

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 15, 73 and 74 of the)	MB Docket No. 15-146
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)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	

To: The Commission (*Electronically filed via ECFS*)

COMMENTS OF DTV AMERICA CORPORATION

1. DTV America Corporation ("DTV America") hereby submits these comments in response to the Commission's *Notice of Proposed Rulemaking* in the above proceeding, FCC 15-68. As the licensee of more than 100 Low Power Television (LPTV) stations and the permittee of more than 200 authorized but unbuilt LPTV stations, DTV America is concerned that in this proceeding the FCC's tentative conclusions reject explicit Congressional intent, reverse Commission precedents upon which LPTV stations have justifiably relied, and overturn the foundational relationship between licensed and unlicensed services with potentially far reaching consequences.

2. DTV America is a firm believer in the advanced technical capabilities of LPTV stations, including, but *going well beyond, conventional* video television services. Especially with the advent of ATSC 3.0, LPTV stations will have both broadcast and broadband capabilities and will be in a strong position to compete in both video and data distribution. DTV America has shown its commitment to spectrum exploitation and innovation by investing large sums of

money in accumulating its portfolio of more than 300 LPTV stations, which it is building putting on the air at a rapid pace. Indeed, in recognition of this future potential Congress was explicit in Section 6403(b) of the Spectrum Act stating that nothing in the Act “should be construed to alter the spectrum usage rights of low-power television stations.” The FCC’s tentative conclusion to prioritize unlicensed white spaces over LPTV stations in repacking is in direct conflict with this Congressional directive.

3. We find it very difficult to understand why the Commission, while claiming to strive every day to increase competition and to open opportunities for business enterprises of all sizes to participate in the optimization of spectrum use, proposes to marginalize and even impair the investments of our company and other LPTV operators. First it reallocated a substantial part of the TV band to non-broadcast services, and now it proposes to take another bite by barring access by displaced LPTV stations to two channels that LPTV needs, so that those channels may be used by unlicensed TV White Spaces (“TWVS”) and other non-broadcast devices. Not only does this decision eliminate any incentives for future pro-consumer investment and innovation by the LPTV industry, it puts at risk investments that the LPTV industry has already made in justifiable reliance upon earlier Commission decisions in earlier *TV White Space* decisions.

4. Finally, unlicensed devices have always had lower priority than licensed services. Section 15.707(a)(1) of the FCC’s Rules makes it very clear that TVWS devices may operate only on channels “not occupied by an authorized service.” LPTV is an authorized service. Section 73.3572(a)(2) of the Rules makes it clear that an LPTV station that must abandon its licensed channel because of interference may seek to operate on any TV channel on which it

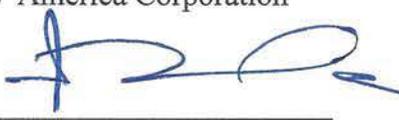
would not cause prohibited interference to only other TV, Class A, and LPTV stations, not to unlicensed devices.¹

5. The Commission is proposing to up-end a fundamental priority principle that has been in effect throughout the agency's history, since the first unlicensed services were authorized. Once this principle is upset, there is no telling how many other unlicensed devices will seek priority spectrum access and how much disorder will result. The Commission is also making a very significant modification of the terms and conditions of existing LPTV licenses, without the consent, and indeed over the objection, of holders of those licenses.

6. If the Commission feels that it needs spectrum for unlicensed short-range broadband links, it should take that spectrum from the vast amount it is repurposing away from TV and toward broadband, not from the shrinking amount that will remain allocated for television broadcast services. What the FCC is saying is, "we are taking some of your spectrum to sell to broadband users, but they need some more for short-range broadband, so we will take it from you again instead of from them."

7. What the FCC is in effect doing is to concentrate more and more spectrum assets in the hands of the wealthiest entities, equating the public interest with money instead of service to the public. Such action is both legally and morally unjustified. Unlicensed services must remain secondary to *all* licensed services, LPTV or otherwise.

Respectfully submitted,
DTV America Corporation

By: 

John Kyle II, President

¹ The Commission is also erecting a barrier to entry by competitive small businesses, contrary to Section 257 of the Communications Act, which announces a national policy in favor of favoring diversity of media voices, vigorous economic competition, and technological advancement.

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