BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Over-The-Air Broadcast Television Viewers	)	MB Docket No. 04-210
	)	
	)	

COMMENTS OF ALOHA PARTNERS REGARDING OVER-THE-AIR BROADCAST TELEVISION VIEWERS

Aloha Partners, L.P. ("Aloha") by counsel, hereby submits it comments in response to the Commission's Public Notice inviting input regarding the conversion from analog to digital television broadcasting, and the means to minimize any associated impact on over-the-air broadcast television viewers.[1] By these comments Aloha provides requested comment on one of two specific lines of inquiry posed by the Commission: The potential options for minimizing the impact on over-the-air consumers when broadcasters begin operating solely in digital.[2]

A. Aloha's Interest in This Proceeding.

Aloha is the largest licensee in the Lower 700 MHz Band.[3] Aloha is licensed in 167arkets for Lower 700 MHz Band spectrum. Its licensed markets include nearly 50% of the

[1] *See Media Bureau Seeks Comment on Over-The-Air Broadcast Television Viewers*, DA 04-1497, May 27, 2004 (*Public Notice*).

[2] The Commission also posed a series of questions regarding the demographics of over-the-air viewers generally. As Aloha, has no expertise regarding such matters, it will refrain from commenting on it here.

[3] That band consists of frequencies 698-746 MHz (the "Lower 700 MHz Band".)

U.S. population. Aloha has paid the Commission more than $35 Million for its licenses. All payments have been on time and in full.

Aloha's interest in 700 MHz stems in large part from the inherent advantages of the 700MHZ spectrum. The 700 MHz Band has significant advantages for delivering Wireless Broadband to rural markets, Public Safety and small businesses as compared to frequency bands over 1 GHz. First, 700 MHz can cover an area 2-3 times as large as that which could be covered by PCS spectrum (1800-1900 MHz) or MMDS spectrum (2500 MHz). This permits significant savings of capital expenditures and system operating costs. These significant savings make the 700 MHz Band far more economical for rural broadband applications. Secondly, 700 MHz is significantly better at accommodating terrain obstructions such as leaves, foliage or structures. This makes 700 MHz significantly more effective at penetrating inside buildings.

B. <u>Transition of Over-The-Air Broadcast Television Viewers.</u>

1. <u>Market Forces and the Transition.</u>

The Commission inquired regarding whether "market forces" would be sufficient to protect over-the-air viewers, absent government intervention. Public Notice at 2. Aloha agrees that market forces are usually the simplest and most cost effective mechanism to implement new policies and government directions. However, market forces often have to be "jump started" by government intervention.

Aloha shares the Commission's concern that some viewers will lose access to free over-the-air television and submits that the government should take active steps to prevent this from happening.

2. What Should the Nature of Government Intervention Be?

Any government intervention should further as many goals of the DTV transition goals as is possible. There are at least two primary goals that should be furthered. First, over-the-air viewers should not be denied access to free television. Second, viewers should obtain greater access to digital programming.

Fortunately, these goals do not conflict with each other, and there appears to be a most efficient means by which to further both: the government should provide tax credits that would be available to viewers who either acquire digital-to-analog converters or purchase equipment that would permit them to obtain a digital signal.[4]

The benefits of this approach appear to be many fold. First, by providing a tax credit, rather than becoming involved in procurement and distribution of equipment, the government's role would be properly minimized. In effect, through tax credit, the government would virtually assure that there is a viable market for conversion equipment, then leave it to the marketplace to efficiently fill the resulting needs.

Similarly, there will be no need to limit unduly the means by which the tax credit can be utilized. Instead, all equipment that is type-accepted by the Commission to either (a) convert digital signal to analog or (b) transmit digital signal, could be acquired with associated use of the tax credit.

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[4] The financial support to be provided could also be provided via some form of "voucher". In theory, both tax credit and voucher would facilitate achievement of the same goals. Aloha prefers tax credits as they appear to be more efficient to implement. Yet, Aloha appreciates that in certain instances vouchers may be a more effective way of providing viewers with an ability to acquire conversion equipment.

Lastly, and to state the obvious, this type of program would both protect over-the-air viewers and facilitate the transfer to digital. Whereas various participants have differing views on what the transition needs most to succeed, there is virtual unanimity that as soon as there are a significant number of digital receivers are in the marketplace, there will be sufficient incentive for producing additional digital programming. That will, in turn, foster additional demand for additional digital receivers.

3. Scope of Government Action.

At a minimum, government action should extend to those in need of financial assistance This group should include all households that fall below the median household income. Each household that qualified would be eligible to receive up to a $50 credit toward their taxes based on purchasing a digital receiver or digital ready TV set.

4. Financing Program

The Commission responsibly asked for information regarding how any subsidy program should be financed. Generally, responsibility for payment should correspond to the breadth of persons who benefit. Here, the beneficiaries are widespread. Viewers will receive superior signal; jobs will be created in order to provide the signal and sell associated equipment; and spectrum now lying follow will be put to productive use. As a result, payment should be spread widely. Payment through such revenues would thus appear to appropriate. It has been estimated that the total cost of a program would be only a fraction of the monies generated. A program of that magnitude can be paid through auction revenues. As such, offsetting auction revenues against tax credits would appear to be most reasonable means to finance the program. Whereas such an arrangement could well require legislation, as the Commission properly noted in its

Public Notice, some form of Congressional action will undeniably be needed to implement the transition anyway. As a result, no meaningful additional legislation will be required.

In the event that payment through auction revenues is not possible, at least to cover all costs, then it would not appear unreasonable to condition future licenses to include an obligation to provide assistance. As the Commission well knows any obligation imposed can legitimately be imposed only on new licensees. After all, existing licenses have (by definition) already been issued without any condition. Clearly, those licenses could not be modified (by adding a condition) without undertaking a 47 U.S.C. § 312 hearing. Moreover, the imposition of any condition of this late date would constitute impermissible retroactive takings. *See Bowen v. Georgetown University Hospital*, 448 U.S. 204 (1988); *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994). Also, creating retroactive obligations would appear to be most inequitable in that licensees were afforded no notice of any such obligation prior to bidding on, and paying for, their licenses.

Whereas, in theory, new licenses could have this condition, any benefit associated with that strategy appears to be illusory. First, experience with band clearing in other services shows that the process is not without considerable complications. The logistics of sharing of costs and the disagreements should not be underestimated. Second, the cloud associated with such a condition should be expected to have the effect of reducing auction revenues by an amount at least equal to what would be paid by new high bidders. Thus, the effective reduction in net auction revenues would be as large, or possible even larger, then the transition obligations if they were to be shifted to new auction winners. Lastly, the Commission should think through the issue of whether different licensees in the same service having significantly different obligations makes sense – especially when all ostensibly benefit from the subsidies being provided. Aloha submits that it would not be.

C. Conclusion.

The Commission is to be commended for posing questions that strike to the heart of the DTV transition. By so doing, the Commission will both facilitate and expedite the DTV transition.

By these comments, Aloha has provided input on the second of the two general lines of inquiry presented by the Commission. In so doing, Aloha has shown that government assistance in the conversion can be both efficient and productive. Indeed, it is essential if the dream of a true digital conversion is to become a reality, so that the American citizens can enjoy the benefits of digital viewing and efficient spectrum use, without any part of the citizenry loosing its access to free over-the-air television.

Respectfully Submitted,

ALOHA PARTNERS, L.P.

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