

**BEFORE THE**  
**Federal Communications Commission**  
**WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
International Comparison and Consumer	)	
Survey Requirements in the	)	GN Docket No. 09-47
Broadband Data Improvement Act	)	
	)	
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	)	
	)	
Future of Media Project	)	GN Docket No. 10-25

**REPLY COMMENTS OF JOINT BROADCAST PARTIES**  
**NBP PUBLIC NOTICE # 30**

Eagle Creek Broadcasting, LLC, Journal Broadcast Group, Northwest Broadcasting, Inc., Sarkes Tarzian, Inc., ShootingStar Broadcasting of New England, LLC, Spanish Broadcasting System, Inc., WNET.org/Educational Broadcasting Corporation, and WQED Multimedia (“Joint Broadcast Parties”)<sup>1</sup>, by counsel, hereby reply to initial comments submitted on December 22, 2009 in response to *NBP Public Notice #26*.<sup>2</sup> On January 13, 2010, the Commission released its thirtieth Public Notice in connection with the National Broadband Plan (“NBP”) proceeding,

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<sup>1</sup> In the aggregate, the Joint Broadcast Parties are licensed to operate 21 commercial and 4 non-commercial television broadcast stations in communities ranging from Newark, New Jersey to Medford, Oregon.

<sup>2</sup> FCC Public Notice, “Data Sought on Uses of Spectrum,” NBP Public Notice #26, DA 09-2518, GN Dkt. Nos. 09-47, 09-51, 09-137, released Dec. 2, 2009 (“*NBP Public Notice #26*”).

seeking reply comments with respect to each of the preceding public notices addressing the many facets of the NBP.<sup>3</sup> These Reply Comments respond to that request.

In particular, the Joint Broadcast Parties are responding to the White Paper filed jointly in this proceeding by CTIA – The Wireless Association and the Consumer Electronics Association.<sup>4</sup> The Joint Broadcast Parties appreciate appropriate recognition by CTIA and CEA for the first time that every broadcast television licensee must continue to have access to a full 6 MHz channel with the capability to operate with a 19.4 Mbps data stream.<sup>5</sup> However, the plan offered by CTIA and CEA to employ a distributed transmission service (“DTS”) model does not represent a global solution to sharing the current broadcast television spectrum with wireless mobile services. Unfortunately, the CTIA/CEA White Paper fails to consider significant aspects of its proposed re-engineering of the TV broadcast band. Among other issues, the Joint Broadcast Parties believe that the following fundamental flaws undermine the conclusions reached by the CTIA/CEA White Paper:

**1) The Cost Assumptions for DTS Conversion Are Dramatically Underestimated.**

CTIA and CEA fail to take into account the actual number of transmitters that would likely be required at each location, as well as the total number of transmit locations necessary to construct a complete and operate a viable DTS system, significantly underestimating each.<sup>6</sup> For this reason, the overall cost estimate for conversion to a DTS model on a nationwide basis is low by many orders of magnitude. The FCC cannot reasonably conclude based on the analysis provided by

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<sup>3</sup> FCC Public Notice, “Reply Comments Sought in Support of National Broadband Plan,” NBP Public Notice #30, DA 10-61, GN Dkt. Nos. 09-47, 09-51, 09-137, released Jan. 13, 2010.

<sup>4</sup> See “White Paper Proposal: Exploring a Path for Next Gen Television and Next Gen Wireless Broadband Spectrum,” CTIA and the Consumer Electronics Association, December 2009 (“CTIA/CEA White Paper”).

<sup>5</sup> See CTIA/CEA White Paper at 2 & 12.

<sup>6</sup> See CTIA/CEA White Paper at 24.

CTIA and CEA that the costs of such a massive re-engineering of the broadcast TV model would be covered by auction revenues. And even if the start-up expenses were somehow covered in full, the CTIA/CEA White Paper does not appear to consider at all dramatically higher ongoing operational and maintenance expenses that would be entailed in the future operation of the very large number of transmitter sites required to give a DTS system a chance to work, including additional site leasing fees and much higher equipment repair and replacement expenses.

**2) Significant Challenges Inherent in Wide Deployment of DTS Are Ignored.** DTS is best suited (and has only been previously used or endorsed by broadcasters) as a gap filler service to expand station coverage to hard to reach areas or otherwise maximize service within a station's predicted coverage area.<sup>7</sup> Indeed, no television broadcaster has abandoned a legacy antenna farm site in favor of multiple, scattered DTS sites. If deployed as a wide-area service, DTS systems would be virtually impossible to operate without some interference caused by signal reflection and other transmission anomalies. Further, precise signal synchronization is essential, and may not be possible due to these interference effects, likely yielding degraded service and dissatisfied consumers.

**3) Most Existing DTV Receivers Are Not Likely To Be Compatible with a DTS Conversion.** Related to the synchronization issue noted above is the fact that, despite CTIA's & CEA's hopes,<sup>8</sup> many current DTV receivers may not be able to discriminate adequately among multiple synchronized signals in order to select the strongest and ignore weaker signals, leading to multipath interference. Accordingly, the DTS proposal could require significant new outlays

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<sup>7</sup> See e.g., *Digital Television Distributed Transmission System Technologies*, Report and Order, 23 FCC Rcd 16731, 16738-39 (¶ 14) (2008).

<sup>8</sup> See CTIA/CEA White Paper at 11. Even CTIA and CEA carefully hedge their predictions in this regard, stating, "[t]he modulation was not designed with an SFN architecture in mind, but today's implementations of 8-VSB DTV receivers are excellent at ghost cancellation, and SFN operation *should be possible if the network is carefully configured*" (emphasis added).

for consumer equipment on the heels of the DTV transition. The CTIA/CEA White Paper neither accounts for nor otherwise addresses the need for such outlays, whether there would be subsidies for conversion, as in the case of the DTV transition, or the ultimate impact of the disruption on the viewing public.

**4) Significant Spectrum Gains Are Not Demonstrated.** The CTIA/CEA White Paper ultimately claims that a substantial amount of spectrum could be made available through the DTS model, but does not precisely quantify this claim or explain how it determined the general magnitude of such purported gains.<sup>9</sup> The Joint Broadcast Parties believe that the ability to free up spectrum in congested East Coast markets, which is a geographic area where the need for additional broadband spectrum is alleged to be most acute, is substantially overstated. At the same time, re-engineering and repacking broadcast spectrum is not necessary to make expanded use of “white space” spectrum in rural and less congested areas.<sup>10</sup>

Beyond these specific concerns regarding the CTIA/CEA proposal, the Joint Broadcast Parties also remain concerned at a more fundamental level that any Commission focus on the broadcast TV spectrum as a potential source for new wireless spectrum would be premised on current marketplace assumptions that have already begun to look dated. Redirecting spectrum from broadcast TV at this time could be a classic example of fighting the last war – i.e., adjusting spectrum policy based on factual circumstances that prevailed in yesterday’s marketplace, instead of considering current and future trends. For example, some have suggested that the simple solution to viewers who continue to receive television over the air is to give these consumers

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<sup>9</sup> See CTIA/CEA White Paper at 22.

<sup>10</sup> See *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Dkt. Nos. 04-186 & 02-380, 23 FCC Rcd 16807, 16820-21 (¶ 32) (2008)

lifetime vouchers to obtain basic channel services from multichannel video programming distributors such as cable, telco video and direct broadcast satellite providers.<sup>11</sup> Yet there is compelling evidence that this service model has already peaked, and that viewers are beginning once again to see services provided using the traditional TV broadcast band as an attractive substitute for MVPD service. As the *Los Angeles Times* reported on Christmas Day:

In these penny-pinching times, watching TV over the airwaves is becoming an increasingly attractive option for many households, particularly among the Los Angeles region's minority communities ... But watching TV over the airwaves has begun to appeal to a broader audience. "It's the best-kept secret around here," said Mike Mahan, who recently installed a pair of antennas in the attic of his Ladera Ranch home and dropped his cable subscription. "I just got tired of paying for hundreds of channels I don't watch."<sup>12</sup>

And there is significant data to suggest that this trend will only continue to grow, with even more people returning in the coming years to over-the-air video reception, a development that has emerged in Europe following the DTV transition there, where broadcast TV viewership is projected to nearly double, from 31 million to 59 million, over the period from 2006 to 2013.<sup>13</sup> At the same time, even to the extent that viewers continue to purchase multi-channel programming packages, new delivery mechanisms that make use of the DTV spectrum are beginning to emerge as competitors to wired and satellite services.<sup>14</sup> Accordingly, in the future, it

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<sup>11</sup> See Coleman Bazelon, "The Need for Additional Spectrum for Wireless Broadband: The Economic Benefits and Costs of Reallocations," The Brattle Group, at 16-17 (October 23, 2009), filed as attachment to Comments of the Consumer Electronics Association, GN Dkt. Nos. 09-47, 09-51 & 09-137 (October 23, 2009).

<sup>12</sup> See David Sarno, "Rabbit Ears Make Comeback in Digital TV Era," *Los Angeles Times* (December 25, 2009), available at <http://www.latimes.com/business/la-fi-rabbit-ears25-2009dec25,0,5668446,full.story> (last viewed 1/27/2010).

<sup>13</sup> See Holman W. Jenkins, Jr., "The Future on TV," *Wall St. Journal*, at A11 (January 6, 2010), available at <http://online.wsj.com/article/SB20001424052748703436504574640181596802504.html> (last viewed 1/27/2010) ("Look to Western Europe, where the digital transition began earlier. Viewers willing to rely on over-the-air digital broadcast TV have grown to 42 million from 31 million in three years, according to the International Television Expert Group. They are expected to hit 59 million in 2013.").

<sup>14</sup> See Patrick Hoge, "Sezmi blends broadband, broadcast to take on cable giants," *San Francisco Business Times*, November 20, 2009, available at

is quite likely that there will be larger numbers of TV viewers relying on free antenna service to receive a significant portion of their live television needs, supplemented in many cases by fixed broadband video obtained online, but without subscribing to expensive MVPD programming packages.

Finally, the Commission just last week launched a new proceeding delving broadly into the “Future of Media.” In that proceeding, the FCC specifically highlighted the importance to all Americans of reliable access to “national, international and local news and information.”<sup>15</sup> One aspect of that inquiry that is very relevant to the Commission’s decisions in the NBP docket is the examination of the important newsgathering role fulfilled by critical sectors of the traditional media, particularly broadcast television and newspapers, that have thus far not been successfully duplicated in any significant way by the online media that have emerged in the last fifteen years. In this regard, the Pew Foundation released a study earlier this month confirming the critical role played by traditional news media – principally newspapers and local TV broadcasters – in originating and disseminating fresh and timely information to the public, and substantiating the fact that most “news” that appears in new media is simply repeated, repackaged, and retweeted information obtained from established newsgathering outlets.<sup>16</sup> These findings highlight the importance of maintaining a vibrant television broadcast news presence in the media.

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<http://sanfrancisco.bizjournals.com/sanfrancisco/stories/2009/11/23/story16.html> (last viewed 1/27/2010); *see also* “Next Generation television services on display at CES, washingtonpost.com at <http://www.washingtonpost.com/wp-dyn/content/video/2010/01/11/VI2010011101156.html> (video link).

<sup>15</sup> FCC Public Notice, “FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age,” DA 10-100, at 3 (released January 21, 2010).

<sup>16</sup> *See* Pew Research Center, Project for Excellence in Journalism, “How News Happens: A Study of the News Ecosystem of One American City,” at 6 (January 2010) (“Local TV newsrooms produced more content than any other sector, an average of 73 stories per station (a total of 291 stories either in broadcast or on their websites out of the three day sample of 715”).

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As shown in the December 22, 2009 Comments of the Joint Broadcast Parties, the record compiled thus far in this proceeding does not demonstrate either a need or a justification for the government to revise the allocation scheme that currently governs the broadcast TV bands. Indeed, the dynamic and evolving services being developed by current broadcast licensees are poised to create new value for broadcasters, home video consumers and mobile video viewers alike. The marketplace should be the ultimate determining factor in whether these emerging services succeed.

Respectfully submitted,

By: s/ *David S. Keir*

Steven A. Lerman  
Dennis P. Corbett  
Brian M. Madden  
Sally A. Buckman  
David S. Keir  
Nancy A. Ory

Lerman Senter PLLC  
2000 K Street, NW  
Suite 600  
Washington, DC 20006  
(202) 429-8970

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*On Behalf of the Joint Broadcast Parties*