

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions)	GN Docket No. 12-268
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Policies Regarding Mobile Spectrum Holdings Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 and 1002)	WT Docket No. 12-269
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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 Spaces Devices and Wireless Microphones)	MB Docket No. 15-146
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Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 and 1002)	AU Docket No. 14-252
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Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations)	MB Docket No. 03-185
)	

To: The Commission

REPLY COMMENTS OF FREE ACCESS & BROADCAST TELEMEDIA, LLC

Free Access & Broadcast Telemedia, LLC (“FAB”) ¹ hereby submits these Reply Comments in the above-captioned proceedings to underscore the illegality of and the wrong-

¹ FAB is an investor in LPTV stations around the country who’s its investments will be decimated if the Commission were to adopt its proposal to prioritize the spectrum needs of unlicensed white space devices over those of LPTV stations. FAB is already harmed by the Commission’s actions in the above-captioned rulemaking proceedings that have placed an added chill on

headed public policy underlying the unprecedented proposals contained in the *Vacant Channel Notice of Proposed Rulemaking* to take away the priority access rights of the **licensees** of low power television (“LPTV”) stations and to transfer them to **unlicensed** white space devices.²

ADOPTION OF THE PROPOSALS WOULD IN ONE FELL SWOOP CONTRAVENE THE SPECTRUM ACT, THE COMMUNICATIONS ACT AND LONG-STANDING COMMISSION PRECEDENT

1. The Commission proposals to strip away the spectrum usage rights of incumbent, licensed LPTV stations in bands that the FCC has allocated for broadcast television are in contravention of the explicit mandate of Congress. In Section 6403(b)(5) of the Spectrum Act, Congress prohibited the Commission from altering the spectrum usage rights of LPTV stations. Congress stated, notwithstanding any other provision of the Spectrum Act, that:

LOW POWER TELEVISION USAGE RIGHTS. ---Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations.

Ignoring the plain language of the Spectrum Act, the Commission proposes to alter --- or more aptly, eviscerate --- the rights of licensees of LPTV stations. It is an understatement to say that making LPTV stations secondary to unlicensed services³ would be an irreparable diminution of their rights as FCC licensees.

investment in existing LPTV stations. Meanwhile, the Commission continues to restrict service innovation that could be afforded by spectrum flexibility which every other wireless licensee enjoys, so long as they do not interfere with others. FAB is committed to providing America’s local, underserved, and often overlooked consumers with free residential and mobile services, both video and interactive, on an ad-supported basis, without subscription fees and related obligations. The freedoms to innovate and grow sought by FAB and small-business LPTV licensees are precisely the proven way growth and innovations occur in the United States. FAB notes the proverbial Silicon Valley garages that fuel the U.S. economy in many ways are not so encumbered by crushing rulemakings and choking regulatory restrictions on when and how technical innovations may take place.

² FAB endorses the Comments filed by Mako Communications, Inc., Sinclair Broadcasting Group, Inc., the National Association of Broadcasters, Gray Television, Inc and DTV America Corp, which cite the statutory provisions and Commission precedent demonstrating that the Commission’s proposal is arbitrary and capricious.

³ The FCC's website states that in spectrum that is designated as "unlicensed" or "licensed-exempt," users can operate without an FCC license, do not have exclusive use of the spectrum And are subject to interference. See <https://www.fcc.gov/encyclopedia/accessing-spectrum>.

2. Arguments by White Spaces proponents such as Microsoft and Google rely on the Commission's **general** powers to manage the spectrum contained in the Communications Act -- powers that have been modified by 2012 Spectrum Act. As Gray Television, Inc. pointed out in its Comments, throughout Title III of the Communications Act, Congress has stressed the importance of **licensed** services and the unique public interest obligations imposed on licensees. For example Section 307(b) requires the Commission to ensure "a fair, efficient, and equitable distribution" among the states when considering applications for **licenses**. Unlicensed services have no public interest obligations whereas all broadcast stations are required to serve the public interest. The Commission's most basic duty mandated by the Communications Act is to manage the spectrum in the public interest.

3. Moreover, as evidenced by the FCC's multiple ownership rules, the Communications Act requires the Commission to foster a multiplicity and diversity of voices. If adopted, the proposals would stifle programming diversity for majority as well as minority audiences.⁴ Taking into account the reduction in the number of full power and Class A stations in some markets after the Incentive Auction, LPTV stations will become the only available broadcast outlets for large and small networks alike. If the Commission were to adopt the proposals, minority, local community and entrepreneurial voices will be silenced, and even some major networks may end up being unable to provide high definition service as they are crammed in on multiple streams of a few full power and Class A stations.

4. Commissioner Michael O'Rielly is right on the mark when he compares FCC adoption of the proposals to a flouting of the U.S. Constitution:

⁴ As pointed out in Comments filed by Gray Television, Inc., LPTV and translator stations provide valuable network and local programming to their communities. Gray Television is using LPTV stations to provide over 80 hours of local news each week, in addition to Top 4 network and local programming of interest to small and mid-size communities.

Simply put, secondary users should not have a superior claim over primary users for any spectrum in the TV band. This is the TV band, after all. The idea that we would even consider measures that could possibly freeze the broadcasting industry in place after the completion of the incentive auction is ludicrous. To ask questions to this effect, even though some describe them as ‘neutral,’ is like asking whether the Commission can ignore the U.S. Constitution (we cannot). From my perspective, the Commission shouldn’t ask questions about things we are precluded from doing.⁵

5. The Commission is proposing a seismic shift in policy. It has been the long-held policy of the Commission not to authorize an unlicensed device that interferes with licensed services. To say that licensed users of the spectrum must get out of the way of unlicensed devices turns on its head the decades-old principle of unlicensed services in Part 15 of the Commission’s rules. Unlicensed services must accept interference from licensed services, while even “secondary” licensees are protected from interference by Part 15 devices and unlicensed services. Unlicensed devices have always had lower priority than licensed services. Section 15.707(2)(1) of the Commission’s rules provides that unlicensed TV white spaces and other non-licensed devices may operate only on channels “not occupied by an unauthorized service.” LPTV is an authorized service.

THE PROPOSALS ARE FUNDAMENTALLY FLAWED POLICIES WITH FAR-REACHING ADVERSE IMPACTS

6. As discussed earlier, the proposals are diametrically counter to the well-established policy of the Commission to provide priority access for holders of FCC licenses. The analogy cited by Sinclair in its Comments is apt: Airlines do not bump confirmed passengers simply because a full plane inconveniences standbys. If adopted, the harmful impacts on LPTV stations would be widespread. The LPTV Spectrum Rights Coalition, LLC filed Comments quantifying the adverse impact of the FCC’s proposals on LPTV stations: if the Commission

⁵ See Statement of Commissioner O’Rielly Approving in Part and Dissenting in Part, *Vacant Channel NPRM*.

were to create a vacant channel for unlicensed uses, it would eliminate all LPTV and TV translators from as many as 943 cities with one 6 MHz station and another 377 with two, for a potential displacement on 1,320 licensed stations.

7. In his Dissenting Statement to the *Vacant Channel NPRM*, Commissioner Ajit Pai said that his objection to the proposals is based on the simple reality that translators and low-power television stations won't have anywhere else to go after the Incentive Auction:

If they are not allowed to continue operating in the UHF band, they will go out of business. On the other hand, there are other spectrum bands where unlicensed devices can operate, and I hope that soon there will be even more. For example, since October 2012, I have been calling on the FCC to take action to make 195 MHz of new spectrum available for unlicensed use in the 5 GHz band, an amount that dwarfs the 5 GHz band an amount that dwarfs the 6 MHz of spectrum that is being fought over here.

8. Moreover, the proposals make the wrong part of the spectrum available for the wrong purpose. The major attraction of the Incentive Auction is the availability of “beach front” spectrum with superior propagation characteristics. But the long distance propagation characteristic of the 600 MHz band is exactly the wrong characteristic for linking devices in a home or a building. For those purposes, higher frequencies with shorter ranges are needed, so that the frequencies may be re-used at nearby locations. The 600 MHz band is better suited for city-wide networks, but city-wide networks are what the wireless carriers that will bid for in the Forward Auction. Those who can put the band to good commercial use will make their business plans and bid for spectrum.⁶ There is scant justification for making more of the same spectrum band available for the construction of networks by deep-pocketed new entrants who are not

⁶ Wireless microphones have different spectrum needs because they are short range, are most often used indoors where their impact is minimal, and are reconfigured from time to time. If the Commission stops trying to decimate the TV band, professional microphone engineers should be able to find channels on which they can operate with far less impact than White Spaces networks will have.

required to pay for entry.⁷ The FCC's proposal would degrade licensed LPTV stations for the benefit of more concentrated and well-heeled new entrants.

9. A policy of allowing unlicensed devices would not only trample the rights of LPTV licensees but would also adversely impact all businesses that are awarded licenses by the Commission. Such a policy would reverberate throughout the entire system of allocating and licensing spectrum in all bands by undermining investment for FCC-licensed users of the spectrum. Each of the five FCC Commissioners has repeatedly given lip service to the need to provide investors and holders of FCC licenses with "regulatory certainty." For example, Chairman Wheeler has stated on many occasions said that as an entrepreneur and investor, he understands the importance with supplying businesses with certainty.⁸ Implementation of the proposals would surely undermine regulatory certainty.

In view of the above, FAB respectfully urges the Commission to reconsider its initial tentative conclusion to favor one or two vacant channels for unlicensed services over a new home for displaced LPTV stations. The Commission does not have the authority to prioritize unlicensed services over existing licensed services --- the proposals are inconsistent with the Spectrum Act, the Communications Act and Commission precedent. Licensed services should continue to have priority over unlicensed services. If adopted, a policy allowing unlicensed devices to trump the rights of FCC licensees would have a harmful if not an existential impact on businesses that are awarded licenses by the Commission to serve the public. It would undermine

⁷ As of September 30, 2015, Microsoft's balance sheet showed cash on hand of \$99 billion (<http://www.microsoft.com/Investor/EarningsAndFinancials/Financials/FY16/Q1/BalanceSheets.aspx>), while Google (<https://investor.google.com/financial/tables.html>) had \$77 billion. Both companies have massive borrowing power and comparatively low levels of debt to enable the purchase of longer-haul spectrum. Moreover, each of the companies has sufficient funds to purchase the entire expected inventory at the incentive auction based on current high-end forecasted prices. For example, Google is expected to attach long-haul 600 MHz spectrum as Wi-Fi to their overbuild fiber rings in Kansas City, Austin, Provo and elsewhere at no cost as a result of the FCC's spectrum auction rules.

⁸ Remarks of Tom Wheeler, Chairman, Federal Communications Commission, National Cable & Telecommunications Association (April 30, 2014) (available at: <http://www.fcc.gov/document/chairman-tom-wheeler-remarks-ncta>).

license expectancy for all classes of terrestrial wireless and satellite licenses, chilling future investments and raising the cost of capital for all users of the spectrum.

Respectfully submitted,

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