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 21ST CENTURY FOX, INC., CBS CORPORATION, THE WALT DISNEY COMPANY, NBC OWNED TELEVISION STATIONS, FBC TELEVISION AFFILIATES ASSOCIATION, CBS TELEVISION NETWORK AFFILIATES ASSOCIATION, ABC TELEVISION AFFILIATES ASSOCIATION, NBC TELEVISION AFFILIATES, AND UNIVISION LOCAL MEDIA, INC. ("BROADCASTERS")

The Broadcasters file these reply comments to emphasize the critical importance of ensuring that full power television broadcast stations remain free to provide the best possible over-the-air service to all viewers in their markets after the upcoming Incentive Auction and subsequent repacking. As others have noted, fulfilling that goal requires that television stations not only retain their existing coverage in the repacking but also retain their flexibility to offer expanded services in the future.[1] Accordingly, the Broadcasters urge the Commission to reject any proposal that does not respect the primary status of full-power television stations throughout the post-Auction television bands. Put simply, as a matter of sound and equitable spectrum

[1] *See* Comments of the National Association of Broadcasters, MB Docket No. 15-146 *et al*., at 18 (filed Sept. 30, 2015) ("NAB Comments") ("After the auction, the Commission's rules will already constrain the ability of some broadcasters remaining on the air to expand or modify their facilities and operations," and vacant channel proposal "will only compound this problem, and risks freezing broadcasters in place.")

policy, and to advance the public interest, the FCC should not subordinate full-power television stations to any other service within the TV stations' home band. The Commission instead should make clear that all channels within the bands designated for broadcast television service will remain available to full-power television stations, subject only to the traditional limitations necessary to prevent harmful interference to other primary licensees.

In direct conflict with these principles, the Commission's June 16, 2015 Notice of Proposed Rulemaking in the above-referenced dockets[2] contemplates requiring full-power television stations to protect TV channels for use by unlicensed services. In particular, the *Vacant Channel NPRM* 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."[3] The Commission subsequently proposed requiring that at least *two* channels within the TV band remain available for unlicensed use in those markets (if any) where a television station is placed in the duplex gap of the new 600 MHz Band.[4] Any such requirement, certainly if applied to full-power TV stations, would improperly undermine the fundamental principle that full-power TV broadcast licensees have priority over secondary or unlicensed users in the TV bands. As other commenters have explained, neither the Communications Act nor the Spectrum Act authorize the

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[2] *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 (June 16, 2015) ("*Vacant Channel NPRM*").

[3] *Vacant Channel NPRM* at ¶¶ 12, 26.

[4] *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*").

Commission to abruptly reverse settled policies by prioritizing unlicensed services — which have no public interest obligations — over licensees required to operate in the public interest.[5]

The Commission has long-recognized that efficient and rational spectral planning requires certain services to have priority on allocated frequencies that have been set aside for specific uses.[6] Granted, over time, the Commission has modified which particular frequencies are allocated for a particular service. This is true of broadcast television service — for example, in connection with the digital television transition — just as it is for various wireless services.[7] But even in making these adjustments, there has never been a question about whether licensees providing the service for which a band is allocated on a primary basis are entitled to priority status. And there should be no question now that full-power TV stations are entitled to primary status within the designated television bands.[8]

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[5] *See* Comments of Gray Television, Inc., MB Docket No. 15-146 *et al.*, at 3-5 (filed Sept. 30, 2015); NAB Comments at 3-4, 8-10; Comments of Sinclair Broadcast Group, Inc., MB Docket No. 15-146 *et al.*, at 3-5 (filed Sept. 30, 2015).

[6] *See, e.g.*, *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, R&O and Second FNPRM, 30 FCC Rcd 3959, 4045, 4047 (2015) (recognizing need to protect incumbent primary FSS earth stations in C-band and Extended C-band); *Reallocation of 216-220mhz Gov't Transfer Band*, NPRM, 15 FCC Rcd 22657, 22662 (2000) ("Any new service allocated on a primary basis in this spectrum will be required to protect existing primary licensees, including AMTS licensees and licensees in the 218-219 MHz Service."); *Preparation for Int'l Telecomm. Union World Radiocommunication Conferences*, Report, 10 FCC Rcd 12783, 12803 (1995) ("[W]e note that all proposed allocations are subject to the fundamental principle that all existing co-primary spectrum users are protected from harmful interference that may be caused by later-in-time co-primary users.").

[7] *See, e.g.*, *Improving Pub. Safety Commc'ns in the 800 MHz Band*, 19 FCC Rcd 14969, 15088-89 (2004) (reallocating spectrum from unlicensed PCS to fixed and mobile services); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile & Fixed Servs. to Support the Introduction of New Advanced Wireless Servs., Including Third Generation Wireless Sys.*, 17 FCC Rcd 23193, 23212-13 (2002) (reallocating spectrum from Multipoint Distribution Service to advanced wireless services, and noting reallocation of spectrum used by fixed microwave service to AWS).

[8] *See .e.g.*, *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band et al.*, R&O and FNPRM, 25 FCC Rcd 643, 648 (2010) ("low power (continued…)

Consistent with this long-established approach, the Commission reaffirmed in the *Incentive Auction Order* that, although the Incentive Auction will reallocate part of the existing UHF television band for broadcasting, fixed, and mobile services on a co-primary basis, the remaining portion of the UHF band will "remain allocated and assigned only to broadcast services."[9] To the extent the *Vacant Channel NPRM* raises the possibility that one or more channels within the spectrum "allocated and assigned only to broadcast services" should in fact be closed off to primary broadcast television licensees, the Commission should firmly reject that proposal as inconsistent not only with settled principles but also with the International Table of Frequency Allocations, which gives broadcast television service clear primary status between 470-608 MHz and from 614-698 MHz in Region 2 (which includes the U.S.).[10] Even the U.S. Table, which as amended in the *Incentive Auction Order* gives co-primary status to broadcasting, fixed, and mobile services in the 600 MHz Band, does not purport to subordinate broadcasting to *unlicensed* operations or to alter broadcasting's primary status in the remaining television bands.[11]

Artificially restricting full-power stations from operating in otherwise useable television-band channels would severely hamper stations' future options for expanding and

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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.*, R&O, 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.").

[9] *See Incentive Auction Order*, 29 FCC Rcd at 6683.

[10] *See* 47 C.F.R. § 2.106.

[11] *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, R&O, 29 FCC Rcd 6567, 6706 (2014) ("*Incentive Auction Order*").

improving their service to the public. The Commission has recognized that "full power television [stations] may need to modify their facilities from time to time in order to continue to serve their viewers."[12] Given the reduced amount of spectrum that will be available in the UHF band after the Auction and repacking, accommodating these modifications is likely to be challenging under the best of circumstances. Adding to these challenges by blocking full power stations from making modifications that are fully compatible with other licensed users' facilities could effectively foreclose stations from making any future modifications that expand service to viewers, to say nothing of eliminating opportunities for the launch of new stations.[13] Moreover, subordinating any licensed user to a quasi-secondary status in its home band would send a chilling signal to all Commission licensees that their services could be undermined at any moment. It would be an especially damaging signal for the Commission to send in an era where the agency expects existing users to be more open to sharing (in situations, of course, where new entrants can demonstrate that they will protect primary licensees).

The Broadcasters agree that "wireless microphones provide significant public benefits,"[14] and that the Commission accordingly must identify spectrum to which television stations and other content creators will have reliable access in order to conduct critical newsgathering, live news and sports coverage, and other high-quality productions.[15] But that is

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[12] *Vacant Channel NPRM* at ¶ 29.

[13] *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").

[14] *Vacant Channel NPRM* at ¶ 10.

[15] *See, e.g.*, Broadcast Networks and Their Affiliates Associations *Ex Parte* Notice, AU Docket No. 14-252 *et. al*, at 1 (filed July 15, 2015) ("The local television stations that we represent rely on wireless microphones for local news gathering and coverage of local emergencies."); Letter of (continued…)

no reason to set aside television channels for priority use by unlicensed white spaces devices. For one thing, TV stations already can use wireless microphones on unused TV band spectrum. The changes contemplated by the *Vacant Channel NPRM* are not needed to maintain the status quo for wireless microphones. Moreover, setting aside spectrum for the future of wireless microphones – and for the future of unlicensed white spaces devices for that matter – can and should be accomplished by finding those services their own places in the spectrum bands (such as the duplex gap and the guard bands between the future TV and wireless bands). Protecting and promoting these services should not come at the cost of stunting the ability of full-power television stations to provide great service to local viewers. Such an approach is counterproductive, ill-serves the public interest in maintaining a robust over-the-air broadcast television service, and constitutes a deleterious approach to spectrum policy. For all of these reasons, the Broadcasters urge that it be rejected.

Respectfully submitted,

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Catherine Wang, Bingham McCutcheon LLP, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 *et. al*., at 2 (filed May 8, 2014) ("Exclusive-use spectrum for wireless microphones is essential for newsgatherers attempting to serve the public by covering breaking news and information.")

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