

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

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	MB Docket No. 08-253
Commission's Rules to Establish Rules for	)	
Replacement Digital Low Power Television	)	
Translator Stations	)	

**COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.**

The Rural Telecommunications Group, Inc. ("RTG"), by its attorneys, hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG's members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members are small, rural businesses serving or seeking to serve secondary, tertiary and rural markets. RTG's members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. RTG's members hold 700 MHz licenses in the Lower 700 MHz Band, and RTG has formed a 700 MHz Council within the association to deal with issues that impact its members 700 MHz businesses.

## I. BACKGROUND

In the NPRM, the Commission has proposed to create a new Replacement Digital Low Power Translator Service (“Replacement Translators”) that would permit full-service television stations to continue to provide service to viewers within their coverage area who have lost service as a result of those stations’ digital transition.<sup>1</sup> The NPRM notes that after the DTV transition, a portion of the existing analog service areas of some full-service stations will no longer be able to receive service after such stations transition to digital broadcasting.<sup>2</sup> Accordingly, the Commission proposes to allow full service stations to continue to serve analog areas that may no longer be within the digital service areas of those stations through new Replacement Translators. To this end, the Commission has proposed to license Replacement Translators on channels 2-59.<sup>3</sup> This includes both “in-core” channels (channels 2-51) that have been set aside for television broadcast service after the DTV transition and out-of-core channels (channels 52-59) (“Lower 700 MHz Band”) that have been reclaimed and auctioned for new commercial wireless telecommunications and information services in Auction Nos. 44, 49, and 73.

A number of RTG members hold licenses or spectrum leases to provide information and telecommunications services in the Lower 700 MHz Band in various rural markets across the country and are directly affected by the Commission’s proposal in the NPRM to include channels 52-59 in its proposed new Replacement Digital Low Power Translator Service. RTG does not

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<sup>1</sup> NPRM at ¶ 1.

<sup>2</sup> NPRM at ¶ 2.

<sup>3</sup> NPRM at ¶ 4.

oppose the licensing of replacement translators on in-core television channels (channels 2-51) for the limited purposes set forth in the NPRM, since these channels are set aside for television broadcast services. RTG, however, strongly opposes any licensing of Replacement Translators, even on a secondary basis, within the Lower 700 MHz Band (channels 52-59). This band is being reclaimed from broadcast use and commercial wireless companies have made a considerable investment to acquire licenses for this reclaimed spectrum in order to provide advanced new commercial wireless services to the public.

## **II. THE NEED FOR OUT-OF-CORE CHANNELS HAS NOT BEEN JUSTIFIED.**

Although the NPRM tentatively concludes that Replacement Translators should be allowed to operate in the Lower 700 MHz Band, no justification is given for this conclusion. In the NPRM, the Commission states that “to prevent possible interference to public safety entities, and avoid the potential for displacement of replacement translator facilities, we believe that replacement translators should not be licensed on channels 60-69.”<sup>4</sup> However, these very same concerns are applicable with equal force to commercial wireless services that are being deployed in the Lower 700 MHz Band. Replacement Translators are just as likely to interfere with commercial services as they are with public safety services. And such Replacement Translators have the same, or even greater, potential to be displaced by newly deployed commercial services as they would face from public safety services. Accordingly, to the extent that interference and displacement potential justify a decision not to license Replacement Translators on channels 60-69, these concerns equally justify excluding channels 52-59 from the Replacement Translator service. The NPRM provides no analysis to the contrary.

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<sup>4</sup> NPRM at ¶ 4.

In fact, the NPRM is inconsistent with other actions the Commission has initiated to clear the 700 MHz entirely in connection with the DTV transition. For example, the Commission has recently commenced a rulemaking to move existing licensed Low Power Auxiliary Service stations (“LPAS”) used in connection with TV broadcast operations out of both the Upper and Lower 700 MHz Bands by the end of the DTV transition.<sup>5</sup> In that proceeding, the Commission noted that neither the Communications Act nor its own policies differentiated between public safety and commercial licensees with respect to the need to clear the 700 MHz Bands.

The Digital Television Transition and Public Safety Act of 2005 (“DTV Act”) set a firm deadline for the end of the digital television (DTV) transition of February 17, 2009, at which time the spectrum in the 698-806 MHz band (“700 MHz Band”), currently occupied by television broadcasters in TV Channels 52-69, will be fully available for public safety as well as commercial wireless services. *As we have recognized, it is incumbent on the Commission to take all steps necessary to make this spectrum effectively available both to public safety and commercial licensees at the end of the DTV transition.*

In this Notice of Proposed Rulemaking and Order (“Notice and Order”), we consider broadcast low power auxiliary stations, which have been permitted to operate on TV Channels 52-69 in the 700 MHz Band, as well as in several other bands, on a secondary non-interference basis. In the Notice of Proposed Rulemaking (Notice) below, we tentatively conclude to amend our rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition *because such operations could cause harmful interference to new public safety and commercial wireless services in the band.*<sup>6</sup>

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<sup>5</sup> *In the Matter of Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition*, WT Docket Nos. 08-166, 08-167, Notice of Proposed Rulemaking and Order, FCC 08-188 (rel. August 21, 2008)(“*LPAS NPRM*”).

<sup>6</sup> *LPAS NPRM* at ¶¶ 1-2 (citations omitted, emphasis added).

The Replacement Translators proposed in the NPRM are no different than the LPAS stations that the Commission is moving out of the 700 MHz Band in the LPAS proceeding. Both are low power stations that operate to supplement television broadcast operations and both types of stations are secondary with respect to interference protection. It is entirely inconsistent for the Commission to claim in the LPAS proceeding that the DTV transition requires the relocation of existing licensed LPAS stations out of the 700 MHz Band entirely by February 17, 2009 in order to protect both commercial and public safety licensees from interference by secondary users and then turn right around in this proceeding and state that only the Upper 700 MHz Band should be off limits to Replacement Translators because of the threat of interference.

**III. ALLOWING REPLACEMENT TRANSLATORS IN THE 700 MHZ BAND REPRESENTS AN UNEXPLAINED DEPARTURE FROM COMMISSION DTV TRANSITION POLICY.**

A decision to allow Replacement Translators in the Lower 700 MHz Band is also inconsistent with the Commission's longstanding policy to implement the DTV transition as required by Congress. RTG and its members have waited for as long as six years for the spectrum which they purchased in FCC administered auctions to be unencumbered by incumbent broadcasters who are required by law to move their operations to in-core channels no later than February 17, 2009. A decision to authorize new Replacement Translators in the Lower 700 MHz represents an unexplained departure from the Commission's consistent policies of moving broadcast and broadcast-related operations out of the 700 MHz Band entirely.

The Commission's policies regarding the continued use of the Lower 700 MHz Band for low power television and television translator services were established when the Lower 700

MHz was first reallocated to commercial wireless use pursuant to Congressional mandate. At that time, the Commission clearly stated that:

LPTV operators in the Lower 700 MHz Band must be prepared to cease service once television Channels 52-59 are reclaimed, pursuant to Section 309(j)(14) of the Communications Act, when new licensees (who will have primary status) begin using the band. Congress has recognized – and the Commission has repeatedly noted – that *not all LPTV stations can be guaranteed a certain future due to the emerging DTV service, and we do not think it is advisable to defer the ultimate displacement of LPTV operations to the detriment of new primary service licensees in the band.* To grant LPTV operations special considerations vis-à-vis new licensees would turn the concept of secondary status upside down and would retard the potential development of new and innovative services.<sup>7</sup>

Based upon this clearly enunciated policy, many companies, including many RTG members spent substantial sums of money to acquire spectrum in Auction Nos. 44, 49, and 73. In the case of RTG's members, this money was spent for the opportunity to provide new advanced wireless services to rural America.

The Commission has taken aggressive steps over the years to implement this DTV transition and spectrum reclamation policy by: adopting specific remedial policies covering broadcasters that fail to meet construction deadlines,<sup>8</sup> allowing broadcast stations to surrender their analog channels and begin digital only operations well in advance of the end of the transition,<sup>9</sup> mandating that new consumer electronics products manufactured after a certain date

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<sup>7</sup> *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002) at ¶ 28.

<sup>8</sup> *In the Matter of Remedial Steps For Failure to Comply With Digital Television Construction Schedule*, MM Docket No. 02-113, Report and Order and Memorandum Opinion and Order on Reconsideration, FCC 03-77 (released April 16, 2003).

contain digital tuners,<sup>10</sup> adopting requirements to ensure the compatibility of digital consumer products with digital services provided by cable television systems and other multichannel video program distributors,<sup>11</sup> adopting distribution control standards for off-air digital content that is delivered in the clear<sup>12</sup> and requiring various stakeholders to undertake consumer education and outreach efforts.<sup>13</sup> Yet, in one fell swoop, at the eleventh hour and on a significantly truncated pleading schedule, the Commission now proposes to authorize new television translators on out-of-core channels, a policy that would undermine the favorable deployment climate it has worked so hard over the years to create. Not only does the NPRM provide an indication that the Lower 700 MHz Band may never be cleared of incumbent LPTV stations, it envisions opening this band up to an entirely new Replacement Translator service. That the Commission seeks to minimize

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<sup>9</sup> *Report and Order, Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, FCC 07-228 (rel. December 31, 2007) (“*Third DTV Periodic Report and Order*”); *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, FCC 08-72 (released March 6, 2008).

<sup>10</sup> *Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978 (2002).

<sup>11</sup> *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80 and PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-225 (released October 9, 2003) (*Second R&O/Second Further Notice*).

<sup>12</sup> *In re: Digital Broadcast Content Protection*, MB Docket 02-230, Report and Order and Further Notice of Proposed Rulemaking, FCC 03-273 (rel. November 4, 2003).

<sup>13</sup> *In the Matter of DTV Consumer Education Initiative*, MB Docket No. 07-148, Report and Order, FCC 08-56 (rel. March 3, 2008) (“*DTV Outreach Order*”).

concerns by claiming that these Replacement Translator stations will operate on a secondary basis does not ameliorate the negative impact that such a policy reversal will have on financial markets and the ability of licensees to deploy their services free from interference from television broadcast services.

A core channel limitation for broadcast service has been the centerpiece of the entire DTV transition and has provided the basis for valuing the reclaimed spectrum that has been acquired by numerous entities during the three 700 MHz Band auctions conducted by the Commission. Maintaining the integrity of the spectrum reclamation process by retaining an in core limitation on all broadcast services is both feasible and consistent with Congressional mandate. In providing for the eventual analog to digital migration of broadcast television, Congress expressly balanced the needs of low power television stations by allowing them to convert their facilities to a newly created class of television broadcast station (“Class A” stations) that would entitle them to operate on a primary basis *within the core channels*.<sup>14</sup> Had Congress wished to allow these stations to continue to operate in the Upper and Lower 700 MHz bands beyond the digital transition, it would not have made express provisions for Class A stations and prohibited such stations from operating outside the core channels.

Recently, the FCC authorized television broadcasters to implement Digital Television Distributed Transmission System Technologies (“DTS), which allows a broadcaster to use multiple transmission facilities on a single channel to reach areas within its service territory that might otherwise not be served from a single transmitter due to terrain characteristics and other

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<sup>14</sup> 47 U.S.C. § 336(f).

factors.<sup>15</sup> The FCC also recognized that “DTS may be a useful tool for stations to prevent some loss of service to existing analog viewers resulting from changes to the station’s service area in the transition to digital service.”<sup>16</sup> To this end, the FCC adopted a special waiver policy to permit a station to use DTS if doing so will enable it to continue to serve its existing analog viewers who would otherwise lose service as a result of its transition to digital service.<sup>17</sup> Accordingly, television broadcasters already have the means to prevent loss of service to analog viewers if they wish to do so without further impairing the deployment of advanced wireless services in the Lower 700 MHz Band.

### III. CONCLUSION

Based on the foregoing, RTG respectfully requests that the Commission exclude the Lower 700 MHz Band from its Replacement Digital Low Power Translator Service.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS GROUP, INC.**

*/s/ Caressa D. Bennet*

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<sup>15</sup> *In the Matter of Digital Television Distributed Transmission System Technologies*, MB Docket No. 05-312, Report and Order, FCC 08-256 (released November 7, 2008) (“*DTS Order*”).

<sup>16</sup> *DTS Order* at ¶ 2.

<sup>17</sup> *DTS Order* at ¶ 28.