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## VIA ELECTRONIC FILING

September 17, 2015

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through  
Incentive Auctions, GN Docket No. 12-268*

*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*

*Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the  
Preservation of One Vacant Channel in the UHF Television Band For Use By White  
Space Devices and Wireless Microphones, MB Docket No. 15-146*

Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

In accordance with Section 1.1206(b)(2), of the FCC's rules, this letter is to notify you that on September 16, 2015, John W. Timmons and Patrick H. Williams of The Cormac Group, LLP, on behalf of Free Access & Broadcast Telemedia, LLC ("FAB"), met with Incentive Auction Task Force ("IATF") Chair Gary Epstein, Vice-Chairman Howard Symons, Media Bureau Chief William Lake, and five other members of the IATF. Topics discussed are all directly related to the attached two handouts which were distributed at the meeting.



Points made in the presentation are also more fully set forth in FAB's submissions filed in Dockets 12-268 and 03-185.

Respectfully submitted,

Erwin G. Krasnow

Counsel to Free Access & Broadcast Telemedia, LLC

cc: Gary Epstein (via email to Gary.Epstein@fcc.gov)  
Howard J. Symons (via email to Howard.Symons@fcc.gov)  
William T. Lake (via email to William.Lake@fcc.gov)  
Barbara Kreisman (via email to Barbara.Kreisman@fcc.gov)

Enclosures – Letter from Hon. Greg Walden and Hon. Joe Barton to FCC Chairman Tom Wheeler  
FAB handout titled *Nothing is Not Enough: Four Local Low-Power TV "Asks"*  
*to Assure a Successful, Timely Auction*

GREG WALDEN  
SECOND DISTRICT, OREGON  
DEPUTY WHIP

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August 4, 2015

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Dear Chairman Wheeler:

I am writing to express my concern about the impact of the Commission's current plans for the broadcast incentive auctions on Low Power Television stations and translators. As you well know, LPTV stations offer local content valued by their communities. These small stations continue to cater to unique interests and respond to their communities. Similarly, translators allow broadcast signals to reach across challenging terrain to serve some of the most rural Americans. Without translators, much of the western half of the United States would not be served by broadcasting.

While the Commission was granted significant flexibility to repack broadcast stations to optimize the recovered spectrum in the 600 MHz band, the Commission itself recognized that it had the responsibility to "help preserve the important services" provided by LPTV and translators.<sup>1</sup> I am concerned that the current focus on white spaces and unlicensed services outside of the duplex gap and guard bands may unnecessarily harm the communities served by LPTV and translators.<sup>2</sup> The spectrum provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (MCTR) do not charge the Commission with the "central goal" of "maximiz[ing] the amount of spectrum made available for not only licensed use, but also unlicensed use."<sup>3</sup> Rather, the Commission was charged with implementing an incentive auction that maximizes the amount of high-quality spectrum licenses for wireless broadband while ensuring that the agency made "all reasonable efforts to preserve...the coverage area and population served of each broadcast television licensee"<sup>4</sup> during the repacking process. While we have all agreed that LPTV and translators are not explicitly protected under the Act, Congress has repeatedly urged

<sup>1</sup> *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, 29 FCC Rcd 12536 (2014) at ¶ 1. See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12637 (2012) at ¶ 358, *et seq.*

<sup>2</sup> See *Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Space Devices and Wireless Microphones*, Notice of Proposed Rulemaking, 30 FCC Rcd 6711 (2015).

<sup>3</sup> Tom Wheeler, "Seizing the Opportunities of Unlicensed Spectrum and Wireless Microphones," FCC Blog (Jul. 16, 2015) at <https://www.fcc.gov/blog/seizing-opportunities-unlicensed-spectrum-and-wireless-microphones>.

<sup>4</sup> Middle Class Tax Relief and Job Creation Act of 2012 § 6403(b)(2), Pub. L. 112-96, 126 Stat. 156 (enacted Feb. 22, 2012) ("MCTR").

the Commission to ensure that LPTV and translators are preserved to the extent possible.<sup>5</sup> The Commission's proposals for unlicensed operation in the broadcast band to supersede use by licensed operations are inconsistent with both the statute and repeated calls from lawmakers to preserve LPTV and translators where possible.

I support the FCC's efforts to increase the availability of unlicensed spectrum for innovative new spectrum technologies to compete in the open market. This concept of innovation without permission has animated the unlicensed bands since their creation and continues today to provide fertile ground for new spectrum access technologies to be deployed and compete. But plans for the purchase of full-power and broadcast licensees in order to make way for unlicensed services within the broadcast band are inappropriate and not permitted by any statute.

Section 6402 of the MCTR (codified at 47 U.S.C. 309(j)(8)(G)), from which the FCC derives the underlying authority for the broadcast incentive auction, authorizes the Commission to "encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order to *permit the assignment of new initial licenses* subject to flexible-use service rules[.]"<sup>6</sup> Creating a band plan based on frequency division technologies necessitates a duplex gap and the presence of adjacent services often necessitates guard bands. Both of these are suitable candidates for additional unlicensed use and consistent with the MCTR. Additionally, while the MCTR gives the FCC the flexibility to continue to implement the TV White Spaces rules in the newly truncated broadcast band post-auction, it does not contemplate Part 15 operation in the broadcast band other than under the Commission's existing white spaces rules.

Finally, the flexibility written into the MCTR that permits the Commission to repack broadcast stations to maximize the recovered spectrum is not *carte blanche* to upend the maxim that colors all FCC licensing: licensed services take precedence over unlicensed services. While the MCTR doesn't give LPTV or translator licensees rights to participate in the auction, they are still licensed services, and are secondary only to full power stations in the television band, not unlicensed. By providing important local programming to their communities these licensees have an established constituency. The MCTR does not allow the FCC to elevate unlicensed operations over translators and low power stations in the television band and to unnecessarily deprive this constituency of their local programming.

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<sup>5</sup> For example, Chairman Emeritus Joe Barton drafted legislation that would enhance the ability of LPTV stations to appeal to the Commission. The Subcommittee on Communications & Technology held a legislative hearing on the draft bill on July 24, 2014. Representative Barton and Rep. Eshoo also requested that the Government Accountability Office review the impact of the incentive auctions on LPTV stations and translators and their respective communities. *See* Letter from Chairman Emeritus Joe Barton and Ranking Member Anna Eshoo, Subcommittee on Communications and Technology to Mr. Gene Dodaro, Comptroller, Government Accountability Office, dated Oct. 1, 2014.

<sup>6</sup> MCTR § 6402 (emphasis added).

Sincerely,

A handwritten signature in blue ink that reads "Greg Walden". The signature is written in a cursive style with a horizontal line underneath it.

Greg Walden  
Chairman  
Subcommittee on Communications  
and Technology

A handwritten signature in blue ink that reads "Joe Barton". The signature is written in a cursive style with a horizontal line underneath it.

Joe Barton  
Chairman Emeritus  
House Committee on Energy and  
Commerce

**Nothing is Not Enough:**  
**Four Local Low-Power TV “Asks” to**  
**Assure a Successful, Timely Auction**

**FAB**

telemedia

**Free Access & Broadcast Telemedia, LLC**

# Four Local Low-Power TV “Asks” to Assure a Winning, Timely Auction

Goal: Fair play for existing FCC-licensed TV stations consistent with fair-play afforded FCC wireless licensees:

1. Some level of LPTV protection in channel repack -- more spectrum should not be sold by the FCC than the Commission actually buys for resale in the reverse auction or is truly vacant, until existing LPTV licensees are accommodated.
2. Extend auction eligibility under existing FCC authority, as the FCC has stated that it has the power to do.
3. Relocation funded for LPTV under existing FCC Title III authority, on top of the \$ 1.75b for full power & Class As.
4. Assurance in writing of future technical flexibility for all TV broadcasters, the same as wireless licensees have today.

LPTVs always were, and still are, broadcast television licensees whose existence needs to be recognized in the incentive auction.

# Low-Power TV: What and Why?

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- For over 30 years, community-based Low-Power TV (LPTV) has been broadcasting free programming over-the-air.
- In many cases, LPTV provides ethnically and culturally diverse and religious programming.
- Number of operating TV stations :

Auction-eligible:

Full-Power Stations:	1330
“Class A” Low-Power Stations:	362

Other (imperiled):

<b>Community-Based, Low-Power TV Stations:</b>	<b>1573 (26% of the total)</b>
<b>Low-Power “Translator” Stations</b>	<b><u>2817</u></b>
<b>TOTAL U.S. OPERATING UHF TV STATIONS</b>	<b>6082</b>

- All broadcasters use the same 6MHz channels, with different footprints.
- At least 15% of US residents rely *only* on free over-the-air stations -- not cable, not satellite, not internet TV.
- This huge and relevant minority segment of the US served by LPTV should be allowed to continue to provide service to the public.

# Low Power TV in the Auction Law

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- Congress invited Full Power and Class A Low Powers into the Spectrum Auction.
- LPTV was not barred or explicitly excluded.
- Congress assured those invited but who did not sell that they would be reimbursed to move elsewhere.
- It was silent on LPTV relocation reimbursement.
- In the Spectrum Act, Congress was *silent* on LPTV other than to say explicitly that:

**“Reorganization of the Broadcast TV Spectrum ...**

**(5) Low-power television usage rights. –**

**Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations.”**

**Under longstanding FCC precedent, LPTV holds location rights inferior only to Full Power and Class A stations, and superior to all others, including unlicensed users and new aspirant licensees.**

# Settled Low Power TV Rules at the FCC

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- At the FCC, LPTV is secondary only to full Power and Class A stations for signal interference purposes.
- The FCC ordered LPTV to move 8 years ago to make room for new licenses sold in the upper TV band to wireless companies.
- However at that time there was room for all to resettle.
- Now there is no more room, and any FCC order requiring LPTV to defer/move to make way for new licensees and even new unlicensed services would trump the rights of current LPTV licensees.
- Such action would be a “taking.”
- At least one DC Circuit Court decision stands for the proposition that when conditions change, a past FCC administrative law ruling cannot necessarily be rubberstamped again.

**LPTV has a firm right of displacement after full power and Class A stations that is superior to new licensees and unlicensed users.**

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# Backup Slides

# Diverse Programming and Media Voices

## 200+ Programming Networks Utilize LPTV

**2500+  
LOCAL  
& DIVERSE  
CONTENT  
CHANNELS**

Sample data from RabbitEars.info – July 2013

# OF NETWORKS	NETWORK CONTENT AND DEMO FOCUS	# OF DTV CHANNELS
43	HISPANIC	850
23	RELIGIOUS	550
33	ETHNIC	182
25	FAMILY/CLASSIC TV	260
13	GOVERNMENT	141
6	SHOPPING	120
5	MUSIC OR AUDIO	153
3	WEATHER	134
3	AFRICAN AMERICAN	100

# LPTV is Community Diversity

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**A 2009 survey of LPTV stations conducted by the CBA (Community Broadcaster Association) discovered the following**

- 57% of LPTV stations have been on the air for more than 10 years
- 20% of LPTV stations have at least 10 employees
- 45% of LPTV stations are owned or partially owned by a minority.
  - 43% of these stations a minority owns at least 51% of the station
  - 24% of LPTV owners are Hispanic
  - 10% of LPTV owners are African American
  - 3% of LPTV owners are Asian
  - 3% of LPTV owners are Native American
  - 34% of LPTV owners are multi-racial
- 60% of LPTV stations are owned or partially owned by females.
- 66% of LPTV stations offer at least some foreign-language programming
- 78% of LPTV stations that offer foreign language programming air at least 10 hours weekly of foreign language programming.
- 83% of LPTV stations have local programming
- 49% of LPTV stations that have local programming air at least 10 hours of local programming each week.
  - 55% offer religious local programming
  - 38% offer family oriented local programming
  - 36% offer local sports programming
  - 31% offer local news
  - 28% offer foreign-language local programming