

**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
)	
)	

REPLY COMMENTS OF LIBERMAN BROADCASTING, INC.

Liberman Broadcasting, Inc. (“Liberman”),¹ the licensee of numerous full power and low-power television stations, and owner of the national Spanish-language television network *Estrella TV*, submits reply comments in response to the above-captioned Notice of Proposed Rulemaking (“NPRM”).² As the largest privately-held, minority-owned Spanish-language broadcaster in the United States, Liberman knows firsthand that LPTV stations “are a source of diverse and local programming for viewers.”³ Liberman relies on owned and operated LPTV stations, as well as numerous LPTV station affiliates across the country, to distribute its high-

¹ All of the business operations and all of the broadcast licenses referred to herein are owned by one of Liberman’s wholly-owned subsidiaries. Thus, while Liberman is a holding company without operations or employees itself, it is the ultimate owner of all of FCC licenses, assets, and operations, including the *Estrella TV* national television network.

² *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, FCC 14-151 (rel. Oct. 10, 2014) (“NPRM”).

³ *Id.*, ¶ 1.

quality Spanish-language programs throughout the United States. This includes approximately 50-60 hours each week of original programming, produced in-house at Liberman's Burbank, California studios, and featuring well-known stars and popular personalities from the U.S. and Latin America. In addition to providing independent local television news and information, the *Estrella TV* network has also built a catalog of thousands of hours of compelling, Spanish-language programming. And since its launch in 2009, Liberman has grown to about 1,000 employees, the overwhelming majority of whom are Hispanic and other minorities.

Despite Liberman's significant contribution to the Commission's longstanding goal of diverse programming to local viewers, the fate of LPTV stations rests precariously on the outcome of the broadcast incentive auction, a massive and complex undertaking that has obvious profound ramifications for the broadcast television industry. Assuming the auction is completed successfully, there will be a finite number of available channels for LPTV stations to be able to continue operations post-auction. Therefore, Liberman strongly believes that the Commission must do everything in its power to "mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations to help preserve the important services they provide."⁴

As detailed more fully below, Liberman supports proposals that effectuate the stated overarching goal of preserving diverse and local programming for viewers, and these proposals have received strong backing from commenters. *First*, by allowing LPTV stations to channel share with full power, Class A, or other LPTV stations, the FCC will provide the critically needed flexibility for these stations to survive in the post-auction environment. *Second*, FCC optimization software would aid displaced LPTV stations. *Third*, all LPTV stations should compete on equal footing for utilizing displacement channels. *Fourth*, the Commission should

⁴ *Id.*

adopt streamlined coordination procedures for border-area stations. *Finally*, the agency should open a new Class A eligibility window after the auction completes.

I. THE COMMISSION SHOULD USE ITS RESOURCES TO AID DISPLACED LPTV STATIONS

Optimization Software. Liberman agrees that the Commission should make available the repacking and optimization software “to assist with the challenges displaced LPTV and TV translator stations [will] face in finding new channel homes.”⁵ Liberman believes that in markets “where all displaced LTPV and TV translator stations can be accommodated onto new channels,” a Public Notice listing potential new channel assignments for such stations could be beneficial, provided that the agency also adopts its proposal not “to require stations to accept channel assignments identified by the Media Bureau.”⁶ A non-binding Public Notice would help the efficiency of the displacement process, while at the same time maintaining station flexibility in choosing new channel destinations.

Liberman is also keenly aware that there will be markets “where not all LPTV and TV translator stations can be accommodated onto new channels using current operating parameters.”⁷ To “efficiently assign[] the spectrum” to LPTV and TV translator stations in these markets,⁸ Liberman strongly agrees with the National Association of Broadcasters (“NAB”) that that the FCC should not favor making spectrum available for currently unlicensed services to the detriment of those previously-licensed services, as posited in the *Incentive Auction Order*.⁹ The bottom line is that the agency needs to use whatever resources it has at its disposal to assist

⁵ *Id.*, ¶ 45.

⁶ *Id.*, ¶ 46.

⁷ *Id.*, ¶ 45.

⁸ *Id.*

⁹ Comments of NAB, at 4-5.

displaced LPTV stations, and it should not take actions that harm existing licensed services to benefit new and as-yet unlicensed services.

Channel Sharing. Similarly, the Commission must provide LPTV stations with the maximum flexibility possible to create channel-sharing arrangements that will allow as many LPTV stations as possible to survive following the auction. No commenter objected to the Commission’s proposal to allow LPTV stations to enter into channel sharing arrangements. Liberman believes that the Commission should allow sharing arrangements between Class A/full power stations and LPTV stations if that arrangement is voluntary and works for the individual stations. Licensees should be afforded a substantial window to enter into these arrangements for at least a two-year period following the auction. Additionally, for those stations entering into channel-sharing arrangements, the FCC should relax the major change rule and allow moves by stations of more than 30 miles. In sum, Liberman agrees with the Advanced Television Broadcasting Alliance that “[t]he FCC should give broadcasters flexibility, within reason, to use any new business arrangements, technologies and service architectures to preserve and enhance service to consumers so long as broadcasters continue to use their licenses to provide free, over-the-air broadcast service.”¹⁰

II. FAVORING DIGITAL-TO-DIGITAL REPLACEMENT SERVICE CONFLICTS WITH THE GOALS OF THE NPRM.

Liberman strongly opposes the Commission’s ill-conceived proposal to “afford applications for new digital-to-digital replacement translators (“DRTs”) . . . processing priority over all other LPTV and TV translator applications including new, minor change and displacement applications.”¹¹ All stations should compete on an equal footing for displacement channels, and the Commission’s priority policies should not favor DRTs – whether existing or

¹⁰ Comments of Advanced Television Broadcasting Alliance, at 5.

¹¹ NPRM, ¶¶ 35-36.

new – over displaced LPTV and translator stations. The NPRM’s existing proposal actually runs contrary to the FCC’s established goal to “help preserve the important services” of LPTV and translator stations.¹²

III. THE FCC SHOULD ADOPT STREAMLINED INTERNATIONAL COORDINATION PROCEDURES

The Commission should adopt streamlined coordination procedures to ensure that displaced LPTV stations in a border zone (i.e., those areas within the U.S., but near an international border) can obtain and build a new facility in a timely manner. LPTV licensees often have very limited resources, and most LPTV licensees will be unable to survive yet another drawn-out coordination process with foreign governments. For this reason, Liberman supports the proposal of the International Communications Network (“ICN”) that the FCC should “negotiate and establish with Mexico a simplified coordination procedure that presumes that an application may be granted after notice and a short wait, absent affirmative intervention by the other government, if it meets a rational interference threshold with respect to existing stations on both sides of the border.”¹³ This proposal appropriately draws on the negotiating power of the United States government to alleviate risk and speed up the processing of displacement applications for individual LPTV and translator stations negatively affected by the auction.

IV. A NEW CLASS A WINDOW FOR SURVIVING LPTV STATIONS WOULD HELP AVOID SUBSEQUENT DISPLACEMENT

Sixteen years ago, low-power stations struggled to obtain financing from rational, risk-averse investors, given their vulnerability to channel displacement and the potential unavailability of alternative frequencies. Congress reacted to the plight of LPTV stations and the

¹² *Id.*, ¶ 1.

¹³ Comments of International Communications Network, Inc., at 3.

threat of spectrum scarcity by passing the Community Broadcasters Protection Act of 1999 (the “CBPA”), which created a “permanent” Class A television license for qualifying stations.

Ironically, the same uncertainty seen previously regarding scarcity and displacement once again deters new investment in LPTV today. Therefore, after the auction concludes, the time will be ripe for the Commission to open a new window for low power stations to apply for Class A status. Liberman agrees with ICN that the CBPA provides the Commission with ample authority to grant further Class A status upgrades to qualifying stations.¹⁴ Affording low power stations such an opportunity to qualify for Class A status post-auction will help ensure that the vital public interest benefits provided by these stations remains viable.

Respectfully submitted,

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February 2, 2015

¹⁴ *Id.*, at 5.