

December 16, 2009

VIA ELECTRONIC FILING AND ELECTRONIC MAIL

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, DC 20554

**Re: Written *ex parte* communication of LIN Television Corporation
GN Docket Nos. 09-47, 09-51, 09-137**

Dear Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker:

Next week, television broadcasters and others will submit comments in response to Public Notice #26,¹ which poses broad questions, the answers to which may have a profound impact on free television broadcasting. LIN Television Corporation (“LIN”) appreciates the opportunity to address these issues but first offers two admonitions, which LIN urges the Commission to acknowledge in any findings that it makes in its National Broadband Plan. The first admonition is that claims of a nationwide broadband spectrum shortage remain highly speculative. The second is that a period of nineteen days is woefully inadequate for a comprehensive and detailed development of the record with respect to the questions that Public Notice #26 asks for the first time.

First, the basic premise of the Public Notice, that our country faces a severe nationwide shortage of spectrum for wireless broadband, has no foundation in the record. If true, that premise has broad implications for public policy, and the question deserves careful examination. But so far those arguing that a spectrum shortage is imminent have not substantiated that claim, and other parties have raised good questions challenging the need for additional wireless spectrum. LIN believes the Public Notice is wrong to accept the existence of a spectrum shortage as a certainty without acknowledging the substantial dispute the record reflects on that question.

Because the record shows no evidence of a wireless spectrum shortage, considering whether free television is more or less important than wireless broadband sets up a false

¹ *Public Notice, Data Sought on Uses of Spectrum*, DA 09-2518, GN Docket Nos. 09-47, 09-51, 09-137 (released December 2, 2009).

choice. Given the dearth of record information about the real capacity of existing but unused and underused wireless spectrum and the starkly conflicting views about the likelihood of a shortage, LIN is particularly concerned about the process that resulted in issuance of Public Notice #26, which simply assumes that a severe nationwide wireless spectrum shortage is inevitable without drastic and prompt reallocation. If the FCC has conducted its own internal analyses, and if those analyses support the Public Notice's conclusion that a spectrum shortage will occur, then those analyses should be placed into the public record and subjected to fair scrutiny before they are used to justify any recommendations in the National Broadband Plan.

Second, hastily prepared responses to Public Notice #26 will provide an unstable foundation for policy recommendations regarding the costs and benefits of reallocation of the television broadcast spectrum. LIN appreciates the challenge the Broadband Task Force faces in responding to the American Recovery and Reinvestment Act's call for a National Broadband Plan, and LIN appreciates the Broadband Task Force's willingness to entertain provocative new ideas about the role of regulation. However, the FCC must recognize that questions about wireless broadband markets, technology and spectrum capacity have been a core aspect of this proceeding since the release of the original Notice of Inquiry more than ten months ago. After multiple rounds of comments and many workshops the record still does not contain clear and complete answers to these questions.

It would be unrealistic for the Broadband Task Force or the Commission to expect that television broadcasters will fully answer in nineteen days the sort of questions the wireless industry has been unable to answer about their own operations in more than ten months. If the National Broadband Plan proposes broadcast spectrum reallocation as a policy option, it should conspicuously state that the option was first considered late in the process and that broadcasters were given little time to respond to sweeping questions on a wide range of topics.

The Broadband Task Force, and the Commission itself, should be careful not to extrapolate ultimate conclusions from an incomplete set of facts. The CTIA and its supporters have shown convincingly that wireless data traffic is growing very fast, but they have shown little beyond this single fact. As Samuel Coleridge observed, "facts are not truths; they are not conclusions; they are not even premises. The truth depends on, and is only arrived at, by a legitimate deduction from all the facts which are material."²

The Broadband Task Force's apparent willingness to accept unsubstantiated predictions of a severe wireless spectrum shortage as if it were an absolute truth, and without acknowledging contrary positions that are already in the record, is troubling. The National Broadband Plan should not carry forward the unfounded assumption of Public Notice #26 that the nation faces a certain shortage of spectrum for wireless broadband services. Television broadcasting is a central element of the nation's communications services mix, and proposals

² Samuel T. Coleridge, *Table Talk*, 23 July 1827.

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that would fundamentally alter or substantially diminish the service cannot be accepted lightly.

Respectfully submitted,

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