

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

In the Matter of)
)
Innovation in the Broadcast Television) ET Docket No. 10-235
Bands: Allocations, Channel Sharing, and)
Improvements to VHF)
)

To: The Secretary

COMMENTS

Entravision Holdings, LLC ("Entravision"), the licensee of low power television and Class A broadcast television Stations (collectively, "LPTV"), by its attorneys, hereby submits these Comments in the above-referenced proceeding in response to the Commission's recently-issued *Notice of Proposed Rulemaking*,¹ in which the Commission seeks comment on proposed changes to the broadcast television band designed to allow the Commission to recover and repurpose certain spectrum in accordance with the Commission's National Broadband Plan ("NBP"). Entravision limits the instant Comments to a single issue, namely the necessity of preserving LPTV service as the Commission adjusts its spectrum allocations and priorities to promote the broadband goals of the NBP. In support thereof, Entravision states as follows.

¹ See *Innovation in the Broadcast Television Band: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No 10-235, Notice of Proposed Rulemaking, FCC 10-196 (rel. Nov. 30, 2010) ("*NPRM*"). See also *Innovation in Broadcast Television Bands*, 76 Fed. Reg. 5521, Feb. 1, 2011.

INTRODUCTION

Traditional Low-Power Television Service is considered under the Commission's rules to be a secondary service. As a result, this Service is vulnerable to any reduction in the amount of spectrum allocated to broadcast television. Given the Commission's plan to repack and repurpose spectrum dedicated to full-power, primary service television Stations, the fate of LPTV Stations, including traditional and Class A stations, under the Commission's NBP is by no means clear. LPTV Stations provide an important service in the public interest, particularly to minority communities with significant over-the-air ("OTA") viewership. Further, LPTV Station owners and operators have made and continue to make substantial investments in their Stations as the LPTV service undertakes its transition to the digital service now offered by full-power television broadcasters. Accordingly, Entravision submits that the Commission should recognize the benefits of the LPTV service, take all actions necessary to preserve LPTV stations, and apply the same spectrum-conserving mechanisms to LPTV Stations that it applies to full-power Stations in order to preserve and protect the entire broadcast television service as the Commission redistributes spectrum per the NBP.

DISCUSSION

1. The Important Role of LPTV Stations in Bringing Specialty Programming to Minority Communities

Entravision is the licensee of 36 LPTV stations that provide Spanish-language programming to Hispanic communities throughout the U.S. Other Spanish-language broadcasters, such as Univision, Telemundo, and Azteca, also have a significant number of LPTV Stations and provide Spanish-language programming to Hispanic communities via these Stations. Amid all of the changes in the communications industry in the last

decade, including growing MVPD penetration rates and the DTV Transition, Hispanic OTA viewership remains quite high – 15.3 percent of Hispanic households rely upon OTA service compared to approximately 10 percent of all U.S. households.² The Commission itself has recognized the continued reliance on OTA services among members of vulnerable and marginalized communities.³ Indeed, concern over the fate of these over-the-air viewers was a principal reason for postponement of the DTV Transition date to June 12, 2009.⁴

The provision of OTA Spanish-language programming via LPTV Stations has become an increasingly important avenue for providing specialty programming to often underserved audiences. Entravision urges the Commission to recognize the role broadcast television – and LPTV Stations in particular – play in bringing local news, public affairs and entertainment programming to minority communities, who rely on them owing to their "narrowcasting" directly to their needs and interests. Such services are clearly in the public interest, as the Commission itself has often noted.⁵ Rather than

² Nielsen Television Ownership Report 2009 and State of the Media TV Usage Trends: Q3 and Q4 2010.

³ See Statement of Julius Genachowski, Chairman, Federal Communications Commission, Before the United States Senate Committee on Commerce, Science and Transportation, Hearing on "Rethinking the Children's Television Act for a Digital Media Age" (July 22, 2009) (recognizing that broadcast television is "the exclusive source of video programming relied upon by millions of households in the country"). See also *DTV Consumer Education Initiative*, MB Docket No. 07-148 ("DTV Consumer Education Initiative"); National Telecommunications and Information Administration, *Implementation and Administration of a Coupon Program for Digital-to-Analog Converter Boxes*, Docket No. 060512129-6129-01 ("NTIA Converter Box Proceeding"); *Over-the-Air Broadcast Television Viewers*, MB Docket No. 04-210 ("Over-the-Air Proceeding").

⁴ See, e.g., Brian Stelter, *DTV Transition Wins Delay to June 12*, The New York Times, February 5, 2009, at B8.

⁵ See generally 2006 *Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section*

write LPTV Stations out of the broadband future, the Commission must consider the extent to which LPTV Stations can continue to serve these public goods in concert with broadband technologies, and whether there are any other content providers in the wireless broadband world with a record of devoting time and resources to these ends, especially at the local end. For example, broadband may well inform its users of a tragedy in Mexico, but will it inform its users, in Spanish, that local school buses in McAllen, Texas will not be running because of equipment problems? Entravision submits that at this point in time, the tangible benefits LPTV Stations provide to minority communities should not be sacrificed in furtherance of NBP goals.

2. LPTV Broadcaster Investment

Many broadcasters with robust LPTV operations, such as Entravision, are currently devoting substantial resources to convert their LPTV Stations to digital operations. Such investment insures that the minority programming discussed above will continue to be available to audiences via a LPTV platform as broadcast television transitions entirely and exclusively to digital. It is well known that LPDTV is a high risk, low margin business owing to the limited coverage of LPTV stations and the lack of mandatory carriage by MVPDs. The Commission should not ask the LPTV community to assume both the financial risk of the digital transition and the regulatory risk that, having completed the digital transition, they may yet lose their broadcast station and with

202 of the Telecommunications Act of 1996, MB Docket No. 06-121 ("2006 Broadcast Ownership Proceeding"). Many of the Commission's most-lauded principles – including localism and a diversity of voices – have served as the engines and justifications for the Commission's heightened regulation of broadcast television stations over and above other video programming providers, as well as for the recently-completed DTV Transition. See 2006 Broadcast Ownership Proceeding, *supra*; *Broadcast Localism*, MB Docket No. 04-233 ("Localism Proceeding"); *Promoting Diversity of Ownership in the Broadcast Service*, MB Docket No. 07-294 ("Diversity Proceeding").

it their ability to serve the public. The only way the LPTV community will be able to raise the funds necessary for the transition will be to ensure investors and lenders that there is a future to their investments. In view of the public interest benefits of LPTV service, as well as the substantial investments LPTV broadcasters have made and continue to make, the Commission should commit itself to preserving the LPTV service, provided it transitions to digital, in the post-NBP spectrum world.

As the many broadcast-related proceedings already cited herein suggest, the Commission has long subjected the broadcast industry to heightened regulation based on the unique relationship between broadcast media and local communities. That relationship is still being cited by one part of the Commission in support of maintaining heightened regulation,⁶ while another part of the Commission now deems OTA broadcasting in the public interest a sub-optimal use of spectrum. LPTV Station owners and operators, along with the rest of the broadcast industry, have devoted extraordinary amounts of time, money and effort taking the directives of a localism and diversity-minded Commission seriously. The Commission should honor such efforts by protecting both LPTV and full-power broadcast services, provided they commit to transition to digital and meet their obligations in service to the public. And, as Entravision has previously argued, if the Commission decides NBP spectrum priorities now trump the longstanding pact between the Commission, broadcasters and the public, the Commission

⁶ See, e.g., *Structuring of the 2010 Media Ownership Review Proceeding*, MB Docket No. 09-182.

will have to allow broadcasters to receive due compensation for treating that pact as a binding one.⁷

3. LPTV Service and NBP Spectrum Priorities

In order to make as much spectrum as possible available for NBP purposes while treating broadcast services fairly and equitably, the Commission should apply to existing LPTV Stations the various mechanisms proposed in both the NBP and the *NPRM* for full-power Stations, including spectrum repacking, allocation and channel sharing proposals and incentive auctions.⁸ Given the valuable service LPTV Stations provide to the public, they should be eligible for the same spectrum recovery solutions as their full-power brethren, taking into consideration the service they have provided.

Further, given that the LPDTV Transition is still pending, the Commission can shape the Transition in a manner that fits with the Commission's NBP spectrum priorities. As stated in Entravision's Comments in the LPDTV Transition Rulemaking,⁹ given NBP

⁷ See *Comments of Entravision Holdings, LLC*, NBP Public Notice #26 Proceeding (December 21, 2009); *Comments of Entravision Holdings, LLC*, LPDTV Transition Proceeding (December 17, 2010).

⁸ Entravision notes that the *NPRM* also includes a number of VHF improvement proposals. In the absence of actual improvements that enables LPDTV stations (which are already disadvantaged by low power) to provide service to their viewers, VHF should not be considered for use by LPDTV stations. During the transition of full-service stations to digital, the Commission recognized the problems attendant to low-V operation and assisted stations in selected UHF channels. The problems associated with low-V operation is fully evidenced by the broadcasters who voted with their vote and moved to the UHF band. Given the unsuitability of low VHF Channels for digital operations, Entravision proposes that the Commission amend its Rules to extend the displacement provisions available to Stations in the 700 MHz band to Stations assigned low VHF Channels.

⁹ 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*, MB Docket No 03-185, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 10-

proposals to reallocate spectrum from the broadcast television bands,¹⁰ an effective LPDTV Transition must acknowledge and internalize the fact that NBP spectrum requirements will ultimately reduce the LPDTV spectrum footprint. As such, the LPDTV Transition should be designed to fairly and efficiently winnow the pack of LPTV and Class A broadcasters, and to restrict the allocation of spectrum to LPDTV services accordingly. To save the Commission's and broadcasters' resources and to make the LPDTV Transition as straightforward as possible for LPDTV viewers, Entravision urges the Commission to do its utmost to avoid the need for any reallocation/repacking process after the initial LPDTV Transition. Once again, to that end, the Commission should mandate an early LPDTV Transition deadline, and use that deadline to promote a small but effective LPDTV service with a modest spectrum footprint.

In order to promote a fair and efficient LPDTV Transition, the Commission should continue its freeze on LPTV and Class A new station applications and to dismiss all pending applications for new LPTV and Class A stations, except for those involving LPDTV stations along the Mexican border where the lack of a treaty or agreement with Mexico has caused a hazard to applicants by having their applications placed in a regulatory limbo.¹¹ The benefits of such a freeze are multiple. In addition to reducing the amount of spectrum set aside for LPDTV service and thereby increasing the amount

172 (rel. Sept. 17, 2010); *Comments of Entravision Holdings, LLC*, LPDTV Transition Proceeding, *supra*.

¹⁰ *National Broadband Plan*, pp. 92-94, rel. March 16, 2010.

¹¹ Recognizing the problems resulting from the Commission's failure to secure an understanding with Mexico as to LPDTV, Entravision urges the Commission to learn from it. Before any action is taken that is applicable to the border area, the United States should secure an agreement with Mexico and affected broadcasters should be given sufficient time to adjust their spectrum-recovery decisions based on the twin effects of the application of the NBP and any treaty with Mexico.

of spectrum available for the Commission's NBP priorities, such a freeze protects existing LPTV and Class A Stations and stymies speculators only interested in acquiring LPDTV spectrum to resell at auction. Further, to maximize these benefits, the Commission should also dismiss all applications for new LPTV and Class A Stations, excluding border market applications, modifications, paired channels or displacement applications. Such steps will help create a small but responsible and effective LPDTV service while bringing LPDTV spectrum allocation in line with the Commission's NBP spectrum goals and policies.

Such aggressive, upfront efforts to narrow the field of potential LPDTV stations and reduce the LPDTV spectrum footprint will require broadcasters to accept new limitations and to make difficult decisions. In return for the investment of time, energy and capital by LPTV broadcasters, the Commission should grant as much protection and certainty as possible to qualified LPTV licensees and applicants undertaking the transition to digital service. To that end, the Commission should establish a presumption that converted digital Class A Stations, on a highest priority basis, and digital LPTV stations, on a lower priority basis, will not have their spectrum reclaimed and repurposed, even as the Commission begins to reclaim and repurpose other spectrum to implement its NBP policies. If, despite the Commission's efforts to devise an efficient, one-time LPDTV Transition, LPDTV spectrum must still be repurposed for other services, then LPDTV and Class A licensees must be reimbursed, from the funds generated by the proposed incentive auctions, for the costs of a second transition.

CONCLUSION

Entravision Holdings, LLC urges the Commission to adopt the recommendations and proposals discussed above in order to preserve and protect LPTV service and to bring it into alignment with the spectrum policies and goals set forth in the Commission's National Broadband Plan.

Respectfully submitted,

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