

**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

Consolidated Telecommunications Company (“Consolidated”), Grand River Communications, Inc. (“GRCI”), Interstate Enterprises, Ltd. (“Interstate”), Kanokla Telephone Association, Inc. (“Kanokla”), Kaplan Telephone Company, Inc. (“Kaplan”), Northeast Missouri Rural Telephone Company (“NMRTC”), Panhandle Telecommunication Systems, Inc. (“PTSI”), Southern Iowa 700, LLC (“SI700”), and West Carolina Communications, LLC (“WCC”) (collectively, “Stakeholders”), by their attorneys, hereby submit comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding. The Stakeholders are rural telephone companies or small telecommunications companies affiliated with rural telephone companies that have participated in the Commission’s completed Auction Nos. 44, 49 and 73 and have acquired spectrum by license and/or by lease with the intent of providing advanced broadband services to rural America. Some of the Stakeholders were among the earliest companies to deploy service to portions of their rural license areas using the 700 MHz spectrum. Full scale deployment of 700 MHz service, however, has been delayed due in large part to the fact that the spectrum remains encumbered until the end of the DTV transition on February 17,

2009. The Stakeholders believe that the Commission’s proposal to allow new television translators to operate in the Lower 700 MHz Band will further delay the deployment of advanced services to rural America unnecessarily.

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 the digital transition.¹ 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.² 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 2-59.³ 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) in the 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.

The Stakeholders are winning bidders of Lower 700 MHz Band spectrum that was subject to competitive bidding in Auction Nos. 44, 49 and/or 73. Accordingly, each of the Stakeholders would be directly impacted by the proposals set forth in the NPRM. In

¹ NPRM at ¶ 1.

² NPRM at ¶ 2.

³ NPRM at ¶ 4.

participating in these auctions, the Stakeholders relied upon the Commission's longstanding and clearly articulated band clearing policies. While understanding that incumbent broadcasters would be entitled to remain on out-of-core channels until completion of the digital transition, the Stakeholders were given no indication that these channels would be opened up to new non-incumbent broadcast facilities for an indefinite period of time. Based the Commission's clear indications that the Lower 700 MHz Band would become unencumbered upon completion of the DTV transition, the Stakeholders have undertaken considerable investment to acquire licenses for this reclaimed spectrum in order to provide advanced new commercial wireless services to the public and have planned for having access to unencumbered spectrum for this purpose by February 17, 2009. The Stakeholders do not 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. However, they strongly oppose any licensing of Replacement Translators, even on a secondary basis, within the Lower 700 MHz Band (channels 52-59).

II. ALLOWING REPLACEMENT TRANSLATORS IN THE 700 MHZ BAND VIOLATES LONGSTANDING DTV TRANSITION POLICY.

A decision to allow Replacement Translators in the Lower 700 MHz Band is inconsistent with the Commission's longstanding policy to implement the DTV transition as required by Congress. The Stakeholders have waited in some cases for as long as six years for the spectrum which they acquired in FCC administered auctions to be cleared so that they could use their licenses to fully deploy commercial wireless services to serve rural America. It is simply untenable and unacceptable for the FCC at the very last minute to try and re-write the rules of the game to allow incumbent broadcasters to remain in the Lower 700 MHz Band. Broadcasters 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 nothing more than an evasion of this very clear legal requirement.

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.⁴

Based upon this clearly enunciated policy, many companies, including the Stakeholders spent rather substantial sums of money to acquire spectrum in Auction Nos. 44, 49, and 73. In the case of the Stakeholders, 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

⁴ *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.

broadcasters that fail to meet construction deadlines,⁵ allowing broadcast stations to surrender their analog channels and begin digital only operations well in advance of the end of the transition,⁶ mandating that new consumer electronics products manufactured after a certain date contain digital tuners,⁷ adopting requirements to ensure the compatibility of digital consumer products with digital services provided by cable television systems and other multichannel video program distributors,⁸ and imposing DTV Outreach reporting requirements on the winning bidders of 700 MHz spectrum in Auction No. 73, just to name a few.⁹ Yet, at the eleventh hour, with no advance warning and on a significantly truncated pleading schedule, the Commission now proposes to retreat from its obligation to clear the Lower 700 MHz Band, and to allow new television translators to operate indefinitely on out-of-core channels.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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*).

⁹ *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*”).

The fact that 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 the Stakeholders to deploy their services free from interference from television broadcast services.¹⁰ Pursuant to section 74.703 of the Commission's rules, which the NPRM proposes to apply to Replacement Translators, the Stakeholders are forced to undertake and provide an interference analysis to the translator station in order to get the station to cease operations. The rules then allow the translator to operate for up to 120 days after receiving notice of interference from a licensee, although that time can be extended if the translator disputes the interference claim and petitions the Commission to resolve the issue. Thus, the Stakeholders could see their operations impaired by Replacement Translators for up to 4 months or longer in the event Commission intervention is required to resolve an interference dispute.

The NPRM stands in stark contrast to other recent statements by the Commission with respect to the need to clear the 700 MHz Band of existing secondary low power broadcast operations. The Commission recently commenced a rulemaking to move existing licensed Low Power Auxiliary Service stations ("LPAS") used in connection with TV broadcast operations out

¹⁰ Although the Commission attempts to model its Replacement Translator service upon its existing rules that allow certain digital translators to operate in the Lower 700 MHz Band in a limited fashion after February 17, 2009, these rules were adopted for an entirely different reason. The existing rules were adopted to assist *existing* analog television translator stations in transitioning to digital operations by allowing them to obtain a companion digital channel (like full service stations) so that analog operations could cease. Because the DTV transition for translator stations could not take place until the Commission completed its channel repacking process for full service stations, digital translators were permitted to obtain companion channels in the Lower 700 MHz Band with an eye toward an eventual movement of such translators out the Lower 700 MHz Band. In contrast, in the NPRM, the Commission proposes to create an entirely new translator service that does not further the DTV transition and to allow the operation of such translators indefinitely.

of both the Upper and Lower 700 MHz Bands by the end of the DTV transition.¹¹ 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.*¹²

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

¹¹ *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*”).

¹² *LPAS NPRM* at ¶¶ 1-2 (citations omitted, emphasis added).

Consolidated Telecommunications Company, *et al.*

January 12, 2009.

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. BROADCASTERS ALREADY HAVE THE SUFFICIENT RESOURCES WITHIN THE CORE SPECTRUM TO SERVE THEIR ANALOG VIEWERS.

The Commission seeks to justify the need for Replacement Translators as a means to ensure that, following the DTV transition, analog viewers will be able to receive the same television stations they were accustomed to getting before the transition. The Stakeholders have no issue with this policy but do not agree that it is appropriate to allow broadcasters to use the Lower 700 MHz Band for this purpose. 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.

The Commission's recent DTV Map Coverage Reports expressly acknowledge that "[a]s early as 1997, in adopting the initial DTV Table of Allotments, the Commission observed that not all stations would replicate their existing coverage area."¹³ The reports also acknowledge that "although the Commission tried to maximize the ability of TV stations to replicate their analog coverage area as closely as possible, TV station were not required to do so" and conclude that "[i]n most instances the [audience] losses result from a broadcaster's choice to modify its

¹³ *Map Book of All Full-Power Digital Television Stations Authorized by the FCC* (<http://www.fcc.gov/dtv/markets/>) and *Map Book For Full-Power Digital Television Stations Having Significant Changes in Coverage* (<http://www.fcc.gov/dtv/markets/report2.html>).

service area, often to reach more overall viewers or better conform to its local market.”¹⁴ It is simply inequitable to allow broadcasters to continue to burden the Lower 700 MHz Band spectrum beyond the DTV transition in order to make it easier for them to reach an audience that, in most cases, they deliberately chose to abandon in order to expand their total viewership. As the reports make clear, nearly nine in ten broadcast stations (89%) will experience a net gain in audience after the DTV transition. To the extent the Commission wishes to allow broadcasters to have their post transition cake (in the form of increased digital audience) and eat it too (in the form of allowing these broadcasters to serve analog viewers outside their digital service areas) this should not be accomplished at the expense of the 700 MHz licensees that have waited years for their spectrum to become unencumbered.

IV. CONCLUSION

The NPRM itself acknowledges that broadcasters have many options that would allow them to serve lost analog viewers without having to use out-of-core spectrum. They remain free to: (1) maximize their service area by increasing height or power; (2) apply for and construct translators on a different in-core channel to re-broadcast their signal; (3) construct a distributed transmission system (DTS) with synchronized translators on the same channel to provide service to lost areas or to populations in areas with difficult terrain;¹⁵ (4) apply to change broadcast channels; (5) change antennas to improve coverage; (6) move transmitting towers; (7) negotiate to use the subchannel of a nearby station whose signal covers the loss area to multicast programming to the population losing the station’s over-the-air signal; or (8) partner with an

¹⁴ *Id.*

¹⁵ See *Digital Television Distributed Transmission System Technologies*, MB Docket No.05-312, Report and Order, FCC 08-256, ¶28, released November 7, 2008 (*DTS Order*) (adopting a waiver policy for the express purpose of enable stations to reach lost analog viewers).

