

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

In the Matter of	)	
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268
	)	
Policies Regarding Mobile Spectrum Holdings	)	WT Docket No. 12-269
	)	
Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 and 1002	)	AU Docket No. 14-252
	)	
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
	)	

To: The Commission

**COMMENTS OF SINCLAIR BROADCAST GROUP, INC.**

In a Notice of Proposed Rulemaking released June 16, 2015<sup>1</sup> (the “*Vacant Channel NPRM*”), the FCC tentatively concluded that it would, in the portion of the UHF band in which television broadcast service has a primary allocation, nonetheless give priority to certain unlicensed users. The FCC reiterated and expanded that proposal two months later in the Incentive Auction Procedures Public Notice.<sup>2</sup>

The FCC proposes to require applicants for low power television (“LPTV”), TV translator

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<sup>1</sup> *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*, Notice of Proposed Rulemaking, MB Docket No. 15-146, 30 FCC Rcd 6711 (2015); *see also 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*, Order, MB Docket No. 15-146, DA 15-918 (rel. Aug. 12, 2015) (establishing September 30, 2015 comment deadline).

<sup>2</sup> *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, MB Docket No. 15-146, FCC 15-78 (Aug. 11, 2015) (“*Procedures PN*”).

stations,<sup>3</sup> and Broadcast Auxiliary Service<sup>4</sup> facilities to demonstrate that their proposed new, displacement, or modified facilities would not eliminate the last vacant UHF television channel available for use by white space devices and wireless microphones in an area. In areas where the FCC has repacked broadcasters in the duplex gap or guard bands, the FCC would go further, reserving *two* channels for unlicensed use.<sup>5</sup> The requirement would also apply to applications for modified Class A facilities filed after the end of the 39-month Post-Auction Transition Period. Although the *Vacant Channel NPRM* does not propose to apply the unlicensed protection requirement to full power modification applications filed after the end of the 39-month Post-Auction Transition Period, it asks whether full power stations should be required to protect white spaces, and whether the requirement should also apply to full power television station channel allotment proceedings.

Sinclair Broadcast Group, Inc. (“Sinclair”) disagrees with the FCC’s tentative conclusions and opposes all of these proposals. Adopting any of them would be arbitrary and capricious, and would constitute sudden reversals of two longstanding FCC policies. The proposed requirements would be contrary to the Communications Act and to the Spectrum Act, and would be fundamentally bad policy.

**A. Adoption of the Proposals Would Be Arbitrary and Capricious and Contrary to the Communications Act and the Spectrum Act**

The rationale for the proposals is that, following repacking, there will be fewer unused television channels available for use either by unlicensed “white space” devices or wireless microphones and, as a result, spectrum for these services must be reserved.<sup>6</sup> This seems an unpersuasive rationale. As the National Association of Broadcasters (“NAB”) notes in its comments, which Sinclair fully supports, the FCC’s policy of using the incentive auction process to open new bands for unlicensed means far more spectrum will be available nationwide, even in the most congested markets, for unlicensed use than is

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<sup>3</sup> See 47 C.F.R. § 74.702(b).

<sup>4</sup> See 47 C.F.R. §§ 74.600 *et seq.* (permitting TV studio-transmitter links (“STLs”), TV relay stations, and TV translator relay stations to operate fixed point-to-point service).

<sup>5</sup> See *Procedures PN* ¶ 32.

available in the white spaces today.

The FCC's policy with respect to broadcast service has not been so generous. Post-repacking, there will also be far less spectrum available for broadcasters, which are, after all, the primary and secondary licensees in the broadcast band. The rationale that these licensed services must disappear in order to preserve spectrum for unlicensed users who were allowed into the band on a strict non-interference basis strikes at the heart of spectrum reallocation. By its nature, the incentive auction will reduce available spectrum. The issue is which services will be permitted to use the remaining spectrum, and on what basis. Some full power and Class A stations will lose coverage area and population served. Thousands of LPTV and translator stations will be displaced and, even *without* the further constraints of a reserved channel, many (perhaps most) of them will be unable to find displacement channels.

Yet these are the *licensed* users of the band, and they provide the service for which the band was allocated in the first place. It would be nonsensical to destroy vast numbers of broadcast facilities and limit the service area and future growth potential of all others, simply to promote availability of an unlicensed service that was allowed into the band on a strict non-interference basis. Unlicensed users are the standby passengers of the television band. Airlines do not bump confirmed passengers simply because a full plane inconveniences standbys. The *Vacant Channel NPRM* proposes to turn the whole concept of priority access on its head.

The proposals of the *Vacant Channel NPRM* and the *Procedures PN* will destroy hundreds of diverse broadcast voices and limit the reach and future relevance of many others. The importance of a multiplicity of diverse voices in the broadcast band is not theoretical. The FCC has repeatedly emphasized, in rules, policies, and almost continuous litigation for many years, the overriding importance of a multiplicity and diversity of broadcast voices. Diversity is such a pervasive and important element of policy for the broadcast band that the FCC has adopted rules reflecting its concern that even small

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<sup>6</sup> *Vacant Channel NPRM*, at 6712; see also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 at 6683-84 ¶ 269 and 6701 ¶ 309 (2014) (“*Incentive Auction Report and Order*”).

reductions in diversity are harmful. *Any* overlap of Grade B contours is prohibited.<sup>7</sup> In matters of diversity, the FCC has determined that even the edge of the contour matters.

One could persuasively argue (and it would be difficult to refute) that fostering and preserving multiple diverse voices is the single most important public interest policy objective the FCC has pursued in many decades of regulating the bands allocated to the television broadcast service. Yet the *Vacant Channel NPRM*, without saying so directly, throws these decades of policy under the bus when doing so suits an entirely different and wholly unrelated policy agenda—albeit one without decades of continuous rulemaking and litigation history behind it.

***The television band is not an unlicensed band into which the government has permitted some nonconforming licensed uses.*** It is a ***licensed band*** allocated to the broadcast service. The purpose of the band, first and foremost, is to enable a robust, competitive broadcast service with a fair and equitable distribution of service and a multiplicity of voices. That is the purpose and the overriding policy of the band. The FCC cannot, decade in and decade out, measure out diversity with the granularity of an eyedropper, and then, almost as an afterthought, adopt a rule that could eliminate thousands of voices, leave communities unserved or underserved, and prevent broadcasters post-auction from maximizing their facilities (heretofore, a thing manifestly in the public interest), simply to grant a nominal accommodation to unlicensed services that have *no* such policy stature in the broadcast band.

Assuming the FCC has authority to elevate unlicensed over licensed broadcast service in the broadcast band—to the profound detriment of bedrock broadcast policy—it must first develop a record to inform such a radical shift in position. How many stations will be eliminated? How many people will lose broadcast service, or will not receive broadcast service that is prohibited from expanding to better provide the service that is the *raison d'être* of the band? Even if history showed significant deployment of white space devices in the UHF band, a decision to diminish broadcast voices and relegate diversity to a second-tier policy in the television band would require a very fully developed record—which would, of

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<sup>7</sup> 47 C.F.R. § 73.3555(b)(1).

course, require the FCC to acknowledge that it is actually proposing to do that. But given the profound lack of interest in unlicensed use of white spaces to date (even before repacking makes the environment more challenging), what exactly does the FCC foresee as public interest benefits sufficient to justify the certain destruction of a multiplicity of broadcast voices, something the FCC for decades has held out as an unassailably vital public interest goal?

The Communications Act, at least by the FCC's many decades of interpretation, *requires* the FCC to foster a multiplicity and diversity of voices. The FCC cannot arbitrarily change course on this foundational policy decision, which has been the bedrock of its regulation of broadcasting. This policy is so important in FCC jurisprudence that a broadcast licensee is essentially limited to six MHz of spectrum in at most forty percent of the country, while other licensees may hold hundreds of MHz in all of the country. The FCC's multiplicity and diversity policy, as manifest in its ownership rules, is in fact broadcast spectrum policy, rooted in the scarcity rationale. The Spectrum Act allows *the market* to diminish diversity under very limited circumstances. But those circumstances expressly exclude eliminating broadcast stations to create spectrum for unlicensed service.<sup>8</sup>

The FCC must also develop a far more robust record to support the other major policy shift proposed in the *Vacant Channel NPRM*: abandonment of the longstanding FCC policy (and international convention) that primary allocations are primary, secondary allocations are secondary, and unlicensed services operating on a non-interference basis in licensed bands cannot limit or constrain licensed services. *All* licensees that have made investments in licenses, facilities, operations, and goodwill should be concerned about the new policy proposed here.

Adopting a rule that will necessarily eliminate many hundreds of LPTV and translator stations, prevent full power and Class A stations from expanding or (in many cases) modifying coverage, and prevent other prospective "voices" from obtaining new assignments and building broadcast stations simply to keep spectrum available for unlicensed users calls into question the scarcity rationale for

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<sup>8</sup> See The Spectrum Act, Pub. L. 112-96, 126 Stat. 156 § 6407(b), (e) (2012) (codified at 47 U.S.C. § 1454(b), (e)).

abridging broadcasters' First Amendment rights. The Constitution does not permit the government to create scarcity of an input so that it can more tightly regulate speech.

## **B. The Proposals Are Bad Policy**

Even if the FCC had authority to do what the *Vacant Channel NPRM* proposes and had developed a record weighing the now-competing policies of broadcast diversity and greater spectrum for unlicensed service, adopting the proposals would be bad policy.

The likelihood that the white spaces will have practical (as opposed to theoretical) value for unlicensed service is very small. Unlicensed uses have been permitted in the white spaces of the broadcast bands for years, but the only evidence of usage suggests a few isolated experiments (and failed experiments at that). This is not anyone's fault, and it is not a failure of the market. It is simply a case of an allocation that is too cumbersome and too unreliable to find practical use in a market that demands low cost devices that work reliably, everywhere. Reserving one or two channels for these devices in some parts of the United States will not solve this problem.

While white space devices were a seemingly good idea in the abstract, in practice, people expect low cost and reliable performance everywhere, all the time. Post-auction, even with a reserved channel (or two) in most markets, many of the biggest markets will be even more hostile environments for white space devices than they are today. The FCC should not knock out translator networks that bring local television to rural areas, and LPTV stations that serve under-served communities, and prevent broadcasters from improving and enhancing service in the future, simply to protect a theoretical service that never materialized in a deployment environment that was far better for years than it will be post-auction. Doing so would be like throwing passengers off of every flight, just in case a few standbys show up, even though they never have before.<sup>9</sup>

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<sup>9</sup> As the comments filed by the NAB note, spectrum reserved for white spaces is not useful for broadband access. It is "a proposal aimed at toys." Comments of the NAB, at 7.

For the reasons explained in these comments, Sinclair respectfully asks the FCC to reject the proposals and tentative conclusions of the *Vacant Channel NPRM*.

Respectfully submitted,

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