

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations)	MB Docket No. 03-185
)	
Expanding the Economic and Innovation 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 THE LPTV SPECTRUM RIGHTS COALITION

The LPTV Spectrum Rights Coalition (“Coalition”) is a national research and policy advocacy group of over 150 LPTV, TV translator, and Class-A licensees which collectively control more than 1000 built FCC licensed facilities and new construction permits in almost every state. These licensees are comprised of a wide assortment of business models from individual entrepreneurs, small family businesses, and investor owned operating companies, civic bodies, non-profits, and government entities. Also included in this Coalition are many supporting industry partners such as content networks, engineers, tower crews, lawyers, equipment manufacturers, and systems integrators. The Coalition also has unnamed auction-eligible participants in its collective research, which if added into our numbers would double the number of stations, licenses, and permits it represents, and which may be kept confidential as per the Commission rules for these proceedings.

The Coalition has been an active participant in the Incentive Spectrum Auction rule making process, and has submitted numerous filings in those proceedings. It has also met more than twenty times with FCC Incentive Auction Task Force staff, as well as the FCC Commissioners and their staff.

I. EXTENDING THE SEPTEMBER 1, 2015 LPTV AND TV TRANSLATOR DIGITAL TRANSITION DATE

The Coalition has previously advocated for an extension of the digital transition date for both built analog LPTV and TV translator facilities which have construction permits ending on September 1, 2015; and for new digital construction permits which have various construction permit deadlines in 2014, 2015, 2016, and 2017. Now that the FCC has agreed with it and has suspended all deadlines for these conversions and build-outs, the question is when should the new deadline be? Any date chosen by the FCC that falls within the post-auction 39-month primary repacking period is not advised, and simply will not logistically work. When those displaced primary and Class-A stations need to complete their rebuilds, so as to qualify for their remaining displacement relocation funding, there will be a log-jam of orders to be fulfilled by the limited tall tower crews. Forcing displaced LPTV and TV translators to rebuild during this post-auction 39-month window will not work in many markets.

We estimate that there are as many as 2,650 LPTV and TV translator built facilities and new construction permits between TV channels 51-38, which is the band which the FCC has said it intends on clearing at a minimum in most markets for the new national mobile services. Forcing these large groups of licensees and permittees to quickly rebuild to a new channel assignment channel 36 and below will take away critical resources from the primary and Class-A station rebuilds.

A key point is that the LPTV and TV translators which are displaced by a winning auction bidder (again i.e., from 51-38) will be able to stay “on-channel” until a 90-day notice is given by that winning bidder that they are ready to deploy the wireless service. So the FCC needs to reconcile that timing with any date it might select for the displacement new construction permits, and analog to digital construction permits. If the FCC is giving the winning wireless bidders a full seven years to build out their wireless operations, then the displaced LPTV and TV translators should be able to stay on-channel for that long. The FCC needs to figure out which of these “process dates” has a priority.

We also estimate that more than 2000 LPTV and TV translators will be displaced from channels 36 to 14, so they also will be competing for the scheduling of the tower crews. These displacements however will not have the lengthy delay to when they are actually displaced, and many if not most will have to move within three years.

What may help to figure this out is to think of these displacements in four distinct categories:

A. Analog to digital conversions no matter where they are:

- i. The FCC indeed has a commitment to having these converted as soon as possible. But in almost all cases, except for the channel-6 aural service stations, there is a very limited analog-reception population still being served by these remaining analog stations. And by the time of the auction and subsequent repack, the number of analog TV receivers will be considerably less. Let's break these down for further consideration:

1. Those that are analog and within the new wireless band, i.e. 51-38.

The FCC will give them a new channel assignment after the auction and after the 6-month primary and Class-A modification window. So when they get that new assignment they can start a new 3-year construction window for that new digital facility. Since they may also wait until the new wireless service is ready to be built before moving, the FCC needs to reconcile that issue. Since they have an open channel to move to for a new digital facility, the FCC would be responsible to stick to the three-year construction window period. The only problem again is that this could in certain markets hinder the FCC's objective of completing the primary repack within 39 months.

2. Those that are outside of the new wireless band, i.e. 36-14

- a. Within this category there are two major divisions, first the ones that are displaced by a displace primary or Class-A being given its channel as a new assignment; and second, those that are not. For those which are displaced, they will be given a new 3-

year digital construction permit, and can stay analog on-channel until the displacing primary or Class-A gives them notice. In most cases this will occur quickly as the displaced primary will want to move and spend the relocation funds. For those which are not displaced, they could be given a much shorter digital conversion period, but again the major repacking issue of a lack of tower crews will need to be given a priority in the decision making. A cookie-cutter approach will not work, and a market-by-market analysis, post-auction, and post-primary channel move modification may be the time to make this decision. If it were just about a standard time for construction in normal operating times it would be easy, but the auction primary and Class-A repacking process must come first.

3. Those that are VHF

- a. One would think this is an easy situational analysis to conduct, but it also has ramifications from the primary repacking process. Since one of the options for auction eligible licensees in the auction is to elect to move to a VHF channel, indeed analog LPTV stations may be displaced in the VHF. So again this triggers a new 3-year digital construction build-out, and they will need to move to build that new facility when the displacing primary or Class-A needs that the VHF channel they now occupy.
- b. However, those analog VHF LPTV and TV translator stations which are not displaced by an auction eligible station should have two options:
 - i. First, if they already have a digital construction permit which the repacking process has not affected, then they should have until the repacking process in that market is done until they have to move and build new digital facilities. Most will want to do this quickly anyway since the analog audience is so low. But they will need to time, once again, on a market-by-market basis because of the tower crew shortage.

- ii. Second, if the digital construction permit they have has been displaced by the auction repacking process, then they will need a new channel found for them by the FCC, as it has said it would for those displaced by the wireless bidders.

4. Those that are channel-6 aural services

- a. We will discuss later in these Comments the channel-6 aural services. However, in terms of displacement within the auction repacking process, if a channel-6 aural service is displaced due to a VHF channel selection by an auction eligible station, the FCC must require that displacing primary or Class-A station maintain its current coverage area and population as it would for any repacking scenario. What the FCC needs to prohibit is an auction eligible station from choosing a channel-6 assignment not based on coverage but based on wanting to get a pay day in the auction, take a VHF assignment, AND disregard its current coverage and accept a channel-6 coverage simply for that new aural service business opportunity. While this might seem like an odd example, if the FCC indeed does allow for an expanded channel-6 digital aural service for a channel-6, then this becomes a real possibility in the repacking and channel assignment modification process.

B. New digital construction permits, mostly from the 2009 rural filing window

- i. There are about 2500 or so of these new digital construction permits from the 2009 rural filing window. For a year now each month these permits have been ending their three-year build periods and entering into the third-extension zone requiring Commissioner-level approval.
- ii. Almost all of these new digital construction permits are in areas where the Commission has identified the pressing need for a large increase of fixed broadband services. Many of these construction permits were obtained in 2009 based on this need, and were applied for two years before the Incentive Auction legislation was even passed.
- iii. Yet many of these rural communities have never had a broadcast television station in their own communities and have relied on TV translators. Many of these construction permits are from translator

organizations, and now with digital broadcasting, they were attempting to have them serve as multi-channel DTV facilities, in addition to serving as translators of the primary networks. Once again, the projected shortage of tower crews will slow down when and how these facilities are built out.

- iv. We recommend that the FCC map these construction permits against the map of unmet rural broadband capacity, to see if the proposed service-waivers some of these permittees justify awarding the waivers so that these rural communities could be served with a fixed broadband service using this spectrum, by these entrepreneurs.

C. Auction-related displacements happening within the new wireless band(s)

- i. As mentioned above the displacements happening within the new wireless band(s) will need to be given considerable time to move and build because the primary repacking and build-outs have a priority for the Commission.

D. Auction-related displacements happening as a result of a displaced primary or Class-A moving back down into the new TV core

- i. Of special note are the Class-A licenses moving back into the new TV core as a result of either not participating in the auction, or not being a winning seller in the auction. When either of these two groups of Class-A's is given a new channel assignment by the FCC, they will be displacing licensed LPTV and TV translators.
- ii. However, the FCC has declared in the Incentive Auction Report and Order that as many as 100 Class-A licenses will not be auction eligible. When asked repeatedly about this issue the Video Division has not been able or willing to produce this list.
- iii. When asked about whether these Class-A licenses would receive repacking priority and protection they said no. So the question needs to be asked, will a non-auction eligible Class-A be repacked before an LPTV or TV translator? Will it be able to displace either?

II. THE POTENTIAL COSTS OF A FORCED “DOUBLE-BUILD”

When discussing the potential of an auction-schedule induced “double-building” of digital facilities due to the projected auction date and construction permit dates

happening around the same time, the Coalition surveyed its members as well as industry experts, including manufactures about the potential costs involved. As a rule of thumb, if the first build-out, the one adhering to the original digital construction permit was done, with the anticipation that it would be moved within a short period of time yet again, the operator could plan for this, and literally not make the big investment as they would for a more long-lasting channel assignment. Not necessarily building out for the full power authorized in the construction permit, but still providing a signal to the authorized contour of coverage could accomplish this. But this practice may run afoul of FCC regulations. Another approach is for the operator to use a broadband antenna, which may change its RF channels, so that in the future if a new channel assignment is made the cost of the antenna is already factored in. Most equipment in a broadcast may be repurposed for a different channel, but it is the labor costs of doing it, especially if another tower crew needs to be hired. And if a totally new tower assignment needs to be made, that will also dramatically increase the costs of the double-build. Within no assurance from the FCC as to the dates of when to build the first time, and then wait to build yet again, the double-build concept is an undue burden on the LPTV and TV translator licensee. It has taken the FCC three years already just to get to this point in the process, and who knows how long it will still take. With such unknowns, even a secondary for interference licensee such as LPTV and TV translators need adequate time to plan and execute their business plans so that their audience and city of license is served.

III. Recommendation: Conduct an LPTV and TV Translator Repacking Optimization Now, Before the Auction, to see what the potential impacts are.

By investing now into the resources to conduct simulations of the potential repacking for LPTV and TV translators in each TV DMA, the FCC can better understand the potential impacts and courses of actions to take. Without such an analysis the FCC Commissioners, the Media Bureau, the Video Division, and the Incentive Auction Task Force are “flying blind” about what the impacts will be. This is especially true since the Video Division cannot show any original research it has done about the impacts of LPTV from the incentive auction process. The

Video Division will not even produce the list that it claims of the 100 Class-A's that may be ineligible for the auction. The LPTV and TV translator industry, while not paying the much higher fees, which the primary broadcasters pay (and not receiving the same MVPD mandated subsidized and compensated carriage they do), we still do pay our annual fees. And we are not getting much if anything in return for it other than enforcement.

LPTV and TV translators will be supplying as little as 60% to as much as 90% of the spectrum the FCC will take in the auction, repurpose as mobile broadband, and then resell in the Incentive Auction. The Federal government will make as much as \$60-80 billion in the Incentive Auction (depending on the clearing achieved), adjusted now for the pricing obtained in the AWS-3 auctions. So it could be said that LPTV and TV translators are contributing spectrum for the auction worth between \$50-\$54 billion, and not getting anything for it except the right to go find another channel (the "Right of Displacement").

To make matters worse, the Video Division has in both the 2010 and 2014 Broadcast Ownership Reports totally miscalculated the percentages of multi-cultural and gender ownership, and management. These studies have been the literal basis for how Congress understands what is going on in the LPTV and TV translator industry for purposes of adherence to key components of the Communications Act. But these studies are dramatically flawed. The FCC does not study the ownership, diversity, or management characteristics of the TV translators. Currently this represents more than 60% of all LPTV and TV translator licenses, and when all issued construction permits are fully built out this number will be 50%. Nor do they do follow-up questions to 30% of the respondents who do not fill out the questionnaire correctly.

So to study now, before the auction, what the potential impacts may be from the auction, and to run simulations of which channels may be available post-auction, is not only advised, it is demanded by the LPTV and TV translator industry. This is especially important since the FCC, in the Incentive Auction Report and Order, has claimed that there will be at least one "naturally occurring TV white space channel" in each DMA, and that unlicensed spectrum needs to be found in each

TV DMA. How can the FCC say that unless they first have studied the potential repacking of LPTV and TV translators? If the FCC has studied this already then we demand to see those studies. If the FCC has not yet studied the claims it is making (as it has done with the 100 auction ineligible Class-A's), then the FCC needs to conduct the analysis. The LPTV and TV translator industry needs a DMA by DMA study done of potential scenarios for channel availability. It already has the 25 simulations per DMA it has run for the Greenhill Report interference study, and it should be able to use these to easily craft a repacking analysis for our industry. We pay our fees and we need this data and analysis!

IV. Recommendation: Establish the New Construction Permit Deadline as “primary repack + one year” for any given DMA.

What this means, is that, each DMA will be different in terms of when it will be able to achieve a repacking of the primary and Class-A stations. In some southern and western rural DMA the repacking happen quickly. But in some densely packed northern cold-weather urban areas it might take a years longer. The FCC could develop a plan that is specific to each DMA, and use a trigger of when the primary and Class-A stations are repacked and built, and then a clock can start to tick for the LPTV and translators. This would have to be in cooperation with the scheduling of tower crews and the tower industry. Otherwise, so as to not limit the ability of the primary stations and Class-A's to repack, the FCC could just choose a blanket date of “39-month repack plus one year”, or 51-months post auction.

V. No “Forced Going Dark” Process

Within this NPRM the FCC points out that if a displaced LPTV or TV Translator station is dark for one year while it is waiting to rebuild its facilities it will lose its' license. What we do not want to see is that this is used as a mechanism to clear spectrum for other uses, i.e., force LPTV and TV translator licensees into situations that they cannot perform. The FCC should not use this rule making as a way to force unreasonable demands on this industry. If one part of the rules says that being dark for a year is a cause to lose a license, and this new rule making forces current licensees into situations where it could happen, the courts will not look favorably upon it.

VI. LPTV and TV Translator Channel Sharing

The concept of LPTV and TV translator channel sharing, as long as it is voluntary, is acceptable, and in some extreme cases may be needed. The sharing between LPTV/TV Translators, with primary and/or Class-A stations, is also acceptable, and in many cases could be beneficial to both parties.

Previously the Coalition has supported the channel sharing between the LPTV industry and the non-com/PBS network affiliates. If this type of channel sharing were to occur, it could help the PBS network to not have what it calls “white areas” which are areas that do not have PBS coverage. In principal this is good, and both the PBS affiliate and the LPTV operator could benefit. However, if the FCC chooses to not allow this arrangement, so that the PBS affiliate without a qualifying must-carry station may not use an LPTV station to qualify for MVPD must-carry status, we recommend that the PBS-network affiliate still negotiate carriage with the LPTV, but then enter into a retransmission agreement for a fee with the local MVPD. The Commission could rule on this.

We urge the Commission to restrict channel-sharing agreements, which would require a move outside of the normal movement under current rules, i.e., the 30 mile modification and overlapping contour move. We believe that this issue needs to be discussed in a much larger context of displacement. What we mean is that if you are displaced, you can first attempt to find a new channel within your city of license, and next within your DMA. The next step is to look for an audience and channel in an adjacent DMA. The rules of finding a suitable displacement channel will need to be harmonized with any new rules for channel sharing beyond your city of license and DMA. This is not to say we are totally in favor of it, we are. But we see the need to be consistent and coordinated in both of these rules so as not to create a wrinkle to work the system with.

VII. Creation of a New Digital-to-Digital Replacement (DRT) Translator Service

The concept of a new service, which is elevated above LPTV and TV translators, so that the already highly subsidized primary stations may continue to offer a level of service within their contours, was initially not welcomed. It could open

the door to the primaries having a spectrum grab and the loss of a lot of LPTV and TV translator stations. However, if the FCC can write the rules so that no DRT may convert to LPTV status, nor may carry anything but what the primary carries, and may not use a new call-sign, and has to prove with engineering studies that it is indeed replacing coverage within its contour, then the burden will upon the FCC to monitor the DRT's. But, if the DRT's are intended to provide the primaries with new channels, or to extend the licensed contour of the station, then the Coalition is opposed. We do urge the Commission to investigate the use of Single Frequency Networks (SFN), which the DRT's are an early example of. The SFN's will be a hallmark of the new ATSC 3.0 standard, and as such, the DRT's may be the first implementation of them, albeit with the ATSC 1.0 limitations.

VIII. Assistance to LPTV and TV Translator Stations in Finding Displacement Channels After the Incentive Auction

We applaud the Commission in offering to provide "voluntary" assistance to "stations" to find new channels post-auction and post-primary modification. And we agree that the use of a Public Notice and list of available channels is a good one, which could limit confusion and provide transparency for licensees.

We do however urge the Commission to extend this service to holders of construction permits. With as much as 35% of the industry (3500 or so permits of the total 10,000 licenses and permits) holders of new or analog-to-digital conversion permits, and a majority of these in underserved rural communities, we think it would be wise for the proposed Public Notice and list of available channels with the DMA include the opportunity for holders of construction permits to also apply for them. However, as in keeping with current rules, holders of licenses would have a higher priority than holders of permits.

IX. Operation of Analog Radio Services by Digital LPTV Stations as Ancillary or Supplementary Services.

The Coalition has conducted extensive research and planning with 15 of the known 29 analog LPTV stations which are providing an aural service on channel-6. Most of these licensees will be filing their own comments and

recommendations into these proceedings. We will provide some summary points for consideration by the Commission:

- A. The 29 known services, of which as many as 25 are known to be broadcasting, together provide their services to an estimated 65 million listeners across the country (20% of national total population.)
- B. They have been doing this for years now without any major interference issues, and certainly without any current issues.
- C. The service they provide is allowed within the LPTV rules, and is considered an “aural service”, and not an FM radio service, and as such, should continue to be governed by the Video Division and not the Radio Division.
- D. These services are providing much needed multi-cultural voices in their communities of licenses, and as such should be encouraged and not discouraged by the Commission.
- E. They all currently air free to the public, and as such, should not be subject to the ancillary fee rules, which are part of the DTV rules for LPTV.
- F. It has and will be reported in comments by others, that extensive testing of current TV receivers has been done and it can be shown that the signals of the channel-6’s can be transmitted and received within normal operating requirements and rules. And in the near-term future, when these stations convert to digital, they will be able to continue to provide these valuable services without interference within normal digital transmission requirements.
- G. In addition, when they do convert to digital, they will be able to also offer extensive video programming, which will only serve to enhance the multi-cultural voices they now serve.
- H. These analog LPTV services are one of the leading LPTV innovation stories, and when they convert to digital, will be one of the leading new examples of how to serve local communities of license.
- I. Their innovation should not be stymied, nor hindered in any way, as long as they adhere to the providing their service on a non-interfering manner.
- J. We urge the Commission to literally put the channel-6 aural services to the back of the repacking line so that they may continue to provide their valuable services for as long as possible. And when it is time to convert to digital, that new rules be adopted so that aural services such as theirs can be developed for future new services.

- K. We also urge the Commission to direct the Video Division to approve numerous outstanding channel-6 analog applications so that new services may be started if that is the business plan of the applicant, and is done with the understanding that displacement from the auction repacking, and conversion to digital are both part of the potential operating environment they will have to deal with.
- L. The Incentive Spectrum Act specifically says to not change the LPTV rules, and our Right to Innovation is key for our current and future uses, and ability to serve our communities of license.

X. Elimination of Analog Tuner Requirements

As part of the on-going meetings with the channel-6 licensees, we discussed the elimination of the analog tuner requirements. We concur that the faster the population of tuners converts to digital the better for all in the long run. And, that the adoption rate of digital tuners is naturally occurring no matter what. So the elimination of the analog tuner requirement should not impose a burden on any of our viewers by the time that requirement is adopted and the consumer electronics industry responds.

XI. Additional Measures to Preserve LPTV and TV Translator Stations

- A. Within the original 2012 Incentive Auction NPRM the Commission put forth the notion that in order to meet the requirements of the Act, the Commission would investigate how the MVPD could be studied to make sure that the networks carried on LPTV could find homes on the MVPD if local channel capacity was lost. We have not seen any discussion of this by the Commission, even though it is part of the record. Most importantly, when the Coalition asked for discovery within the Comcast/Time Warner merger, we were informed that the Commission did not have “discovery powers” related to the Incentive Auction. This means that the LPTV industry and its network partners have no method within the FCC rules to discover the extent and contract conditions by which the MVPD carry LPTV, and the capacity by which the Commission may rule that they could in support of the Incentive Spectrum Auction Act. The Coalition suggests to the FCC that it either find the power of discovery as it relates to the MVPD and LPTV network carriage,

or that it request from the Congress for it. A possible avenue of litigation from LPTV against the Act and Commission is in if does not attempt to provide the networks which are carried on LPTV to have alternative avenues of distribution via the MVPD, as the 2012 NPRM asks.

B. The Coalition, in its 2012 NPRM comments, suggested that the Commission explore the concept of a “New Primary” post-auction, for all TV station licensees. The reasoning was that since LPTV and TV translators had to pay for their own displacement moves, that after those moves were made, and the spectrum screen for TV service settled, that it made sense for harmonization of all of the services. Some in these proceedings may call for an opening to the Class-A window. The Coalition knows from first-hand experience this is the same as asking for MVPD must-carry. It is old language, old rules, old ways of picking winners and losers. We suggest that a new way forward post-auction using the “New Primary” designation. While this is currently outside of the authority of Commission, as it sees it, what we do suggest is to study it.

C. Conduct a far-reaching future study of the LPTV and TV translator industry. There has not been such a study done even of the effects from the auction, and we already have to deal with the expansion of the digital replacement translators. This is in addition to the TV white space community now being offered a guaranteed channel in each DMA, and the unlicensed spectrum advocates wanting as much as they can get. Chairman Wheeler has offered the concept of “technology neutral” as a way forward with Internet linear channels somehow gaining negotiation rights to content. Where is the vision for how the LPTV industry may move forward post-auction. The Commission “owes” the LPTV industry for years of no research, the lack of accurate industry statistics, and the lack of respect as our Class-A licensees have been gone after and their licenses revoked for filing mistakes and non-compliance. When have you ever seen a primary full power licensed downgraded to Class-A status? Never. Why are translators not studied in the Broadcast Ownership reports, especially now after the DTV transition? Study our industry so we know where it might go in the future post-auction. In 2009 we had hundreds of entrepreneurs step up for the 2009 rural filing window, with more than 2500 applications filed to deploy innovative

broadband services in support of the National Broadband Plan. Only then to see that the Congress and Commission take over three years now to get the rule making done. Study our industry and what is possible to both preserve the unique services and networks it currently provides, and all of the new ones in the digital future pipeline. The Commission has full authority today to do this. Assist the LPTV industry to continue to be the gateway within the broadcast industry for entrepreneurs, women, and multicultural voices.

Respectfully submitted,

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