

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 MEDIA GENERAL, INC.¹

Media General owns and operates broadcast television stations in 48 markets, including 99 low power television (“LPTV”) and TV translator stations, and is one of the nation’s largest connected-screen media companies. Spectrum allocation in the TV band is a zero-sum game. Reserving vacant channels for unlicensed use under the NPRM’s proposal will force countless LPTV and TV translator stations to cease broadcasting and hamstring broadcasters’ potential to launch technological improvements after the auction. This resulting harm is irreparable, runs counter to the clear language of the Spectrum Act, longstanding FCC policy, and the public interest, and warrants rejection of the NPRM’s proposal.

¹ Media General, Inc. (“Media General”) hereby submits comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding. *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*, Notice of Proposed Rulemaking, FCC 15-68 (rel. June 16, 2015) (“NPRM”).

I. THE SPECTRUM ACT AND FCC POLICY FORECLOSE ADOPTION OF THE NPRM'S VACANT CHANNEL PROPOSAL.

The text of the Spectrum Act provides an explicit statement of Congressional intent regarding LPTV stations: for the laws governing the “reorganization of broadcast TV spectrum,” “[n]othing . . . shall be construed to alter the spectrum usage rights of low-power television stations.”² LPTV spectrum usage rights have always trumped unlicensed spectrum usage rights, including at the time of the Spectrum Act’s enactment. Indeed, a little more than three years prior to the Spectrum Act’s adoption, the Commission unequivocally “disagree[d] . . . that TV operations should be restricted to provide more vacant channels for the operation of unlicensed devices” and held that LPTV stations “warrant priority over” unlicensed use.³ This follows from the general rule that Part 15 devices “may not cause interference to authorized services and must accept any interference received, including interference from other unlicensed devices.”⁴

The statute therefore serves as the beginning and end for consideration of the NPRM’s vacant channel proposal. “When the words of a statute are unambiguous, . . . [the] inquiry is complete.”⁵ By contrast, the piecemeal and attenuated authority the NPRM cites for the vacant channel proposal would not withstand judicial scrutiny.⁶

² 47 U.S.C. § 1452(b)(5).

³ *Digital Television Distributed Transmission System Technologies*, Report and Order, 23 FCC Rcd 16731, ¶ 19 (2008).

⁴ *Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37*, FCC 15-99, ¶ 265 (rel. Aug. 11, 2015).

⁵ *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citations omitted).

⁶ “An agency interpretation that is inconsistent with the design and structure of the statute as a whole does not merit deference.” *Util. Air Regulatory Grp. v. Env’tl. Prot. Agency*, 573 U.S. ____ (2014) (internal quotations and citations omitted).

II. THE PROVEN PUBLIC INTEREST BENEFITS OF LPTV OUTWEIGH ANY SPECULATIVE BENEFITS OF UNLICENSED USE IN THE TV BANDS.

Media General stations are the preeminent providers of local news and information in their markets. For example, the Radio Television Digital News Association recently honored WSLN-TV (Roanoke, Va.) with a national Edward R. Murrow Award and 11 other Media General stations with 22 regional Murrow Awards.⁷ The company also further bolstered its newsgathering efforts in May, opening its Washington D.C. bureau to provide breaking news, political updates and analysis, and in-depth investigative reporting.⁸ Media General stations provide programming responsive to community needs, and we support numerous non-profit organizations, programs and events that help make the communities we serve better, stronger, and more vibrant places to live, work, and do business.

Media General's provision of local news, emergency alerts, weather and sports via over-the-air ("OTA") LPTV and translator stations is especially critical. According to the FCC, "the households that principally rely on OTA broadcasts are the most vulnerable and arguably the most difficult to reach; almost half have annual incomes of less than \$30,000, and two-thirds are headed by someone over 50 years of age or someone for whom English is a second language."⁹ In addition, "[l]ow power stations may provide the only over-the-air broadcast services in rural areas."¹⁰

⁷ *Media General's WSLN-TV Wins National Edward R. Murrow Award* (June 26, 2015), available at http://mediageneral.com/press/2015/june26_15.html.

⁸ *Media General Announces New Washington, D.C. Bureau and Names Jim Osman as Bureau Chief* (May 18, 2015), available at http://mediageneral.com/press/2015/may18_15.html.

⁹ *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, 22 FCC Rcd 21064, ¶ 6 (2007).

¹⁰ *Unlicensed Operation in the TV Broadcast Bands*, 25 FCC Rcd 18661, ¶ 22 (2010).

For instance, in the Albuquerque-Santa Fe DMA, Media General utilizes 69 LPTV and TV translator stations to extend critical over-the-air coverage of KRQE, KASA-TV, KBIM-TV and KREZ-TV across the state of New Mexico and portions of Southern Colorado. The DMA is the nation's second largest in geographic scope, and more than one of five people in the DMA view television via OTA.¹¹ New Mexico ranks among the worst in the country in home Internet adoption, and the problem compounds in rural areas or tribal lands due to lack of access.¹² The Stations employ two full-time engineers to ensure that these LPTV and translator stations, most of them located at elevations above 6,000 feet, accessed by dirt roads, and highly-susceptible to forest fires, lightning strikes, high desert wind, and rural power outages, remain operational, functional, and able to provide essential local news and information counted on by so many in their DMA.

By augmenting its local presence with numerous LPTV and TV translator stations, Media General agrees with the FCC that LPTV stations “are a source of diverse and local programming for viewers.”¹³ For example, WYFX-LD, the FOX affiliate for Youngstown, Ohio, broadcasts local news seven days a week, with three hours of local news coverage each weekday.

That is why, contrary to the comments of Google, “today’s LPTV licensees actually *are* meeting the particular needs of the local communities they are authorized to serve.”¹⁴ LPTV serves a definitive public interest need, one that has been confirmed time and time again by the

¹¹ *ADS, Wired-Cable and Over-the-Air Penetration by DMA: DMA Household Universe Estimates: July – 2015*, TVB.org, available at http://www.tvb.org/research/184839/4729/ads_cable_dma

¹² See University of New Mexico, *Broadband Subscription and Internet Use in New Mexico* (June 2013), available at <https://bber.unm.edu/pubs/BBER-Broadband.pdf>.

¹³ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536, ¶ 1 (2014).

¹⁴ Comments of Google, at 16 (emphasis added).

FCC. By contrast, judging by the limited number of white space devices currently operating in the United States, a claim of future public interest benefits of unlicensed use in the TV bands is uncertain.

The agency should adhere to the public interest framework it uses for cost-benefit analysis, which holds that “[t]he Commission will discount or dismiss speculative benefits that it cannot verify.”¹⁵ Further, “[w]here potential harms appear both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”¹⁶ The creation of vacant channels will force LPTV and TV translators off the air, a harm “both certain and great,” “actual and not theoretical,” and therefore irreparable.¹⁷ The FCC has declined to adopt proposals where benefits “would be speculative, while the costs imposed . . . are real.”¹⁸ Therefore, the FCC should reject the NPRM’s vacant channel proposal.

III. RESERVATION OF VACANT CHANNELS SHOULD NOT COME AT THE EXPENSE OF BROADCASTER INNOVATION.

The Commission should avoid policies that remove broadcasters’ flexibility for post-auction facility changes and hinder their deployment of innovative services, such as ATSC 3.0. Media General is excited about the new products and services that ATSC 3.0 will provide. That is why Media General agrees with numerous commenters that requiring broadcasters “to preserve one vacant channel for unlicensed use in every area . . . risks freezing broadcasters in

¹⁵ *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, FCC 15-94, ¶ 274 (rel. July 28, 2015).

¹⁶ *Applications of Cricket License Company, LLC, et al.*, 29 FCC Rcd 02735, ¶ 132 (2014)

¹⁷ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

¹⁸ *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, 29 FCC Rcd 04127, ¶ 75 (2014).

place.” Reserving channels in the TV band for white space devices based on unfulfilled promises and to the detriment of consumers would be unprecedented and unsound policy.

IV. CONCLUSION

LPTV and TV translator stations provide local programming and critical emergency information to viewers throughout the country. Jettisoning a significant number of stations that provide this concrete public interest benefit in favor of a white space pipe dream absent Congressional authority and without reasoned analysis of longstanding Commission precedent demonstrates that the vacant channel proposal should be summarily rejected.

Respectfully Submitted,

Media General, Inc.

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