

**Before the  
Federal Communications Commission  
Washington, DC 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	)	GN Docket No. 09-137
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, as	)	
Amended by the Broadband Data	)	
Improvement Act	)	

To: The Commission

**COMMENTS – NBP PUBLIC NOTICE #26**

**NEXSTAR BROADCASTING GROUP, INC.**

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## **Summary**

Nexstar Broadcasting Group, Inc. urges the Commission to work jointly with NTIA and broadcasters to develop a national broadband plan that does not decimate the broadcast industry – which provides a free and reliable programming service today on which hundreds of millions of viewers rely – in favor of some nascent, unknown wireless broadband service that charges a monthly fee but may not provide the same excellent service that broadcasters do. The questions asked by the Commission are valid, but they should be asked only after the Commission has undertaken a fulsome review of current spectrum uses; after broadcasters and the public have had sufficient time after the DTV transition to adapt to the new digital-only era for television; and most importantly, after the Commission has developed a record that decisively shows the actual need of the wireless broadband industry for additional spectrum on a nationwide basis.

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Nexstar Broadcasting Group, Inc. (“Nexstar”), by its attorneys, hereby submits these comments in response to the Commission’s Public Notice “Data Sought on Uses of Spectrum” (NPB Public Notice #26) released on December 2, 2009, in the above-referenced proceedings.

Nexstar owns, operates, programs or provides sales and other services to more than 60 television broadcast stations in 34 U.S. television markets. These stations are in 14 states and serve approximately 13 million viewers, about 11.5 percent of all U.S. television households. Thus, Nexstar is well-positioned to provide the Commission with useful comments in response to the questions in NBP Public Notice #26.

Although Nexstar addresses some of the Commission’s questions below, Nexstar notes that NPB Public Notice #26 raises substantial and complex questions about the future of television broadcasting but provides only a scant two and one half weeks for broadcasters to respond. The Commission’s unreasonable deadline seriously hinders broadcasters’ ability to provide insightful comment on the questions asked. Indeed, even if broadcasters initiated appropriate studies immediately upon release of the Public Notice, it is unlikely any meaningful study would be complete by the comment filing deadline.<sup>1</sup>

**A. *General Approach to Spectrum Assessment***

*1. What factors should the Commission consider when examining and comparing the benefits of spectrum used for over-the-air television broadcasting and those of spectrum used for wireless broadband services?*

Both broadcasting and wireless broadband service provide benefits to the public. However, by this question, the Commission seeks to compare apples and oranges. Each provides its own specific benefits, which are not fungible with the other service, and together provide consumers with vast benefit. In addition, each service is regulated by the Commission under vastly different regulatory schemes. Accordingly, developing a set of “factors” for comparing the benefits of each service to the other likely will lead to an incorrect or artificial outcome prevailing toward whichever service such factors are more favorable.

Notwithstanding the foregoing, when considering the benefits of over-the-air television broadcasting, the Commission must consider that free over-the-air broadcasting has been the hallmark of the U.S. mass media system since the very early days of broadcast radio, in the 1930s. Unlike other countries where broadcast radio started and developed as a government-controlled monopoly (supported by taxes on receivers), in the U.S. broadcasting started,

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<sup>1</sup> The Commission’s questions are repeated herein in italics prior to each answer.

developed and thrived as a privately-owned, competitive business. Under this model, broadcast radio became our country's predominant medium of mass communication within just a few years of its inception, as did broadcast TV after World War II. And, to this day, free over-the-air TV broadcasting remains the preeminent means of mass video communication – even with parallel use by most viewers of MVPDs, DVDs and Internet video. For example, during the week ending December 13, 2009, 91 of the top 100 television programs were on broadcast networks.<sup>2</sup> In addition, Deloitte's recently released "State of the Media Democracy" report shows an increasing number of Americans turning to television during the current challenging economic environment, with more than seventy percent of the survey respondents ranking watching TV as one of their top three favorite media activities.<sup>3</sup>

Furthermore, over-the-air broadcast TV stations continue to serve the viewing public in their markets with free service, available to all without payment to any MVPD or installation of complicated equipment. This over-the-air service remains available even to MVPD subscribers when MVPDs encounter service problems. At such times, broadcast TV stations are able to continue serving the viewing public with entertainment and non-entertainment programming. Nexstar elaborates further on this point in Commission Question C below.

By framing question A.1. in this manner, the Commission appears to be viewing spectrum usage for broadcasting versus wireless broadband as an either/or proposition with an underlying assumption that wireless broadband is somehow a more deserving user of spectrum.

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<sup>2</sup> Radio Business Report/Television Business Report, December 17, 2009, reporting information compiled by the Television Bureau of Advertising. Indeed, 49 of the top 50 programs that week were on broadcast networks. The lone exception was "Monday Night Football," which is only broadcast during the football season.

<sup>3</sup> Deloitte, LLP, "State of the Media Democracy" Survey: *Recession Intensifies America's Love for TV* (Dec. 15, 2009).

However, the Commission's presumption – that smart phones such as the iPhone will come close to providing the same level of local public service a broadcast station is mandated to provide – is simply a fallacy. Wireless broadband providers are not required to provide educational programming to the nation's children, are not required to provide emergency alert information, are not required to ensure that materials transmitted over their systems are available to the hearing and visually impaired, are not required to maintain local studios and public files and do not create programming that includes local news and information. And even if all of the public interest regulations broadcasters are required to fulfill are imposed on wireless broadband providers, wireless broadband predominantly is a subscription service for which the public must pay a fee.

2. *What would be the impact to the U.S. economy if insufficient additional spectrum were made available for wireless broadband deployment, in terms of investments, jobs, consumer welfare, innovation, and other indicators of global leadership?*

This is a loaded question. Of course insufficient spectrum available for wireless broadcast deployment could have a negative impact on investment, employment, consumer welfare, etc. But the Commission's assumption that there will be a nationwide spectrum crisis in the future is not a proven certainty and seems to have arisen simply from the wireless industry's repeated and unsubstantiated assertions that there will be a nationwide crisis. And even if it is true that in 15 to 20 years the nation will need more spectrum for wireless broadband services, that is not a sufficient reason to take spectrum from broadcast television, which also provides on-going investment opportunities, employs hundreds of thousands of people and contributes to consumer welfare in many ways.

Accordingly, before undertaking any such mass spectrum reallocation, it is incumbent upon the Commission to undertake a scientifically valid assessment not just of the broadcast

industry's spectrum usage but also of the wireless industry's spectrum usage (now and in the future), how technology will assist all providers to make better use of their spectrum and whether reallocating spectrum from current uses will even solve the "looming crisis." In addition, the Commission should work with the NTIA and other appropriate agencies to conduct a full current spectrum inventory to search for alternatives that can provide the spectrum necessary for future wireless broadband deployment, without disrupting an entire industry which hundreds of millions of viewers rely on for important services.

3. *What would be the impact to the U.S. economy and public welfare if the coverage of free over-the air broadcast television [were] diminished to accommodate a repacking of stations to recover spectrum?*

Free over-the-air broadcast television "diminished to accommodate a repacking of stations to recover spectrum"? This question answers itself. There is no reason to "diminish" free over-the-air television to accommodate wireless providers, especially since such services can be accommodated by other means. If a particular TV station is willing to relinquish its channel for non-broadcast use, perhaps that should be permitted. But no station should be forced to relinquish any portion of its spectrum to accommodate other uses, particularly after the broadcast industry and consumers as a whole just finished spending billions of dollars complying with the federally-mandated transition to digital operations.

The impact on the public welfare caused by a government-forced diminishment of local broadcast TV will be substantial. TV broadcasters currently serve the public welfare with the broadcast of children's educational programming; the provision of an Emergency Alert System (EAS), including life-saving AMBER Alerts; local news, weather and emergency announcements; and availability to viewers if other video distribution systems fail. Indeed, with the use of battery-powered TV sets, over-the-air television remains available to the viewer even

if the viewer loses power. Broadcast television service also contributes to local businesses and economies through the broadcast of local advertising. Any diminishment of spectrum available to over-the-air broadcast television will impact broadcasters' ability to meet these needs.

In addition, the vast majority of Americans still receive their broadcast signals via over-the-air broadcasts, either directly or from an MVPD that receives local broadcast signals via over-the-air delivery. Accordingly, any "diminishment" of broadcast spectrum has the potential to disenfranchise an entire class of people, particularly the poor and elderly, by preventing them from receiving free over-the-air HD television programming. Does the Commission seriously contend that the public will benefit by a requirement to pay for HD programming?

Nexstar further notes that the Commission's question assumes that the television broadcast industry will survive a government forced reallocation of such vast scale. There is no guarantee of that. With television broadcasters limited in their ability to provide only a single channel of standard definition programming, capital investment in the television broadcast industry will be greatly diminished. Accordingly, Nexstar anticipates that many broadcasters may simply elect to sell their spectrum back to the Commission and exit the business, reducing viewpoint diversity and access to local information and eliminating thousands of jobs.

4. *How do television broadcasters use the capabilities of digital television today? Please provide information on data rate allocations to HD, SD, multicast streams, bandwidth leasing arrangements, etc. and the business rationale behind these choices.*

5. *How do broadcasters plan to use licensed spectrum in the future?*

- a. *What innovations in applications, services, or business models will create synergies between broadband and broadcast services, or other new value from currently licensed spectrum?*
- b. *How should the Commission evaluate the future economic value of over-the-air digital television and new capabilities to offer mobile TV broadcasting? How does the financial community in general view that future value?*

[This response is to questions 4 and 5.]

The DTV transition (an unfunded federal mandate imposed on both the broadcast industry and consumers) was a huge undertaking for Nexstar, not only in terms of cost—Nexstar has invested approximately \$60 million in the DTV transition for its full power stations – but also in terms of deployment of management resources.<sup>4</sup> And with the DTV transition ending just a short six months ago, not all technical issues are resolved yet. Nexstar’s personnel continue to visit viewer homes to remedy reception issues, particularly for its VHF band stations, and continue to work with engineering teams to resolve reception issues in certain of its markets. Accordingly, Nexstar is not yet focused on specific additional uses for its digital spectrum.

Nonetheless, Nexstar is using its digital facilities to broadcast network programs in high definition. And Nexstar continues to invest in the DTV transition through the acquisition and installation of digital newsroom equipment at its stations at a cost of more than one million dollars and Nexstar will be spending at least another \$500,000 to transition its translator stations to digital facilities.

Nexstar currently has no bandwidth leasing agreements with third parties but does have multicast streams on some of its stations. For example, four Nexstar stations carry MyNetworkTV network programming as a second digital programming stream. Nexstar also is investigating other uses of its digital spectrum, including development of applications for smart phones, developing a programming stream targeted towards underserved markets and mobile DTV.

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<sup>4</sup> Collectively, the broadcast industry has invested billions of dollars to transition to digital only operations and consumers have spent billions of dollars purchasing equipment to permit them to view digital broadcast signals. And the federal government allotted \$1.5 billion to fund the converter box program. Now is not the time for the Commission to propose abandonment of an entire technology.

With respect to future uses, the Commission is asking broadcasters to look into a crystal ball and predict what new value broadcasters will create from and with their spectrum when they have barely had an opportunity to begin using it to its full potential. Indeed, it is far too early—just six months after the DTV transition—for the Commission to make any conclusions about broadcast TV stations’ uses of their digital spectrum and the relative consumer value of such uses. It is also far too early to tell which new services will ultimately be successful. Accordingly, it would be more appropriate for the Commission to be asking questions A.4 and A.5 two or three years from now.

6. *Consumers are migrating away from mass-market “appointment” viewing to more fragmented and time-shifted viewing. What impact will this trend have on the television broadcasting industry? What can the Commission do to help broadcasters participate in this evolution?*

The Commission seems to view “timeshifted” viewing as somehow harmful to broadcasters. To the contrary, the fact that new technologies are permitting viewers to watch broadcast television programming at the viewer’s convenience is a positive benefit to broadcasters. Moreover, this evolution is happening without Commission intervention.

7. *In the Telecommunications Act of 1996 (the “Act”), Congress instructed the Commission to conduct an evaluation of the advanced television services program within 10 years after the date the Commission first issued licenses for such services. Subsection (1), which requires an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services may no longer be pertinent in light of the completion of the digital transition. Please comment on subsections (2) and (3) of Section 336(g) that require the Commission to conduct:*

- a. *an assessment of alternative uses, including public safety use, of the spectrum used for advanced television broadcasts; and*  
*an evaluation of the extent to which the Commission may be able to reduce the amount of spectrum assigned to advanced television licensees.*

The Commission has successfully fulfilled its obligations with respect to the assessments required in subsection a and b above, implementing a band plan for broadcasters’ advanced television broadcasts that reclaimed more than 100 megahertz of spectrum for public safety and

wireless broadband uses. However, the Act did not contemplate that the Commission would use these provisions to orchestrate a potential reclamation of broadcast spectrum in amounts that would diminish broadcasters' ability to provide a robust broadcast service. And notwithstanding the Act's directives, there is a strong sentiment in Congress for the Commission to conduct a full spectrum inventory before undertaking any drastic measures such as proposed in this proceeding.<sup>5</sup>

**B. Potential Approaches to Increase Spectrum Availability and Efficiency**

*There may be opportunities for broadcasters to share 6 MHz channels in a market without significantly disrupting the free over-the-air television services that consumers enjoy today. Stations sharing channels may be able to trade capacity (in Mbps) between or among themselves. We note that the number of broadcasting stations sharing a single 6 MHz channel would affect the number and type of signals that each can broadcast. Spectrum sharing arrangements may also entail geographic consolidation, if broadcasters who previously used different transmitting sites share spectrum at a single transmitter closer to the center of densely populated areas.*

*1. What are the advantages of a channel-sharing approach to broadcasters' business? What are the disadvantages of this approach? What are the technical and business requirements to enable successful channel sharing?*

Forced channel sharing confers no advantage on broadcasters. It immediately diminishes a broadcaster's ability to use the spectrum to its full advantage and will certainly kill services such as mobile DTV – which consumers have indicated they prefer – in their infancy. Such forced sharing also sends a harsh signal to the investment community that television broadcasting is not a worthy investment (which in turn reduces capital available to broadcasters that would permit them to better serve the public with new and innovative programming and other services). Finally, to reiterate, the Commission's request for broadcasters to predict what

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<sup>5</sup> See Radio Spectrum Inventory Act, H.R. 3125, 111<sup>th</sup> Cong. 119, S. 649, 111<sup>th</sup> Cong, 342 (2009). The Senate bill has been referred by committee with a recommendation that it be considered by the Senate as a whole. The House bill is pending in committee.

technical developments may occur in the future to make this possible on a scant three weeks notice is not feasible.

2. *What opportunities exist to free up broadcast spectrum through greater co-location of transmission facilities closer to the center of densely populated areas? There are numerous examples of broadcasters collocating facilities already. What are the financial and other benefits of co-location? What are the tradeoffs for broadcast TV stations and consumers in terms of signal coverage and local programming efforts?*

Although broadcasters have co-located facilities in some markets, these co-locations were purely voluntary choices made by broadcasters at the time they constructed their facilities. To force co-location after the fact will be expensive (requiring extensive site analysis, probable tower improvements, removal of and relocation of equipment, etc.). In addition, it is unclear whether co-location of transmission facilities in densely populated areas is even feasible. The Commission need only remember the difficulties faced in Denver and New York City in implementing co-located facilities to understand that forced co-location will require extensive Commission interference in local property issues. Moreover, forced co-location would require broadcasters to break existing leases (generally at substantial penalty) with their current tower landlords.

Forced co-located also has the potential to disenfranchise viewers. If all broadcasters are co-located in a single location there likely will be reduced service to viewers both in service area and services available. Reduced service areas will deprive some viewers of access to free over-the-air television, including emergency information, news and other local public affairs programming. Further, any such reduction of service area is directly contrary to the Commission's extraordinary focus on ensuring that as few viewers as possible face a reduction in service in connection with the just-completed digital transition. Accordingly, the Commission

must have a well developed record in support of the need to undertake such measures – a record that in this proceeding is wholly short on concrete data and facts and long on speculation.

3. *How will video capabilities improve over time using current MPEG-2 and 8-VSB technologies? What improvements could be gained by deployment of next generation technologies over that currently achieved under the ATSC standard? What would be required for broadcasters and consumers to transition to more advanced technologies?*

Nexstar will leave this question for those better able to analyze and speculate on the future technologies that may be available to broadcasters.

4. *To what extent would establishing antenna and receiver standards facilitate spectral efficiency and improved reception in broadcasting? What other actions could the FCC take to enable broadcasters to make more efficient use of their spectrum?*

The Commission is asking this question ten years too late. Broadcasters have invested billions of dollars in the antennas currently in use with their digital facilities and consumers have invested untold billions of dollars in purchasing digital tuners and other entertainment equipment, in particular to view high definition programming – all under the current standards. It is ludicrous for the Commission now to determine that it should set antenna and receiver standards. In addition, requiring broadcasters to use reduced spectrum and broadcast only a single, standard definition channel would constitute one of the largest bait and switch schemes in the history of our country! And it would be orchestrated by our federal government.

5. *What percentages of broadcast programming streams are transmitted to MVPDs by over-the-air broadcast line (either directly or through the MVPD)? What would be the costs to replace over-the-air delivery to MVPDs and consumers with other means (fiber, microwave)?*

Most cable headends and DBS receive facilities receive the signals of local broadcast stations over-the-air. For example, virtually all (99 percent) of the MVPD services which carry Nexstar's stations obtain their signals directly through the stations' over-the-air broadcasts. In those few instances where Nexstar and the MVPD use a different manner of signal delivery (e.g., fiber or a backhaul delivery system), the costs are extraordinarily expensive. Equipment costs can be as high as \$200,000 per site and monthly transport costs can be as high as \$5,000 per month. Therefore, to equip just one market to replace over-the-air signal delivery to MVPDs would be a multi-million dollar undertaking with no beneficial return on investment.

Accordingly, the most efficient, cost-effective means for delivering broadcast signals to the American public remains over-the-air broadcast signals.

**C. *Broadcasting and the Public Interest***

*Broadcasters have historically played an important role in advancing public interests through free over-the-air broadcast TV. What are the benefits of free, over-the-air television broadcasting, in particular with respect to public awareness of emergency information, local news, political discourse, and education?*

The benefits of free over-the-air TV are innumerable. Nexstar presumes that many TV broadcast companies, public interest groups and individuals will address this question, but Nexstar provides these thoughts for consideration.

First, the word "free" in this question is operative. About 15 percent of U.S. TV households – about 16.5 million households and 66 million persons – still rely solely on free over-the-air reception for their television. The presumption seems to be that these viewers, for the most part, are people who cannot afford to subscribe to an MVPD service. That probably is true to a certain extent, but there also are households that do not have any MVPD service

available – remote households where cable TV is not available and even DBS is not available because of terrain issues. And there are also households that, while they can afford to do so, choose not to subscribe to an MVPD service. This is reason enough for the Commission to maintain the status quo for DTV – that is, a full six MHz for each TV broadcast station. It makes no sense to deprive 66 million people of HDTV and the other benefits that broadcasters will provide for free to viewers – such as multicast programming channels – as we progress into the DTV era.<sup>6</sup>

Further, beyond providing a service to households that cannot afford to subscribe to an MVPD service or for some reason do not have access to an MVPD service, free over-the-air TV helps restrain MVPD subscription fee increases. There have been many articles in general publications in the past few months remarking on how clear over-the-air DTV reception can be, much better than watching its same station via an MVPD. In addition, with Internet-enabled Blu-Ray devices, home viewers have access to a huge range of video programming on their televisions, in addition to their local over-the-air DTV stations. This is allowing many households that can afford MVPD subscriptions to seriously consider whether they still need MVPD service. Because MVPD companies are aware of this, they know they cannot raise their rates too high, or else more of their customers will decide that they can get by without an MVPD service.

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<sup>6</sup> The Commission has proposed that subsidies may be available to assist viewers who otherwise may not be able to subscribe to MVPD services. Again the Commission seems to be placing value judgments on the relative worth of two industries – in this instance, the cable and broadcast industries. Such a proposal also presumes broadcasters would continue in business providing some sort of programming to cable companies, which may or may not be true. As noted herein, altering the fundamentals of the broadcast industry will have consequences that cannot be predicted. In addition, such a proposal raises numerous questions: How would the subsidy be calculated? How long would it be paid? What happens if MVPD providers raise their rates? Would those who can afford to subscribe but choose not to do so for other reasons be subsidized? Etc.

TV broadcasters also provide an inherently local service, providing extensive coverage of local events and politics, emergency information and AMBER alerts. And they provide local advertisers with a local platform to drive local business. The same cannot be said of nationwide wireless broadband service providers.

***D. Market Mechanisms for Spectrum Contribution***

*What market-based or other incentive mechanisms should the Commission consider to enable broadcasters to choose whether or not to make any spectrum (excess or otherwise) available for reallocation to wireless broadband use?*

Nexstar believes that without a clear understanding of what may be required of broadcasters and the likely harms to the broadcast industry, it is too early to assess what incentives or mechanisms will effectively permit broadcasters to make excess spectrum available for wireless broadband use. Before undertaking such analysis, the Commission must have clear and objective data showing current and future spectrum requirements, and then decide whether reallocation of the spectrum reserved to broadcasters is necessary and at the same time ensure that there will be no harm to the public interest.

For the foregoing reasons, Nexstar urges the Commission to work jointly with NTIA and broadcasters to develop a national broadband plan that does not decimate the broadcast industry – which provides a free and reliable programming service today on which hundreds of millions of viewers rely – in favor of some nascent, unknown wireless broadband service that charges a monthly fee but may not provide the same excellent service that broadcasters do. The questions in NBP #26 are valid questions that should be asked, but only after the Commission has undertaken a fulsome review of current spectrum uses; after broadcasters and the public have had sufficient time after the DTV transition to adapt to the new digital-only era for television; and most importantly, after the Commission has developed a record that decisively shows the actual need of the wireless broadband industry for additional spectrum on a nationwide basis.

Respectfully submitted,

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