

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

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	MB Docket No. 03-185
Commission’s Rules to Establish Rules for Digital)	
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)	
)	
To: The Commission		

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to certain of the comments filed in response to the Third Notice of Proposed Rulemaking (“*Third NPRM*”) in the above-captioned proceedings.¹ The record supports WISPA’s views favoring spectral efficiency through a combination of policies, rules and practices that will balance the interests of licensed and unlicensed interests.

¹ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement*, MB Docket No. 03-185, GN Docket No. 12-268 and ET Docket No. 14-175, Third Notice of Proposed Rulemaking, FCC 14-151 (rel. Oct. 10, 2014) (“*Third NPRM*”). The Media Bureau (“Bureau”) extended the Reply Comment deadline to February 2, 2015. See *Order*, DA 15-79 (rel. Jan. 21, 2015).

Discussion

I. THE COMMISSION SHOULD MAKE CLEAR THAT UNUSED TV SPECTRUM CAN BE USED ON AN UNLICENSED BASIS.

Not surprisingly, LPTV interests favor an extension of the September 1, 2015 digital transition deadline applicable to LPTV and TV translator stations.² LPTV stakeholders argue that the current deadline “is patently insufficient time for hundreds of analog LPTV stations to obtain FCC authority, necessary funding, and purchase and install new equipment” and that forcing stations to meet the deadline will require “a duplicative and equally expensive second buildout.”³ Commenters generally do not suggest a specific buildout deadline, but instead contend that the Commission should wait until after the incentive auction to set a deadline because there is not enough information at this time to establish a deadline.⁴

WISPA is troubled by the prospect of a regulatory regime that would afford permittees that have never constructed authorized facilities to have additional time to construct. These permittees, separate and apart from those legitimate licensees that are operating digital television facilities with local programming, are essentially arbitraging an initial construction permit with a three-year construction period that has already expired into a permit that may not have to be built until 2020.

² See, e.g., Comments of the LPTV Spectrum Rights Coalition, MB Docket No. 03-185, *et al.* (filed Jan. 15, 2015) (“LPTV Coalition Comments”) at 3; Comments of the Advanced Television Broadcasting Alliance, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) (“ATBA Comments”) at 2; Comments of the National Association of Broadcasters, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) (“NAB Comments”) at 3; Comments of Sinclair Broadcast Group, Inc., MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 1-2; Comments of George S. Flinn, Jr., MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 2-3; Comments of National Public Radio, Inc., MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) (“NPR Comments”) at 3.

³ Comments of Signal Above, LLC, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) (“Signal Above Comments”) at 2. See also Comments of West Virginia Educational Broadcast Authority, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) (“WVEBA Comments”) at 9-10; LPTV Coalition Comments at 7-8; NAB Comments at 3.

⁴ See, e.g., NAB Comments at 3; ATBA Comments at 2; Comments of National Translator Association, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 5-6.

Notwithstanding WISPA's concerns, WISPA does not oppose an extension of the September 1, 2015 digital conversion deadline, so long as the Commission allows unused spectrum to be used for unlicensed purposes. Sections 15.713(b)(1)(iii) and (iv) provide database protection to LPTV, TV translator and booster "stations," but it is unclear whether and to what extent "stations" includes construction permits. WISPA understands that certain construction permits may, under current practices, have protection in the TV white space database even though they are not operating. Database protection should be afforded only to those stations that are providing service to the public so that WISPs, local communities and others may use the vacant spectrum for fixed broadband services under the Part 15 TV white space rules. WISPA expects that those with LPTV interests would find this clarification to be uncontroversial particularly because of LPTV stations' status as broadcasters dedicated to local community service.

Further, there is a statutory basis for not restricting unlicensed use of TV channels that lack operations. Section 6403(i)(2) of the Spectrum Act⁵ expressly states that the reorganization of the TV band shall not prevent the implementation of the Commission's 2008 TV white space implementation decision⁶ with respect to "the spectrum that remains allocated for television use after the reorganization" of the band. The *TV White Spaces Second R&O* specifically authorizes "all unlicensed TV band devices to operate on *unoccupied* television channels in the channel range 21-51, with the exception of channel 37."⁷ TV Channels 14-20 are available for fixed unlicensed use "where the channels *are not being used* for PLMRS/CMRS or other authorized services."⁸ Notably, the *TV White Spaces Second R&O* authorizes, and the Spectrum Act

⁵ Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96 (Feb. 12, 2012) ("Spectrum Act").

⁶ Unlicensed Operation in the TV Broadcast Bands, 23 FCC Rcd 16807 (2008) ("*TV White Spaces Second R&O*").

⁷ *Id.* at ¶ 154 (emphasis added).

⁸ *Id.* (emphasis added).

ensures, that TV channels not occupied or used by licensed services at a given time should be available for fixed unlicensed use.

To enable unlicensed use of spectrum that is not being used by LPTV and TV translator stations, WISPA supports OTI/PK's proposal to "obligate secondary stations to affirmatively report timely updates on their actual operations – either to the Commission or directly to a [TV bands database] – so that unused spectrum is made available for public use."⁹ Such a "trivial and appropriate" reporting requirement¹⁰ would free up spectrum where, for instance, a station is "dark" for a period of time or is only transmitting at certain hours of the day.¹¹ In cases where construction deadlines are not met and no required extension request is filed, the TV bands database should show the affected channel as available for unlicensed use. And if an LPTV licensee is operating or meets whatever extended deadline the Commission ultimately adopts, unlicensed users fully understand that the TV bands database will show a channel as occupied and the unlicensed users will be forced to vacate the spectrum.

To be clear, WISPA does not advocate for allowing unlicensed use of spectrum that is being utilized to provide broadcast service to the public. But when the spectrum remains unused, there is no policy reason to allow the spectrum to stay fallow while Americans lack access to fixed broadband services that could be accessed through TV white spaces. Further, through simple reporting, the TV band administrators can easily make more channels available for unlicensed use for an interim period or, if digital facilities are not constructed, on a more permanent basis.

⁹ Comments of Open Technology Institute at New America Foundation and Public Knowledge, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) ("OTI/PK Comments") at 7.

¹⁰ *Id.* at 9.

¹¹ *See id.* at 9-10.

II. THE SPECTRUM ACT RECOGNIZES THE INTERESTS OF BOTH LPTV STATIONS AND UNLICENSED USERS AND AFFORDS THE COMMISSION BROAD DISCRETION TO FASHION INCENTIVE AUCTION RULES.

Some commenters, such as FAB, argue that Section 6403(b)(5) of the Spectrum Act, which prevents the Commission from “alter[ing] the spectrum usage rights of low-power television station,” requires the Commission to include LPTV stations in the incentive auction or otherwise requires the Commission to find a “displacement home vis á vis other TV stations, not every new class of licensed or unlicensed services the FCC now creates at the expense of LPTV license rights holders.”¹² FAB misconstrues the Spectrum Act. The “right” to displacement is not a guarantee that every LPTV construction permit or licensed station will obtain a new channel. For example, to the extent it is impossible for an LPTV station to find a new channel and operate with facilities that do not cause interference to protected stations, an LPTV station would not be able to obtain a new channel assignment. Furthermore, in Section 6403(h) of the Spectrum Act, Congress expressly acknowledged that the right of a licensee to protest modification of its license under Section 316 of the Communications Act of 1934 would not apply to license modifications made pursuant to the incentive auction process.

Moreover, in Section 6403(i)(2) of the Spectrum Act, Congress expressly endorsed unlicensed use of TV white spaces and further noted that the reorganization of the broadcast television spectrum pursuant to the incentive auction should not prevent the Commission from implementing its *TV White Spaces Second R&O*. In doing this, Congress afforded the Commission the discretion to make decisions concerning the extent to which it would accommodate both licensed LPTV stations and unlicensed TV band operations. Contrary to

¹² Comments of Free Access & Broadcast Telemedia, LLC, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) (“FAB Comments”) at 11. *See also* Comments of National Religious Broadcasters to Third Notice of Proposed Rulemaking, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 7-8.

NAB's suggestion, this does not preclude the Commission from designating at least one TV channel nationwide for unlicensed use.¹³ Finally, the Commission should not construe the word "alter" to authorize a change in status for LPTV stations from secondary to primary, as some commenters suggest.¹⁴

III. THE RECORD DEMONSTRATES SUPPORT FOR THE USE OF REPACKING AND OPTIMIZATION SOFTWARE IN THE DISPLACEMENT PROCESS.

A number of commenters support the use of the Commission's repacking and optimization software to assist LPTV and TV translator stations in identifying locations where displaced stations could be accommodated, so long as stations retain discretion to select their own displacement channel.¹⁵ However, as WISPA has stated since filing its first comments in the incentive auction proceeding, the Commission can and should aspire to use its software tools to enable the efficient use of unlicensed spectrum for higher-power fixed broadband use.¹⁶ In its comments in this proceeding, WISPA urged the Commission to "make its [displacement channel] recommendations based on factors that include not only the rights of protected stations, but also the viability of the remaining unlicensed white space spectrum under Part 15 rules."¹⁷ WISPA suggested that the Commission could establish "spectrum neighborhoods" that would identify and assign displacement channels based on criteria that considered spectrum efficiency.¹⁸

¹³ See NAB Comments at 4-5.

¹⁴ See, e.g., Comments of DTV America Corporation, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2014).

¹⁵ See ATBA Comments at 8; Comments of the Public Broadcasting Service, Corporation for Public Broadcasting, and Association of Public Television Stations, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 3; WVEBA Comments at 2. While it does not oppose use of the Commission's software for displacement purposes, Mako Communications questions the benefits given its belief that there will be few channels available for displacement in major markets. See Comments of Mako Communications, LLC, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) ("Mako Comments") at 11.

¹⁶ See Comments of WISPA, GN Docket No. 12-268 (filed Jan. 25, 2013) at 23.

¹⁷ See Comments of WISPA, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 4.

¹⁸ See *id.* at 15.

The LPTV Coalition suggested that the “spectrum neighborhoods” be “seriously studied so that as many LPTV and TV translators as possible can stay in their current city of license and TV DMA.”¹⁹ OTI/PK urged the Commission “to use its repacking and optimization software analysis throughout the entire process to at least recommend (if not require) channel relocation assignments that optimize the remaining unoccupied channels for fixed wireless broadband service.”²⁰ Given the diverse voices asking the Commission to use its optimization software to accommodate the interests of both licensed and unlicensed users, WISPA sees no reason why the Commission should stop short of the ultimate goal of identifying displacement channels.

IV. THE RECORD SUPPORTS VOLUNTARY CHANNEL SHARING.

A number of commenters support the Commission’s proposal to permit LPTV stations to voluntarily share channels with other LPTV, Class and full-power TV stations.²¹ Although Mako Communications questions whether channel sharing will be helpful in major and mid-size markets,²² preserving TV spectrum in rural markets – especially if that spectrum is optimized for spectral efficiency – could have significant benefits for consumers that require spectrum for fixed broadband access. The record supports voluntary channel sharing, and the Commission therefore should adopt it.

¹⁹ LPTV Coalition Comments at 15.

²⁰ OTI/PK Comments at 12.

²¹ See, e.g., *id.* at 4, 10-13; LPTV Coalition Comments at 10-11; NAB Comments at 5; NPR Comments at 3; Comments of The Expanding Opportunities for Broadcasters Coalition, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 2-5; Comments of Gary White, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 3; Comments of LMO Christian Media, Inc., MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 2; Comments of La Mega Mundial, LLC, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 4; Comments of Jose Salas, MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015) at 2.

²² See Mako Comments at 9.

V. THE COMMISSION SHOULD NOT AUTHORIZE NON-BROADCAST USE OF LPTV SPECTRUM AT THIS TIME.

Spectrum Evolution asks the Commission to radically transform the LPTV service by eliminating certain technical requirements and authorizing non-broadcast services.²³ This suggestion is outside the scope of the Commission's inquiry in the *Third NPRM* and should not be considered in the context of this proceeding. If it is inclined to consider SEI's request, the Commission should initiate a separate rulemaking proceeding that identifies the relevant technical and policy issues and affords the public proper notice of the opportunity to comment on the record.

Conclusion

The Commission has an opportunity through rule changes and displacement processes to enhance the overall utility of the TV band for both licensed and unlicensed users. To successfully accomplish this, two important steps should be taken. First, the Commission's process should, wherever possible, incorporate principles of spectral efficiency that make available the maximum amount of useable spectrum for fixed unlicensed use. Second, the Commission should adopt its LPTV and TV translator channel sharing proposals.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

February 2, 2015

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²³ See generally Comments of Spectrum Evolution Inc., MB Docket No. 03-185, *et al.* (filed Jan. 12, 2015).