

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	)	<b>MB Docket No. 03-185</b>
Low Power Television and Television Translator	)	
Stations	)	
	)	
Expanding the Economic and Innovation	)	<b>GN Docket No. 12-268</b>
Opportunities of Spectrum through Incentive)	)	
Auctions	)	
	)	
Amendment of Part 15 of the Commission’s Rules	)	<b>ET Docket No. 14-175</b>
to Eliminate the Analog Tuner Requirement	)	

*Filed Electronically through ECFS*

To: The Commission

**COMMENTS OF SPECTRUM EVOLUTION, INC.**

1. These Comments are filed on behalf of Spectrum Evolution, Inc. (“SEI”) in response to the *Third Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding, 29 FCC Rcd. 12536 (2014).<sup>1</sup> SEI is an organization dedicated to the exploration of new technologies that will allow all television broadcasters, including full power, Class A, low power television (“LPTV”), and TV translator stations, to participate in implementation of the National Broadband Plan through the elimination of barriers to efficient spectrum usage. ***Technology-neutral*** Commission policy will enable broadcasters to provide both broadcast and broadband services to the public over an existing television channel, the same as wireless carriers are already implementing with their LTE spectrum.

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<sup>1</sup> The NPRM was published at 79 FR 70824 (Nov. 28, 2014). The Media Bureau extended the deadline for initial comments in an Order, DA-1727, released Dec. 1, 2014.

2. In these Comments, SEI urges the Commission to provide LPTV stations with the tools they need survive the impending spectrum re-pack by implementing the same technology-neutral policy for TV broadcasting as the Commission has implemented, and the Chairman has endorsed, for nearly every other spectrum allocation in the 21<sup>st</sup> century.<sup>2</sup> Technology-neutral regulation will unleash the potential of one of the few spectrum allocations not now being fully exploited because of harmful governmental restrictions. Technology-neutral policy is standard regulatory practice within the very industries to which the Commission seeks to transfer TV spectrum in the incentive auction. Thus at present, one industry group that is being asked to participate in the auction process has an unfair regulatory advantage over the other participating group. If the Commission is unwilling to regulate all of television in a technology-neutral manner, even if its intent may be only to allow innovation rather than actively to stimulate it, the Commission should at a minimum implement a technology-neutral scheme of regulation for Class A and LPTV (“Class A/LPTV”) stations, to allow them to lead the way into the future of television broadcasting.

3. The basic purpose of this proceeding is to explore and to find ways to preserve LPTV stations and the opportunities they offer for more minority and female ownership, broadening the base of media ownership to stimulate competition, and facilitating ownership of media dissemination facilities by small businesses. The point of these Comments is that the Commission has good and relatively easy ways at its disposal to help to achieve its objective, and it needs to abandon its previous reluctance to implement them.

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<sup>2</sup> “Technology-neutral rules are best.” FCC Chairman Tom Wheeler, Blog Post, October 31, 2014. <http://www.fcc.gov/blog/technology-transitions-consumers-matter-most>. “A key component of rules that spur competition is assuring the FCC’s rules are technology-neutral.” FCC Chairman Tom Wheeler, Blog Post, October 28, 2014. <http://www.fcc.gov/blog/tech-transitions-video-and-future>.

4. Virtually everyone recognizes that the LPTV industry is gravely threatened by the upcoming spectrum re-pack, because the Commission plans to reposition existing full power and Class A television stations in a reduced total number of channels without regard to how many LPTV stations are displaced and without regard to whether those stations will be able to survive by finding new channels or will simply be forced to disappear into oblivion. But all of Class A/LPTV is at further risk because of changes in the basic landscape of television broadcasting which have eroded their traditional broadcast business model. The advent of multi-stream capacity after the digital transition has resulted in loss of many program sources that formerly provided an economic foundation to support local LPTV stations; those sources have migrated to streams on full power stations. Left without much of the programming they used to carry and from which they derived economic support, and saddled with only minimal cable carriage rights<sup>3</sup> and no satellite carriage rights at all, Class A/LPTV stations have no choice but to innovate with new business models if they hope to survive. Unfortunately, by forcing uniform adherence to the antiquated ATSC 1.0 technical standard, the Commission has denied Class A/LPTV stations the benefits of technology freedom that is virtually standard for every other wireless industry and that would allow Class A/LPTV stations to innovate, grow, and provide the public with multiple services, supported by advertising and/or by subscription at well below the high and ever-escalating subscription rates charged by the concentrated wireless carrier industry.

5. If afforded technology-neutral regulation, Class A/LPTV stations could implement OFDM modulation technology right now— a technology that ultimately and inevitably will become predominant for all of television broadcasting as the ATSC standard evolves to new

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<sup>3</sup> Only LPTV stations outside the top 160 Metropolitan Statistical Areas and outside counties to which full power TV stations are licensed are able to qualify for mandatory cable carriage, no matter how meritorious their programming may be. *See* Section 614(h)(2) of the Communications Act, 47 USC § 534(h)(2).

generations, because OFDM is so much more versatile and efficient than today's TV technology. Stations using advanced technology could continue to offer broadcast services, including multiple free program streams, while adding a multitude of non-broadcast services, such as subscription video, audio channels, and data services, including access to content accessible on the Internet.

6. Why not implement technology-neutral regulation now? *There is no valid reason not to do so.* It is for sure that the prospect of having to replace consumer TV receivers only a few years after they were replaced during the transition from analog to digital TV is not a reason, because receivers will not have to be replaced again. Today's TV receivers are already multi-standard devices, using various inputs – RF, component, composite, DVI, HDMI, and USB. They are fed by set-top boxes, USB dongles (*e.g.*, Google Chromecast), Internet interfaces, and tethers to smartphones. *There is already no uniformity of technology* among the many multi-channel video program distributor (“MVPD”) services that reach today's TV receivers through these various interfaces; cable TV and direct broadcast satellites do not transport signals in the ATSC 1.0 format, nor do the many widely deployed devices that interface between TV receivers and the Internet (Roku, Apple TV, Amazon Fire TV, NetGear, NeoTV, Sony PlayStation, etc.) use ATSC 1.0 to move content. All of these formats flourish without consumers needing to replace TV receivers or to buy multiple receivers. Class A/LPTV stations, the vast majority of which are not carried by MVPDs, are well aware of the importance of access to consumer receiving devices and can look out for themselves in finding a way to ensure access to any viewer that wants to receive their services. The mobile hand-held modification already introduced into the ATSC standard demonstrates the intent of innovative broadcasters to broaden the universe of receiving devices they can reach, including mobile devices, while continuing to reach and not obsoleting any existing TV set.

7. Prohibiting technological advancement makes no sense in any context, broadcast or otherwise. For example, say that a livery stable in the early 20<sup>th</sup> Century found itself losing business because horses were being replaced with automobiles. It would convert to an automobile repair shop. The enterprise would still be in the same business – repair of transportation devices – but it would tailor its services to evolving transportation technology. Of course, no one would try to stop this advancement, apart perhaps from an economic obstructionist seeking to curtail competition. Most people would actively encourage the livery stable to convert to a more current business model. But in the FCC world, Class A/LPTV is being confined to the livery stable model. Why? The only possible explanation is a desire by the Commission to defer the prospect of business success so that the agency can buy, or the case of LPTV confiscate, TV spectrum to turn over to different entrepreneurs who are already testing service combinations, including broadcasting, that are similar to what Class A/LPTV operators could provide if unleashed from their technological shackles.<sup>4</sup>

8. Congress has already accepted the concept of technology-neutral regulation for TV broadcasters in the *LPTV Pilot Project Digital Data Services Act*, 47 U.S.C. § 336(h) (“DDSA”). While the statute names a finite list of LPTV stations, SEI urges the Commission to interpret that list as naming stations that *must* receive DDSA authorizations on request, not the *only* stations that may receive such authorizations. If for some reason the Commission concludes that the list restricts stations that may receive DDSA authorizations, then it should nevertheless implement technology-neutral regulation apart from the DDSA, under its general authority to specify how

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<sup>4</sup> AT&T has already announced its intent to begin trials one-to-many (*i.e.*, broadcast) services via LTE technology at the football championship game between Oregon and Ohio on the very date that these Comments are being filed. See <http://about.att.com/innovationblog/1815attplanstohostlt>, visited January 9, 2015. Verizon demonstrated LTE broadcasting at the 2014 Super Bowl. See <http://www.multichannel.com/news/technology/att-plays-ball-lte-broadcast/386750#sthash.d1JHS0qi.dpuf>, visited January 9, 2015.

licensees may use their spectrum Sections 303(a) and (r) of the Communications Act.<sup>5</sup> If there is no other way, the Commission should actively promote a legislative enlargement of the coverage of the DDSA.

9. A Technology-neutral regulatory scheme is the most important key to preserving LPTV. However, another important key to attracting capital is an end to LPTV's secondary status in the long term. LPTV stations have been bounced around as the TV spectrum has been progressively compressed, first with Channels 60-69 disappearing, then Channels 51-59, and soon even more channels – probably many more than the 10 that have been lopped off in each of previous reallocations. Enough is enough! Those who can find new homes after the upcoming re-pack should be allowed to settle in and stay alive. Permanence is the only way they will realistically be able to attract serious capital investment to allow achievement of the ownership and programming diversification goals for which the LPTV service was created. In sum, after the re-pack, LPTV stations should not have to yield their channels at all; or if they must yield, it should be only to accommodate new and changed full power TV facilities.<sup>6</sup>

10. In addition, if there are not enough channels to accommodate all LPTV stations in a market after the re-pack, SEI 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 that have full power or Class A outlets with overlapping service areas and thus already have assurance that their voices will be preserved.

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<sup>5</sup> 47 USC §§ 303(a) and (r).

<sup>6</sup> LPTV stations are today secondary to land mobile stations in the “T-band,” Channel 14-20. That status as it now exists need not change for now, but those land mobile operations will be phased out over a period of years under the *Middle Class Relief and Job Creation Act of 2012*, Public Law 112-96, Feb. 12, 2012.

11. In addition to long-term relief, interim relief is needed to avoid LPTV stations economically bleeding to death while they await word about whether they will survive the re-pack. Operating stations costs money, yet capital investment is discouraged by the severe uncertainty that LPTV stations face. To mitigate this problem, the Commission should allow stations facing financial challenges to remain off the air until full power and Class A stations have been assigned new channels after the re-pack. Section 312(g) of the Communications Act explicitly allows the Commission to “extend or reinstate such station license if...the applicable law changes, or for any other reason to promote equity and fairness.”<sup>7</sup> The incentive auction statute is a change in law, and it certainly would be “fair and equitable” to allow a licensee to conserve resources until it knows whether or not it has a future.

12. If the Commission means what it says about preserving the LPTV service and allowing it to survive, it must take bold steps to that end. SEI asks the Commission to recognize that those steps must be *effective* in the real-life environment that LPTV stations face.

13. It is difficult for SEI to understand the Commission’s reluctance to embrace technology-neutral regulation for the LPTV industry, apart from fear that relief from artificial technology constraints would be successful and would force regulatory authorities to recognize the enormous value to both the industry and the public that would be generated were restrictive regulation to be relaxed and all industries contending for broadcast spectrum treated similarly. The incentive auction process will be fundamentally unfair if its success depends on not giving one participant the flexibility that is granted to the other and on taking spectrum without compensation from LPTV stations that have been prevented from showing the world what they can do to provide serious competition to the high-priced wireless carriers the Commission has

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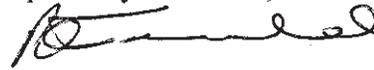
<sup>7</sup> 47 USC § 312(g).

picked to win. If AT&T and Verizon can broadcast<sup>8</sup> and be allowed, as they are, to move from 1G to 2G to 3G to 4G, and soon to 5G technology without regulatory permission, why can't LPTV stations be granted similar technology freedom and be allowed to compete?

14. Technology-neutral regulation is not an idea to be put aside and considered later. It is an idea whose time is here now.

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Respectfully submitted,



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<sup>8</sup> See n. 3, supra.