



June 3, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (Docket No. 12-268)

Dear Ms. Dortch:

This letter is to notify you that on June 2, 2015, Patrick Butler, President and CEO, and Lonna Thompson, Executive Vice President, Chief Operating Officer and General Counsel, of the Association of Public Television Stations (“APTS”) met with Philip Verveer, Senior Counselor, in the Office of Chairman Tom Wheeler.

The purpose of our visit was to urge adoption of preventative measures to ensure that the broadcast spectrum incentive auction does not create unserved areas in major markets where millions of Americans could lose access to noncommercial educational service. APTS expressed broad support for a timely and successful incentive auction and the goal of expanding access to broadband, which is a platform that APTS has found through experience to be highly complementary to over-the-air distribution. Nonetheless, given that there are major markets at risk where reliance solely on over-the-air television is almost twenty percent of the population and over thirty percent in underserved minority populations, it is critical that the Commission ensure continued access to noncommercial educational broadcast service. APTS advised that there is a risk of the incentive auction creating unprecedented “white areas” in dozens of communities across the country.

We asserted that the Commission has both the *authority* to reserve a portion of the public airwaves for noncommercial educational service and the *obligation* to continue doing so. The Commission’s authority derives from the Communications Act, which requires the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”¹ Pursuant to this mandate, the Commission has consistently worked for over six decades to ensure that all communities across the country have access to noncommercial educational service.

¹ 47 U.S.C. § 307(b). Radio service refers to the radio frequency spectrum that is used for both radio and television.

When implementing this mandate and adopting the initial television Assignment Table, the Commission held extensive hearings to determine “whether television channels should be reserved for the exclusive use of non-commercial educational stations.”² “On the basis of the record thus compiled, the Commission concluded ... that there is a need for non-commercial educational television stations.”³ The Commission found that “based on the important contributions such stations can make in the education of the in-school and adult public, there is a need for non-commercial educational stations” and the “public interest will clearly be served if these stations are used to contribute significantly to the educational process of the nation.”⁴ Therefore, “to insure an extensive, rather than a sparse and haphazard development of educational television, channels must be reserved by the Commission” for noncommercial educational use.⁵

“One of the reasons for having the reservation is that the Commission recognizes that it is of the utmost importance to this nation that a reasonable opportunity be afforded educational institutions to use television as a non-commercial educational medium.”⁶ “In preparing a proposed Assignment Table for the entire nation which would provide the framework for the growth of television for many years to come,” the Commission found that it “could not limit our perspective to immediate demand for educational stations.”⁷ “The very purpose of the Assignment Table is to reserve channels for the communities there listed to forestall haphazard, *inefficient* or *inequitable* distribution of television service in the United States throughout the many years to come.”⁸ The Commission found that the reservation of spectrum for noncommercial educational service in the Assignment Table is necessary to comply with the mandate in the Communications Act to “provide a fair, efficient, and equitable” distribution of service.⁹

As detailed in the Petition for Reconsideration filed by APTS, CPB and PBS on September 15, 2014, the Commission has consistently held to this understanding of its authority for over 62 years, including when the 740-806 MHz band was cleared for wireless services.¹⁰ The Commission’s obligation to continue doing so at this juncture stems from the dictates of the Administrative Procedure Act as also described in the Petition for Reconsideration on file.¹¹ The Commission has worked to support and further the universal service of public television for over six decades and can continue to do so through

² *Amendment of Section 3.606 of the Commission’s Rules and Regulations et al.*, Sixth Report & Order, 41 F.C.C. 148, ¶ 35 (Apr. 11, 1952).

³ *Id.* at ¶ 36.

⁴ *Id.* at ¶ 38.

⁵ *Id.* at ¶ 41.

⁶ *Id.* at ¶ 43.

⁷ *Id.* at ¶ 39.

⁸ *Id.* at ¶ 42 (emphasis added).

⁹ 47 U.S.C. § 307(b).

¹⁰ *Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania*, Report and Order, FCC 02-209, 17 FCC Rcd 14038, 14048–49 (2002).

¹¹ 5 U.S.C. § 553, 706(2)(A).

prudent design of the upcoming incentive auction. The Commission has never made the continued existence of noncommercial educational reserved spectrum subject entirely to market forces and cannot reverse this well-settled policy now. The solution proposed in the pending Petition for Reconsideration would ensure both the preservation of noncommercial service and a successful incentive auction by allowing any station to volunteer to participate in the auction, while preserving at least one reserved channel during the repacking process to enable a new entrant to offer noncommercial educational service in the community.

APTS looks forward to working closely with the Commission to ensure that continued service to the entire American public is achieved in concert with a successful incentive auction next year.

Regards,

/s/ Lonna Thompson _____

Lonna Thompson

Executive Vice President, Chief Operating Officer
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