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 AT&T INC.

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively "AT&T"), hereby responds to the Notice of Proposed Rulemaking ("*Notice*") seeking comment on the creation of a new "replacement" digital television translator service ("DTV translator service").[1] The *Notice* proposes to authorize digital low power television translator stations ("DTV replacement translators") in channels 2-51, but limits eligibility for the DTV translator service to full power broadcasting stations that need supplemental fill-in coverage to replicate their analog coverage. The *Notice* also proposes to permit DTV replacement translators in former television stations 52-59 ("Lower 700 MHz band") in the event the broadcaster cannot be accommodated in channels 2-51 ("in-core digital channels").[2]

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[1] *Amendment of Parts 73 and 74 of the Commission's Rules for Replacement Digital Low Power Television Translator Stations*, Notice of Proposed Rulemaking, MB Docket No. 08-253, FCC 08-278 (2008) ("*DTV Translator NPRM*").

[2] Specifically, the Notice tentatively concludes that "stations seeking a replacement translator on channels 52-59 be required to certify in their applications the unavailability of any suitable in-core channel for this purpose. We propose defining 'suitable in-core channel' as one that would enable the station to produce a digital service area comparable to its analog service area." *Id.*, ¶ 4

AT&T strongly opposes allowing the new DTV translator service in the Lower 700 MHz band. The Lower 700 MHz band spectrum has been allocated on a primary basis for mobile services[3] and auctioned to licensees—including AT&T[4]—for a significant amount of money. As detailed below, the DTV replacement service proposed in the *Notice* will harm the deployment of advanced broadband wireless services by 700 MHz auction winners. Further, as opposed to other replacement solutions previously recommended by the Commission—like the use of distributed transmission systems ("DTS")—permitting the DTV translator service in channels 52-59 is short-sighted, will only be a temporary fix for broadcasters, and does not provide any bridge to a permanent solution. It is inevitable that, once 700 MHz wireless licensees deploy, DTV translator stations in channels 52-59 will be required by FCC rules to cease operations. The measures proposed in the *Notice* will therefore cause significant customer confusion with no lasting public benefit. As discussed in further detail below, the public interest therefore requires the Commission to limit DTV translator service deployment to channels below 52.

The Commission should not permit secondary DTV translator service in the Lower 700 MHz band. Licensees in the 700 MHz bands have invested billions of dollars at auction with the expectation that the 700 MHz spectrum would be free of interfering broadcasting services and that wireless deployment would be rapid and relatively unfettered.[5] The *Notice* proposal,

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[3] The Lower 700 MHz spectrum, comprising the former television stations from 52 to 59, was reallocated for mobile use and licensed in Auction Nos. 44, 49, 60 and 73.

[4] AT&T, through AT&T Mobility II LLC, holds 333 Lower 700 MHz C Block authorizations and, through AT&T Mobility Spectrum LLC, bid over $6.6 billion in Auction No. 73 and was recently awarded 227 Lower 700 MHz B Block authorizations.

[5] AT&T recognizes that the 700 MHz bands were auctioned subject to the presence of certain grandfathered low power television stations. Because those stations were identified prior to the auction, however, bidders could factor the presence of such incumbents into their bidding. The *Notice* is now proposing to vastly expand the universe of secondary users with which licensees have to contend.

however, turns this expectation on its head and proposes to create an entirely new class of incumbents that could stifle the deployment of advanced broadband wireless services in the 700 MHz spectrum. The *Notice* also puts the onus on 700 MHz wireless licensees to track potentially interfering DTV stations and prosecute interference claims. AT&T believes this is inconsistent with the terms defined by the agency at the time it auctioned the spectrum and fundamentally inequitable. The FCC should not alter the terms of a $19 billion auction[6] after the fact.[7]

Furthermore, the proposal to allow the use of Lower 700 MHz spectrum for DTV replacement translators is ill-founded as a matter of public policy because it represents a short term stop gap measure with no prospect of a long term solution. 700 MHz licensees, having spent over $19 billion on spectrum, will not permit the spectrum to lie fallow. Indeed, the FCC itself imposed build-out requirements on the spectrum that are more stringent than any previously adopted. As that build-out occurs, it is a foregone conclusion that any DTV

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[6] *See* "Summary of Auction 73—700 MHz Band", http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73; "Summary of Auction 44—Lower 700 MHz Band", http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=44; "Summary of Auction 49—Lower 700 MHz Band", http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=49; "Summary of Auction 60—Lower 700 MHz Band", http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=60.

[7] Further, the creation of a new DTV replacement translator service violates Section 337 of the Communications Act, which clearly reflects Congress' intent to remove full power broadcast licensees—whether operating on full power stations or on low power translators—from the Lower 700 MHz band following the DTV transition date. Section 337(e)(1) unambiguously provides that "[a]ny full-power television station licensee that holds a television broadcast license to operate between 698 and 806 megahertz may not operate at that frequency after February 17, 2009." 47 U.S.C. § 337(e)(1). Furthermore, Section 337(e) is entitled "Removal and Relocation of Incumbent Broadcast Licensees"—another indication that Congress wants this spectrum removed from the hands of existing broadcasters and reassigned to wireless providers. *Id*.

replacement translators in channels 52-59 would have to cease operation—those operations are likely to cover populated areas that the mobile carriers would also desire to serve. Even worse, the relatively high power/high site nature of DTV translators are fundamentally incompatible as a matter of system architecture with the low power/low site frequency re-use systems employed by mobile carriers. It is untenable to conclude that such operations will not experience interference from DTV translators due to co-channel and/or adjacent channel signals, and possibly at great distances. Thus, to the extent that deployment of DTV replacement translators in the Lower 700 MHz band is a solution at all, it is a very short term solution.

While a short term stop gap measure might be contemplated as a sound public policy measure if necessary to effect a transition, this particular proposal creates a substantial hardship on 700 MHz licensees while providing no prospect for a long term solution. As previously noted, the only circumstance where the *Notice* proposes to permit DTV replacement translators to operate in the Lower 700 MHz band is where no in-core digital channels are available. Given that spectrum congestion issues are more likely to occur in urbanized areas, in fact, the net result is that DTV translators and mobile operators will be seeking to deploy in the same areas in the near term. If no in-core channels are available at the DTV transition date, it is wildly speculative to presume that such channels could be made available in the short term after the DTV transition. Thus, accommodation in the Lower 700 MHz band is not a bridge to a permanent solution, but rather a bridge to nowhere.

Instead of pursuing temporary stopgap fixes that clearly disserve the public interest, the Commission should promote existing long-term solutions that it already has developed to replace

service to loss areas, including the use of DTS and other remedies explicitly noted in the *Notice*.[8] Indeed, the Commission recognized in its November 2008 DTS Order, as well as in the instant *Notice*, that DTS will be a "useful tool" to prevent "loss of service to existing analog viewers resulting from changes to the station's service area in the transition to digital service."[9] Moreover, the Commission has concluded that the "[u]se of DTS is also more spectrum efficient than use of translators because DTS uses the stations' already allotted frequency, whereas translators require one or more additional frequencies." [10] AT&T agrees with the Commission's conclusions regarding the promise of DTS as a solution, and therefore urges the Commission to focus its time and resources helping broadcasters construct and operate DTS systems.

AT&T further notes that, to the extent that translators can be deployed in the Lower 700 MHz band, market-based regulatory mechanisms to allow such deployments already exist. Specifically, if a translator can be deployed consistent with a 700 MHz licensee's business plans, those entities are free to either lease or partition/disaggregate spectrum to accommodate that need. Such use would, obviously, require that the translator operate subject to the rules in Part 27, but those rules, in certain cases, are sufficiently flexible to accommodate limited translator operation.

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[8] Broadcasters also could enter into leasing arrangements with 700 MHz wireless licensees to the extent they would like to extend coverage to their previous analog coverage areas.

[9] *See Digital Television Distributed Transmission System Technologies*, Report and Order, 23 FCC Rcd 16731, ¶ 2 (2008).

[10] *Id*., ¶ 6. Additionally, the Commission recognized that DTS would be valuable in "provid[ing] service to areas that a single-transmitter station would fail to reach due to natural or man-made obstructions that would block the signal coming from the single-transmitter site. It can provide more uniform signal levels throughout a station's service area, making indoor reception more reliable. Also, multiple DTS transmitters generally operate at a lower power than a single transmitter to achieve the same coverage and thereby reduce the likelihood of causing interference to neighboring licensees." *Id*.

As a final matter, the *Notice* proposal would also create substantial confusion for television customers, as well as hardships on 700 MHz licensees. Because the Lower 700 MHz band is not, as previously noted, a permanent solution for television coverage, any operations in that band will require customers to change channels to find the programming they expect. AT&T does not believe it is in the public interest to create a situation where customers are forced to undergo a significant change and induced to rely on programming that ultimately will, at best, require another change or, at worst, may be transient and disappear completely.

For 700 MHz licensees, the *Notice*'s proposals impose the heavy burden of tracking DTV replacement translator deployment, developing and expending resources on determining when such facilities will interfere with mobile deployment plans, and coordinating the shut-down of those facilities. In fact, given the potential for long range interference from even low power translators—AT&T estimates that it may receive interference, in certain circumstances, from translators located 50 kilometers away—the market area licensee receiving notice of a translator deployment may not be the only 700 MHz licensee impacted by those facilities. Just as importantly, a mobile operation may have to document actual interference—or wait out a long notice period—prior to seeking Commission action to terminate the operations of a DTV replacement translator. And, while a primary wireless licensee would have a theoretical legal right to terminate the DTV translator operations of the secondary user, vindicating that right can be difficult, costly, and time-consuming. Indeed, the process for obtaining a cease and desist order from the Enforcement Bureau—which is the presumable procedure for terminating the operations of a secondary user—is not subject to any specific timetable. While AT&T believes licensees will generally act in accordance with the rules, scenarios may exist where the Enforcement Bureau is unable to enforce its rules in a timely matter because of the agency's

limited resources or the delay tactics of a DTV translator licensee reluctant to shutdown facilities in which it invested a significant amount of money. As mentioned above, the Commission has recently identified these same issues in a recent Order and has pointed to the use of DTS as a preferred solution.

In sum, AT&T submits that the *Notice* proposal to create a new DTV replacement translator service operating on the Lower 700 MHz channels is an inequitable revision of the terms of the Lower 700 MHz auctions and generally poor public policy. Allowing replacement translators to operate on the Lower 700 MHz channels will impose significant burdens on new 700 MHz licensees, potentially affecting the roll-out of broadband services to the public and creating substantial confusion among television customers, all for the purpose of prolonging, for a short time, services that cannot realistically be maintained in the long term. For these reasons, AT&T strongly urges the Commission to limit any new replacement translator operation to spectrum below the former channel 52.

Respectfully submitted,

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