

**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

REPLY COMMENTS OF THE NATIONAL TRANSLATOR ASSOCIATION

The National Translator Association (NTA) herein replies to initial comments submitted in response to the Notice of Proposed Rulemaking released June 16, 2015 (the "*Vacant Channel Notice*" or "*NPRM*"). The NPRM proposes to reserve auctionable spectrum and hold it for unlicensed use in perpetuity. In the process, it will eliminate existing broadcast service and preclude broadcasters from modifying or expanding coverage over time to adjust to shifting populations. It will also prevent launch of new broadcast services, raising serious questions about the FCC's continued belief that a multiplicity and diversity of voices are paramount public interest objectives.

The comments reflect that the *NPRM* is perhaps the FCC's most destructive move yet to advance policy goals having nothing to do with the actual incentive spectrum auction while using the auction as "cover" to ignore or actually defy longstanding policies and rules that have for fifty years aided rural communities in the US to receive television signals otherwise

unavailable to them and which, when implemented, will again deny TV broadcasts to these same disadvantaged communities.

NTA, like ATBA, supports the comments of Gray Television and in particular, Gray's explanation that the FCC does not have authority to prioritize unlicensed service over licensed broadcast stations in the broadcast band. NTA also supports commenters who note that adopting the NPRM's proposals would be arbitrary and capricious, because it is an abrupt change of course from the FCC's long-established rules and policies regarding (i) the status of unlicensed users generally, and the status of unlicensed TV band devices ("TVBDs") in the television band specifically; and (ii) the overriding policy goals and associated rules supporting the widest possible deployment of broadcast service in the bands allocated to broadcast service.

The *Vacant Channel Notice* proposes to give unlicensed users priority over incumbent, licensed LPTV and translator stations in bands that are allocated for broadcast television. As the NAB observes, the FCC proposes "a comprehensive restructuring of the white spaces rules that would provide white spaces with rights and protections unlike any other unlicensed service."

The FCC's table of allotments does not contain an allocation for unlicensed use in television bands, and the FCC itself has consistently referred to the relevant bands as "the TV Bands." Yet, the *NPRM* proposes to give TVBDs greater status in the TV bands than unlicensed users have in bands that are actually allocated for unlicensed use. As NAB notes, the cornerstones of Part 15 of the FCC's rules, under which TVBDs operate, are that "unlicensed operations have no recognizable right to continue to operate on any particular frequency, they must not cause harmful interference to any authorized service, and they must accept harmful interference caused by any authorized service."

By the FCC's own reckoning, the supposed virtue of TVBDs is that they would "operate on frequencies in the TV bands in areas **where they are not used** by licensed services". Again, by the FCC's own definition, TVBDs are intended as "opportunistic" users of otherwise

unused spectrum. This is their claimed benefit and efficiency. But the claims put forth in the comments by parties seeking to greatly expand unlicensed access turn this benefit and efficiency on its head. Rather than employ otherwise unused spectrum opportunistically, the NPRM and the supporting commenters would do just the opposite: they would destroy existing service to keep spectrum fallow in perpetuity, so that it might be used any time by TVBDs that are, seldom if ever used in spite of having been permitted for years. This is an arbitrary and capricious reversal of years of policy (including, without limitation, the policy that says licensed services in bands designated for their use need not protect unlicensed, opportunistic services that do not have no allocation whatever.) As NAB points out, reversing policy and elevating the status of TVBDs to the point of displacing licensed services and precluding expansion of licensed service for which the band is allocated is particularly unwarranted (and capricious) given that the market has shown *no* demand for TVBDs.

NTA agrees with other commenters who note that the NPRM proposals are contrary to the Spectrum Act. The Spectrum Act was intended in part to raise funds for the Treasury by auctioning spectrum licenses made available by repacking. Congress specifically prohibited the FCC from reclaiming broadcast licenses simply to create spectrum for unlicensed use: the FCC is permitted to permit unlicensed use in guard bands, but those guard bands must be no larger than technically reasonable. The intent of Congress is clear: the FCC cannot manipulate the auction to create unlicensed bands.

INDEED, the NPRM proposals are contrary to the Spectrum Act on yet another basis, and also contrary to Title III of the Balanced Budget Act of 1997. The latter requires the FCC, when faced with mutually exclusive applications for broadcast stations, to assign a license based on a competitive auction. The FCC acknowledges this much in the initial Incentive Auction Report and Order, where it acknowledges that mutually exclusive displacement applications must be resolved by auction if the mutual exclusivity cannot be resolved. Now, though, the FCC proposes to reserve portions of the broadcast TV bands specifically for

unlicensed use and, on that basis, *refuse to accept in the first instance applications for the primary and secondary services the band was allocated for, which applications otherwise might be auctioned*. This is exactly the opposite of what Congress told the FCC to do.

NTA most certainly agrees with NAB's comment that the effects on low power and translator facilities will be widespread. Our fifty-odd years of experience in dealing with casual interferors proves that our low power and limited coverage area stations are extremely vulnerable. The FCC boldly asserts, with no support, that at least two vacant channels will be available in most areas after repacking and that, in any event, the proposal will only *reduce* the number of channels available for LPTV and translator displacement, broadcast modifications, and new broadcast facilities, "will be limited". Please help NTA explain the silence that will surely ensue to the loyal viewers of our translator and LPTV stations. The FCC must make *some* accounting to the public who actually own the spectrum at issue - for the loss of and preclusion of service. Along those lines, not a word has been uttered. Elimination of one, two or three channels that would otherwise serve the primary and secondary purposes of the allocation would be devastating to the broadcast service.

The FCC has dismissed other calls to account for the loss of LPTV and translator service, asserting that the Spectrum Act does not require the FCC to protect LPTV and translator stations in the repacking process. But in those cases, at least, the FCC was disregarding the impact on LPTV *with the stated goal of running a successful incentive auction, which is the very purpose of the Spectrum Act*. Here, the FCC is refusing to take any credible steps to quantify (and is evidently vastly underestimating) the destruction of broadcast service, *to achieve a wholly unrelated policy goal that has no basis in the Spectrum Act and no essential relationship to the auction*.

Unlike thousands of LPTV and translator stations currently licensed and operating in the UHF band across the country, many or most at risk of being eliminated post-auction, there are essentially no services being provided by TVBDs anywhere. If the FCC believes more spectrum

should be made available for unlicensed services, it should identify suitable bands where that type of unmanaged service can proliferate. The FCC should not eliminate existing licensed service to preserve spectrum that may one day, possibly, find limited use for unlicensed devices, in spite of history suggesting otherwise. Especially, it should not do so as an afterthought to a complex incentive auction that is intended to create *licensed* wireless services while fully preserving *licensed* broadcast services.

NTA strongly opposes the comments of The Open Technology Institute at New America and Public Knowledge and other commenters who argue that the vacant channel demonstration requirement should apply immediately after the auction and should apply to digital replacement translators (“DRTs”). DRTs provide broadcast service within the contours of full power stations, and exist simply to address coverage anomalies. It would be nonsensical to prevent broadcasters from using DRTs to fill in their service areas simply to protect theoretical unlicensed use. Given the Spectrum Act’s admonishment that the FCC use all reasonable efforts to preserve broadcast coverage area and population served in repacking, essentially reallocating broadcast spectrum *inside a licensed, primary service station’s service contour* to unlicensed use cannot be justified.

OTI/PK makes the insane claim, “...that a single LPTV or translator station in a single market could effectively undermine . . . the deployment of unlicensed devices nationwide.” LPTV and translator station, owing to their limited power and coverage areas, will simply not accomplish what OTI/PK claims is their fear; rather, that assertion is on its face absurd. The band, post-repacking, must remain allocated to broadcast television and populated with licensed television broadcast facilities nationwide. Opportunistic use of remaining white spaces must be exactly that...*opportunistic*. If the OTI/PK wishes for the FCC to **destroy** by fully reallocating the television band for unlicensed use, it must submit a petition for rulemaking and all stakeholders, including NTA, will most assuredly confront that request directly.

What is true, though, is that eliminating a single translator station to preserve spectrum for TVBDs could eliminate broadcast services to large areas that rely on translators. Most translator networks are “daisy-chained”. Like Christmas tree lights, if one goes out, so do the ones further down the chain. The translators closest to the source broadcast signal are often the most important. As the vacant channel showing would be more difficult to make closer to urban areas, it is highly likely that the most critical translators will be eliminated, also eliminating service for the rest of that chain of the network. Since many small cable operators serving small communities rely on translators to receive the signals of major networks and public broadcasting, loss of one translator could result in a near total loss of broadcast service in a large area.

OTI/PK also argue that multiple vacant channels must be available nationwide for the white spaces authorization to have any utility. But even with the vacant channel reservation, the FCC cannot guarantee that vacant channels will be available nationwide. There seems to be at least a rough consensus on this point, at least: *even if the FCC prohibits LPTV stations and translators from using available displacement channels, and prevents broadcasters from launching single frequency networks, and refused to process applications for other facilities modifications or new broadcast stations in the TV bands, it is unlikely that the reserved white spaces will be much used.* This, again, underscores how much this proposal departs from reasoned decision-making. OTI/PK's assertions must be disregarded in their entirety.

For these reasons, and for the reasons cited by NAB, Gray Television, PearlTV, Mako Communications, and others, NTA urges the FCC to reject the proposal to require any broadcasters to make any “vacant channel” showings in connection with any broadcast facility applications.

	Respectfully submitted, By: /s/ James R. McDonald, President
--	---

NTA, Arvada, CO

/S/ Byron W. St. Clair, President Emeritus

NATIONAL TRANSLATOR ASSOCIATION