

**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 WEIGEL BROADCASTING CO.

Weigel Broadcasting Co. (“Weigel”), licensee of WBND-LD, South Bend-Elkhart, Indiana (“WBND” or the “Station”),¹ submits these comments in response to the Commission’s Third Notice of Proposed Rulemaking in the captioned proceedings.²

As Weigel has stated previously,³ it is essential that, in implementing an incentive auction and television band repacking, the Commission preserve existing service from low power television (“LPTV”) stations that serve their communities as the functional equivalent of full power stations. As shown below, these stations are regarded – by viewers, networks and

¹ Weigel also is the licensee of two other South Bend low power television stations: WCWW-LP (a CW Network affiliate) and WMYS-LP (a Telemundo and MyNetworkTV affiliate). Across the three stations’ digital streams, Weigel broadcasts eight networks, which include Movies!, THIS TV, MeTV, and TouchVision, in addition to ABC, CW, MyNetworkTV, and Telemundo, to viewers in the South Bend-Elkhart DMA.

² *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*, Third Notice of Proposed Rulemaking, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (rel. Oct. 10, 2014) (“Third NPRM”).

³ See Comments of Weigel Broadcasting Co., *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 (Jan. 25, 2013).

other programmers, and advertisers alike – as competitive substitutes for the full power stations in their markets. Failure to preserve service from these stations would be contrary to the core Communications Act imperatives of diversity and competition and would result in irreparable harm to viewers and the public interest.

The Commission previously has expressed concern that preserving existing service by all 5,500 LPTV and TV translator stations nationwide⁴ would “unduly constrain our flexibility in the repacking process and undermine the likelihood of meeting our objectives for the incentive auction.”⁵ Accordingly, the Commission now seeks comment on “measures we should consider in order to mitigate the impact of the incentive auction on LPTV and TV translator stations and to help preserve the important services they provide.”⁶

In the case of stations such as Weigel’s WBND, the only appropriate measure to achieve the Commission’s stated objective is clear: in order to avoid creating a top-4 network white area in the 96th television market and subjecting its residents to the loss of a unique local voice as a result of the incentive auction and repacking, the Commission must take steps to preserve the service of low power stations like WBND to the same extent as their full-power counterparts. WBND is its community’s exclusive affiliate of a major national network. WBND and its sister station, WCWW-LP, produce and air as many (or more) hours per week of local news and other non-entertainment programming as their full power competitors. WBND consistently achieves ratings placing it among the top four stations in its market. It has as many or more employees as some of its full power counterparts in South Bend.

⁴ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268, at ¶ 241 (rel. June 2, 2014) (“Incentive Auction Report and Order”).

⁵ *Id.* at ¶ 21.

⁶ *Third NPRM*, at ¶ 59.

The Commission has the discretion to preserve the service of low power stations in the circumstances presented here. Not to do so would diminish diversity and competition, disserve the public interest, and contravene the intent of Congress.

I. WBND’s Service To South Bend Is Functionally Equivalent To The Service Provided By Full Power Stations In The Market.

The South Bend market has only five full power television stations, two of which are religious or non-commercial educational stations. With 73 employees, WBND has become a powerful competitive force in South Bend, notwithstanding its low power status.

Since 1995 WBND has been its market’s only ABC Network affiliate, bringing the network’s news, sports, and entertainment programming to the South Bend-Elkhart DMA, where nearly 1 in 5 households rely on over-the-air broadcasts and would not receive programs such as “Good Morning America,” “ABC World News Tonight” and popular Notre Dame football games without WBND’s service.⁷

In addition to its ABC Network programming, WBND broadcasts locally-produced daily newscasts from 4:30 to 7 a.m., 5 to 6:30 p.m., and 11 to 11:35 p.m. In all, the Station produces more than 45 hours of local news each week – more than any other station in the market.⁸

Further demonstrating its commitment to the South Bend community, following the digital

⁷ An above-average percentage of homes in the South Bend-Elkhart DMA rely on over-the-air broadcasts for their television programming, compared to national rates. Data from November 2014 showed that 17.6 percent of households in the South Bend-Elkhart DMA rely on over-the-air broadcasts, compared to 10.7 percent nationally. See *ADS, Wired-Cable and Over-The-Air Penetration by DMA*, TVB, November 2014, http://www.tvb.org/research/media_comparisons/4729/ads_cable_dma; *Cable & ADS, National Trends*, TVB, http://www.tvb.org/research/media_comparisons/4729.

⁸ The WBND newsroom also produces original news programming for WCWW-LP. A complete schedule of WBND’s newscasts can be found at When to Watch ABC57 News, <http://www.abc57.com/story/26498808/when-to-watch-abc57-news>. WBND’s news website, at www.abc57.com, debuted in August 2011 and provides local news, weather and sports, including investigative stories, high school sports coverage and live Doppler Radar.

television transition Weigel spent millions of dollars to build an HD-capable newsroom and hired more than 25 new employees to create a robust, multi-platform news operation at WBND.⁹

WBND participates in the civic life of its community by airing debates in state and federal election races. It alerts viewers to emergency weather and environmental conditions. In 2012, the station provided live coverage and alert information when a toxic fire erupted at a local EPA Superfund site, causing a chemical cloud that forced the evacuation of nearby neighborhoods. WBND provided information on evacuation orders, air quality alerts, and shelter locations. In June 2013, WBND provided four hours of uninterrupted coverage of dangerous storms as they moved through the area. WBND has invested in the Severe Weather Warning System, so that an automatic alert appears on screen when the National Weather Service issues watches and warnings for the Station's viewing area.

South Bend-Elkhart viewers have recognized the value of WBND to their community. As measured by Nielsen, WBND's ratings have increased 21 percent in the last three years, and in the last two "sweeps" periods (May 2014 and November 2014) the Station beat the full power Fox affiliate, WSJV, to be the No. 3 station in the market.¹⁰ Ratings for WBND's news programs have continued to rise, reflecting the strength of its local news and public affairs programming, and WBND is now consistently ranked among the top three stations in its market.¹¹

⁹ See Diana Marszalek, *Weigel Makes Bold News Move In South Bend*, TVNewsCheck, Nov. 30, 2010, available at <http://www.tvnewscheck.com/article/47353/weigel-makes-bold-news-move-in-south-bend>.

¹⁰ Nielsen, Sunday-Saturday, 5:00 a.m. to 5:00 a.m., persons 2+, May 2014 and November 2014.

¹¹ Nielsen, Monday-Friday, 11:00-11:35 p.m., Share Trend from February 2012 to November 2014; Nielsen, Monday-Friday, 6:00-6:30 p.m., Share Trend from February 2012 to February 2014.

WBND's investment in producing quality local news also has been recognized by its peers. In 2014, WBND's news operation won two regional Emmy® Awards, beating out full power competitors in Chicago and Milwaukee, and more regional Emmys® than any other station in South Bend. WBND was honored in the "Outstanding Achievement for News Gathering – Serious News Single Feature" category and in the "Outstanding Achievement for News Specialty Report – Environment" category. The Station also won awards in 2011, 2012, and 2013 from the Indiana Broadcasters' Association.

If WBND is not protected in the repacking process, viewers in the South Bend-Elkhart market will lose more than 40 hours of local news every week, critical weather information, public affairs programming, popular ABC network news and entertainment programming, and a community partner that provides dozens of local jobs and sponsors numerous community events. These harms can be avoided if the Commission takes steps to preserve the service of low power stations in the unique circumstances presented here.

II. The Commission Should Make All Reasonable Efforts To Preserve Service From An LPTV Station That Serves Its Community As The Functional Equivalent Of A Full Power Station.

The Commission states that it seeks to "mitigate the impact of the incentive auction" on low power stations and to "preserve the important services they provide."¹² The only way to achieve this objective is to protect low power stations such as WBND so that they can maintain their vital service to their communities, including by providing valuable national network and local programming.

The Commission has long recognized that preservation of existing service is a policy imperative, and frequently has acted to ensure it. Indeed, the Commission has stated that "*any*

¹² *Third NPRM*, at ¶ 59.

loss of service is *prima facie* inconsistent with the public interest.”¹³ At the same time, Congress has disfavored the creation of “short markets,” in which one or more of the four major national networks is not available for viewing on the primary program stream of a local station.¹⁴

Thus, historically the Commission has waived the duopoly rule in order to keep a station from going dark or enable a station to return to the air.¹⁵ Among other things, in considering requests for duopoly rule waivers the Commission specifically seeks to preserve as many voices as possible and to avoid the creation of any network white areas. For instance, the Commission granted a permanent waiver of the duopoly rule in order to restore over-the-air CBS Network programming to hundreds of thousands of viewers who had lost that service because of affiliation changes.¹⁶ Similarly, the Commission granted a duopoly rule waiver for stations in Lincoln and Albion, Nebraska, because it wanted to “avoid[] a loss of ABC service to a substantial number of viewers” in Albion.¹⁷

The Commission also has granted waivers on the basis of an increase in, or a pledge to increase, local news and public affairs programming, noting the importance of such services to the community. The Commission granted a duopoly rule waiver to permit common ownership

¹³ *Coronado Commc’ns Co.*, Memorandum Opinion and Order, 8 FCC Rcd 159, 162 (1992) (emphasis added). See also *WVIT Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 18172, 18174 (MB 1997) (the provision of national network service to additional viewers “constitutes a significant public interest benefit”).

¹⁴ See Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, § 105, 124 Stat. 1218, 1240 (May 2010) (ensuring that satellite carriers could deliver local network affiliate programming to unserved areas).

¹⁵ See, e.g., *San Diego Television, Inc., Debtor-in-Possession*, 11 FCC Rcd 14689 (1996) (granting permanent duopoly rule waiver to successful bidder in auction conducted pursuant to bankruptcy court proceeding); *Meridian Broadcasting Partnership, Debtor-in-Possession*, 8 FCC Rcd 8399 (1993) (granting permanent duopoly rule waiver in order to facilitate reactivation of a bankrupt and dark station).

¹⁶ *Weigel Broadcasting Co.*, Memorandum Opinion and Order, 11 FCC Rcd 17202, 17203-04 (1996). See also *Thomas J. Flatley*, Memorandum Opinion and Order, 7 FCC Rcd 4242 (1992) (granting permanent duopoly rule waiver approved to facilitate sale of financially troubled station that had gone off the air).

¹⁷ *Citadel Commc’ns Co., Ltd.*, Memorandum Opinion and Order, 10 FCC Rcd 11910, 11921 (1995).

of stations in New York and Philadelphia where the applicant “pledged to increase substantially local and public affairs programming in the Philadelphia market.”¹⁸ Similarly, the Commission granted a waiver of the duopoly rule where the applicant proposed to add a half hour of local news each weeknight on its station in Des Moines, Iowa.¹⁹

A common thread runs through these cases, which reflect the Commission’s consistent desire to preserve local service in challenged markets: More voices are better than fewer voices. Local news matters. Service to the community is valued. These themes have long informed Commission decisions in analogous circumstances, and they therefore provide guideposts for the Commission in this proceeding. As the Commission is aware, a “significant number” of low power and TV translator stations may be displaced as a result of the incentive auction and “required to find a new channel from the smaller number of channels that will remain in the reorganized spectrum or discontinue operations.”²⁰ It is imperative that the Commission take steps to ensure that low power stations, such as WBND, that are as highly valued in their communities as their full power station counterparts are afforded the same level of service protection.

The waiver cases discussed above suggest the criteria that should be taken into account by the Commission in ensuring that the impact of the incentive auction is mitigated for stations such as WBND – and the communities they serve. Thus, for example, the functional

¹⁸ *Taft Broadcasting Partners Ltd. P’ship*, Memorandum Opinion and Order, 7 FCC Rcd 2854, 2855 (1992).

¹⁹ *H & C Commc’ns, Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 144, 146 (1993). *See also Citadel Commc’ns Co., Ltd.*, 10 FCC Rcd at 11920 (noting that station subject to duopoly waiver “will air news and other programming dealing with matters of direct concern to the residents of Lincoln and the surrounding areas”); *NWCG Holdings Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 16318, 16321 (MB 1996) (granting duopoly waiver to permit common ownership of stations in Chicago and Milwaukee where the applicant “made an institutional commitment to local news programming on each of its stations”).

²⁰ *Third NPRM*, at ¶ 2.

equivalency of a low power station vis-à-vis the full power stations in its market could be determined by evaluating one or more of the following criteria:

1. **Stations that produced 18 hours or more of local newscasts as of February 22, 2012.** This factor recognizes that one of the most valuable services a station can provide is news and information about its community — through local news, sports, and weather.
2. **Stations that are their community’s exclusive affiliate of a top 4 network (ABC, CBS, NBC or FOX).** Because these stations are the only source for viewers in their community of the popular news, sports and entertainment programming of a major network, loss of service by these stations necessarily would result in the creation of a new network white area, which is strongly disfavored by the Commission.
3. **Stations ranked among the top 4 in their market as of February 22, 2012.** The Commission historically has considered a station ranked in the top 4 to be a competitive force in its market. The duopoly rule, for instance, bars ownership of two stations in one market only if both stations are ranked in the top 4 in the DMA.²¹
4. **Stations that employed at least 25 people as of February 22, 2012.** The Commission historically has differentiated among stations based on their number of employees. For example, stations with more than 5 or 10 full-time employees are subject to differing equal employment opportunity obligations both from each other and from smaller stations.²²

Significantly, nothing in the Spectrum Act prohibits the Commission from taking steps to preserve service from low power stations where appropriate. The Commission has acknowledged that it has discretion under the Spectrum Act to protect certain facilities in the repacking process.²³ The Spectrum Act specifically states that it shall not be construed “to alter the spectrum usage rights of low power television stations,”²⁴ and, in considering the Spectrum

²¹ 47 C.F.R. § 73.3555(b).

²² *Id.* § 73.2080(c)(2).

²³ See *Incentive Auction Report and Order*, at ¶ 241 (“[W]e have discretion to grant protection to additional facilities where appropriate.”).

²⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(b)(5) (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (the “Spectrum Act”).

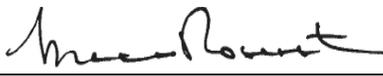
Act, Members of Congress stated that they did not expect that, as a result of the incentive auction, “a low power television station would simply end up off the air.”²⁵

CONCLUSION

Weigel appreciates the Commission’s interest in mitigating the impact of the incentive auction on low power stations. Weigel urges the Commission to take steps to protect the viewers and communities served by low power stations, such as WBND, that serve as major network affiliates in their markets, provide extensive local news coverage, generate competitive ratings and otherwise are functionally equivalent to the full power station competitors in their markets. Doing so would be consistent with the Spectrum Act, would advance the core Commission principles of diversity and competition, and otherwise would serve the public interest.

Respectfully submitted,

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²⁵ *Keeping the New Broadband Spectrum Law on Track*: Hearing Before the Subcomm. on Communications and Technology of the House Comm. on Energy and Commerce, 112th Cong. 70 (2012), <http://democrats.energycommerce.house.gov/sites/default/files/documents/Transcript-Broadband-Spectrum-Law-2012-12-12.pdf> (preliminary transcript) (statement of Rep. Barton) (“I didn’t envision that we would have the end result that a low power television station would simply end up off the air. ... [I]t is not fair at all that the end result is that a low power television station that has been a good licensee ends up totally off the air.”).