

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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
	)	

**COMMENTS OF THE PUBLIC BROADCASTING SERVICE,  
ASSOCIATION OF PUBLIC TELEVISION STATIONS, AND  
CORPORATION FOR PUBLIC BROADCASTING**

The Public Broadcasting Service (“PBS”),<sup>1</sup> Association of Public Television Stations (“APTS”),<sup>2</sup> and Corporation for Public Broadcasting (“CPB”)<sup>3</sup> (collectively, “PTV”) file these comments to encourage the Commission to adopt rules in this proceeding that continue to support a “healthy broadcasting industry with robust reach” that will be “an important part of

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<sup>1</sup> PBS, with its over 350 member stations, offers all Americans the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches nearly 109 million people through television and over 28 million people online, inviting them to experience the worlds of science, history, nature, and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

<sup>2</sup> APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s 364 CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

<sup>3</sup> CPB is a private, non-profit corporation created and authorized by the Public Broadcasting Act of 1967 to facilitate and promote a national system of public telecommunications. Pursuant to its authority, CPB has provided millions of dollars in grant monies for support and development of public broadcasting stations and programming.

our future just as it has been an indispensable part of our past.”<sup>4</sup> Specifically, PTV urges the Commission to ensure that full-power television stations retain their primary status in the repacked television band so that they are not unduly constrained in continuing to deliver important programming and emergency alert services to the public or prevented from offering new services in the future.

PTV appreciates the Commission’s proposal in the *Vacant Channel NPRM* to consider allotment petitions to restore full-power noncommercial educational (“NCE”) service to an area under existing standards, regardless of whether any vacant channels would remain in an area after the proposed allotment is granted and even if full-power stations generally are required to preserve at least one vacant channel.<sup>5</sup> However, because many vacant channels will not be suitable for full-power television station operations, as detailed below, this exemption is likely to be of limited use in practice. Consequently, consistent with the Commission’s commitment to take steps to ensure that the public continues to receive critical NCE television services after the incentive auction and repacking,<sup>6</sup> PTV urges the Commission to allow NCE translators — in addition to NCE full-power stations — to use any available channel in the repacked television band so long as it does not cause harmful interference to other licensees.

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<sup>4</sup> Prepared Remarks of FCC Chairman Tom Wheeler, NAB Show (April 15, 2015), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-333028A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-333028A1.pdf).

<sup>5</sup> *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 et al.*, Notice of Proposed Rulemaking, MB Docket No. 15-146 *et al.*, FCC 15-68, at ¶ 31 (June 16, 2015) (“*Vacant Channel NPRM*”).

<sup>6</sup> *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, GN Docket No. 12-268, FCC 15-69, at ¶¶ 149, 154 (June 19, 2015) (“*Second Order on Reconsideration*”).

**I. The Commission Should Not Adopt Rules That Would Undermine the Primary Status of Full-Power Television Stations.**

The NPRM suggests that low-power and translator television stations, and possibly full-power stations as well, might be required after the post-auction transition period to “make a demonstration that their proposed new, displacement, or modified facility will not eliminate the last available vacant UHF channel in an area for use by white space devices and wireless microphones.”<sup>7</sup> Subsequently, the Commission proposed that in those markets (if any) where a television station is placed in the duplex gap of the new 600 MHz Band, stations would have to ensure that at least *two* vacant channels remain available for unlicensed use in the UHF band.<sup>8</sup> Any such requirement, if adopted and applied to full-power stations, would turn a full-power television licensee’s “primary” status on its head in an unprecedented manner. This proposal would improperly subordinate primary licensees’ ability to use remaining television spectrum to that of wireless microphone, white space device, or other unlicensed users, even though many of these devices — unlike television stations — have access to substantial spectrum outside the television band.<sup>9</sup>

The approach proposed in this NPRM would improperly constrain television stations’ options for new or expanded television services in the future, in addition to limiting — if not entirely foreclosing — the possibility of new stations adding to the diversity of the local broadcast market. The Commission accordingly should not require any full-power stations to

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<sup>7</sup> See *Vacant Channel NPRM* at ¶¶ 12, 26.

<sup>8</sup> *Procedures for Competitive Bidding in Auction 1000*, Public Notice, AU Docket No. 14-252 *et al.*, FCC 15-78, at ¶ 32 (Aug. 11, 2015) (“*Procedures PN*”).

<sup>9</sup> See, e.g., *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, GN Docket No. 12-354, FCC 15-47, at ¶ 1 (April 21, 2015); *Revision of Part 15 of the Commission’s Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, First Report and Order, 29 FCC Rcd 4127, 4132–33 (2014).

restrict their own operations in order to preserve vacant channels beyond those limits required to avoid interference with other *licensed* broadcasters.

**II. If the Commission Adopts Any Vacant Channel Showing Requirements, NCE Translator Stations Should Be Exempt in Addition to NCE Full-Power Stations.**

As explained in PTV’s prior filings in this docket, and consistent with the public television system’s mission of universal service, it is critical that the incentive auction and subsequent repacking do not create gaps in the public’s access to important noncommercial educational services.<sup>10</sup> In the *Second Order on Reconsideration*, the Commission acknowledged that such a result would be highly undesirable, reaffirmed its “commitment to noncommercial educational broadcasting,” and committed to taking steps as needed to restore service to any communities left without NCE television service after the incentive auction and repacking.<sup>11</sup>

To this end, the *Vacant Channel NPRM* proposes to exempt full-power NCE station allotment petitions from having to make a vacant channel showing to preserve a UHF channel for use by white space and unlicensed devices (if any full-power stations are ever required to make such a showing).<sup>12</sup> This proposal is a small step in the right direction, but it is by no means a panacea. As the *Vacant Channel NPRM* acknowledges, most of the “vacant” television channels after the auction will be available precisely because it is not possible to operate a full-power television station on such channels without causing harmful interference to

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<sup>10</sup> See, e.g., Comments of the Public Broadcasting Service, Corporation For Public Broadcasting, and Association of Public Television Stations, MB Docket No. 03-185 *et al.*, at 2–3 (filed Jan. 12, 2015) (“PTV Translator Comments”); Comments of the Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service, GN Docket No. 12-268, at 3–4 (filed Jan. 25, 2013) (summarizing public television stations’ mission of promoting universal access to local television services).

<sup>11</sup> See *Second Order on Reconsideration* at ¶¶ 149–50, 154.

<sup>12</sup> *Vacant Channel NPRM* at ¶ 31.

other full-power stations.<sup>13</sup> Consequently, the proposed exemption will be of very limited use to most full-power NCE stations in practice.

In addition, some of the proposals in the *Vacant Channel NPRM*, if adopted, actually would *impede* NCE television service by making it less likely that channels will be available for translators to restore NCE service for any communities lacking such service after the auction. For example, the Commission stated in the *Second Order on Reconsideration* that if a community were left without any NCE service, one solution could be to “waive the freeze on the filing of applications for new LPTV or TV translator stations to allow NCE licensees to promptly restore NCE service to a loss area with these stations.”<sup>14</sup> This option may prove illusory, however, if NCE translators are prohibited from using the last vacant (but otherwise useable) channel in the market by the rules under consideration in this proceeding. This risk will be further magnified if the Commission follows through on its latest proposal to deny broadcasters access to *two* channels in some markets.<sup>15</sup> Given the Commission’s commitment to ensuring continued NCE service to all communities and restoring NCE service to any communities that lose service after the incentive auction, the Commission should exempt NCE translators, not only NCE full-power stations, from any requirement for a vacant channel demonstration.

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<sup>13</sup> *See id.* at ¶ 11 (“After the final channel assignments are made following the incentive auction, multiple vacant channels will exist in most areas as a result of the co- and adjacent-channel separation requirements necessary to protect primary broadcast stations from interference from each other.”); *see also id.* at ¶ 37 (“we propose that a channel be considered available if it can accommodate wireless microphones and 40 milliwatt personal/portable devices”).

<sup>14</sup> *Second Order on Reconsideration* at ¶ 154.

<sup>15</sup> *See Procedures PN* at ¶ 32.

In the *Second Order on Reconsideration*, the Commission predicted that “the number of communities that will be left without an NCE station, if any, will be very small,”<sup>16</sup> and that “multiple vacant channels will still exist in all or most markets as a consequence of the need to avoid interference between primary broadcast stations in the incentive auction final channel assignment process.”<sup>17</sup> Therefore, allowing NCE translators to use these “vacant” channels to continue providing critical over-the-air services to the public after the incentive auction and repacking will leave sufficient spectrum available for white space devices and wireless microphones in most markets, especially considering that these non-broadcast devices will continue to have access to other spectrum outside of the repacked television band.

Finally, PTV reiterates its recommendation that the Commission adopt PTV’s proposal to afford translators that are displaced in the repacking a second-level processing priority over other translator or LPTV displacement applications.<sup>18</sup> This treatment is warranted by the unique status that noncommercial educational translators already receive under Commission regulations (e.g., cable carriage rights).<sup>19</sup> In this proceeding, the Commission should extend this same priority to applications for new translators seeking to restore NCE service to communities that have lost such services, and none of these NCE translators should be precluded from operating in the television band merely because their operations would require using the last available vacant television channel for broadcast service.

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<sup>16</sup> *Second Order on Reconsideration* at ¶ 154 n.567.

<sup>17</sup> *Id.* at ¶ 11.

<sup>18</sup> See PTV Translator Comments at 5–8.

<sup>19</sup> See, e.g., 47 C.F.R. §§ 76.55(a)(3), 76.56(a).

## CONCLUSION

The repacking's reduction of available television spectrum will pose continuing challenges to broadcasters' ability to maximize their service to their communities. To help alleviate this issue, full-power television stations should be able to rely on having continued primary status within the reduced television band. The Commission should continue working to ensure that noncommercial educational television service is preserved in all communities across the country by adopting the measures proposed above.

Respectfully submitted,

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