

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

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

REPLY COMMENTS OF LIN TELEVISION CORPORATION

LIN Television Corporation d/b/a LIN Media (“LIN”) responds to certain comments submitted in response to the Commission’s above-captioned *Notice of Proposed Rulemaking*.¹ While LIN supports a properly scoped proceeding that would permit innovation in the broadcast television bands and allow a more efficient use of our nation’s spectrum resources than the FCC’s rules permit today, LIN urges the Commission to avoid taking unlawful procedural shortcuts through the rulemaking process. As LIN explained in its initial comments, the National Broadband Plan cannot serve as a substitute for a record built on the formal notice and comment rulemaking process. The questions asked in the NPRM are far too inchoate to permit informed comments. Fundamental changes to spectrum allocations, service rules and national communications policy that have been in place for decades must be based on an appropriate record. That record does not exist today and it cannot be created based on the NPRM.

In these reply comments, LIN will first establish that the opening comments in this proceeding reflect a consensus that the NPRM is premature and does not provide a sufficient foundation for the sweeping policy and rule changes proposed. Second, LIN will respond to

¹ *In the Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, FCC 10-196, released November 30, 2010 (the “NPRM”).

proposals made by other commenters that cannot be adopted because they are not contemplated by the NPRM. Finally, LIN will address the claims of a few wireless carriers and their advocates that broadcasters do not use spectrum efficiently.

Discussion

A. The Initial Comments Reflect Consensus that the NPRM is Premature and Under-Inclusive

Many commenters agree with LIN's assessment that the questions raised in the NPRM are vague, premature and lack essential details. Without concrete proposals for allocation plans, interference protection, repacking, and many other basic provisions that are essential corollaries of the plans proposed in the NPRM it is impossible for anyone to provide informed, meaningful comment. The National Association of Broadcasters ("NAB") and the Association for Maximum Service Television, Inc. ("MSTV") properly caution the FCC to take a holistic approach, because the three discrete issues raised in the NPRM are inextricably involved with much bigger-picture issues.² Local Television Broadcasters contend that the NPRM is arbitrary and capricious because the proposals are piecemeal, depriving broadcasters of the full opportunity to comment.³ Public broadcasting interests point out that under no circumstances would the entire UHF band be reallocated to wireless services, so without knowing the licensing regime, reallocation is premature.⁴ Capitol Broadcasting Company ("CBC"), and others, note that reallocations should not be considered until after completion of a meaningful spectrum inventory.⁵ Other commenters agree with LIN that the NPRM's proposals are premature when

² See Comments of NAB/MSTV at 2-5.

³ See Comments of Local Television Broadcasters ("LTB") at 3.

⁴ See Joint Comments of Association of Public Television Stations, National Public Radio, the Public Broadcasting Service, and the Corporation for Public Broadcasting ("Public Broadcasters") at 8.

⁵ See Comments of CBC at 3, 7-8; *see also* Comments of Sinclair Broadcast Group, Inc. ("Sinclair") at 3; Comments of LeSea Broadcasting at 2.

the FCC lacks authority to conduct incentive auctions.⁶ Cox Media Group, Inc. (“Cox”) argues that the NPRM’s channel sharing proposal is premature because the FCC has not provided any information about diminished service or increased interference and has not considered business trends.⁷ Even wireless commenters recognize that the NPRM addresses only a small part of the picture.⁸

Other parties identify issues they contend are presented by the NPRM’s proposals but which are not addressed in the NPRM. For example, several commenters note that repacking could affect public safety communications in television channels 14-20.⁹ Others express concern about how reallocation and repacking would impact LPTV stations.¹⁰ The Wireless Internet Service Providers Association (“WISPA”) admonishes the FCC to consider the impact of repacking on white spaces deployment, the need for additional unlicensed spectrum, and the policy problems with turning over more spectrum to large wireless providers.¹¹

LIN’s comments reiterated its longstanding position that there has been no credible showing that a mobile “spectrum crunch” exists. Although a number of reallocation proponents submitted comments, none provided any evidence of a mobile broadband spectrum shortage. Instead, they recite secondary and tertiary sources stating that demand for mobile services is growing. But growth in demand, no matter how rapid, does not necessarily lead to a shortage.

⁶ *See, e.g.*, Comments of National Religious Broadcasters at 4-5, Comments of Public Broadcasters at 9. Of course, the FCC does have power to make many improvements in its spectrum and broadcasting rules and policies, and it should undertake to do so in a holistic way that counts broadcast viewers among the beneficiaries. But it is premature for the FCC here to begin adopting rules that would guide the exercise of powers Congress has not delegated to the FCC.

⁷ *See* Comments of Cox at 2.

⁸ *See, e.g.*, Comments of T-Mobile at 2, 7; Comments of Telecommunications Industry Association at 4.

⁹ *See, e.g.*, Comments of the Los Angeles County Sheriff’s Department at 1-2; Comments of The Los Angeles Regional Interoperable Communications System at 2.

¹⁰ *See, e.g.*, Comments of Entravision Holdings, LLC at 2-9; Comments of National Religious Broadcasters at 6-7; Comments of LeSea, *passim*.

¹¹ *See* Comments of WISPA at 3-5.

Reallocation proponents provide no evidence at all regarding the amount of growth that can be accommodated by investing capital to deploy mobile spectrum that is wholly unused today (or by re-farming mobile spectrum that is already in use with newer, more efficient technology). They never address the capacity of the already-licensed but essentially unused 700 MHz bands, the sparsely deployed BRS bands, the unused ATC and WCS bands, the unassigned AWS bands, or the 500 MHz of spectrum planned to be reallocated from federal use.¹² In their comments in this proceeding, as well as in their prior submissions to the FCC and in the National Broadband Plan record, reallocation proponents provide no quantification at all of the amount of traffic that can be offloaded from high power mobile base stations to WiFi hotspots, picocells, or femtocells, or peer-to-peer.¹³ It seems likely that carriers investing billions of dollars to deploy networks have made fairly detailed internal projections of traffic growth and have reasonably well-developed plans to meet that growth. But no information of the sort has been provided for the record, even in summary form.

Instead, the reallocation proponents rely on circular citations to the National Broadband Plan, statements of FCC and NTIA staff and officials that simply re-state the National Broadband Plan's conclusions, and press reports. For example, the Consumer Electronics Association ("CEA") supports its assertion of a spectrum crunch by citing to statements by President Obama, FCC Chairman Julius Genachowski, and Assistant Secretary Lawrence

¹² See *Plan and Timetable to Make Available 500 Megahertz of Spectrum for Wireless Broadband*, U.S. Department of Commerce (dated October, 2010).

¹³ In other contexts, however, wireless interests are eager to describe new technologies that allow existing spectrum allocations to yield vastly more data capacity. For example, Qualcomm Incorporated has recently described its FlashLinq peer-to-peer solution and has explained how the wireless industry is increasing capacity through network topology enhancements such as heterogenous networks of "macro/pico/femto cells working together through adaptive interference management and interference cancellation in the user equipment [that] could achieve a substantial increase in network capacity". Comments of Qualcomm Incorporated, WT Docket No. 06-150 (filed April 11, 2011) at 7-10. Qualcomm's comments in the instant proceeding make no mention of FlashLinq or heterogenous networks.

Strickling.¹⁴ CTIA – The Wireless Association® (“CTIA”) also cites similar statements by politicians and government officials, as well as its own prior CTIA-sponsored studies.¹⁵ But those studies suffer from the same logical fallacy that underlies the National Broadband Plan’s assertion of a looming spectrum crisis: they conclude that because demand is growing fast, supply must be short. LIN’s comments in the National Broadband Plan proceeding explained why those studies have no probative value, but the National Broadband Plan did not even acknowledge LIN’s effective rebuttal.¹⁶ LIN incorporates those comments by reference here, in reply to the same arguments and studies that CTIA now raises again.

LIN would enthusiastically support a properly scoped re-assessment of spectrum policy, potentially including but not limited to spectrum reallocations. But that re-assessment should be based on data, not rhetoric. Wireless carriers have vast troves of information about spectrum usage and the ability of various combinations of capital, technology and spectrum resources to meet growing demand. The wireless industry is pressing for a wholesale restructuring of the nation’s spectrum and communications policies. But so far it has relied on catch-phrases and self-serving projections while holding crucial information close to the vest. If a spectrum crisis is looming or if the nation faces a spectrum crunch, no doubt the wireless and consumer electronics industries can provide persuasive evidence and logically sound arguments. At that point, if it ever arrives, it would be appropriate for the FCC to consider appropriate policy measures to alleviate a shortage. Until then, pursuing wholesale disruption of a core element of the nation’s communications service to solve a crisis that is only speculative is premature.

¹⁴ Comments of CEA at 2-7. CEA also cites the number of wireless subscribers globally but does not explain how that figure relates to the ability of U.S. spectrum allocations to meet U.S. demand. *Id.* at 2.

¹⁵ See Comments of CTIA at 3, 4, 9, 10, 15.

¹⁶ See NBP Public Notice # 26, Comments of LIN Television Corporation, GN Docket No. 09-51 (filed December 21, 2009).

B. Proposals by Commenters That Are Not Within the Scope of the NPRM Cannot Be Adopted in This Proceeding, Though Some May be Worthy of Consideration in a Comprehensive Proceeding

In response to the NPRM a number of parties urged the FCC to take a variety of actions in this proceeding that are not contemplated by the NPRM. For example:

- Sinclair, CBC and the LTB urge the FCC to adopt various free-market solutions that recognize broadcasters as a critical part of the nation’s communications infrastructure.¹⁷
- T-Mobile USA, Inc. (“T-Mobile”) argues that the FCC should consider measures other than incentive auctions, within its existing authority, such as the modification of service and technical rules and bidding credits.¹⁸
- The Minority Media and Telecommunications Council (“MMTC”) proposes, among other things, to re-assign television Channels 5 and 6 to AM and low power FM radio broadcasters and to adopt a sub-channel ownership structure that would allow broadcasters to sell sub-channels to diverse businesses and minority entrepreneurs.¹⁹

These and other proposals²⁰ cannot be adopted because they are not contemplated by the NPRM. LIN takes no position on these proposals at this time, but believes some of the proposals, especially those proposed by CBC, LTB and Sinclair, deserve full consideration in the context of a broader review of the FCC’s spectrum policy.

It is appropriate for the FCC to review and improve its regulations from time to time, even when no crisis exists. Congress has expressly required the Commission to review its broadcast ownership rules at regular intervals to “determine whether any of such rules are necessary in the public interest as the result of competition” and to “repeal or modify any regulation it determines to be no longer in the public interest.”²¹ Unlike efforts to solve a speculative “spectrum crunch,” relaxation or repeal of the FCC’s ownership rules is national

¹⁷ Comments of Sinclair at 13-17; Comments of CBC at 22-25; Comments of LBS at 14-15.

¹⁸ Comments of T-Mobile at 9-10.

¹⁹ Comments of MMTC at 6-9.

²⁰ *See, e.g.*, Comments of CEA at 12-13.

²¹ 1996 Act, Pub. L. No. 104-104, 110 Stat. 56 § 202(h).

policy. It is premature for the FCC to undertake extraordinarily complex reallocation and repacking proceedings to solve a theoretical problem when it cannot make time to implement specific policies Congress has chosen.

We reiterate that LIN would not oppose a properly scoped proceeding in which the Commission proposed to improve the broadcasting service as part of a more comprehensive policy overhaul that includes repeal or substantial relaxation of the FCC's ownership rules and substantially more technical flexibility for broadcasters. Furthermore, LIN has not ruled out consideration of truly voluntary incentive auctions as a component of the agenda. But a euphemistically-titled proceeding that would impose major new regulatory constraints on innovation *by broadcasters* in the broadcast television bands does not fit the bill.

C. Assertions by Broadcasters' Mobile Video Competitors that Broadcast Service is Inefficient Are Wrong

A few commenters argue that broadcasters use spectrum inefficiently.²² Those comments should not be considered because they are not within the scope of the NPRM. On the other hand, an enlightened and rigorous analysis of spectrum "efficiency" should be in integral part of the holistic review of spectrum and communications policy LIN believes the FCC should undertake.

Statements about "efficiency," without context, mean nothing. Saying that mobile broadband is a more efficient use of spectrum than broadcast television is like saying cars are more efficient than trucks. They perform different functions. The choice is not binary: mobile broadband and broadcast television are different services that people use in different ways. A full deconstruction of the specious "efficiency" dichotomy is beyond the scope of the NPRM and LIN will not undertake that task here. However, a few high level points are appropriate.

²² See, e.g., Comments of Cablevision at 4; CTIA Comments at 6-8.

First, assertions that the white spaces between television broadcast coverage areas are wasted are based on value judgments, not facts. The television white spaces can and will be intensively used to provide a variety of broadband access services, including fixed, nomadic and even mobile links, while protecting over-the-air television reception. Cablevision Systems Corporation's ("Cablevision") comments illustrate the fallacy of the spacing argument. With no hint of irony, Cablevision argues (i) that broadcasters use spectrum inefficiently because of the spacing requirements; and (ii) that the FCC should provide more white spaces access.²³ But of course it is the spacing requirements that create and maintain the white spaces. And Cablevision cannot argue that unlicensed wireless broadband is inefficient – Cablevision claims that it operates the nation's largest contiguous WiFi network.

Second, the assertion that a cellular architecture is inherently more efficient than a broadcast architecture is nonsense. Again, they perform different functions. The inefficiency of using a 6 MHz broadcast channel to complete a phone call is readily apparent. The inefficiency of using the capacity of hundreds or tens of thousands of cell sectors to close multiple one-to-one links, all carrying the same live video stream, is equally obvious. In theory, broadcasters could deploy multi-site single frequency networks, but those networks would be monumentally inefficient in many respects, including use of other limited resources like available tower sites and capital. Arguments that broadcasters should adopt a cellular architecture inevitably come from wireless carriers that have vastly more spectrum in any given place than any broadcaster has as a result of the Commission's rules, or come from their vendors.²⁴ This is another subject appropriate to a holistic spectrum and communications policy review.

²³ See Comments of Cablevision at 3-6.

²⁴ See generally, Comments of Ericsson.

Third, broadcasting is not inefficient simply because most households pay for MVPD service. Broadcasters are upgrading facilities to provide broadcast mobile DTV services that are not available from MVPDs or any other source. Moreover, MVPD penetration has peaked and is falling. If cord cutting drives MVPD penetration to 60%, 40%, or 10%, broadcast service can serve every non-subscribing household with no additional spectrum at all, and consumers can reallocate cable television payments to more and faster broadband links. Public policy should support that result and certainly should not foreclose it.

Conclusion

For the reasons explained here and in LIN's comments, the Commission cannot adopt rules based on the NPRM. The Commission should issue a further notice of proposed rulemaking proposing rules that provide enough information about the proposed reallocation and repacking to permit informed comment. That further notice should also propose new rules that would permit broadcasters more flexibility to innovate in the broadcast television bands.

Respectfully submitted,

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