

**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 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
)	

To: The Commission

**REPLY COMMENTS OF
THE ADVANCED TELEVISION BROADCASTING ALLIANCE**

In these reply comments, the Advanced Television Broadcasting Alliance (“ATBA”),¹ replies to certain matters raised by other commenters in the opening round of comments submitted in this proceeding.²

Most commenters offered constructive proposals that the FCC should adopt. Several of those proposals align with recommendations ATBA set out in its opening comments. And several commenters noted the inadequacy of the FCC’s own proposals outlined in the NPRM.

¹ The ATBA is an organization comprised of hundreds of low-power television (“LPTV”) broadcasters, owners and operators of translators, and allied industry organizations and companies. For efficiency, unless otherwise stated or implied by context, references to “LPTV” in this filing include low power television broadcast, translator and booster stations and services.

² *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*, Third Notice of Proposed Rulemaking, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175, FCC 14-151 (rel. Oct. 10, 2014) (“NPRM”).

ATBA generally supports those comments, as is discussed further below.

But prior to commenting on those constructive proposals, we must address the requests in comments submitted by the Wireless Internet Service Provider's Association ("WISPA"), and separate comments filed jointly by the Open Technology Institute at New America Foundation and Public Knowledge ("OTI/PK"). OTI/PK, and, to a lesser extent, WISPA, ask the FCC to elevate the status of hypothetical unlicensed services that are not in use today (in spite of having an existing regulatory structure) over those of operating, licensed LPTV and translator services.

WISPA and OTI/PK ask the FCC to "optimize" the post-auction TV band to create contiguous blocks of clear channels for high power unlicensed use.³ If any service should, LPTV should maintain its priority over new, unlicensed use. In the context of the highly constrained, tightly repacked post-auction television band, the suggestion is simply a euphemism for asking the FCC to repurpose spectrum from licensed LPTV stations for unlicensed use. No licensed station should be required to move to a new channel to create contiguous white space for unlicensed use. And no displaced LPTV or translator stations should be denied a displacement channel that fully replicates its service area, nor be required to incur additional displacement costs, simply to create a better environment for white spaced devices that have not yet been deployed in spite of having far more "white space" spectrum available in the past than will be available post-auction. Doing so would be destructive, bad policy, and contrary to the requirements of the Communications Act and the Spectrum Act.⁴

WISPA argues that the FCC should emphasize "spectrum efficiency" by making

³ Comments of WISPA at 3-5, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015); Comments of OTI/PK at 4, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015).

⁴ The Spectrum Act does not require the FCC to allow unlicensed operations in guard bands. Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6407 (Feb. 22, 2012) (codified at 47 U.S.C. § 1454) ("Spectrum Act").

unlicensed spectrum available in every market.⁵ WISPA thus asks the FCC to make displacement decisions based not only on rights of protected stations, but also on the viability of remaining unlicensed white spaces under Part 15 of the Commission's rules.⁶ WISPA and OTI/PK do not explain how their proposal would actually be implemented, though. Would the FCC continue to recover as much spectrum as possible and repack broadcast stations as tightly as possible, and then reserve channels for unlicensed use before accepting displacement applications? Or would it preclude or constrain displaced LPTV and translator stations from finding the best available displacement channels? Any such approach that would prevent any LPTV or translator station from receiving an equivalent displacement channel that would otherwise be available would be inconsistent with the Spectrum Act. To the extent that WISPA and OTI/PK suggest the FCC should elevate the status of unlicensed service to a point at which it is permitted to limit or preclude displacement channels, ATBA believes such an approach is not only bad public policy but also contrary to the Spectrum Act and the Communications Act.

OTI/PK also asks the FCC to "ensure" that channels "occupied" by non-operational LPTV and translator stations be available for use by unlicensed devices, and require those licenses to report their operational status.⁷ But in the face of the enormous costs and uncertainty resulting from the auction, the FCC cannot rest even more costs, obligations, and uncertainty on LPTV and translator operators, requiring them to declare to unlicensed users whether they are operating or not at any particular time. Nor should LPTV stations face the risk of unlicensed devices erroneously attempting to use their licensed spectrum when they are operating.

In what is possibly one of the most over-reaching suggestions offered to date in these

⁵ Comments of WISPA at 3-6.

⁶ *Id.* at 4.

⁷ Comments of OTI/PK at 4.

proceedings, OTI/PK also asks the FCC to impose mandatory channel sharing on LPTV and translator stations on the theory that those stations do not fully use their licensed spectrum.⁸ (WISPA supports voluntary channel sharing,⁹ as did ATBA. OTI/PK endorses *mandatory* channel sharing.) But what OTI/PK asks would not only impermissibly give unlicensed facilities priority over licensed LPTV and translator services, it would be contrary to the Spectrum Act. And purposefully diminishing LPTV and translator service would be contrary to the FCC's core public interest requirements under the Communications Act.¹⁰

The public has an expectation that LPTV and translator services will not only continue to operate, but that they will grow and evolve as integral elements of the future media landscape. The fact that some LPTV and translator stations may not fill a 19.4 Mbps bitstream 24x7 is not an invitation to impose mandatory channel sharing. No wireless operator – and virtually no spectrum user – runs a “fully-loaded” system 24/7. The record in this proceeding, and in other FCC proceedings, reflects that the uncertainty of the broadcast incentive auction has stymied investment in LPTV and translator services for years. But LPTV and translator operators are eager to continue operating and upgrade their services post-auction.

LPTV and translator services exist *today* and serve consumers, including niche populations, *today*. Limiting their ability to provide services that are relevant to consumers after the auction, three, five and ten years from now, would be anathema in the context of a long-established national policy of promoting diversity and localism. And for what? To make a small

⁸ Comments of OTI/PK at 4, 11.

⁹ Comments of WISPA at 6.

¹⁰ Echoing ABTA's opening comments, Weigel Broadcasting submits that failure to preserve service from LPTV and translator stations would be contrary to the core Communications Act imperatives of ensuring diversity and competition and would result in irreparable harm to viewers and the public interest. *See* Comments of Weigel Broadcasting at 3, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015).

amount of spectrum available for unlicensed use that exists only (or mostly) in theory today, and in spite of vastly more existing white space that will exist post-auction, even if the FCC did attempt to force LPTV and translator stations to share channels.

The Spectrum Act specifically prohibits the FCC from permitting unlicensed use of a guard band¹¹ that would cause harmful interference to licensed services, and states that the Act does not “alter the spectrum usage rights of low power stations.”¹² The Spectrum Act expressly permits the FCC to permit unlicensed use of the guard bands within and adjacent to the new wireless licenses created through the incentive auction process, though. It is imperative that the FCC follow the instruction of Congress to permit unlicensed operations that will not interfere with licensed services, including LPTV station operations. The FCC should—and as a legal matter, must—dismiss the arguments of commenters who ask the FCC to vastly compound the complexity and seemingly transparency of repacking and severely limit the number and robustness of displacement channels to be made available.

However laudable the goal of increasing spectrum for unlicensed use, WISPA and OTI/PK are asking the FCC to subjugate express statutory mandates to preserve the diversity and local service provided by broadcasting to favor of unlicensed services, which are not even permitted to *interfere* with LPTV services. In a perfect world, all LPTV and translator stations that are displaced in repacking would receive equivalent displacement channels, and the TV band would have enough remaining headroom to allow the FCC to make reassignments in a way that might leave consistent and contiguous bands for unlicensed use. But the auction designed by the FCC does not leave headroom. Many LPTV and translator stations will be displaced and will not find displacement channels. The task of finding displacement channels already faces

¹¹ White spaces are, in effect, on-channel guard bands.

¹² Spectrum Act § 6407.

daunting constraints. The notion that the FCC might add yet another constraint simply cannot be accepted.

Many commenters also observed that the proposals in the NPRM reflect a general approach that falls far short of the FCC's obligation to promote diversity.¹³ As an example, ATBA agrees with the comments of Block Communications that the FCC's main goal in these proceedings should be to preserve as much of the fabric of the nation's over-the-air TV broadcasting service as possible. In no event should the FCC prioritize "general" unlicensed services over existing, widely used local services from LPTV and translator stations.¹⁴ Creating additional spectrum for unlicensed use in the television band is not the goal of the Spectrum Act or a topic relevant to the questions asked in the NPRM. The goal here is to preserve as many LPTV and translator stations as possible. Unlicensed operations do not have and are not entitled to priority over licensed operations under the Communications Act or the Spectrum Act.

To better ensure the preservation of LPTV and translator stations, ATBA, along with many other commenters, continues to support the FCC's proposal to postpone the transition deadline and conform the new facility construction deadline to the postponed date. The process will require multiple filing windows for full-power and Class A Stations to file multiple

¹³ International Communications Network ("ICN") notes that the shrinking of the TV band and repacking of remaining stations in congested markets threatens the existence of low power television service, which affords opportunities to small businesses and minority operators, and provides diversity of programming to the viewing public. Comments of ICN at 4, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015); Comments of Block Communications at 8, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015); Comments of NAB at 4, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015); Comments of Weigel Broadcasting at 7.

¹⁴ See, e.g., *ex parte* letter from Richard Zaragoza on behalf of Colorado Broadcasters Association, et al., in GN Docket No. 12-268 (filed March 7, 2013), at 1 ("Approximately 500,000 residents, from the Denver DMA northward, are served by an estimated 450 LPTV stations and TV Translators which are a vital part of the Federal and State emergency alert systems protecting those residents").

applications for construction permits for new, alternate, and expanded facilities.¹⁵ The FCC's original deadline thus underestimated the amount of time the repacking process will consume. Then LPTV needs to be considered. The fact that a significant number of stations have not yet transitioned to digital further demonstrates the necessity of a transition date extension.

LPTV and translator stations that survive the re-packing process will have endured many years of business and financial uncertainty and costly facility changes. ATBA thus joins the National Religious Broadcasters, International Communications Networks, and other commenters in urging the FCC to remove that uncertainty going forward by allowing such stations to obtain Class A status, subject to compliance with the applicable requirements. After the close of the auction, and for a reasonable period following the construction deadline for displaced LPTV and translator stations, the FCC should accept and process applications for Class A status from LPTV stations that would be eligible for that status under existing Class A operating requirements.¹⁶

Further, as ATBA explained in its opening comments, the Commission should extend the digital transition date and the construction deadline for new digital stations. However, we do not believe the FCC has or is formally seeking sufficient information at this time to establish a common transition and construction deadline, and we believe it extremely unlikely that the FCC could have sufficient information prior to the auction. The FCC should make sure that it has as much information and data as is needed to make critical policy decisions that will decide the fates of thousands of licensees and millions of viewers. Critically, the most important

¹⁵ *Id.*

¹⁶ *See, e.g.*, Comments of DTV America Corporation at 2, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015); Comments of National Religious Broadcasters at 3, 8, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015) (supporting allowing LPTV stations meeting Class A criteria to obtain Class A status).

information will not be known until after the auction closes, and in many cases well after the auction closes.

As ATBA explained in its opening comments, the FCC should give LPTV stations broad flexibility to use any reasonable operating and technical approaches, including different technical standards and deployment topologies, to preserve service post-auction. ATBA supports rules that would give LPTV and translator licensees broad flexibility to voluntarily share channels. Channel sharing is a licensing construct that may be a useful tool to help make the loss of service marginally less random for some licensees and their viewers. But the net loss of service, and potential for future service improvements, is not changed by channel sharing. The FCC should thus strive to preserve the greatest number of LPTV and translator assignments.

Respectfully submitted,

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