

**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
)	

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

The Public Broadcasting Service (“PBS”),¹ Association of Public Television Stations (“APTS”),² and Corporation for Public Broadcasting (“CPB”)³ (collectively, “PTV”) submit these reply comments to address the appropriate definition of the term “community” for the noncommercial educational exception to the proposed vacant channel demonstration requirement in post-auction allotment proceedings. PTV urges the Commission to define the

¹ PBS, with its 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.

² APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s 363 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.

³ 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.

term “community” in this context as a community of license, consistent with longstanding precedent and noncommercial broadcasting operations as described below.

The Commission proposes to require full-power television licensees to complete a vacant channel demonstration for use by unlicensed devices in connection with new or modified facilities following the post-auction transition period.⁴ As PTV explained in its initial comments in this proceeding, the Commission should not adopt the proposal because it would undermine the primary status of full-power licensees and limit the long-term diversity of local broadcasting.⁵ If the Commission nonetheless adopts a vacant channel showing requirement, then it is essential that television translator stations licensed to noncommercial educational broadcasters be exempt in addition to full-power noncommercial stations.⁶

The *Notice of Proposed Rulemaking* suggests that this noncommercial educational exception would be appropriate in any “community” that has lost noncommercial educational service following the auction. In comments filed by Google Inc. and Microsoft Corporation, it has been suggested that the term “community” be defined to encompass an entire Designated Market Area (DMA). Microsoft suggests that the Commission should permit the exception “only where the DMA would be completely unserved by a noncommercial education broadcaster.”⁷ Google similarly suggests that the Commission should “define ‘community’ in

⁴ *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, GN Docket No. 12-268, FCC 15-68 (rel. June 16, 2015) (“*Vacant Channel NPRM*”).

⁵ Comments of the Public Broadcasting Service, Association of Public Television Stations, and Corporation for Public Broadcasting, MB Docket No. 15-146 *et al.*, at 3–4 (filed Sept. 30, 2015).

⁶ *Id.* at 4–6.

⁷ Comments of Microsoft Corporation, MB Docket No. 15-146 *et al.*, at 17–18 (filed Sept. 30, 2015).

this context to mean a designated market area.”⁸ PTV greatly appreciates the support for the noncommercial educational exception offered by these filings, but respectfully suggests that DMA boundaries are an entirely inapplicable tool in this context. Designated Market Areas are a creature of the commercial broadcasting world and have long been disregarded by the Commission in regulating noncommercial educational broadcasters.

For instance, the Commission’s must-carry regulations recognize the unique geographic nature and operations of noncommercial educational broadcasters. While the must-carry rights of commercial broadcasters are defined based on DMAs, the must-carry rights of noncommercial broadcasters are instead defined based on the service contour of the station and a 50 mile radius from the reference point of the community to which the station is licensed.⁹ As a result, service by a noncommercial broadcaster to part of a DMA after the auction will not ensure cable carriage throughout the DMA. The Commission has long recognized that DMA boundaries are not an appropriate tool for defining and allocating noncommercial educational service or the cable carriage of such stations.

Similarly, the digital television Table of Allotments designates channels for exclusive noncommercial educational broadcast service based on communities of license, not DMAs. The Commission’s rules provide that where “there is only one technically available channel available in a community,” the channel may be reserved for noncommercial educational use.¹⁰ This procedure for setting aside spectrum for noncommercial service will continue to apply following the auction and should inform the geographic scope of the proposed

⁸ Comments of Google Inc., MB Docket No. 15-146 *et al.*, at 25–26 (filed Sept. 30, 2015).

⁹ 47 C.F.R. § 76.55(b), (c), (e).

¹⁰ 47 C.F.R. § 73.622(a).

noncommercial exception to the vacant channel demonstration requirement. The term “community” as used in both the Commission’s must-carry rules and the digital television Table of Allotment rules refers to a community of license, not a DMA.

If the Commission were to abruptly deviate from such precedent and enact the rules as recommended by the commenters above, then this could lead to a significant number of people losing noncommercial service, including uniquely educational children’s content and critical emergency alerts. Given the way in which the noncommercial educational broadcasting system has been built over the past sixty years,¹¹ the incentive auction is likely to result in discrete areas without service that do not necessarily encompass an entire DMA. There is a distinct possibility that the incentive auction causes a number of communities with tens of thousands of people each to lose over-the-air service. While these may not comprise whole DMAs, that will not matter to the individuals and families that need educational services restored as quickly as possible.

As the Commission recognized earlier this year, these post-auction communities without service will necessitate a wide variety of remedial measures. This will include facilities modification by a neighboring station to expand its contour, waivers of the freeze on filing applications for new television translator stations, and allotment of new channels reserved exclusively for noncommercial educational broadcast use.¹² These measures will be necessary

¹¹ For example, sixteen different states are served by public television state licensees that operate a series of transmitters designed to provide local service throughout their state, not based on DMA boundaries that often ignore state lines. These state broadcasters tend to site station transmitters to provide service throughout the state, without regard to DMA boundaries, in contrast to commercial stations that are sited to cluster around the market hub of the DMA.

¹² 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 ¶ 154 (June 19, 2015).

not only if an entire DMA loses service, but also (and much more likely) if a smaller local community loses service. It is critical that full-power and low-power noncommercial educational licensees be exempt from any new vacant channel demonstration requirement, and that this noncommercial educational exception apply on the more granular community of license basis, not a DMA basis. Rather than swallowing the rule as Microsoft and Google suggest, defining the noncommercial exception in this way will enable it to serve its intended purpose and more effectively preserve universal access to educational broadcast services.

Respectfully submitted,

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October 30, 2015