

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

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

To: The Commission

**COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”),¹ pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby provides its Comments concerning the Notice of Proposed Rulemaking (“*NPRM*”)² issued June 16, 2015 in the above-captioned proceedings.³ WISPA supports the Commission’s proposal to preserve one television channel in

¹ WISPA is the trade association that represents the interests of wireless Internet service providers (“WISPs”) that offer fixed broadband service to consumers, businesses and first responders across the country, many of whom reside in rural, unserved and underserved areas where wired technologies may not be available. In some of these areas, WISPs offer the only terrestrial source for fixed broadband access. In areas where other broadband options are available, WISPs provide a local access alternative that fosters competition in service, cost and features.

² 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, FCC 15-68, MB Docket No. 15-146 and GN Docket No. 12-268 (rel. June 16, 2015) (“*NPRM*”).

³ 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*, DA 15-867 (rel. July 29, 2015) (suspending original comment deadlines); *Amendment of Parts 15, 73 and 74 of the Commission’s Rules to Provide*

each area of the United States for shared use by unlicensed white space devices and wireless microphones. These Comments focus on one particular issue raised by the Commission's proposal: the ability of unlicensed white space devices to operate at up to 4 Watts EIRP (or 10 Watts in less congested areas) where a reserved vacant channel is contiguous to other channels that are also unused for the television broadcast service.

In the *NPRM*, the Commission tentatively concludes that it should preserve the availability in each market of one vacant channel in the range of Channel 21 and above for use by white space devices and wireless microphones, and that such vacant channels (which would vary by market) should be made available for unlicensed wireless "under the existing rules as well as any new or modified rules we adopt in [the Part 15] proceeding."⁴ The Commission specifically finds that the impact of preserving a single channel for this use upon prospective LPTV and TV translator applicants "will be limited because multiple vacant channels will still exist in all or most markets."⁵

The Commission's proposal for operation on a single vacant channel is predicated principally on the use of lower power personal/portable devices.⁶ Nonetheless, the Commission indicates that 4 Watt EIRP fixed white space devices may operate under circumstances where "both adjacent TV channels are vacant," *i.e.*, where there are three contiguous vacant channels in an area.⁷ In light of the overarching statement in the *NPRM* that white space devices should be

for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Space Devices And Wireless Microphones, DA 15-918 (rel. August 12, 2015) (establishing new deadlines to file Comments on September 30, 2015 and Reply Comments on October 30, 2015).

⁴ *Id.* at 6 (¶ 10).

⁵ *Id.* at 6 (¶ 11).

⁶ *Id.* at 6 (¶ 11) & n.32.

⁷ *Id.* at 15 (¶ 33) & n.78.

permitted to operate “under the existing rules,” the Commission should clarify in its order adopting the vacant channel proposal that unlicensed white space devices will be able to operate at higher power, consistent with the existing Part 15 rules, where there are three or more contiguous channels that include the designated vacant channel. Indeed, as a practical matter, this type of operation would be the only means by which WISPs could affirmatively benefit from the vacant channel proposal, as operation at the lower personal/portable power levels permitted when only a single channel is available would be insufficient for the provision of fixed broadband service.

Specifically, the FCC should not unnecessarily restrict operations where three or more contiguous channels, including the designated vacant channel, are unassigned for television broadcasting in a particular market. Instead, the Commission should allow a higher maximum power for unlicensed devices – 10 Watts EIRP in less congested areas and 4 Watts EIRP in other areas – as it does in other cases where three vacant contiguous white space channels are available.⁸ The FCC should affirmatively state that fixed operations at power levels up to the permissible levels in amended Section 15.709(a)(2)(i) – along with channel bonding and channel aggregation pursuant to new technical rules – will be permitted under these particular circumstances.

WISPA notes that, as the Commission explicitly found in the *NPRM*, the preservation of the availability of some spectrum for unlicensed wireless use is fully in accord with the Spectrum

⁸ See *Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37, and Amendment of Part 74 of the Commission's Rules for Low Power Auxiliary Stations in the Repurposed 600 MHz Band and 600 MHz Duplex Gap*, FCC 15-99, ET Docket No. 14-165 and GN Docket No. 12-268 (rel. Aug. 11, 2015), at 22 (“We are modifying the rules to allow fixed white space device operators in less congested areas to radiate at levels beyond the current 4 watt EIRP limit up to 10 watts EIRP to increase their service range”). See also revised FCC Rule, 47 C.F.R. § 15.709(a)(2)(i)).

Act.⁹ The provision of the Spectrum Act that preserves “the spectrum usage rights of low-power television stations”¹⁰ is intended to protect the rights of existing LPTV licensees, but does not limit the right of the Commission to manage spectrum resources in the public interest.¹¹ The Commission also specifically notes that nothing in section 6403(b) of the Spectrum Act “shall be construed to . . . prevent the implementation of the Commission’s ‘White Spaces’ Second Report and Order . . . in the spectrum that remains allocated for broadcast television use after the

⁹ See *NPRM* at 9-11 (¶¶ 18-19).

¹⁰ 47 U.S.C. §1452(b)(5).

¹¹ See 47 U.S.C. § 1452(i) (“Nothing in subsection (b) shall be construed to — (1) expand or contract the authority of the Commission, except as otherwise expressly provided; or (2) prevent the implementation of the Commission’s “White Spaces” Second Report and Order and Memorandum Opinion and Order (FCC 08-260, adopted November 4, 2008) in the spectrum that remains allocated for broadcast television use after the reorganization required by such subsection”).

reorganization” of the TV band.¹² Allocating a vacant channel for unlicensed use consistent with the Commission’s rules would be fully consistent with this congressional mandate.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

September 30, 2015

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¹² *NPRM* at 10 (¶ 18), *quoting* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403 (codified at § 47 U.S.C. § 1452), 126 Stat. 156 (2012) (“Spectrum Act”).