

**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)	ET Docket No. 14-175
Rules to Eliminate the Analog Tuner)	
Requirement)	

**REPLY COMMENTS OF THE
LPTV SPECTRUM RIGHTS COALITION**

The LPTV Spectrum Rights Coalition (“LSRC”) is a national research and advocacy group representing more than 150 low power television (“LPTV”), TV Translator, and Class-A licensees, with more than 1000 built operating stations and new digital construction permits. LSRC also includes many content networks aired on LPTV stations, consulting engineers, members of the FCC bar, and manufacturers. LSRC hereby submits reply comments in response to the above-captioned Notice of Proposed Rulemaking (“NPRM”). *LPTV and TV translator in this document are meant to be the same unless otherwise noted.*

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I. THERE IS BROAD INDUSTRY AGREEMENT THAT ALL LPTV CONSTRUCTION PERMITS BE SUSPENDED UNTIL POST-AUCTION

All of the industry organizations representing LPTV and TV translator licensees¹ are in agreement that the FCC should delay both the analog-to-digital sunset date of Sept. 2015, in addition to the new digital construction permit deadlines, until after the Incentive Auction. LSRC refers the FCC to its extensive description of what it thinks should be the process and the considerations for it.²

II. THERE IS NOT AGREEMENT AS TO WHICH IF ANY GROUPS SHOULD GET A PRIORITY IN THE REPACK

Public Broadcasting Network, Corporation for Public Broadcasting, and Association of Public Television Stations, (collectively as "PTV"), assert that there should be two additional priorities for repacking³ in addition to what the FCC has already decided for the Digital Replacement Translators⁴. PTV requests that⁵, "*(1) afford noncommercial ("NCE") television translators that are displaced in the repacking a second-level processing priority over other translator or LPTV applications; and, (2) apply a third-level processing priority to any translators that operate as an integral part of a chain making up an extended translator network.*" LSRC agrees with PTV that this is a much-needed priority for the PTV stations, and one, which would seem to be afforded it within the Communications Act.⁶

However, before supporting such a priority, which could in some markets dramatically reduce the number of available displacement channels to commercial and other non-com LPTV broadcasters, LSRC would like to see a DMA-by-DMA analysis of just where PTV believes this harm to their systems may occur. LSRC suggests that the FCC, along with PTV, the National Translator Association, LSRC, and NAB have a meeting to discuss the ramifications of the PTV

¹ 3rd LPTV NPRM Comments; LPTV Spectrum Rights Coalition pg. 3, National Association of Broadcasters pg. 3, National

² 3rd LPTV NPRM Comments; LPTV Spectrum Rights Coalition pg. 4

³ Incentive Auction NPRM, 27 FCC Rcd at 12476 ¶ 361.

⁴ Incentive Auction R&O, 29 FCC Rcd at 6834-35 ¶ 657.

⁵ Combined Comments of Public Broadcasting Service, Corporation for Public Broadcasting, and Association for Public Television Stations pg. 4.

⁶ See 47 U.S.C. § 396(a)(5) ("[I]t furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, and will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation."); id. § 396(a)(7) ("[I]t is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States.").

request. LSRC has suggested in its Comments⁷ that, the "FCC should conduct a mock LPTV and TV Translator repacking optimization before the auction." and, that the "FCC should consider establishing a new DMA-based construction permit schedule."

Both of these recommendations by LSRC would assist PTV to better understand where, when, and how their request for priorities would be needed. Since the overall translator community is comprised of about 6000 or so licenses, and with the PTV translators being about 9% of those, it is not unreasonable to see how the proposal for that 9% would affect the other 91%. Not to mention the affects on the rest of the LPTV service.

The FCC should not take NTA's silence on this issue as their tacit approval of the requested PTV priorities. LSRC shares membership with over 250 of its translators with NTA, and we know first-hand that the PTV priority request could totally disrupt the carefully and costly engineered translator solutions many rural communities rely on. LSRC also needs to point out, that unchecked and limited, the PTV requested priorities could become a method for the limiting of urban spectrum which commercial and non-com LPTV stations utilize. LSRC does not imply that is the intent of the PTV request, but simply to point out that the law of unintended consequences can assert itself into complex systems and rulemakings. LSRC requests a "technical summit" to address these issues.

III. THERE ARE INSUFFICIENT COMMENTS REGARDING THE POTENTIAL COSTS OF DISPLACEMENT

While there has been little discussion⁸ in the Comments related to the FCC request⁹, "...we seek comment from existing LPTV and TV translator stations on the status of their conversion efforts and the additional costs they may have to incur should they have to "double build" their digital facilities. We also invite comment from low power stations that have completed the conversion process regarding their experience and the extent of their current digital service offerings." LSRC has, in 2013 and 2014, requested the estimated costs for transition from its' members, and has seen these estimates vary from \$50,000 to almost \$1 million, depending a great deal on tower relocations.

⁷ 3rd LPTV NPRM Comments; LPTV Spectrum Rights Coalition pg. 7, 9, 17

⁸ Signal Above, LLC 3rd LPTV NPRM Comments, pg. 3

⁹ 3rd LPTV NPRM, pg. 5 par.8

However, these estimates are anecdotal and do not represent the same level of research and examination which the FCC solicited¹⁰, and then published as the "Widely Report"¹¹ While this Report was intended for the auction-eligible station reimbursement costs associated with the broadcasters relocation fund related to the Incentive Auction, it can serve as a useful roadmap for what LPTV and TV translators could experience in terms of costs. LSRC understands fully that the FCC is not obligated to reimburse LPTV from the displacement costs associated with the auction and subsequent repacking, but it has asked what it could do to assist LPTV in this process, which it can do with the law and authority it does have.¹²

LSRC recommends that the FCC conduct a similar study for LPTV and TV translators, using the Widely Report as its basis, and readjust the study for the special and unique considerations which the LPTV industry has. This recommendation is fully within its legal authority to take this proposed measure. The benefits of doing this to the FCC is that it will be able to ascertain as best it can, what the potential costs will be for the LPTV displacement caused by the Incentive Auction repacking.

The FCC simply cannot rely on LSRC and other industry groups to accomplish this essential task. We all can help, but it is incumbent on the FCC to do the analysis, otherwise, the time it would have taken the FCC now to do this, will be added on to the time when it wants the auction to occur, since the courts will want this information also. In addition, the GAO study¹³ which members (Barton & Eshoo) of the House Committee on Energy and Commerce have requested, does not have anything at all to do with the costs of LPTV and TV translator displacement. Again, we recommend that the FCC use its authority, budget, and resources to accomplish this task.

IV. THE RECORD DEMONSTRATES CONSIDERABLE SUPPORT FOR DIGITAL CHANNEL 6 FM BROADCASTING

There was just one LPTV industry commenter who addressed the NPRM's proposal to

¹⁰ DA 13-1954, Media Bureau Seeks Comment On Catalog of Eligible Expenses and Other Issues Related to the Reimbursement of Broadcasting Channel Reassignment Costs, Sept. 23, 2013. DA 14-389, Media Bureau Seeks Comment on Widely Report and Catalog of Potential Expenses and Estimated Costs

¹¹ Widely Report, Dec. 30, 2013 - <http://apps.fcc.gov/ecfs/document/view?id=7521094235>

¹² 3rd LPTV NPRM, pg. 23, Section G at 59. Additional Measures to Preserve LPTV and TV Translator Services

¹³ http://joebarton.house.gov/uploads/LPTVletter_100114.pdf

allow LPTV stations on digital TV channel 6 to operate FM radio services (aural services) on an ancillary or supplementary basis, in a negative way. This almost unanimous record confirms the LPTV licensee acceptance for this business model, and the strong public interest their communities have from these FM "aural" services. It also shows that there is literally no countervailing harm associated with this unique service. And those multi-cultural audiences the stations have all across the country are enjoying and benefiting from local news, community affairs programming, and emergency messages in various languages.

In contrast, the arguments of National Public Radio, Inc. ("NPR"), the single commenter to actually oppose the FCC's proposal, just do not pass the smell test.¹⁴ We attempted to engage NPR, and also their funder CPB during this process, but were never able to get them to discuss the issues, other than a 5-minute phone call. NPR simply has no factual basis to challenge the LPTV channel service, other than to not want competition at the low end of the dial.

But LSRC will let the actual channel-6 LPTV licensees defend the technical aspects of their service. To remind the Commission, LSRC conducted numerous calls, meetings, and sponsored research in support of the channel-6 licensees. We did this because we believe that a digital channel-6 providing an FM or aural service is the first real test case for the highly anticipated LPTV flexible use future. Whatever lessons we can learn from these operators, and how the Commission regulates them, can point us all towards how to plan for future uses. The added benefit of all of this is that the channel-6 services have been around now for decades, and have a substantial track record of multi-cultural audience success and technical achievement, both of which are supposed hallmarks of the LPTV service.

V. THE DIGITAL DATA SERVICES ACT PILOT STATIONS DESERVE A CHANCE TO EARN PRIORITIZATION IN THE REPACK

LSRC fully supports the concept of providing a prioritization¹⁵ for the twelve LPTV licensees, which are identified as eligible pilot project stations within the LPTV Digital Data Services Act {"DDSA").¹⁶ LSRC believes that the DDSA holds great promise for LPTV in that it

¹⁴ See attached press reports related to NPR's owned self-reported problem of "Sounding Too White"

¹⁵ See Comments of U.S. Television, LLC - <http://apps.fcc.gov/ecfs/document/view?id=60001012965>

¹⁶ See <http://www.federalregister.com/Browse/Document/usa/na/fr/2002/3/4/02-4978>

may be the easiest path the industry, the Congress, and the FCC has to enabling LPTV with technically neutral regulations.¹⁷

We concur with Spectrum Evolution, Inc.¹⁸ ("SEO"), that, *"Congress has already accepted the concept of technology-neutral regulation for TV broadcasters in the LPTV Pilot Project Digital Data Services Act, 47 U.S.C. § 336(h) ("DDSA"). While the statute names a finite list of LPTV stations, SEI urges the Commission to interpret that list as naming stations that must receive DDSA authorizations on request, not the only stations that may receive such authorizations. If for some reason the Commission concludes that the list restricts stations that may receive DDSA authorizations, then it should nevertheless implement technology-neutral regulation apart from the DDSA, under its general authority to specify how licensees may use their spectrum Sections 303(a) and (r) of the Communications Act.⁵ If there is no other way, the Commission should actively promote a legislative enlargement of the coverage of the DDSA."*

LSRC recommends, as does SEO in the above quote, that the FCC examine if they can increase the pool of potential LPTV licensees, which could become DDSA qualified for the pilot project. There are many factors involved in why these 12 licensees have not yet tested alternative transmission systems. But one thing is for sure. The future is now, the technology is ready, and all that it will take for a robust testing program is for the FCC to enlarge the pool of potential pilot project users.

LSRC recommends that if a current DDSA authorized licensee does not want to participate in the pilot program, that they not receive any priority in the LPTV repack. However, if they do, then the FCC should provide some sort of accommodation for them, but only on a basis of proof that they are actually going to do the testing. These licenses literally have the future of the LPTV service in their power to test, and if they do not take up that challenge, then the FCC needs to find those that are ready, able and willing to do so. These licenses were not suppose to just be sat on so that they could be cashed in at some future time, or not used as pilot project stations. LSRC understands that over the years these licenses and owners have changed and many if not most of them do not want to be in the Pilot Project. But that is not a reason for the will of Congress to be denied.

¹⁷ Spectrum Evolution, Inc., 3rd LPTV NPRM Comments, pg. 3 number 5.

¹⁸ Spectrum Evolution, Inc., 3rd LPTV NPRM Comments, pg. 5 number 8.

However, let this be a warning to those in the FCC and especially in the Video Division who may think the comments of LSRC herein are an opening to seek to wipe out the DDSA legislation and the rights given to our industry to test out digital data and alternative uses of our spectrum. It is not, and we fully intend on going back to Congress to build on this legislation as part of the accommodation we will be seeking for not being in the Incentive Auction, not being protected in the repack, and for not receiving channel relocation funding, as are the auction eligible licenses.

A key point to remember is that the Incentive Auction legislation provides for any auction-eligible license, which does not sell in the auction, and does not take relocation funding, to be granted a waiver from the FCC, so that they may deploy a flexible use transmission service. LSRC is suggesting that LPTV licensees should be able to do the same using the DDSA as the model and basis, although no special waiver would be needed from the FCC under the DDSA rules.

LSRC recognizes that this request is outside of the legal authority which the FCC will want to assert, but, the legislative basis for it is there, and we simply want the FCC to use whatever discretion it believes it can to make the DDSA a vehicle for the success of LPTV and to be in support of the National Broadband Plan. The FCC needs to remember, that the entire Incentive Auction authority, accompanying rule makings process, is in support of the National Broadband Plan. So the link to the DDSA is strong, and can be the future of the LPTV service, just as flexible-use authority is for the wireless industry, and those auction-eligible broadcasters not accepting relocation funding.

VI. MEXICAN COORIDATION PRE-AUCTION, AND PRE-DISPLACEMENT IS ESSENTIAL AND WARRANTED

LSRC totally agrees with the International Communications Network, Inc. ("ICN"), a long time LPTV licensee in San Diego, CA. We urge the Commission to adopt what they recommend related to a simplified coordination process, *"The Commission should, at the very least, 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."¹⁹ There are numerous LPTV stations in the Mexican Border Zone, and providing guidance to them is essential, now, before the auction process itself starts. LSRC wants to know the clearing expectations in both border zones, as that will have a cascading effect for many other LPTV in adjacent DMA.

VII. AGREEMENT IN WHOLE WITH THE COMMENTS OF MAKO COMMUNICATIONS, LLC

LSRC agrees in whole with the comments of Mako Communications, LLC ("MAKO").²⁰ We do this because MAKO represents the sentiment of many in the LPTV industry who believe that by the very nature of the enabling legislation, and the accompanying rule makings, which LPTV will have to operate within, that the LPTV industry, as broadcasters, is doomed. This quote sums up the situation²¹, "*the Commission's Incentive Auction Report and Order violated the adjudicatory notice and hearing requirements contained in the Administrative Procedure Act and the Communications Act of 1934 by engaging in the attempted revocation of LPTV stations' licenses en masse by rulemaking.*"

In addition, LSRC believes the same as MAKO in this statement²², "*The Third Notice's proposals constitute an admission by the Commission that its incentive auction and repacking process will detrimentally impact LPTV service and will result in LPTV stations, particularly those located in major markets, being forced to discontinue broadcast service. Having admitted that the incentive auction and the repacking will seriously threaten the survival of LPTV service as it currently exists, the Commission offers a few crumbs in its Third Notice to soften the death blows for LPTV stations-- those same LPTV stations providing what the Commission acknowledges as "important services."*"

If we had to pick just one statement²³ from all of these Proceedings, we would concur with MAKO in, "*The truth is the Commission's Incentive Auction Report and Order will starve LPTV stations, especially those located in major and mid-size markets, of available usable spectrum when those stations are displaced from their licensed channels -- as the Commission knows they*

¹⁹ International Communications Network, Inc., 3rd LPTV NPRM Comments, pg. 3, #5

²⁰ Mako Communications, LLC, 3rd LPTV NPRM Comments

²¹ Mako Communications, LLC, 3rd LPTV NPRM Comments, pg. 2

²² Mako Communications, LLC, 3rd LPTV NPRM Comments, pg. 3-4

²³ Mako Communications, LLC, 3rd LPTV NPRM Comments, pg. 4

surely will be -- by the incentive auction and repacking process. Without access to available usable channels, these LPTV stations will have to cease operations and the Commission will cancel their licenses. The only realistic mitigation would be the FCC's acknowledgment that spectrum confiscation constitutes unlawful revocation by rulemaking, and should be abandoned."

VIII. THE FCC MUST SATISFY ITS OBLIGATIONS UNDER THE APA

LSRC agrees with the following statement by Free Access & Broadcast Telemedia, LLC ("FAB")²⁴, "*...the incentive auction rulemaking to date is littered with arbitrary and capricious decisions, however unintentional, in violation of the APA, the Communications Act, the Spectrum Act, and the RFA. Nevertheless, the FCC has time and leeway in this 3rd NPRM to correct its course and fortify the auction's possible success within the hoped-for timeline.*

*Specifically, by denying LPTV the straightforward right to participate in the auction, by selling more spectrum in the forward auction than is offered in the reverse auction, by refusing to repack LPTV before more spectrum is sold in the forward auction, by selling vacant spectrum without accommodating LPTV first, by granting new unlicensed uses for vacant spectrum before LPTV has been allotted channels in the re-sized TV band, collectively and individually violates the APA, under which the FCC may not issue a rule that is "arbitrary, capricious, an abuse of discretion, . . . otherwise not in accordance with law," or unsupported by record evidence and settled FCC licensing procedures and displacement rules.*²³

*To satisfy its obligations under the APA, the Commission "must examine and consider the relevant data and factors, and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."*²⁴ *Failure to permit LPTV licensed stations to participate in the auction and a refusal to protect these same stations in repacking continues to run afoul of these requirements. Adding on new levels of licensing complexity such as channel sharing does not ameliorate the other lethal conclusions the FCC already appears to have reached, although Petitions for Reconsideration are outstanding..."*

"

²³ 5 U.S.C. § 706(2)(A) & (E).

²⁴ *Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983)."

²⁴ Free Access & Broadcast Telemedia, LLC, 3rd LPTV NPRM, pg.17

IX. LPTV & TV TRANSLATOR NEW CHANNEL ASSIGNMENTS SHOULD BE MAXIMIZED FOR BOTH BROADCAST VIEWERSHIP & UNLICENSED USE

LSRC agrees with the combined Comments of Open Technology Institute from New America Foundation, and Public Knowledge, ("OTI/PK"), when they state²⁵, "*The specific channels that the Commission assigns (or chooses not to assign) in the post-auction repacking and reassignment process will shape TV band spectrum efficiency and determine whether there is a robust future for unlicensed broadband in this uniquely valuable low-band spectrum. It is critical that the Commission not only finds workable channels for LPTV and translator stations that are actively broadcasting a service to their community, but also makes these channel reassignments in a way that maximizes the number of useable white space channels available for unlicensed use, with as many consecutive white space channels as possible to facilitate rural broadband (since fixed wireless services can operate only on the middle of three consecutive white space channels).*"

All of us in the LPTV and TV translator industry need to attempt to understand what OTI/PK is saying above, and the context from which it is delivered. LSRC believes that the LPTV inherent "Right of Displacement"²⁶ requires the FCC to first repack built and licensed stations, and then make sure all of the new construction permits it has issued have new channels to move to, and then, and only then, should any available be made for TV White Space and unlicensed use.

However, LSRC believes that LPTV could greatly benefit if the post-auction displacement repacking was organized in such a way that distinct "spectrum neighborhoods" could be found in each DMA for first LPTV and Translators, and then, the unlicensed users. What we are battling as an industry now, today, as you read this, is that the FCC is proposing to assign BEFORE the auction and repacking, guaranteed TV White Space and unlicensed channels. And do this BEFORE they have released how many, if any, channels will be available for LPTV.

LSRC firmly, strongly, and without any hesitation at all, believes that we must engage our enemy, look them straight in the eye, and come to the realization that they want what we got, and they have the Congress, the FCC, the investment community, and most everyone except

²⁵ Open Technology Institute-New America Foundation & Public Knowledge, 3rd LPTV NPRM Comments, pg. 2

²⁶ U.S. Code § 74.787 Digital licensing.

broadcasters on their side. But our Right of Displacement can really mess up their plans, and they need us on board with their plans in order for them to work—hence, a deal.

But the main reason LSRC supports the spectrum neighborhood concept is that with a fixed positioning in the new band, LPTV licenses stand to have their values greatly increased by knowing that they have a channel that will not be taken from them for future unlicensed use. Combined with the LSRC concept of the "New Primary", which anticipates and plans for ATSC 3.0, and flexible-use broadcast future, a Spectrum Neighborhood need not be a scary place to move to.

As it currently stands, your licensed and built 6-MHz channel is walled off from the TV White Space database administrators, and they never have access to your spectrum whether you are on the air or not. But if you read what OTI/PK says further in their Comments²⁷, "*OTI/PK urge the Commission, wherever feasible, to optimize the repacking and channel relocation process – particularly with respect to the reassignment of LPTV and TV translator stations – to create a contiguous block of white space spectrum that facilitate higher power fixed use for rural broadband and other purposes that serve the public interest.*

The unlicensed use advocates are already planning and in some markets operating in the future world of "dynamic spectrum sharing". And they want to do in the middle of where we live, work, and make our living. We either head them off, put them in their own neighborhood, or they will invade us, and eventually crowd us out of the spectrum we need to not only grow, but literally operate to survive. There is no turning back of the clock on this. Both the urban and rural LPTV and TV translator industry needs to get smart, and that is all about carving out where to live, who to hang out with, and knowing that what you got to use is yours, and not a shared resource, unless you are the one controlling the sharing.

Read next what OTI/PK wants to do²⁸, "*OTI/PK urge the Commission to ensure that a channel occupied by a nonoperational LPTV or TV translator station (licensees and construction permits) will be made available for unlicensed use through the FCC-authorized TV Bands Database system. As part of this Order, the Commission should obligate secondary broadcast operators to affirmatively report timely updates on their actual operations – either to the Commission or directly to a TVDB – so that unused spectrum is made available for public use in*

²⁷ Open Technology Institute-New America Foundation & Public Knowledge, 3rd LPTV NPRM Comments, pg. 4

²⁸ Open Technology Institute-New America Foundation & Public Knowledge, 3rd LPTV NPRM Comments, pg. 4

a timely manner."

So, you are not too worried? Think the FCC has your back? Well read on, this is the part that will freak out all of you with construction permits²⁹, "*OTI/PK strongly support channel sharing, but believe it need not always be voluntary. Where fallow capacity can be freed up – or where an operational LPTV station can be accommodated rather than left off the air – mandatory channel sharing, or at least strong incentives for channel sharing, should be an option. This should be particularly true for unbuilt stations (CPs) that can far more easily arrange their construction on a shared basis – and quite possibly save operating expense in addition to saving the public lost low-band communications capacity."*

LSRC urgently recommends to the FCC that alongside of the 3rd LPTV NPRM rule making, as well as the Part 15 rule making, and the upcoming unlicensed rule making, that the FCC host a day-long panel and internet discussion about the "Incentive Auction Repacking and Spectrum Neighborhoods."

Finally, the LPTV Right of Displacement means that any attempt by the FCC to elevate unlicensed users, and TV White Space users above LPTV and TV translators will result in taking the ruling through reconsideration, and when ripe to the courts. But, a creative compromise guaranteeing acceptable channels for all built and licensed LPTV and TV translators, and a market-by-market spectrum neighborhood planning approach, could, with a big if, could possibly work for all users wanting the spectrum LPTV rightfully deserves first shot at, but may be politically outmaneuvered from utilizing.

Don't shoot the messenger folks, we all have made the Right of Displacement the law of the land...but we got to play nice with the other kids in the play yard who also want to use the sandbox. But remember, if we come to the table to negotiate a plan, and one cannot be worked out in your market, we win or go to court, and let the courts decide.

X. WE OPPOSE ANY PRE-QUALIFYING FOR CLASS-A STATUS

LSRC opposes any proposals to "pre-qualify" LPTV stations for Class-A based on what stations have already been doing or not. Commenters who are proposing this are:

²⁹ Open Technology Institute-New America Foundation & Public Knowledge, 3rd LPTV NPRM Comments, pg. 4

Weigel Broadcasting Co. (" WEIGEL ")³⁰. It has an ABC network affiliate airing on their LPTV licensed station. This is what they want, " *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 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 fulltime employees are subject to differing equal employment opportunity obligations both from each other and from smaller stations.²²*

LSRC recommends to WEIGEL that it needs to do the right thing to either ante up some big bucks so that we can lobby Congress and the FCC for ALL LPTV to be protected in the repack, or suck it up and realize you made a poor business decision; and, FOR THE PAST THREE YOU KNEW YOUR STATION WAS GOING TO NOT BE AUCTION ELIGIBLE OR HAVE PROTECTION IN THE REPACK, AND DID NOTHING ABOUT IT IN SUPPORT OF THE REST OF THE LPTV INDUSTRY.

But LSRC is a forgiving entity, we understand that all of us make transgressions, and have

³⁰ Weigel Broadcasting Co. Comments 3rd LPTV NPRM, pg. 3

faults, although the WEIGEL MISTAKE IS HUGE!!! But do not fear, we have a plan for you. WEIGEL actually spells it out quite nicely in their next paragraph³¹, "*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 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

So welcome to the fight WEIGEL, we need you, and you for sure need us. No more unanswered calls and emails from you. No more not wanting to hang out at NAB with the LPTV folks. No, you are now officially one of us WEIGEL, and you need to get with the program, spend some money, go on the offensive, file some motions. Just remember, you crack open the door for yourself, and the rest of the 9,999 of us are going to pile on and through before you take your first step.

And remember this, airing the ABC network, CW, MYNetwork, and Telemundo makes NO difference in this game. The First Amendment rules the day, and your content does not give you any advantage at all. It is all about the license you got, and you are now hanging out to dry with the rest of us. And what is the WORSE CASE? You have to move and pay for it yourself, which should not be a problem for you since you get big-time retrans dollars and advertising rates. But you have had three years to plan, so we can't wait for your call. *(There are about 100 of these big time network affiliates, which are LPTV, but mostly in small markets, which this one is not.)*

Another commenter, the National Religious Broadcasters ("NRB"), also recommends a pre-qualified approach to gain Class-A status,³² "*We urge the Commission to grant auction and spectrum protection rights to any low-power station – similar to granting it Class-A license status – where that station can demonstrate that it has essentially and substantially met the qualifications to apply for Class-A status.*" While LSRC agrees in principle with NRB that it would great if any LPTV, which could show that it is Class-A qualified, could get that status or similar protection, and everything that comes along with it, we think the approach is unworkable.

³¹ Weigel Broadcasting Co. Comments 3rd LPTV NPRM, pg. 8

³² National Religious Broadcasters, 3rd LPTV NPRM Comments, pg. 10

Pre-qualifying is almost impossible to do since no official FCC record keeping has been done, and no real way to verify what has been aired, if the studio was open, if the station records were available. Again, we agree with the intent, but not the mechanism.

Yet another commenter, DTV America Corporation ("DTV America"), may offer a better, more legally refined approach³³ than WEIGEL or NRB, " 7. *There is no question that the Commission has statutory authority to create more primary LPTV stations, especially if the qualifying criteria are the same ones used for Class A stations in 2000. Congress specifically gave the Commission authority to upgrade qualifying LPTV stations in the Community Broadcasters Protection Act of 1999, 47 USC § 336(f). While the Commission has consistently refused to open more than one window of opportunity for LPTV stations to upgrade to Class A status, there can be no dispute that the statute allows further upgrades, as the Commission is given broad discretion in Section 336(f)(2)(B) of the Communications Act, without a time limit, to determine which stations may qualify for Class A primary service protection.⁸ The Commission have chosen not to use this authority in the past, but the authority remains part of the law and not only may, but indeed should, be used now.*"

LSRC believes that the DTV America approach may be the most legally sound one to attempt, but where we have a problem with it, is in the plan for implementation, which as with WEIGEL and NRB, trips up on the qualifying part³⁴, "8. *LPTV stations can be allowed to qualify for post-repack primary status without disrupting the incentive auction or the re-pack and without adding any strain on the Commission's resources prior to the re-pack. DTV America suggests that the Commission announce during the summer of 2015 that it will accept certifications in December of 2015 from LPTV stations that have qualified before they file their certification.⁹ The Commission need not process the certifications or entertain petitions to deny at that stage. Just as it did with the initial Class A qualification window in 2000, the Commission can publish a list of stations that submitted complete certifications. Then after the spectrum re-pack, those stations that have not been displaced and those that have been displaced and have found new channels can file license applications on Form 302-CA. At the time the license applications are filed, likely in late 2016 or early 2017, the Commission will have finished all or most of the re-pack and will be able to turn toward evaluating the qualifications of individual applicants and entertaining any petitions or objections that may be filed.*"

³³ DTV America Corporation, 3rd LPTV NPRM Comments, pg. 4, #7.

³⁴ DTV America Corporation, 3rd LPTV NPRM Comments, pg. 5, #8.

LSRC believes this all can work, but objects strongly to, "*DTV America suggests that the Commission announce during the summer of 2015 that it will accept certifications in December of 2015 from LPTV stations that have qualified before they file their certification.*" Many, if not most, major market LPTV operators have migrated to a channel-leasing (time-brokerage) model. This has been because of the dramatic narrowing of the business model opportunities, which the DTV transition and now three-year-old Incentive Auction rule making process has created. DTV America needs to understand that by giving such a short (6-months) self certifying window to not only declare yourself Class-A compliant, but to actually end multi-year contracts with networks which are leasing capacity on your station, then build a local channel, and get it all done without breaking the back in six months, well it is not feasible, nor is it fair. The mid to small market LPTV owners need to realize that it is different in the major markets, and that you simply cannot turn on a dime and switch everything like you can when you are smaller.

But LSRC believes between the WEIGEL waiver approach, the NRB self-certification approach, and the well reasoned, but ill-timed DTV America approach, the FCC can see that there is great interest in the LPTV industry for doing this. However, LSRC needs to caution all who promote and want the Class-A status. Without changes to the rules as they are today, you are walking into more operating requirements than a full power in many ways. As DTV America goes on to say³⁵, "*The Commission may want to consider whether it should be necessary any longer for local main studios to be opened and staffed 40 hours a week, given the fact that local public inspection files are now posted online, and there is little need for members of the public to visit a station in person any longer to obtain information about the station's program services.*"

But I must warn everyone reading this and thinking LPTV may have a way to get Class-A status as part of the repack - not! When LSRC first started 21 months ago researching and advocating on behalf of LPTV, and then eventually lobbying, we used the same exact legal construct and reasoning as we made are way around the 8th floor of the FCC and the halls of Congress. The problem that we ran into was consistently that no one wanted to do anything at all to hinder in any way the Incentive Auction process. Now that we are 20 months later, and we are not talking in any way about auction eligibility for Class-A's, nor hindering the auction, or primary repack, what we really are trying to do is what? Gain some sort of permanence for our secondary-licenses, like Class-A's have now? Trying to position our licenses for the next auction?

³⁵ DTV America Corporation, 3rd LPTV NPRM Comments, pg. 6, footnote 11

Trying to gain an advantage in the prioritization of the repack?

Again, LSRC agrees with and is in solidarity with WEIGEL, NRB, and DTV America in the "intent" of their Class-A aspirations, but does not agree with their "methods" or "implementation strategies". LSRC is working towards solutions, which can actually happen, and within the sandbox of all of the other players who have aspirations and big time backers in our schoolyard. We again offer the "New Primary" as a means to achieve this objectives and goals. What is the New Primary? You tell us...but remember this, as it is the same for the New Primary, as it is with a new Class-A window, "*...this is currently outside of the authority of Commission, as it sees it, what we do suggest is to study it.*"

XI. THE RECORD IS CLEAR THAT THE FCC SHOULD CONDUCT AN ECONOMIC ANALYSIS OF THE RISKS AND BENEFITS OF LPTV AUCTION ELIGIBILITY AND PARTICIPATION

LSRC references both its own comments³⁶ about the lack of any economic analysis of LPTV as auction eligible, by either the Congress, or the FCC, "*The FCC has not conducted any type of economic analysis of the risk and benefits of including LPTV in the auction. It has however, stated clearly in the 2012 Incentive Auction NPRM, that it has the authority to include LPTV in the auction, but does not see any economic or practical benefit of including LPTV in the auction. So how can the FCC make that statement and not be required to back it up with economic analysis? The FCC rejected this argument in the June 2014 Report and Order, and it is now part of two Petitions for Reconsideration in these Proceedings. Only by studying this can the FCC know for sure what could be the results, and any assumptions at all about it are creating a lack of informed judgment.*"

LSRC, further references the comments of FAB³⁷. "*...the Commission now seeks benefit-disadvantages analysis (i.e., benefit-cost) for every recommendation. FAB has asked the Commission to employ that same analysis when it sought auction participation for LPTV stations after emphasizing that the Commission itself said it is empowered to allow LPTV to participate in the auction.⁴ To date, the Commission has not even acknowledged FAB's requests, on the very point the Commission admitted is a possible policy alternative within its powers. FAB still awaits*

³⁶ LPTV Spectrum Rights Coalition Comments, 3rd LPTV NPRM, pg. 16

³⁷ Free Access & Broadcast Telemedia, LLC, 3rd LPTV NPRM, pg. 2

word that the Commission has conducted (or will now conduct) such a cost-benefit analysis and will release the results. Otherwise, the Commission's basic conclusion that LPTV will not be invited to participate in the auction is arbitrary and capricious after raising that opportunity as a policy alternative and then dismissing it without analysis."

Respectfully submitted,

_____/S/_____

Michael Gravino, Director

LPTV Spectrum Rights Coalition