

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Parts 73 and 74 of the  
Commission's Rules to Establish Rules for  
Digital Low Power Television, Television  
Translator, and Television Booster Stations  
and to Amend Rules for Digital Class A  
Television Stations

MB Docket No. 03-185

COMMENTS OF DATACOM, LLC

DataCom, LLC ("DataCom") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking (the "*Notice*") in the above-captioned docket.<sup>1</sup> DataCom's comments are restricted to the proposal in the *Notice* regarding the use of the former television ("TV") broadcast channels 52-59 by low power television ("LPTV") and TV translators on a secondary basis. As discussed below, DataCom strongly opposes the introduction of LPTV and TV translators into a band where licensees, including DataCom, have paid substantial auction prices for exclusive use rights to the same spectrum. DataCom urges the FCC to reject the proposal in the *Notice* to permit any entities, other than those authorized by the market area licensee, to operate under any circumstances.

DataCom participated in Auction Nos. 44 and 49 for authorizations in the lower 700 MHz band. Indeed, in both cases, DataCom acquired market area licenses for C

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<sup>1</sup> Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, FCC 03-189, MB Docket No. 03-185 (August 29, 2003).

Block spectrum, which comprises the 12 MHz previously allocated to TV channels 54 and 59. As the Commission has observed numerous times, the use of competitive bidding ensures that spectrum resources are licensed to those entities that are able to put those licenses to the highest economic value.<sup>2</sup> To the extent that LPTV and TV translator uses are not precluded under the lower 700 MHz service rules, entities seeking spectrum for those applications could have participated in the auctions and acquired spectrum. The Commission should not now permit such entities to operate in a manner that undermines the competitive bidding process.

In this regard, the Commission should recognize that by modifying the usage of the band post-auction, the impact is far greater than simply burdening existing auctions winners in that band. Unquestionably, the *Notice* proposals to modify the characteristics of spectrum that has already been sold will be viewed as arbitrary by both future auction participants and capital markets. Not only will it be more difficult for future bidders to attract capital to acquire spectrum through competitive bidding, bidders themselves will be forced to discount the value of spectrum to account for future actions by the Commission that limit the value of the spectrum after licensing is complete. This result is directly contrary to the purpose of auctions.

Moreover, while the *Notice* proposes to permit LPTV and TV translator uses on a secondary basis and suggests use of certain land mobile/television protection criteria, DataCom does not believe these measures adequately protect services offered, and to the offered, by lower 700 MHz licensees. As an initial matter, the existence of any

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<sup>2</sup> See, e.g., Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendments of the Commission's Cellular/PCS Cross-Ownership Rule, 11 FCC Rcd 7824 (stating that "[e]conomic theory teaches that auctions are won by the bidder who puts the highest value on the property being auctioned.") at ¶99.

secondary operations in the lower 700 MHz band imposes transaction costs on primary licensees desiring to use spectrum they acquired at auction. Primary licensees will be required to monitor the presence of new secondary users and engage in substantial administrative and engineering efforts to determine the technical interference impact of such operations on their services. To the extent that a secondary licensee attempts to dispute the existence of interference, primary licensees will be required to invoke the legal process in order to eliminate harmful interference. Having acquired rights to use the spectrum at auction, licensees should not now be required to pay to continue to use those rights.

Moreover, the protection criteria the Commission proposes to use—standards developed to protect land mobile uses in major metropolitan areas from interference on TV channels 14-20—were developed for the protection of relatively higher power analog land mobile stations. There is absolutely no basis for believing those standards are adequate to protect newer digital data transmission schemes that are interference-limited and based on cellular architectures. The presence of LPTV and TV translator stations may, for example, require deployment of a higher density of base stations or limit the coverage of a digital data system even while remaining nominally within the limits of the protection criteria.

The *Notice* also fails to recognize that there is already a mechanism for the introduction of LPTV and TV translator stations in the lower 700 MHz band that does not require FCC intervention. Under the new secondary markets policies adopted by the Commission,<sup>3</sup> potential LPTV and TV translator licensees could negotiate individually

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<sup>3</sup> Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, FCC 03-113, WT Docket No. 00-230 (2003) at ¶32.

with lower 700 MHz band licensees and develop contractual terms for the use of such spectrum. Such agreements, definitionally, would recognize the economic value of the spectrum for licensees and, at the same time, provide specific terms for use that would, by mutual agreement, eliminate the need for FCC action to resolve interference disputes. Indeed, the introduction of LPTV and TV translator licensing into the lower 700 MHz band is an example of the type of command-and-control regulation that the Commission has determined is economically ineffective,<sup>4</sup> and the more appropriate mechanism for such uses would be to allow the secondary markets policies to control spectrum use.

For the foregoing reasons, DataCom opposes the secondary licensing of LPTV and TV translator stations on lower 700 MHz band spectrum. DataCom, like many other licensees, has purchased its spectrum use rights through FCC auctions at a considerable cost. Licensing LPTV and TV translator stations in such spectrum undercuts both the Commission's competitive bidding process and the newly adopted secondary markets

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<sup>4</sup> Spectrum Policy Task Force Report, ET Docket 02-135 (2002) at ¶¶41-44.

policies. DataCom therefore urges the Commission to allow the market-based policies that it has already adopted to address, in an economically efficient manner, the use of spectrum in the lower 700 MHz band.

Respectfully submitted,

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