadcasters, such as WVEBA, play a unique role in the nation’s television broadcast system in their ability to provide educational programming to their communities.³ Indeed, pursuant to FCC rules, NCE stations are tasked

² Although not specifically addressed in these Comments, WVEBA supports the proposal of the Public Broadcasting Service (“PBS”), Corporation for Public Broadcasting (“CPB”), and Association of Public Television Stations (“APTS”, and collectively, the Public Broadcasters) that the FCC adopt a third-level processing priority to any translators that operate as an integral part of a chain making up an extended translator network. *See* Comments of the Public Broadcasters to the *Third Notice*, at §I.B (filed Jan. 12, 2015).

³ *See, e.g.*, In the Matters of Amendment of Section 3.606 of the Commission’s Rules and Regulations; Amendment of the Commission’s Rules, Regulations and Engineering Standards

with “serv[ing] the educational needs of the community” through the broadcast of educational, cultural, public affairs, and other programming.⁴ In recognition of this important role, the FCC’s rules and policies have long treated NCE television stations differently than commercial television stations in several aspects. For example, the Commission’s spectrum planning policies historically have included a significant reservation of spectrum for noncommercial television stations.⁵ The FCC also has crafted rules to enable NCE broadcasters to focus on programming, rather than on the commercial market pressures faced by commercial broadcasters.⁶ Moreover, the Commission has afforded NCE stations with unique must-carry rights in order to facilitate

Concerning the Television Broadcast Service; Utilization of Frequencies in the Band 470 to 890 MCS for Television Broadcasting, 41 F.C.C. 148, ¶ 38 (1952) (“The record shows the desire and ability of education to make a substantial contribution to the use of television. . . . The public interest will clearly be served if these stations are used to contribute significantly to the educational process of the nation. The type of programs which have been broadcast by educational organizations, and those which the record indicates can and would be televised by educators, will provide a valuable complement to commercial broadcasting.”).

⁴ 47 C.F.R. § 73.621(a).

⁵ Historically, the FCC has set aside approximately 25% of television channels for non-commercial use. *See* Deletion of Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania, *Mem. Op. & Order*, 11 FCC Rcd 11700, 11708 (1996); *see also* 41 F.C.C. 148 ¶ 60 (specifying that the FCC would reserve at least one channel for educational use if at least three VHF channels were assigned to a city); *In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Notice of Proposed Rulemaking*, 6 FCC Rcd 7024, 7030 (1992) (“The Commission’s spectrum planning policy has traditionally taken into account the important role noncommercial stations play and the financial constraints they face in constructing and operating stations.”).

⁶ *See, e.g.*, 47 C.F.R. § 399(b)(2) (prohibiting the broadcast of advertisements on public broadcasting stations); *In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, 7 FCC Rcd 827 (1986); *Commission Policy Concerning the Noncommercial Educational Nature of Educational Broadcasting Stations*, 97 FCC 2d 255 (1984); *Commission Policy Concerning the Noncommercial Educational Nature of Educational Broadcasting Stations*, 90 FCC 2d 895 (1982); *Second Report and Order*, 86 FCC 2d 141 (1981); *First Report and Order and Notice of Proposed Rulemaking*, 69 FCC 2d 200 (1978). *See also* Petition for Reconsideration of the Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service, Expanding the Economic and Innovation Opportunities Through Incentive Auctions, GN Docket No. 12-268, filed Sept. 15, 2014 (“The Commission’s interest in creating a ‘noncommercial’ service has been to remove the programming decisions of public broadcasters from the normal kinds of commercial market pressures under which broadcasters in the unreserved spectrum usually operate.”)

the ability of NCE stations to provide universal television service.⁷ Importantly, these must-carry rights expressly contemplate the carriage of television translator stations of any NCE station, including NCE translators that operate on unreserved spectrum.⁸

The inclusion of television translator stations in the must-carry rights of NCE broadcasters underscores the importance of such stations in the provision of broadcast television programming. As an initial matter, as has been repeatedly observed by the Commission, translator stations are essential to the ability of broadcasters to serve viewers in rural and remote locations, many of which cannot otherwise receive free over-the-air television due to signal blockage from terrain obstructions.⁹ Importantly, television translator stations are not only used to provide broadcast service directly to consumers, but also to enable NCE broadcasters to deliver good quality signals to cable providers. Absent the use of translator stations, in many cases, NCE station programming would not be eligible for cable carriage simply because the NCE station could not provide to cable operators a signal of the quality required by the FCC's must-carry rules.

⁷ See 47 C.F.R. § 76.55(a). As the Commission recently has observed, the must-carry rules are “critical to public TV’s universal service mission”. In re Innovation in the Broadcast Television Band: Allocation, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, *Report and Order*, 27 FCC Rcd 4616, 4632 (2012).

⁸ See 47 C.F.R. § 76.55(a).

⁹ In the matter of Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Report and Order*, 19 FCC Rcd 19331, 19333 (2004). (noting that the FCC created the low power television service, which includes translators, in 1982 with the specific goal of “bring[ing] television service, including local service, to viewers ‘otherwise unserved or underserved’ by existing service providers.”); Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations, *Notice of Proposed Rulemaking*, 18 FCC Rcd 18365, 18369 (2003) (observed, translator stations are an “integral component of the nation’s television system” because they provide free, over-the-air service to rural and remote locations, as well as to areas that cannot receive full-power broadcast signals due to terrain obstructions).

In WVEBA's own experience, television translator stations have played a vital role in its ability to provide universal television service to the state of West Virginia, consistent with its legislative mandates. WVEBA was established by the West Virginia Legislature as a public benefit corporation to construct, maintain and operate educational broadcasting facilities to serve the citizens of West Virginia.¹⁰ In this capacity, WVEBA serves as the FCC licensee of the three full-power television broadcast stations affiliated with PBS in the state of West Virginia.¹¹

Because West Virginia is a large state with mountainous terrain and many rural areas, it simply is not possible for WVEBA to meet its statutory obligation to serve the entire state of West Virginia solely with these three full-power stations. Accordingly, WVEBA also holds licenses for several television translator stations, which stations are used to provide service to remote and rural areas of the state as well as to deliver a good quality signal to cable providers. Specifically, WVEBA's television translators provide service in 24 of the 55 counties in West Virginia, as well as rural areas in Virginia, Ohio, Pennsylvania, and Maryland. More than 40 percent of West Virginia's population (approximately 700,000 people) live in the counties served by WVEBA's translators. In fact, major West Virginia cities of Parkersburg, Wheeling and Martinsburg would not receive any WVEBA programming without the WVBEA translators. Importantly, WVEBA is the only broadcaster providing in-depth coverage to these communities of their state's government. Not only do WVEBA's television translators serve customers using antennas but they also provide

¹⁰ See W. Va. Code § 10-5-2(a) (2011). As an affiliate of PBS, WVEBA also is Congressionally mandated to provide universal television service. See 47 U.S.C. § 396(a)(5) ("it furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, and will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation."); *Id.* § 396(a)(7) ("it is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States.").

¹¹ Specifically, WVEBA is the licensee of WNPB-TV, Morgantown, West Virginia; WSWP-TV, Grandview, West Virginia; and WVPB-TV, Huntington, West Virginia.

service to many large and small cable television systems throughout these areas. In short, without its translator operations, WVEBA would have difficulty meeting its mandate to serve the residents of West Virginia with television programming, whether directly via over-the-air signals, or via cable systems that rely on translators to pick up WVEBA content.

Unlike commercial broadcast stations which are permitted to broadcast advertisements as well as negotiate for retransmission consent fees, WVEBA is constrained in its ability to generate revenues from its broadcast operations.¹² To obtain funds to support its broadcast operations, WVEBA generally is required to either raise funds from private donations or to seek grants and appropriations from the state of West Virginia.¹³ The process to procure funding is involved and time-consuming, and often takes two to three years.¹⁴ Moreover, there is no guarantee that WVEBA will be able to access funds at any given time due to state-mandated restrictions. For example, West Virginia law expressly state that any funds raised by WVEBA for its broadcast operations must “be deposited with the State Treasurer of West Virginia” or with those private nonprofit corporations that have satisfied with specific statutory requirements for holding such funds.¹⁵ The WVEBA must follow a long and cumbersome state purchasing process that takes much staff time and many months, and sometimes years, to complete for a construction project of this size. Thus, if, as a result of the incentive auction process, any of WVEBA’s translator operations are displaced, WVEBA will face a significant challenge in obtaining adequate funding in a timely manner to construct new facilities (assuming channel availability).

¹² *See, supra* at n. 6. In addition, unlike commercial stations, NCE broadcasters cannot elect to negotiate retransmission consent fees. 47 CFR § 76.64(f) (establishing rules for commercial television stations’ retransmission consent); *Id.* § 76.56(a) (establishing must-carry rules for qualified NCE television stations).

¹³ W. Va. Code § 10-5-4 (2011).

¹⁴ *See* http://www.legis.state.wv.us/Wrapup/pdfs/Vol.XV_issue7.pdf.

¹⁵ W. Va. Code § 10-5-4; 10-5-6 (2011).

In order to facilitate the ability of NCE stations like WVEBA to meet their goal of providing universal television service, the Commission should take all actions necessary to ensure that NCE stations are not materially adversely impacted as a result of the displacement process stemming from the incentive auction. As an initial matter, WVEBA appreciates that the FCC intends to allow translators assigned to channels in the 600 MHz band to continue to broadcast until such time as a licensee in the 600 MHz band actually commences operations, as well as indefinitely in areas where harmful interference to a 600 MHz licensee from a translator station is unlikely.¹⁶ This approach, however, does not adequately mitigate the risk of disruptions in NCE programming for those viewers that rely on translators that are ultimately displaced. Accordingly, the Commission should adopt application processing procedures whereby displacement applications filed by NCE translator stations will be provided priority over all other displacement applications, excepting applications for DRTs.¹⁷ Such an approach likely will provide NCE stations with more available channel options, and thus additional flexibility, than if NCE translator displacement applications are processed co-equally with all other translator applications. Moreover, by processing NCE displacement applications promptly, the Commission can provide NCE stations with certainty that their translator operations can be maintained, thereby enabling stations to make appropriate plans for construction and funding of displaced translators.

Given the likelihood of increased demand for channels and equipment in the aftermath of the repacking, as well as the possibilities of weather-related delays, delays in zoning approvals,

¹⁶ See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, 29 FCC Rcd 6567, ¶ 670 and notes 1863 & 1864 (rel. June 2, 2014).

¹⁷ This proposal is submitted by WVEBA in response to the FCC's request for input regarding additional means to mitigate the impact of the incentive auction on translator stations. See *Third Notice* at ¶ 4 and ¶ 59.

and other factors outside of a NCE station's control, it is critical that the FCC quickly and efficiently process NCE displacement applications, ahead of all other displacement applications excepting those for DRTs. In the absence of a second-level processing priority, NCE broadcasters like WVEBA are likely to be required to cease translator operations, at least temporarily, while they search for new available channels, work to secure funding for new facilities, and construct such facilities.¹⁸ Indeed, WVEBA anticipates that it may be required to cease operations of certain of its translators on a permanent basis if it is not able to obtain prompt relief following the incentive auction, and it is likely that other NCE stations will also be required to do so. Such a result clearly is not in the public interest.

II. THE COMMISSION SHOULD USE THE MEDIA BUREAU'S REPACKING OPTIMIZATION SOFTWARE TO ASSIST TRANSLATOR STATIONS IN IDENTIFYING AVAILABLE CHANNELS

In the *Third Notice*, the Commission seeks comment on whether to enable displaced translator stations to utilize the repacking and optimization software ("Software") to facilitate the relocation of displaced translator stations.¹⁹ Because, as discussed above, NCE stations face unique financial and resource constraints, such stations may not have access to the technical or other resources to identify appropriate channels for their displaced translator operations in an efficient and cost-effective manner. By using the Software to identify channels available for NCE translator stations, the Commission likely can ease at least some of the challenges of the displacement process for NCE translators. WVEBA emphasizes that stations should be provided with channel options derived from the Software with adequate time to evaluate the feasibility of all channel options, from a technical and cost perspective. Thus, at a minimum, NCE stations should be provided with a list of channels identified by the Software, whether by public notice or

¹⁸ See, e.g., Comments of the Public Broadcasting Service, Corporation for Public Broadcasting, and Association of Public Television Stations, *Widely Report and Catalog of Potential Expenses and Estimated Costs*, GN Docket No. 12-268, at 9-10 (May 6, 2014).

¹⁹ See *Third Notice* at ¶¶ 44-46.

otherwise, well in advance of the filing window for displacement applications. Importantly, it is imperative that NCE stations not be bound by any channel suggestions advanced by the Media Bureau as a result of the Software but rather remain free to determine which channel(s) work best for their operations, as proposed in the *Third Notice*.²⁰

III. THE COMMISSION SHOULD POSTPONE THE DEADLINE BY WHICH TRANSLATOR STATIONS MUST CONVERT TO ALL-DIGITAL BROADCASTS

WVEBA supports the Commission's tentative conclusion to postpone the September 1, 2015 deadline ("Digital Deadline") by which translator stations currently are required to transition to all-digital broadcasts. WVEBA already has made significant strides in transitioning its translator network to digital, and currently operates only one analog television translator. If the Digital Deadline is not extended, WVEBA would be required to either transition this translator to digital in approximately nine months, or cease operations. It is, however, undisputed that translator operations are likely to be displaced as a result of the incentive auction, which presently is not scheduled to commence until the first quarter of 2016.²¹ Thus, if the FCC does not postpone the Digital Deadline, WVEBA, like many other translator station licensees, may be required to "double-build", *i.e.*, construct digital facilities by September 1, 2015 and construct new facilities when the first facilities are displaced.²² This result is clearly not in the public interest, especially in light of the important role of translators in NCE operations, and the financial constraints faced by NCE licensees in constructing and operating broadcast facilities. The Commission can easily remedy this problem, however, by adopting its tentative conclusion to postpone the Digital Deadline until after the close of the incentive auction and repacking

²⁰ *Third Notice* at ¶ 46.

²¹ *Third Notice* at ¶ 2; Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, AU Docket No. 14-252, *Public Notice* (December 17, 2014).

²² *Third Notice* at ¶ 6.

process. WVEBA encourages the FCC to delay setting a new deadline for the low power digital transition until it has assessed “the overall impact of the repacking process on LPTV and TV translator stations.”²³ By waiting until the repacking process is complete to establish a new deadline, translator stations will have full insight into which channels are available for digital operations post-repacking, and thus can transition in a more efficient manner.

IV. CONCLUSION

As explained herein, NCE translator stations are essential to the ability of NCE broadcasters to provide universal service in furtherance of their legislative mandate. To minimize viewer disruptions, WVEBA urges the Commission to adopt a processing priority for NCE displacement applications, second only to DRT applications. The FCC also should adopt its proposal to use the repacking and optimization software to identify possible channels for displaced NCE translators, provided that NCE stations retain discretion to select the channels for which they ultimately apply. Finally, the Commission should postpone the September 1, 2015 deadline for the low power digital television transition until a date to be determined after the close of the incentive auction.

Respectfully submitted,

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²³ *Third Notice* at ¶ 9.