Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations	)	MB Docket No. 03-185

To The Commission

COMMENTS OF LPTV ENTREPRENEURS

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December 17, 2010

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I. SUMMARY

The fifteen LPTV station owners, operators and entrepreneurs listed in Appendix A hereto ("LPTV Entrepreneurs") respectfully submit these comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") [1] to underscore the importance of protecting and preserving low power television ("LPTV") service. The proposed 2012 shutoff date contemplated in the FNPRM will cause LPTV stations to expend already strained resources to convert to digital transmission or risk losing their spectrum at a time when it is unclear whether they will recoup these costs due to uncertain spectrum reallocation policies.

In March 2010, the National Broadband Plan ("NBP") provided recommendations on how broadcast spectrum could be more efficiently used for broadcast service and ways that LPTV licensees could continue to serve the community.[2] The LPTV Entrepreneurs believe that Commission should allow for flexibility in the technical regulations and use of spectrum that will be reallocated to LPTV licensees. This includes the ability for LPTV licensees to provide local wireless broadband. Of additional importance is the ability for LPTV broadcasters to participate in incentive auctions, as discussed in the NBP.[3]

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[1] See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, 25 FCC Rcd 13833 ¶1 (2010) ("LPTV FNPRM"). The Commission stated that "Class A TV stations, low power television stations (LPTV), and TV translators, are referred to collectively as 'low power television stations.' There are a total of 7536 licensed low power television stations: 523 Class A TV, 2451 LPTV, and 4562 TV translator stations." Id. (citing "Broadcast Station Totals as of June 30, 2010," FCC News Release, July 28, 2010).

[2] See Connecting America: The National Broadband Plan, Federal Communications Commission, at 92-98 (released March 16, 2010), available at http://download.broadband.gov/plan/national-broadband-plan.pdf (last visited November 15, 2010) ("National Broadband Plan") (discussing how changes to LPTV service could increase efficient use of spectrum to ensure nationwide broadband service).

[3] See National Broadband Plan at 92.

The Commission should allow more time for LPTV owners to convert to digital and expand the potential use of LPTV spectrum. As stated in the FNPRM, the date for analog LPTV termination should be determined after the recommended reallocation of spectrum from the broadcast television band is complete.[4] This will ensure that channel space is available for LPTV broadcasters and allow LPTV licensees the appropriate amount of time to gather the resources necessary for digital conversion.

[4] See LPTV FNPRM, 25 FCC Rcd at 13838 ¶17.

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COMMENTS OF LPTV ENTREPRENEURS

The fifteen LPTV station owners, operators and entrepreneurs listed in Appendix A hereto ("LPTV Entrepreneurs") respectfully submit these comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") to consider issues that need to be resolved to complete the low power television ("LPTV") station digital transition.[5] Thirteen of the LPTV Entrepreneurs are minority owned companies. Eight of the LPTV Entrepreneurs will be partnering with MMTC to train minorities and women in broadcasting, using a platform of 151 LPTV stations that Trinity Broadcasting Network has donated to MMTC (FCC approval pending).

Of paramount consideration to the LPTV Entrepreneurs are the deadlines and procedures the Commission will undertake to achieve its goal of more efficient use of spectrum in the

[5] See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, 25 FCC Rcd 13833 ¶1 (2010) ("LPTV FNPRM"). For this Notice, the Commission refers to "Class A TV stations, low power television stations (LPTV), and TV translators, are referred to collectively as 'low power television stations.' There are a total of 7536 licensed low power television stations: 523 Class A TV, 2451 LPTV, and 4562 TV translator stations." Id. (citing "Broadcast Station Totals as of June 30, 2010," News Release, July 28, 2010).

broadcast TV bands.[6] Additionally, though not directly addressed in the FNPRM, the Commission should ensure that LPTV stations are allowed to participate in voluntary incentive auctions, as recommended in the National Broadband Plan ("NBP").[7]

I. BACKGROUND

We present these Comments to underscore the importance of protecting and preserving LPTV service. LPTV was created in an effort to assist entry into the market for new broadcasters and encourage diverse programming.[8] LPTV programming was intended to be directly responsive to audience needs and interests,[9] while also advancing minority ownership.[10] The Commission indicates there are over 7,000 licensed LPTV stations, but due to the agency's failure to collect data and make it available to the public, no current, reliable data exists on the number of minority-owned LPTV stations.[11] Minority LPTV ownership was once as high as

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[6] LPTV FNPRM, 25 FCC Rcd at 13835 ¶6.

[7] See National Broadband Plan at 92-98 (released March 16, 2010), available at http://download.broadband.gov/plan/national-broadband-plan.pdf (last visited November 15, 2010) ("In addition, the FCC should grant similar license flexibility to LPTV stations post-DTV transition as full-power stations have…and authorize LPTV stations to participate in incentive auctions.")

[8] See An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, 47 Fed. Reg. 21468, ¶80 (1982) ("LPTV 1982 Order").

[9] Id.

[10] Id. at 21526 (Statement of Chairman Mark S. Fowler). LPTV was considered "a rich, if distant, opportunity to promote diversity of ownership generally and to widen opportunities for minority ownership in particular; it also may serve as a testing ground for new regulatory approaches." Id. (Separate Statement of Commissioner Henry M. Rivera).

[11] The most recent estimates for minority LPTV ownership range from 20% to 45%, but these estimates lack reliability because there is no recognized industry group to collect this data and the most recent data was collected via a voluntary web survey of LPTV owners. See Phil Kurtz, CBA to present LPTV, Class A Diversity Ownership Report to Members of Congress, Broadcast Engineering (April 28, 2009), available at http://broadcastengineering.com/news/cba-present-lptv-class-diversity-report-congress-0428/ (last visited November 15, 2010).

13%,[12] and, according to Commission data nearly a decade old, rose to an estimated 20% in 2001.[13]

Much has changed since the 2004 Digital LPTV Order was issued, establishing a framework for digital LPTV conversion.[14] The Commission completed the conversion of full power analog TV to DTV in 2009, a process that allowed the agency to learn much as to what is necessary to educate, inform, and prepare the public for a mass conversion of broadcast spectrum. In March 2010, the National Broadband Plan provided recommendations on how broadcast spectrum could be more efficiently used for broadcast service and ways that LPTV licensees could continue to serve the community.[15]

Despite its promise, two major regulatory issues have hampered LPTV service throughout the years. First, the lack of must carry status limits LPTV reach and impact. Cable companies were not required to carry LPTV in analog, nor are they currently required to carry them after the full power digital television ("DTV") conversion. Second, the government mishandled the standards process for DTV converter boxes. The National Telecommunications and Information Administration ("NTIA"), which was responsible for establishing standards for DTV converter boxes, did not initially mandate that the converter boxes carry analog LPTV signals. Nor did the FCC make allowances for this, which ultimately caused LPTV to lose a

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[12] See Eli M. Noam, Media Ownership And Concentration In America, Oxford Univ. Press, at 69 (2009) (estimate of minority LPTV ownership in 1995).

[13] See Federal Communications Commission, Low Power Television Fact Sheet (Nov. 2001), available at http://www.fcc.gov/mb/video/files/LPTVFactSheet.html (last visited November 15, 2010).

[14] See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, Report and Order, 19 FCC Rcd 19331 (2004) ("Digital LPTV Order").

[15] See National Broadband Plan at 92-98 (discussing how changes to LPTV service could increase efficient use of spectrum to ensure nationwide broadband service).

portion of its audience after the full-power DTV conversion in 2009. LPTV stations must now expend already strained resources to convert to digital transmission or risk losing their spectrum at a time when it is unclear whether they will recoup these costs due to uncertain spectrum reallocation policies.

II. LPTV BROADCASTERS SHOULD HAVE THE FLEXIBILITY TO USE SPECTRUM FOR BROADBAND SERVICE AND TO PARTICIPATE IN INCENTIVE AUCTIONS

Repurposing spectrum to meet the nation's broadband needs is vitally important. Access to education, healthcare, employment, and civic participation are moving to the Internet and wireless broadband will be used as a means to enable communities to access these resources.[16] The National Broadband Plan recommends that 500 MHz of spectrum be made available for mobile broadband over the next 10 years.[17] After spectrum is reallocated, current LPTV broadcasters should have the flexibility to use the spectrum for wireless broadband as well as traditional broadcast services. Providing such flexibility will enhance local and regional broadband service by promoting competition and allowing LPTV licensees to continue serving the communities in which they are located.

There is the additional possibility that some LPTV broadcasters may want to participate in incentive auctions as contemplated in the NBP.[18] These broadcasters may voluntarily

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[16] Lawrence Summers, Assistant to the President for Economic Policy and Director of the National Economic Council, stated in his remarks on the President's Spectrum Initiative, that the amount of data transmitted over wireless networks has grown as much as 250 percent per year in recent years. See Remarks by Lawrence H. Summers at the New America Foundation on the President's Spectrum Initiative, June 28, 2010, available at http://www.whitehouse.gov/administration/eop/nec/speeches/technological-opportunities-job-creation-economic-growth (last visited December 7, 2010).

[17] See National Broadband Plan at 83-84.

[18] See id. at 92 ("In addition, the FCC should grant similar license flexibility to LPTV stations post-DTV transition as full-power stations have…and authorize LPTV stations to participate in incentive auctions.")

relinquish their spectrum in return for a portion of these auction proceeds. Subsequent to the release of the National Broadband Plan, the Commission published a Technical Paper, which "presents the analyses supporting the [spectrum reallocation] recommendations in the Plan."[19] The Technical Paper recommends that the FCC allow LPTV licensees to participate in the voluntary incentive auctions.[20] We agree that LPTV licensees should be included in the incentive auctions as proposed in the NBP.[21] The potential opportunity presented by incentive auctions would do much to stabilize and undergird the value imputed to LPTV stations by investors and lenders, thereby enhancing access to capital for these small and diverse competitors.

In the summer of 2010, members of Congress introduced separate bills that would have granted the Commission authority to allow broadcast licensees to participate is such auctions.[22] This spectrum, currently used for local, community broadcasting, should remain available to the community to provide wireless broadband services. The Commission should make every effort to ensure that LPTV licensees are able to retain their spectrum for local wireless broadband

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[19] Spectrum Analysis: Options for Broadcast Spectrum, Options for Broadcast Spectrum, OBI Technical Paper No. 3 (June 2010), p. 4, available at http://download.broadband.gov/plan/fcc-omnibus-broadband-initiative-(obi)-technical-paper-spectrum-analysis-options-for-broadband-spectrum.pdf (last visited December 7, 2010).

[20] See id. at 33 ("In conjunction with the DTV transition for LPTV, the FCC should grant similar license flexibility to LPTV stations post-DTV transition as full-power stations have, allow LPTV stations to use certain technologies… to enable more efficient channel assignments, modify LPTV licenses to enable channel sharing, and authorize LPTVs to participate in incentive auctions.")

[21] See National Broadband Plan at 92.

[22] See Spectrum Measurement and Policy Reform Act, S. 3610, 111th Cong. §6 (as introduced July 19, 2010); see also Voluntary Incentive Auctions Act of 2010, H.R. 5947 111th Cong. § 2 (as introduced July 29, 2010); see also Public Safety and Wireless Innovation Act, S. 3756, 111th Cong. §204 (as introduced August 5, 2010).

service and are eligible for incentive auctions as the agency seeks to reallocate spectrum to allow more capacity for wireless services.

III. THE COMMISSION SHOULD ADOPT RULES THAT WILL PROTECT AND PRESERVE LPTV SPECTRUM FOR CURRENT LICENSEES, FUTURE APPLICANTS, AND THE VIEWERS THEY SERVE.

As the Commission sets out to complete the digital conversion of broadcast television spectrum and reallocate portions of this spectrum to broadband service, the agency should remain mindful of the importance of LPTV stations to the communities they serve. It would be contrary to the public interest to adopt rules that are unnecessarily burdensome on these broadcasters.

A. Analog Shutoff Date

The Commission proposes an analog termination date of 2012 and seeks comment on a timeline for analog LPTV services to terminate, and inquires into the costs associated with LPTV digital conversion.[23] Almost every LPTV station with the financial wherewithal to do so has already begun the digital transition process. The majority of those that have not at least begun the process are either located in spectrally crowded markets, where digital channels are hard to come by, or cannot afford the cost of converting to digital at this time. The total cost of converting analog LPTV to digital is approximately $42,000 to $71,000 without a channel move, and can be over $200,000 with a channel move - not including revenue lost from time off air.[24] Financing equipment and construction by 2012 for an LPTV licensee that has not begun the switch presents an extreme hardship. Ultimately, a 2012 conversion mandate will force many

[23] See LPTV FNPRM, 25 FCC Rcd at 13836-40 ¶¶8-19.

[24] Quotations provided by Warren Trumbly, President, KAXT-TV, San Francisco, CA, December 13, 2010 (on file with MMTC).

analog LPTV licensees that have not begun the transition out of business and terminate the services that they provide to their target audiences.

We agree, as contemplated in the FNPRM, the date for analog termination should be determined after the recommended reallocation of spectrum from the broadcast television band is complete.[25] As a secondary service, LPTV licensees must choose from the channels that remain after reallocation, if any are available.[26] After reallocation is finalized, an LPTV licensee can be confident that the channel on which it builds its digital facility will not be taken away. As it stands, LPTV licensees must convert in 2012, then some will need to convert or move their signal a second time after spectrum is reallocated.

Most LPTV broadcasters will not be able to absorb the financial impact of two such conversions. In order to access financing and encourage investment, the Commission needs to provide LPTV operators certainty that spectrum will be available after reallocation. No reasonable broadcaster will invest capital with the continued uncertainty in the viability of its licenses. Further, not every station will be able to "flash cut" to digital immediately. Some will need to suspend broadcasting, or go dark, to complete the transition. As such, a mandatory conversion date of three years after the new allotment table becomes final, coupled with a special temporary authority to go dark for more than one year, if necessary, is a more realistic timetable to end LPTV analog service.[27]

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[25] See LPTV FNPRM, 25 FCC Rcd at 13838 ¶17.

[26] The Commission's proposal to reallocate 120 MHz of spectrum from television broadcasting to wireless broadband completely frustrates the ability of LPTV licensees in or anywhere near the top 50 television markets. These markets are fairly saturated. Selecting a channel on which to go digital, prior to reallocation, is unwise because these broadcasters have no idea whether the channel they choose will then be displaced by a full power licensee that loses its channel due to spectrum reallocation.

[27] Section 74.15(f) of the Commission's rules states that an LPTV license "will expire as a matter of law upon failure to transmit broadcast signals for any consecutive 12-month period

The Commission also seeks comment on whether, in view of spectrum shortages, underutilized VHF channels accompanied by additional power levels will provide a viable alternative for continued operation during reallocation.[28] Allowing LPTV licensees to use VHF channels after the digital transition will significantly increase the likelihood that channel capacity will be sufficient for current LPTV stations after spectrum reallocation is complete. In order to make underutilized VHF spectrum viable for digital LPTV use, the Commission should allow VHF stations the full 15 kW effective radiated power that UHF stations are currently permitted to use. The Commission should also permit the same adjacent channel protection ratio and amount of *de minimus* interference between LPTV stations and full power stations as it permits between digital full power stations. LPTV digital applicants could use sharp tuned and full service mask output filters, and take the resulting reduction in out-of-band emissions into account when calculating interference levels. The Commission should also consider specified beam tilt and actual vertical antenna patterns when processing LPTV digital conversion applications. Each of these steps would have a marked effect on the probability that every existing LPTV licensee, including those in larger, saturated TV markets, will be able to find a channel with a reasonable size digital service area after the conversion.

B. Filing Freeze

The Commission seeks comment on whether to dismiss those applications for new analog LPTV facilities that remain pending after the May 24, 2010 deadline for amendments to specify

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notwithstanding any provision, term, or condition of the license to the contrary." See 47 C.F.R. §74.15(f). However, the Communications Act allows the Commission to use its discretion on whether to "extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, *or for any other reason to promote equity and fairness*." 47 U.S.C. §312(g) (emphasis added).

[28] See LPTV FNPRM, 25 FCC Rcd at 13838-39 ¶17. The Commission also seeks comment on "Antenna Vertical Radiation Patterns" and "Use of Full-Power DTV Emission Mask" which are briefly addressed here. Id. at 13847-848 ¶¶42-44.

digital facilities.[29] On that date, the Commission imposed a filing freeze on new analog or digital LPTV applications on channels 52-96, allowing for waivers on a case-by-case basis.[30] While this may have been a sound administrative move in light of the Commission's proposed spectrum reallocation plans, it placed LPTV applicants in regulatory and financial limbo. After almost of decade, the Commission just began receiving applications for LPTV service in rural areas where there was the least amount of congestion, and therefore a greater likelihood that an LPTV channel was available to new licensees.[31] The Commission should remain mindful of the financial burden it has placed on LPTV applicants that have spent thousands of dollars in legal and filing fees only to be shut out of the opportunity originally intended for LPTV to serve the public via broadcast or other ancillary services.[32]

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[29] Id. at 13842-43 ¶26.

[30] Id. at 13842-43 ¶¶26-27.

[31] See Freeze On The Filing Of Applications For New Digital Low Power Television and TV Translator Stations, Public Notice, DA 10-2070 (released October 28, 2010) (citing Commencement of Rural, First-Come, First-Served Digital Licensing, Public Notice, 24 FCC Rcd 8911 (2009).)

[32] See Press Release, New Advocacy Group Enlightens Decision-Makers To The Bright Possibilities Of Television Spectrum, Spectrum Evolution (Nov. 1, 2010), available at http://www.spectrumevolution.org/wp-content/uploads/2010/11/Spectrum-Evolution-Press-Release.pdf (last visited Dec. 2, 2010).

CONCLUSION

As the Commission prepares to make spectrum available for broadband technology, it should ensure that LPTV service remains available for the communities that rely upon the programming LPTV licensees provide. The Commission should pursue alternatives to the 2012 digital transition date, including making underutilized VHF spectrum available for LPTV channels and, ultimately, postponing the transition until after reallocation of full power broadcast television is complete. Plans for spectrum reallocation should not put current LPTV broadcasters at risk of losing access to spectrum, nor should reallocation be done in a manner that will foreclose opportunities in the future. Finally, and most important, LPTV's future options should include the opportunity for LPTV broadcasters to recoup their investment and service to their community by participating in voluntary incentive auctions.

Respectfully submitted,

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December 17, 2010

APPENDIX

LPTV ENTREPRENEURS

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Broadcast Partners LLC, Knoxville, TN
Broadland Properties, Inc., Santa Clara, CA
Chicago 22, LLC, Chicago, IL
Coast Investors, LLC, Doral, FL
Developers & Managers Group, LLC, Baton Rouge, LA
DTV America Corporation, Sebring, FL
Gaines Media, Morristown, TN
Madison Avenue Ventures, Weston, FL
Media Vista Group, LLC, Naples, FL
Minority Media and Telecommunications Council, Washington, DC
New Moon Communications, LLC, Tulsa, OK
Open Buckle Ranch, LLC, Rapid City, SD
Rejoice TV, Inc., Virginia Beach, VA