

**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 BONTEN MEDIA GROUP, INC.**

Bonten Media Group, Inc. (“Bonten”) files these comments to urge the Commission to reject any new rules that would further hinder efforts by full-power television stations to offer new or improved over-the-air services to viewers after the conclusion of the incentive auction and the resulting repacking of the remaining broadcast television band.

In its June 16, 2015, Notice of Proposed Rulemaking in the above-referenced dockets, the Commission seeks comment on whether, after the Post-Auction Transition Period, full-power television stations should be required 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>1</sup> The answer is emphatically “no.” Such a proposal, if adopted, would abandon the fundamental principle that the primary users of the television band — TV broadcast stations — have priority over

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<sup>1</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*, MB Docket No. 15-146, FCC 15-68, at ¶¶ 12, 26 (June 16, 2015) (“*Vacant Channel NPRM*”).

secondary or unlicensed users. Moreover, the proposal would further hinder efforts by existing broadcasters, and potential new broadcast entrants, to offer vibrant and competitive over-the-air service in what is already expected to be a constrained spectrum environment in many areas.

Later, after determining that it would allow television stations to be repacked in the 600 MHz Band's "duplex gap" — spectrum that otherwise would be used by wireless microphones and unlicensed devices — the Commission proposed requiring that at least *two* channels within the television band remain "vacant" in those markets (if any) where a television station is placed in the duplex gap.<sup>2</sup> This expanded proposal would even further hamper television stations' efforts to serve their viewers, especially if the limitation were applied to full-power stations. Bonten is especially concerned about the effect that blocking full-power stations from using an otherwise available channel could have on its ongoing effort to restore over-the-air broadcast television service to viewers who lost service from WCYB (Bristol, Virginia) as a result of the digital television transition. The Commission has already ruled that it will not process Bonten's long-pending petition to restore such service until the Post-Auction Transition Period has concluded.<sup>3</sup> Any proposal to impose additional restrictions on the channels available to WCYB at that time would unjustifiably risk permanently foreclosing WCYB's viewers from ever receiving the restored service.

Accordingly, the Commission should grant applications for new or modified full-power television facilities if those facilities comply with existing technical standards, without regard for whether one or more television channels will remain available for use by secondary

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<sup>2</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>3</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report & Order, 29 FCC Rcd 6567, 6568-69 (2014) ("*Incentive Auction Order*").

licensees or unlicensed services. In any case, Bonten’s long-pending channel-substitution request should be exempt from any newly imposed vacant-channel restriction.

**I. THE COMMISSION SHOULD RESPECT FULL-POWER TV STATIONS’ CONTINUED PRIMARY STATUS THROUGHOUT THE REPACKED TELEVISION BAND.**

Although the frequencies assigned to television broadcast operations have changed over time, the Commission has consistently recognized that full-power TV stations are the primary users within these frequencies and accordingly are entitled to priority over other users.<sup>4</sup> The current UHF television band is “allocated and assigned on a primary basis for the licensed full-power and Class A broadcast television services.”<sup>5</sup> After the incentive auction and resulting repacking, the UHF band will be split between the new 600 MHz band — allocated on a co-primary basis for broadcasting, fixed, and mobile services, with broadcast operations relocated over time — and the remaining portion of the UHF band, which will “remain allocated and assigned only to broadcast services.”<sup>6</sup> The *Vacant Channel NPRM* seeks comment on whether the Commission should upend this longstanding principle after the end of the Post-Auction Transition Period. Instead, at least one TV channel within the portion of the UHF band that remains “allocated and assigned only to broadcast services” — and in some markets as many

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<sup>4</sup> See .e.g., *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band et al.*, Report & Order and FNPRM, 25 FCC Rcd 643, 648 (2010) (“low power auxiliary station usage in the UHF-TV spectrum ... is ‘secondary to TV broadcasting and land mobile stations ... and must not cause harmful interference’ to such operations”) (quoting 47 C.F.R. § 74.803(b)); *Amendment of Subparts F & G of Part 74 & Subpart B of Part 78 to Provide for the Use of FM Microwave by Television Translator Relay Stations, & to Provide for the Operation of Television Translator Stations Using Modulation of Direct Video & Audio Feed et al.*, Report & Order, 67 F.C.C.2d 209, 219 (1978) (“The needs of regular television broadcast stations have heretofore been considered primary to the needs of television translator stations ... [and w]e see no reason to change this policy.”).

<sup>5</sup> *Vacant Channel NPRM* at ¶ 5.

<sup>6</sup> See *Incentive Auction Order*, 29 FCC Rcd at 6683.

as two such channels — would be closed-off to TV service in favor of wireless microphones and unlicensed white space devices.<sup>7</sup>

The Commission should not adopt any such proposal. The Commission recognizes that “full power television may need to modify their facilities from time to time in order to continue to serve their viewers.”<sup>8</sup> In addition to routine modifications, stations also must have the flexibility necessary for the expected transition to the ATSC 3.0 television standard.<sup>9</sup> Moreover, the Commission has long sought to encourage new entrants that wish to compete in local broadcast markets.<sup>10</sup> The constrained post-repacking UHF band will make it difficult for stations to address these needs, given that 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 that channel without causing harmful interference to other full-power stations.<sup>11</sup> To the extent a channel is otherwise useable for full-power service, the Commission should not place additional hurdles in front of broadcasters seeking to offer new or expanded services to their communities.

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

<sup>8</sup> *Vacant Channel NPRM* at ¶ 29.

<sup>9</sup> See Notice of *Ex Parte* Presentation by Pearl TV, Docket Nos. 12-268, 15-137, & 15-146, at 2 (filed July 30, 2015) (noting that proposals that would freeze in place the service area of a broadcaster ... could significantly impair the ability of broadcasters to offer consumers services that may be very appealing as the video distribution business continues to evolve” under ATSC 3.0).

<sup>10</sup> See *Advanced Television Sys. & Their Impact Upon the Existing Television Broad. Serv.*, Second Mem. Op. & Order on Recon., 14 FCC Rcd 1348, 1356 & n.22 (1998) (rejecting proposal that “could diminish competition and diversity by appropriating scarce spectrum that could otherwise be used by new entrants into broadcasting,” and noting that “[t]he Commission has long promoted increased and diverse participation in the broadcasting industry”).

<sup>11</sup> See *Vacant Channel NPRM* 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.”).

## II. THE COMMISSION MUST NOT FURTHER HINDER EFFORTS TO RESTORE WCYB'S OVER-THE-AIR SERVICE LOST IN THE DTV TRANSITION.

Even if the Commission generally bars full-power TV stations from using the last available TV-band UHF channel in an area, Bonten's pending request for a VHF-to-UHF channel substitution should be exempt from any such restriction. Bonten sought authority more than four years ago to move WCYB from a low VHF channel to a UHF channel in order to restore over-the-air broadcast television service to viewers who lost service as a result of the digital television transition.<sup>12</sup> Bonten filed its Petition before the Media Bureau instituted a freeze on such petitions, and the Media Bureau committed to continue processing such pre-freeze petitions.<sup>13</sup> Before seeking a channel substitution, Bonten exhausted all other reasonable efforts to restore reliable over-the-air service throughout WCYB's pre-transition coverage area, including seeking and receiving authority to permanently increase its effective radiated power ("ERP") to 29.9 kW, the maximum power level the station's equipment can accommodate.<sup>14</sup> WCYB has calculated that its proposed channel substitution would allow the station to restore real-world reception to more than 31,000 viewers, including more than 29,000 within the station's DMA.<sup>15</sup> Although the Commission's traditional methodology predicts that this substitution would result in some loss of service population, much of this loss is illusory because it is based on unrealistic estimates of low-VHF reception.<sup>16</sup>

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<sup>12</sup> Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Bristol, Virginia), Petition for Rulemaking (May 26, 2011) ("WCYB Petition").

<sup>13</sup> *Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 26 FCC Rcd 7721 (MB 2011) (stating that "[t]he Media Bureau will continue its processing of rulemaking petitions that are already on file") ("*Channel Substitution Freeze PN*").

<sup>14</sup> WCYB Petition at 2.

<sup>15</sup> WCYB Supplement at 3-4.

<sup>16</sup> *See* WCYB Supplement at 2.

In addition, the channel substitution would make WCYB's service more robust for all of its viewers. Low-VHF equipment is increasingly difficult and expensive to obtain.<sup>17</sup> Manufacturers no longer offer such equipment on an off-the-shelf basis, and some leading manufacturers no longer offer such equipment at all.<sup>18</sup> Thus, if WCYB's transmitter, antenna, or other equipment fails or is damaged, Bonten would face high costs and long delays to obtain custom-built equipment (if such equipment could be obtained at all), and WCYB's viewers could be left without service from the affected station for an extended period.<sup>19</sup> Granting Bonten's channel-substitution request therefore would serve the public interest not only by immediately improving reception to viewers in the stations' core service areas but also by making the stations' service more resilient.

Unfortunately, the Bureau failed to act on Bonten's petition, despite Congress providing the Commission with specific, clear authority to proceed in the Spectrum Act. Then, in the *Incentive Auction Order*, the Commission held that Bonten's request could not be processed until after the current freeze on new allotment petitions is lifted, after the Post-Auction Transition Period.<sup>20</sup> The Commission reaffirmed this holding in its rejection of the Petition for Reconsideration jointly filed by Bonten and Raycom (whose station WMC has a similar low-VHF-to-UHF substitution request pending).<sup>21</sup> In holding that the Commission did not have to "weigh[] the benefits to the public of restoring over-the-air service to pre-DTV transition

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<sup>17</sup> See Bonten May 2013 *Ex Parte*, at 2-3.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 2-3.

<sup>20</sup> See *Incentive Auction Order*, 29 FCC Rcd at 6568-69.

<sup>21</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, GN Docket No. 12-268, FCC 15-69, at ¶44 (June 19, 2015) ("*Second Recon Order*").

viewers” at this time, the Commission asserted that “[d]eclining to protect petitioners’ proposed facilities in the repacking process ... does not preclude grant of their petitions after conclusion of the repacking process.”<sup>22</sup>

Now, however, the *Vacant Channel NPRM* suggests that, even if Bonten is able to identify a post-repacking UHF channel that WCYB could use without causing impermissible interference to other full-power TV broadcasters, Bonten might still be precluded from using that channel in order to maintain spectrum for wireless microphones or white space devices. Bonten continues to believe that, at a minimum, the Commission can and should act on WCYB’s petition to provide a UHF channel as a part of the repacking, as soon as protected facilities have selected their channels (and before any restriction preventing full-power stations from occupying otherwise useable channels would take effect<sup>23</sup>). The Commission should not add an additional three years to a process that has already left thousands of viewers without reliable over-the-air television service for far too long.

In any case, the Commission should exempt pending channel-substitution requests like Bonten’s from any vacant-channel requirement it adopts that is applicable to full-power stations. The Commission has predicted 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>24</sup> If the Commission is correct, exempting Bonten’s pending channel-substitution request from any requirement to protect vacant channels will serve the public interest by protecting over-the-air viewers while

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<sup>22</sup> *Second Recon Order* at ¶ 46.

<sup>23</sup> *See Vacant Channel NPRM* at ¶ 26

<sup>24</sup> *Id.* at ¶ 11.

