



November 24, 2009

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Notification of *Ex Parte* Communication  
GN Docket Nos. 09-47, 09-51, and 09-137

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that today George L. Mahoney, Vice President, Secretary, and General Counsel of Media General, Inc. ("Media General"), and I met with Barbara Kreisman, Chief of the Video Division of the Media Bureau, to discuss reply comments Media General, along with other broadcasters, filed on November 13, 2009, in the above-referenced dockets. In addition to discussing the points made in the attached copy of the reply comments, Mr. Mahoney reviewed his company's recent experience in completing the DTV transition.

As required by Section 1.1206(b), as modified by the policies applicable to electronic filings, one electronic copy of this letter is being submitted for each above-referenced docket.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anne Swanson', written over a horizontal line.

M. Anne Swanson

Enclosure  
cc w/encl. (by email):  
Barbara Kreisman, Esquire

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996	)	GN Docket No. 09-137
	)	
	)	

**REPLY COMMENTS OF LOCAL TELEVISION BROADCASTERS  
NBP PUBLIC NOTICE # 6**

**Allbritton Communications Company  
Bahakel Communications, Ltd.  
Boise Telecasters, LP  
Cocola Broadcasting Companies, LLC  
Communications Corporation of America  
Evening Post Publishing Company  
Granite Broadcasting Corporation  
Gray Television, Inc.  
Jovon Broadcasting Corporation  
Local TV, LLC  
McGraw-Hill Broadcasting Company  
Media General, Inc.  
Meredith Corporation  
Midwest Television, Inc.  
Smith Media, LLC  
WNAC, LLC**

**DOW LOHNES PLLC**  
1200 New Hampshire Avenue, NW, Suite 800  
Washington, DC 20036  
(202) 776-2000

November 13, 2009

## TABLE OF CONTENTS

Summary .....	ii
Question 4: What are the key issues in moving spectrum allocations .....2 toward their highest and best use in the public interest?	
Question 4(a): How should the Commission define and determine the value of different uses to evaluate whether spectrum usage is at the highest and best use in the public interest?	
Question 4(a): How should the Commission define what it means to use .....5 spectrum efficiently and productively in the public interest?	
Question 4(a): How would the Commission determine that the public interest.....7 would be better served by reallocating spectrum from an existing service to wireless broadband service?	
Question 4(d): What are the costs of moving current occupants and users of underutilized spectrum bands to other bands, to other technologies or solutions that do not require licensed spectrum?	
Question 4(b): Are some spectrum bands being used more efficiently and .....12 productively in the public interest than others?	

## SUMMARY

Broadcast television is the definitive example of the highest and best use of spectrum in the public interest. Commission determinations of spectrum value accordingly must account for this public interest along with particular agency rules in place for furthering it, rather than blindly applying rigid valuation algorithms. To ensure efficient and productive use of the spectrum in the public interest, the Commission should broadly encourage licensee flexibility and technological advancement – such as, for example, by an orderly reduction of the spectrum holdings of other non-auctioned services, as was done for television broadcasting.

Many commenter demands for reallocating spectrum are anti-competitive or otherwise meritless. Consumers value video programming more highly than any other content, and a reallocation of broadcast spectrum could conveniently eliminate the wireless industry's most serious competitive threat – Mobile DTV. Indeed, a spectrum reallocation from television to wireless broadband would amount to the Commission picking industry winners and losers, denying the public the “triple play” of HD, multicast, and mobile while permanently locking broadcasters into a twentieth century service. Moreover, any broadcast spectrum reallocation would threaten the ability of the tens of millions of Americans who rely exclusively on over-the-air service to maintain access to emergency, news, and public affairs information – the same viewers for whom the Administration recently extended the DTV transition.

With some wireless licensees allegedly warehousing the spectrum they already have, and other auction bidders experiencing “loser's remorse” for the spectrum they don't, the Commission should examine reallocation demands carefully. It is easier to ask for more spectrum than to innovate, and the perpetual promise of more spectrum for the wireless industry promotes inefficiency. The Commission helped create a broadcast television system that is the envy of the world, and the agency should be comfortable applying lessons learned in that achievement to regulating other, less efficiently used spectrum bands.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
International Comparison and Consumer	)	GN Docket No. 09-47
Survey Requirements in the	)	
Broadband Data Improvement Act	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Deployment of Advanced Telecommunications	)	GN Docket No. 09-137
Capability to All Americans in a Reasonable and	)	
Timely Fashion, and Possible Steps to Accelerate	)	
Such Deployment Pursuant to Section 706	)	
of the Telecommunications Act of 1996	)	
	)	
To: Office of the Secretary		

**REPLY COMMENTS OF LOCAL TELEVISION BROADCASTERS  
NBP PUBLIC NOTICE # 6**

The Local Television Broadcasters hereby offer the following Reply Comments to the Commission’s *Public Notice* of September 23, 2009, regarding the sufficiency of current spectrum allocations and the process for evaluating potential reallocations to wireless broadband, and addressing certain of the comments filed with the Commission on October 23, 2009.<sup>1</sup>

---

<sup>1</sup> The Local Television Broadcasters are comprised of the following 16 broadcast groups that collectively own 159 television stations operating in 40 states (and the District of Columbia) throughout the country as listed in Attachment A: Allbritton Communications Company; Bahakel Communications, Ltd.; Boise Telecasters, LP; Cocola Broadcasting Companies, LLC; Communications Corporation of America; Evening Post Publishing Company; Granite Broadcasting Corporation; Gray Television, Inc.; Jovon Broadcasting Corporation; Local TV, LLC; McGraw-Hill Broadcasting Company; Media General, Inc.; Meredith Corporation; Midwest Television, Inc.; Smith Media, LLC; and WNAC, LLC. The Commission solicited these particular comments in Comment Sought on Spectrum for Broadband (NBP Public Notice # 6), *Public Notice*, DA 09-2100 (rel. Sept. 23, 2009) (“*Public Notice*”).

As the Commission’s own experiences and the comments of NAB and others received to date in this proceeding confirm, the broadcast television service stands as the definitive example of “the highest and best use of spectrum in the public interest.” In searching for spectrum to be reallocated for broadband use, the Commission should apply the time-tested lessons of television broadcast spectrum management when it evaluates other spectrum allocations and other services. The Local Television Broadcasters believe that before reallocating spectrum from any band, the Commission should (1) take a skeptical view of anti-competitive spectrum demands that would eliminate broadcasters’ ability to provide mobile television; and (2) reemphasize the importance of both technological advancement and public interest objectives for each particular spectrum band.

*Question 4: What are the key issues in moving spectrum allocations toward their highest and best use in the public interest?*

*Question 4(a): How should the Commission define and determine the value of different uses to evaluate whether spectrum usage is at the highest and best use in the public interest?*

**I. BROADCAST TELEVISION SERVICE IS THE DEFINITIVE EXAMPLE OF “THE HIGHEST AND BEST USE OF SPECTRUM IN THE PUBLIC INTEREST.”**

Digital broadcast television service is the Commission’s foremost example of the “highest and best use of the spectrum in the public interest.” For over a half century, the Commission has worked with all stakeholders to develop a vigorous and robust concept of broadcasting in the public interest, and these policies have helped produce a broadcast system that to this day remains the envy of the world. The concepts of “highest use,” “best use,” and “public interest” are intertwined throughout the Commission’s relevant television broadcast rules and policies. Every day, television broadcasters rapidly deliver news, weather, sports,

entertainment, and emergency messaging demanded by their local communities at no cost to consumers – and every day this responsibility begins anew.

Accordingly, when the Commission asks about the highest and best use of spectrum in the public interest, and asks how it should define and determine the value of different spectrum uses, the answers come from broadcast television service. The key issue is whether the particular public interest objectives that the Commission ascribes to uses of particular spectrum are being achieved. For broadcast television, the Commission manages spectrum use so that all consumers throughout the country can easily receive a free, ubiquitous, and robust video service (including both related and unrelated ancillary services). Consequently, any determination of the highest and best use in the public interest must account for spectrum management rules that the Commission already has in place for furthering the public interest – and not just rigid application of Wall Street’s quantitative valuation algorithms (such as CEA postulates in its Bazelon Report).<sup>2</sup> Such sterile analyses disregard the public interest aspects of broadcast service and center on the concept that the public’s highest valued programming should be relegated to a wired delivery system, giving cynical voice to the notion: “Let them eat cable.”

The Local Television Broadcasters accordingly agree with Shure’s comment that the Commission should place significant weight on “widespread” and “proven” spectrum use.<sup>3</sup> For digital broadcast television service, the public derives tremendous value from the Commission’s time-tested spectrum management policies. Broadcast television service is available to virtually

---

<sup>2</sup> Consumer Electronics Association Oct. 23, 2009 Comments, GN Docket No. 09-157, Appendix at 22 (discounting the value of television broadcast spectrum due to Multichannel Video Programming Distributor (“MVPD”) subscription rates) (“CEA Comments”).

<sup>3</sup> Shure Incorporated Oct. 23, 2009 Comments, GN Docket No. 09-157, at 8.

every household in the country.<sup>4</sup> The public does not pay a penny for this service. Complicated reception equipment is unnecessary. The service is ubiquitous and available 24 hours a day, seven days a week. The service helps drive local economies and local businesses. The transmission signal is local, much of the programming is local, and much of the advertising is local. If government leaders or political campaigners want to get a message to the public or debate an important issue, broadcast television is their resource. If there is an emergency, the broadcast signal thankfully will be there – even if other communications systems are vulnerable to outages and congestion gridlock.

The public accordingly has embraced the broadcast television service – and this too must be a part of the Commission’s calculation of the highest and best use in the public interest. Indeed, the public’s reliance on broadcast television – in combination with the responsive dynamics of the free-market – quantifies the public interest as well as any measure presented by commenters to the Commission. Television broadcast service has the highest average percentage use of spectrum in the commercial bands notwithstanding that many consumers rely on MVPDs. Americans are watching more television than ever – with average viewing amounts up 20% over the past ten years.<sup>5</sup> The public’s affection for and reliance upon broadcast television should not be underestimated. Consumers have spent over \$27 billion to convert to a more efficient digital service.<sup>6</sup> Such investment squarely is predicated upon the public’s attachment to – and the value

---

<sup>4</sup> U.S. Census Bureau, *Conversion from Analog to Digital-TV – Feb. 17, 2009*, CB08-FFSE.03 (May 29, 2008) <[http://www.census.gov/Press-Release/www/releases/archives/facts\\_for\\_features\\_special\\_editions/012025.html](http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/012025.html)>.

<sup>5</sup> Nielsen Media Research, *Nielsen Wire, Average TV Viewing for 2008-09 TV Season at All-Time High* (Nov. 10, 2009) <[http://blog.nielsen.com/nielsenwire/media\\_entertainment/average-tv-viewing-for-2008-09-tv-season-at-all-time-high/](http://blog.nielsen.com/nielsenwire/media_entertainment/average-tv-viewing-for-2008-09-tv-season-at-all-time-high/)>.

<sup>6</sup> NAB/MSTV Oct. 23, 2009 Comments, GN Docket No. 09-157, at 9 (“NAB/MSTV Comments”).

derived from – broadcast television service usage. Indeed, Congress has directed the Commission to create 175 *new* television allotments.<sup>7</sup> The Commission must consider all of this – the public’s preference for broadcast television service, the investment in digital television, and the creation of these new allotments – when determining the highest and best use of the broadcast spectrum.

*Question 4(a): How should the Commission define what it means to use spectrum efficiently and productively in the public interest?*

**II. THE COMMISSION CAN MEANINGFULLY DEFINE SPECTRAL EFFICIENCY BY EMPHASIZING TECHNOLOGICAL ADVANCEMENT AND PRIMARY POLICY OBJECTIVES.**

In defining what it means to use spectrum efficiently and productively in the public interest, the Commission must ensure that its definition accounts for the particular rules and policies governing the use of that particular spectrum band. As such, the Commission’s overarching task is to establish policies that facilitate and encourage efficient, intense, and innovative use of spectrum. To define this task in practical terms, the Commission again should examine the broadcast television service, where Commission policies compel stations to do more with less.

As part of the DTV transition, the Commission reduced the spectrum allocated to television broadcast service by some 25%. Yet by adopting flexible use rights and embracing new and developing technology – just as numerous commenters support<sup>8</sup> – the Commission

---

<sup>7</sup> 47 U.S.C. §336(f)(6)(B).

<sup>8</sup> Qualcomm Oct. 23, 2009 Comments, GN Docket No. 09-157, at 27-28 (and further noting that the “highest and best use of spectrum can change over time, and flexible use rights allow the licensee to adapt”); Verizon Oct. 23, 2009 Comments, GN Docket No. 09-157, at 17; CTIA Oct. 23, 2009 Comments, GN Docket No. 09-157, at 22 (“CTIA Comments”); AT&T Oct. 23, 2009 Comments, GN Docket No. 09-157, at 23 (“AT&T Comments”).

unleashed broadcast innovations such as program multicasting, mobile TV, and Distributed Transmission Systems, allowing television stations to offer more services with less spectrum. While these innovations are in their infancy, their promise is immediate and their import is clear: the Commission can encourage spectrum efficiency by adopting lucid, well-considered, and focused rules that emphasize technological advancement and incumbent flexibility.<sup>9</sup> The Local Television Broadcasters strongly urge the Commission to consider how it can provide incumbent licensees – including broadcasters – with even greater amounts of flexibility so that the public may reap the benefits of innovation.<sup>10</sup>

In contrast, the unconditional spectrum transfers or reallocations contemplated in the *Public Notice* have all the trappings of spectral *inefficiency*. Innovation is difficult, and it is much easier for wireless licensees to demand more spectrum than it is for them to “do more with less.” To encourage spectral efficiency, the Commission should consider adopting an “X-Factor” that would reduce the non-auctioned spectrum held by other, non-broadcast licensees (including the government) in an orderly manner – just as was done for television broadcasters.<sup>11</sup> Accordingly, only after other FCC licensees and users of non-auctioned spectrum have surrendered 25% of their current spectrum as television broadcasters have done should the

---

<sup>9</sup> Similarly, the Commission in 2004 reduced spectrum in the 2 GHz Broadcast Auxiliary Service by 14%, which had the effect of facilitating digital innovation. *See, e.g., Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004).

<sup>10</sup> APTS and PBS listed numerous examples of innovative broadcast use by non-commercial stations. *See APTS/CPB/PBS Oct. 23, 2009 Comments*, GN Docket No. 09-157, at 3-7.

<sup>11</sup> The Commission historically has recognized the need for establishing orderly incentives to encourage efficient use of resources. For example, the Commission annually reduced the prices that dominant wireline carriers could charge by a “productivity offset” (or “X-Factor”) that was intended both to promote and account for the realization of efficiency and technological innovation. *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, *Second Report and Order*, 5 FCC Rcd 6786, 6796 (1990).

Commission even begin to evaluate whether television spectrum would be suitable for wireless broadband purposes. By emphasizing flexible use rights and technological advancement in this manner, the Commission more meaningfully can define spectral efficiency in the public interest.

*Question 4(a): How would the Commission determine that the public interest would be better served by reallocating spectrum from an existing service to wireless broadband service?*

*Question 4(d): What are the costs of moving current occupants and users of underutilized spectrum bands to other bands, to other technologies or solutions that do not require licensed spectrum?*

### **III. THE COMMISSION SHOULD CLOSELY EXAMINE DEMANDS FOR SPECTRUM REALLOCATION.**

While the Local Television Broadcasters appreciate and acknowledge the tremendous increase in data usage some wireless operators are seeing in some markets with the introduction of “smart” wireless phones, the Commission should not reflexively assume that the answer to isolated carrier network congestion is the reallocation of spectrum on a nationwide basis. Instead of assuming in advance that the answer is more spectrum, to determine if the public interest would be served better by reallocating spectrum from an existing service to wireless broadband, the Commission first should examine the legitimacy of some industries’ demands for more spectrum.

There are several reasons why the Commission should be skeptical, and foremost is the competitive threat that Mobile DTV poses to the wireless industry. Consumers clearly want video programming, and Mobile DTV’s delivery of emergency and other critical programming is a significant extension of broadcast capability. Reallocating broadcast spectrum, however, could well prevent television stations from providing a mobile service that is free to the public, thereby eliminating the wireless industry’s most serious competitive threat to its subscription services and giving it greater amounts of warehouseable spectrum to boot. Broadcasters, on the other

hand, would be denied the “triple play” of HD, multicast, and mobile, and would be permanently locked into a twentieth century service. As such, it is unsurprising that CTIA in its comments would describe television broadcast spectrum use as “highly inefficient”<sup>12</sup> or that T-Mobile, which is under no order to surrender or make more efficient use of its own spectrum, would allege broadcasters have “little motivation to use spectrum efficiently.”<sup>13</sup> Plainly, reallocating broadcast spectrum as these parties demand would amount to the Commission picking industry “winners and losers” contrary to its long-standing policies of allowing the marketplace to determine success.<sup>14</sup>

Before the Commission even considers pursuing an aggressive course of nationwide spectrum reallocation, wireless carriers should demonstrate that they are using spectrally efficient technology. For example, how dense is carrier cell site coverage in urban areas where spectrum needs are most acute? Are wireless carriers perhaps erecting fewer cell sites because of the expense of backhaul, thereby constructing and operating systems that accommodate fewer users than their spectrum holdings would otherwise allow? Or are tower siting problems and local zoning boards constraining wireless carriers from using spectrum efficiently? The Commission first must understand if efficient wireless spectrum use is being constrained by other rules and policies before taking a step as drastic as reallocating television broadcast spectrum nationwide for wireless broadband use.

---

<sup>12</sup> CTIA Comments at 30.

<sup>13</sup> T-Mobile Oct. 23, 2009 Comments, GN Docket No. 09-157, at 18-19 (“T-Mobile Comments”).

<sup>14</sup> See, e.g., Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 13 FCC Rcd 24011, 24014 (1998); Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order*, 17 FCC Rcd 11331, 11376 (2002). See also Dissenting Statement of Commissioner Michael J. Copps, High Cost Universal Support, *Order*, 23 FCC Rcd 8834, 8946 (2008) (maintaining that Commission action amounted to “picking winners and losers”).

The Local Television Broadcasters believe that if the Commission asks these basic and important questions, it will find, in fact, that wireless spectrum generally is not heavily used. As noted in the previous section, the perpetual promise of greater amounts of spectrum for the wireless industry fosters inefficiency. It is much easier to ask for more spectrum than to innovate. Unlike broadcasters who continue to do more with less spectrum, some wireless licensees allegedly are warehousing the licensed spectrum they already have – and these allegations come from inside the wireless industry itself. For example, the Rural Cellular Association maintains that “nationwide carriers have amassed a significant amount of spectrum, particularly in rural areas, that remains unused” and concludes that “[p]ermitting the nation’s largest carriers to allow this spectrum to lie fallow is a disservice.”<sup>15</sup> What public policy is served, therefore, if the Commission allocates even more nationwide spectrum to wireless warehouseers?

Indeed, some might say that the projected spectrum “shortage” merely is a logical outcome of the Congressional mandate to auction spectrum. It goes without saying that there only can be one winner per auction license. Are these spectrum demands coming from parties who – for whatever reason – did not place the highest bids in a variety of FCC auctions? Some complain that more spectrum is needed because many carriers have been unable to win FCC auctions. The Local Television Broadcasters question whether such “loser’s remorse” is a legitimate basis for reallocating spectrum.

While the Local Television Broadcasters urge the Commission to engage in data-driven policymaking by looking at actual wireless industry spectrum usage on a granular basis, the

---

<sup>15</sup> Petition for Rulemaking to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz, RM-11498, Reply Comments of Rural Cellular Association (Dec. 22, 2008) at 2. *See also* NAB/MSTV Comments at p. 3.

wireless industry, in contrast, encourages the Commission to look beyond the facts and engage in speculation as to future wireless use.<sup>16</sup> Forecasts are useful tools, but the Commission should be mindful that wireless industry demands for more spectrum largely are based upon forecasts *instead of facts* – and forecasts often are proven incorrect. Indeed, one could view these forecasts as unreasonably extrapolating from brief and immature stages of wireless service provision and then unreasonably presuming continued immaturity for great periods of time to come. Furthermore, it is unclear what type of transported content is the basis of these forecasts. For example, over 90% of e-mail transmitted in the United States is considered spam,<sup>17</sup> and as carrier and consumer ability to block such traffic increases, usage loads correspondingly will change.

To the extent that the Commission nonetheless concludes that spectrum reallocations to wireless broadband are necessary at all, then, in evaluating which incumbent service should surrender spectrum for this, the Commission should focus on the cost to consumers and the particular amounts of spectrum that incumbents already have surrendered. The cost to consumers not only should include economic cost, but the cost and consequences of lengthy disruption. These costs must not be underestimated. For example, television broadcasters are moving to deliver Mobile DTV brimming with local content. How long would consumers have to wait for implementation of a wireless broadband spectrum reallocation and network upgrade?

---

<sup>16</sup> See, e.g., CEA Comments at 2-3; CTIA Comments at 11; AT&T Comments at 7; T-Mobile Comments at 2; Critical Infrastructure Communications Coalition Oct. 23, 2009 Comments, GN Docket No. 09-157, at 5-6; 3G Americas Oct. 23, 2009 Comments, GN Docket No. 09-157, at 4-5.

<sup>17</sup> See MessageLabs Intelligence Special Report, *Spam Rates in the U.S.* (Sept. 2009) <[http://www.messagelabs.com/mlireport/MLI\\_2009Sep\\_Spam\\_US\\_FINAL.pdf](http://www.messagelabs.com/mlireport/MLI_2009Sep_Spam_US_FINAL.pdf)>http://www.messagelabs.com/mlireport/MLI\_2009Sep\_Spam\_US\_FINAL.pdf>.

Probably ten years, while consumers are on the precipice now of receiving Mobile DTV from broadcasters.

Moreover, reallocation threatens the ability of the tens of millions of Americans who rely exclusively on over-the-air service<sup>18</sup> to maintain access to critical information in times of emergency – or more generally access the news, public affairs information, and political advertisements that facilitate a participatory democracy. Furthermore, broadcast spectrum reallocation necessarily will place more television stations in the VHF band where post-transition interference difficulties have been well documented.<sup>19</sup> VHF signals are susceptible to ever increasing amounts of impulse noise coming, for example, from in-home video games and appliances, business equipment, and industrial machinery, and government subsidized DTV converter boxes furthermore never were designed to handle the vagaries of repacked broadcast operations. It is notable that the current Administration displayed great concern earlier this year about the possibility of losses to these same viewers who rely on over-the-air service – a concern so great that the federal government extended the DTV transition by months and spent over \$2 billion to ensure disruptions were minimized.<sup>20</sup> While these disruptions were merely temporary

---

<sup>18</sup> Nielsen Media Research, *Nielsen Wire, More than Half the Homes in U.S. Have Three or More TVs* (July 20, 2009) <[http://blog.nielsen.com/nielsenwire/media\\_entertainment/more-than-half-the-homes-in-us-have-three-or-more-tvs/](http://blog.nielsen.com/nielsenwire/media_entertainment/more-than-half-the-homes-in-us-have-three-or-more-tvs/)>.

<sup>19</sup> Michael Grotticelli, *With DTV Transition History, FCC Focuses On Reception Problem Areas*, *Broadcast Engineering* (Aug. 3, 2009) <<http://broadcastengineering.com/news/dtv-transition-history-fcc-reception-problem-areas-080309/>>.

<sup>20</sup> See Digital Television and Public Safety Act of 2005 (“DTV Act”), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat 4 (2006), codified at 47 USC §§309(j)(14) and 337(e), as amended by DTV Delay Act, Pub. L. No. 111-4, 123 Stat 112 (2009) (authorizing \$1.5 billion for the DTV converter box program and related activities); American Recovery and Reinvestment Act of 2008, Pub. L. No. 111-5, 123 Stat. 115 (2009) (authorizing an additional \$650 million for DTV transition activities).

and scattered, they were very real, and they had very real consequences – especially for public officials. It accordingly strains credulity for the Commission now to be entertaining television service losses for these very same viewers. The Local Television Broadcasters maintain a close relationship with their respective viewing communities, and it is easy to predict the extreme outrage of these taxpayers when they lose broadcast service because of a nationwide spectrum reallocation – whether it be due to interference, channel repacking, inadequately designed devices, or some other reason.

The Local Television Broadcasters accordingly urge the Commission to be skeptical of anti-competitive spectrum demands by warehousing wireless licensees, and to consider all costs and disruptions to both viewers and public officials as it evaluates various spectrum reallocations.

*Question 4(b): Are some spectrum bands being used more efficiently and productively in the public interest than others?*

**IV. THE COMMISSION SHOULD APPLY THE LESSONS OF BROADCAST TELEVISION AND BRS/EBS TO LESS EFFICIENTLY USED SPECTRUM BANDS.**

The Commission has created efficient and productive spectrum use by encouraging technological innovation and incumbent flexibility in the digital broadcast television service as well as in the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) in the 2.5 GHz band. Digital broadcast television spectrum is being used efficiently and productively in the public interest. This is due in large part to the well-considered Commission policies designed to promote public interest goals as well as the extensive broadcaster investment that followed. The Commission’s broadcast television policies advance the public interest by ensuring ubiquitous, robust, and easily-received service to practically every household in the country.

Likewise, as AT&T noted in its comments,<sup>21</sup> the re-purposing of the BRS/EBS band provides another model for the Commission to consider as it re-evaluates its spectrum allocations, because the Commission granted flexibility to BRS and EBS licensees, whose old video-oriented band plan and out-dated rules prevented them from fully utilizing their licensed spectrum, so that their spectrum could be efficiently used for wireless broadband services.<sup>22</sup> This flexibility extended to the leasing of excess capacity on BRS and EBS stations by the Commission's decision to apply the Secondary Markets<sup>23</sup> leasing regime to BRS/EBS.<sup>24</sup> The Commission explained its flexible policies as follows:

[We have taken] important first steps to facilitate significantly broader access to valuable spectrum resources by enabling a wide array of facilities-based providers of broadband and other communications services to enter into spectrum leasing arrangements with Wireless Radio Service licensees. These flexible policies continue our evolution toward greater reliance on the marketplace to expand the scope of available wireless services and devices, leading to more efficient and dynamic use of the important spectrum resource to the ultimate benefit of consumers throughout the country.<sup>25</sup>

BRS licensees are permitted by Secondary Markets rules to lease as much as their entire licensed spectrum. EBS licensees are required to reserve a portion of their spectrum capacity to serve the educational needs of their communities – and therefore the public interest – but have the flexibility to redeploy excess capacity to third parties who also utilize the spectrum

---

<sup>21</sup> AT&T Comments at 28.

<sup>22</sup> See, e.g., Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (“*BRS/EBS R&O*”).

<sup>23</sup> See, e.g., Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003).

<sup>24</sup> *BRS/EBS R&O*, ¶¶ 177-81.

<sup>25</sup> *Id.*, ¶ 179.

efficiently. Under the leasing model most often used in the BRS/EBS band, these licensees retain *de jure* control of their licenses, but day-to-day responsibility for compliance with FCC rules concerning station construction and operation on the leased spectrum is transferred to the lessee. Although the Local Television Broadcasters do not necessarily propose that the Commission adopt a similar regime in the television broadcast service, the flexibility provided to BRS and EBS licensees presents another scenario by which spectrum in many different services could be freed to serve both their current uses and also deployed, in an amount and to a degree established by market-place forces, for broadband use.

The Commission has created efficient and productive broadcast spectrum use by encouraging technological innovation and incumbent flexibility. The Local Television Broadcasters encourage the Commission to apply these lessons to other, less efficiently used spectrum bands.

### **Conclusion**

Digital broadcast television service stands as the prototypical example of “the highest and best use of spectrum in the public interest.” The public derives tremendous value from time-tested Commission policies that ensure free, robust, and local programming is received without complication by virtually every household in the country. As the Commission cannot deny, emphasizing technological innovation and flexible use for incumbents facilitates meaningful spectral efficiency. The Commission accordingly should be skeptical of inherently inefficient demands for greater and greater amounts of spectrum – especially when such demands have the effect of eliminating competitive threats and not furthering a higher and better use of spectrum. The Commission has helped create a broadcast television system that is the envy of the world,

and it should be comfortable applying lessons learned in that achievement to regulating other, less efficiently used spectrum bands.

Respectfully submitted,

**LOCAL TELEVISION BROADCASTERS**

**Allbritton Communications Company  
Bahakel Communications, Ltd.  
Boise Telecasters, LP  
Cocola Broadcasting Companies, LLC  
Communications Corporation of America  
Evening Post Publishing Company  
Granite Broadcasting Corporation  
Gray Television, Inc.  
Jovon Broadcasting Corporation  
Local TV, LLC  
McGraw-Hill Broadcasting Company  
Media General, Inc.  
Meredith Corporation  
Midwest Television, Inc.  
Smith Media, LLC  
WNAC, LLC**

/s/

By: \_\_\_\_\_  
John R. Feore, Jr.  
Scott S. Patrick

**DOW LOHNES PLLC**  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
(202) 776-2000

November 13, 2009

**ATTACHMENT A**

**LOCAL TELEVISION BROADCASTERS  
GROUPS AND THEIR TELEVISION STATIONS**

<b>Owner</b>	<b>DMA</b>	<b>Station</b>
<b>Allbritton Communications Company</b>	Birmingham	WCFT-TV, Tuscaloosa, AL
	Birmingham	WJSU-TV, Anniston, AL
	Charleston	WCIV(TV), Charleston, SC
	Harrisburg-Lancaster	WHTM-TV, Harrisburg, PA
	Little Rock-Pine Bluff	KATV(TV), Little Rock, AR
	Roanoke-Lynchburg	WSET-TV, Lynchburg, VA
	Tulsa	KTUL(TV), Tulsa, OK
	Washington, DC	WJLA-TV, Washington, DC
<b>Bahakel Communications Ltd.</b>	Charlotte	WCCB(TV), Charlotte, NC
	Columbia, SC	WOLO-TV, Columbia, SC
	Jackson, TN	WBBJ-TV, Jackson, TN
	Montgomery-Selma	WAKA(TV), Selma, AL
	Myrtle Beach-Florence	WFXB(TV), Myrtle Beach, SC
<b>Boise Telecasters, LP</b>	Boise	KKJB(TV), Boise, ID
<b>Cocola Broadcasting Companies, LLC</b>	Boise	KCBB-LP, Boise, ID
	Boise	KKIC-LP, Boise, ID
	Chico-Redding	KKDJ-LP, Santa Maria, CA
	Fresno-Visalia	KGMC(TV), Clovis, CA
	Fresno-Visalia	KMSG-LP, Fresno, CA
<b>Communications Corporation of America</b>	Alexandria, LA	WNTZ-TV, Natchez, MS
	Baton Rouge	WBRL-TV, Baton Rouge, LA
	Baton Rouge	WGMB-TV, Baton Rouge, LA
	El Paso	KTSM-TV, El Paso, TX
	Evansville	WEVV-TV, Evansville, IN
	Harlingen-Weslaco	KVEO-TV, Brownsville, TX
	Lafayette	KADN-TV, Lafayette, LA
	Lafayette	KLAF-LP, Lafayette, LA
	Odessa-Midland	KPEJ-TV, Odessa, TX
	Shreveport	KMSS-TV, Shreveport, LA
	Tyler-Longview	KETK-TV, Jacksonville, TX
	Waco-Temple	KWKT-TV, Waco, TX
	Waco-Temple	KYLE-TV, Bryan, TX
<b>Evening Post Publishing Company</b>	Billings	KTVQ(TV), Billings, MT
	Butte-Bozeman	KBZK-TV, Bozeman, MT
	Butte-Bozeman	KXLF-TV, Butte, MT
	Colorado Springs-Pueblo	KOAA-TV, Pueblo, CO
	Corpus Christi	K47DF-CA (KDF), Kingsville-Alice, TX
	Corpus Christi	K68DJ (KAJA), Corpus Christi, TX
	Corpus Christi	KRIS-TV, Corpus Christi, TX
	Great Falls	KRTV(TV), Great Falls, MT
	Helena	KXLH-LP, Helena, MT

<b>Owner</b>	<b>DMA</b>	<b>Station</b>
	Lafayette	KATC(TV), Lafayette, LA
	Lexington	WLEX-TV, Lexington, KY
	Missoula	K18AJ-CA (KAJ), Kalispell, MT
	Missoula	KPAX-TV, Missoula, MT
	Santa Barbara-Santa Maria	KSBY(TV), San Luis Obispo, CA
	Tucson	KVOA(TV), Tucson, AZ
<b>Granite Broadcasting Corporation</b>	Binghamton	WBNG-TV, Binghamton, NY
	Buffalo	WKBW-TV, Buffalo, NY
	Detroit	WMYD(TV), Detroit, MI
	Duluth-Superior, MN/WI	KBJR-TV, Superior, WI
	Duluth-Superior, MN/WI	KRII(TV), Chisholm, MN (KBJR sat)
	Fresno-Visalia	KSEE(TV), Fresno, CA
	Ft. Wayne	WISE-TV, Fort Wayne, IN
	Peoria-Bloomington	WEEK-TV, Peoria, IL
	San Francisco-Oakland	KOFY-TV, San Francisco, CA
	Syracuse	WTVH(TV), Syracuse, NY
<b>Gray Television, Inc.</b>	Albany, GA	WSWG(TV), Valdosta, GA
	Augusta	WRDW-TV, Augusta, GA
	Bowling Green	WBKO(TV), Bowling Green, KY
	Charleston-Huntington	WSAZ-TV, Huntington, WV
	Charlottesville	WAHU-CA, Charlottesville, VA
	Charlottesville	WCAV(TV), Charlottesville, VA
	Charlottesville	WVAW-LP, Charlottesville, VA
	Colorado Springs-Pueblo	KKTV(TV), Colorado Springs, CO
	Dothan	WTVY(TV), Dothan, AL
	Grand Junction-Montrose	KKCO(TV), Grand Junction, CO
	Greenville	WITN-TV, Washington, NC
	Harrisonburg	WHSV-TV, Harrisonburg, VA
	Knoxville	WVLT-TV, Knoxville, TN
	La Crosse-Eau Claire	WEAU-TV, Eau Claire, WI
	Lansing	WILX-TV, Onandaga, MI
	Lexington	WKYT-TV, Lexington, KY
	Lexington	WYMT-TV, Hazard, KY
	Lincoln & Hastings	KGIN(TV), Grand Island, NE (KOLN sat)
	Lincoln & Hastings	KOLN(TV), Lincoln, NE
	Madison	WMTV(TV), Madison, WI
	Meridian	WTOK-TV, Meridian, MS
	Omaha	WOWT-TV, Omaha, NE
	Panama City	WJHG-TV, Panama City, FL
	Parkersburg	WTAP-TV, Parkersburg, WV
	Reno	KOLO-TV, Reno, NV
	Rockford	WIFR(TV), Freeport, IL
	Sherman, TX-Ada, OK	KXII(TV), Sherman, TX
	South Bend-Elkhart	WNDU-TV, South Bend, IN
	Tallahassee-Thomasville, FL/GA	WCTV(TV), Thomasville, GA
	Topeka	WIBW-TV, Topeka, KS
	Waco-Temple	KBTX-TV, Bryan, TX

<b>Owner</b>	<b>DMA</b>	<b>Station</b>
	Waco-Temple	KWTX-TV, Waco, TX
	Wausau-Rhineland	WSAW-TV, Wausau, WI
	Wichita-Hutchinson	KAKE-TV, Wichita, KS
	Wichita-Hutchinson	KLBY(TV), Colby, KS (KAKE sat)
	Wichita-Hutchinson	KUPK-TV, Garden City, KS (KAKE sat)
<b>Jovon Broadcasting Corporation</b>	Chicago	WJYS(TV), Hammond, IA
<b>Local TV, LLC</b>	Cleveland-Akron	WJW(TV), Cleveland, OH
	Davenport-Rock Island, IA/IL	WQAD-TV, Moline, IL
	Denver	KDVR(TV), Denver, CO
	Denver	KFCT(TV), Ft Collins, CO (KDVR sat)
	Des Moines	WHO-DT, Des Moines, IA
	Ft. Smith-Fayetteville	KFSM-TV, Fort Smith, AR
	Greensboro-High Point	WGHP(TV), High Point, NC
	Huntsville-Decatur	WHNT-TV, Huntsville, AL
	Kansas City	WDAF-TV, Kansas City, MO
	Memphis	WREG-TV, Memphis, TN
	Milwaukee	WITI(TV), Milwaukee, WI
	Norfolk-Portsmouth	WTKR-TV, Norfolk, VA
	Oklahoma City	KAUT-TV, Oklahoma City, OK
	Oklahoma City	KFOR-TV, Oklahoma City, OK
	Richmond-Petersburg	WTVR-TV, Richmond, VA
	Salt Lake City	KSTU(TV), Salt Lake City, UT
	St. Louis	KTVI(TV), St. Louis, MO
	Wilkes Barre-Scranton	WNEP-TV, Scranton, PA
<b>McGraw-Hill Broadcasting Company</b>	Bakersfield	KERO-TV, Bakersfield, CA
	Bakersfield	KZKC-LP, Bakersfield, CA
	Colorado Springs-Pueblo	KZCS-LP, Colorado Springs, CO
	Denver	KMGH-TV, Denver, CO
	Denver	KZCO-LP, Denver, CO
	Denver	KZFC-LP, Windsor, CO
	Indianapolis	WRTV(TV), Indianapolis, IN
	San Diego	KGTV(TV), San Diego, CA
	San Diego	KZSD-LP, San Diego, CA
<b>Media General, Inc.</b>	Augusta	WJBF(TV), Augusta, GA
	Birmingham	WVTM-TV, Birmingham, AL
	Charleston	WCBD-TV, Charleston, SC
	Columbus, GA	WRBL(TV), Columbus, GA
	Columbus, OH	WCMH-TV, Columbus, OH
	Greenville	WNCT-TV, Greenville, NC
	Greenville-Spartanburg, NC/SC	WSPA-TV, Spartanburg, SC
	Greenville-Spartanburg, NC/SC	WYCW(TV), Asheville, NC
	Hattiesburg-Laurel	WHLT(TV), Hattiesburg, MS (WJTV sat)
	Jackson, MS	WJTV(TV), Jackson, MS
	Mobile, AL-Pensacola, FL	WKRG-TV, Mobile, AL
	Myrtle Beach-Florence	WBTW(TV), Florence, SC
	Providence-New Bedford, RI/MA	WJAR(TV), Providence, RI
	Raleigh-Durham	WNCN(TV), Goldsboro, NC

<b>Owner</b>	<b>DMA</b>	<b>Station</b>
	Roanoke-Lynchburg	WSLS-TV, Roanoke, VA
	Savannah	WSAV-TV, Savannah, GA
	Tampa-St. Petersburg	WFLA-TV, Tampa, FL
	Tri-Cities, TN-VA	WJHL-TV, Johnson City, TN
<b>Meredith Corporation</b>	Atlanta	WGCL-TV, Atlanta, GA
	Flint-Saginaw	WNEM-TV, Bay City, MI
	Greenville-Spartanburg, NC/SC	WHNS(TV), Greenville, SC
	Hartford & New Haven	WFSB(TV), Hartford, CT
	Kansas City	KCTV(TV), Kansas City, MO
	Kansas City	KSMO-TV, Kansas City, MO
	Las Vegas	KVVU-TV, Henderson, NV
	Nashville	WSMV-TV, Nashville, TN
	Phoenix	KPHO-TV, Phoenix, AZ
	Portland	KPDX(TV), Vancouver, WA
	Portland	KPTV(TV), Portland, OR
	Springfield, MA	WSHM-LP, Springfield, MA
<b>Midwest Television, Inc.</b>	San Diego	KFMB(TV), San Diego, CA
<b>Smith Media, LLC</b>	Anchorage	KIMO(TV), Anchorage, AK
	Burlington-Plattsburgh, VT/NY	WFFF-TV, Burlington, VT
	Fairbanks	KATN(TV), Fairbanks, AK
	Juneau	KJUD(TV), Juneau, AK
	Santa Barbara-Santa Maria	KEYT-TV, Santa Barbara, CA
	Utica	WKTV(TV), Utica, NY
<b>WNAC, LLC</b>	Providence-New Bedford, RI/MA	WNAC-TV, Providence, RI