

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

In the Matter of	)	RM-11626
	)	
Request for Licensing Freezes and Petition for	)	
Rulemaking to Amend the Commission's DTV	)	
Table of Allocations to Prohibit the Future	)	
Licensing of Channel 51 Broadcast Stations and to	)	
Promote Voluntary Agreement to Relocate	)	
Broadcast Stations from Channel 51	)	
	)	

To: The Secretary

**COMMENTS**

Rancho Palos Verdes Broadcasters, Inc. ("RPVB"), the licensee of Station KXLA(TV), Channel 51, Rancho Palos Verdes, California ("KXLA"), by its attorneys, hereby files these Comments opposing the Petition for Rulemaking ("Petition") submitted by CTIA – The Wireless Association ("CTIA") and the Rural Cellular Association ("Rural Cellular") (CTIA and Rural Cellular are collectively referred to as "Petitioners") in which Petitioners ask the Commission to: (i) prohibit future licensing of broadcast television Stations on Channel 51, (ii) implement an immediate freeze on applications for new or modified broadcast facilities on Channel 51, and (iii) facilitate voluntary clearance arrangements whereby Channel 51 broadcasters voluntarily relocate to another channel. As a Channel 51 broadcaster, RPVB submits that Petitioners' proposals are unreasonable and should not be adopted, either in whole or in part.

More than a decade ago, the Commission allotted Channel 51 to broadcast operations and spectrum above Channel 51 to other uses. In the intervening years, that

straightforward decision has shaped the choices of broadcasters, wireless service providers, and investors and, in turn, the broadcasting and wireless landscapes upon which industry stakeholders and the public have come to rely. Proposals that overturn the settled expectations of the broadcast industry and the viewing public should not become Commission policy without very good reason, and, while Petitioners cite interference issues and spectrum scarcity, they fail to meet the critical test: presenting evidence that these alleged problems warrant the drastic solutions proposed in the Petition, and that other, less costly and more spectrum-efficient solutions are unavailable. Accordingly, Petitioners' proposals should be rejected. In support thereof, RPVB states as follows.

In *Advanced Television Systems and Their Impact Upon the Existing Television Service*,<sup>1</sup> the Commission allotted Channels 2-51 to digital television service, while stripping broadcast television of channels 52-69 and allotting these channels to other uses, in the wireless and public safety sectors. That proceeding balanced the spectrum needs of broadcasters transitioning to digital service with the Commission's goal of recovering broadcast spectrum to reallocate for other purposes. Since that time, members of both the broadcast and wireless industries have been fully aware of the Commission's spectrum allocations and have conducted their businesses accordingly. Broadcasters and their investors have made operational and investment decisions based upon Channel 51's classification as a broadcast allotment with no differences from other Channels assigned to over-the-air television service; similarly, wireless providers, including those in the

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<sup>1</sup> Sixth Report and Order, 12 FCC Rcd 14588, 14627(1997) ("*Sixth Report and Order*")

lower 700 MHz A block,<sup>2</sup> have made their bids for cellular licenses with full cognizance of the spectrum licensed to wireless services, the broadcast operations licensed to Channel 51 and any interference (whether caused or incurred) issues raised thereby. In other words, for over a decade now, broadcasters and wireless providers have made informed decisions against a fixed backdrop of rules and conditions and no complaints have been raised by either group.

Wireless providers, through this Petition, are now claiming, for the first time, that the rules and conditions they willingly accepted and lived with for a decade are unacceptable with respect to Channel 51. These claims, and Petitioners' corresponding spectrum demands, are simply unsupportable.<sup>3</sup> In order to justify a reversal of Channel 51's allocation to broadcast, the Commission would have to reach a number of conclusions, including: (i) that interference problems between Channel 51 broadcasters and lower 700 MHz A block wireless providers are, in fact, severe, (ii) that no other solutions to these problems besides reallocation are possible or practicable, and (iii) that the benefits of reallocation outweigh the costs. Petitioners have failed to provide persuasive evidence in support of any one of these factors, let alone all of them.

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<sup>2</sup> Licensees of the lower 700 MHz A block hold spectrum that used to belong to TV Channel 52. See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, ¶ 77 (2001).

<sup>3</sup> While Petitioners insist that existing Channel 51 broadcasters such as RPVB would not be forced to abandon their spectrum but would simply be encouraged to do so voluntarily, RPVB submits that Petitioners' proposals amount to the wholesale repurposing of Channel 51 for wireless use, and RPVB treats it herein accordingly. As other broadcasters have pointed out, the choice to stay or go does not count as voluntary, if interference and coverage area protections are diluted, or spectrum fees rise. See, e.g., *Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc.*, Innovation in the Broadcast Television Band Proceeding, ET Docket 10-235 (March 18, 2011) at 12.

To begin with, Petitioners fail to provide any material evidence of dire interference problems between Channel 51 broadcasters and lower 700 MHz A block wireless providers. Petitioners claim that Channel 51 broadcasters "pose a substantial threat to mobile systems deployed in the A Block" because there is "no guard band between Channel 51 and the A Block,"<sup>4</sup> and that A Block licensees are unduly "constrained by the interference protection they must accord to Channel 51 operations."<sup>5</sup> Yet Petitioners fail to support these assertions with anything other than general statements or anecdotes from wireless industry stakeholders essentially repeating the same unsupported claims.<sup>6</sup> Under the standards of reasonable agency decision making, stripping broadcasters of Channel 51 requires, at the very least, more than mere speculation on the part of interested stakeholders. To bolster their empty claims, Petitioners insist that "investor confidence" and the "carrier's reputation and goodwill among consumers" may falter as a result of interference issues.<sup>7</sup> RPVB submits that Petitioners' concerns about investor confidence and consumer goodwill are misplaced. Obviously, the blow to investor confidence and consumer goodwill that a Channel 51 broadcaster, such as RPVB, would suffer, should Channel 51 suddenly be repurposed for primarily non-broadcast services, greatly exceeds Petitioners' speculative anxiety. If the Commission begins renegeing on its commitments to broadcasters and the viewing public and sets about repurposing licensed, fully-utilized broadcast spectrum for non-broadcast

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<sup>4</sup> Petition at 3.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* (quoting generalized statements of Verizon Wireless, Motorola and Cellular South).

<sup>7</sup> *Id.* at 6.

purposes, what *should* reasonable investors and viewers think of the reliability of Commission commitments or of broadcasting's future?

Assuming, for the sake of argument, that Petitioners' interference claims have some degree of validity, their proposed remedy is still entirely out of proportion to the injury they allege. Petitioners resort to the most drastic remedy possible – prohibiting further licensing of broadcast operations on Channel 51 and repurposing the spectrum for wireless use – without even considering more moderate, balanced, technology-driven solutions that would avoid the need for wholesale repurposing of Channel 51. By failing even to discuss the possibility of engineering solutions, such as filtering, to common interference issues, Petitioners reveal themselves to be much more interested in acquiring broadcast spectrum than in solving basic problems arising from the coexistence of broadcast and wireless operations. Essentially, Petitioners are unconcerned about and uncommitted to broadcasters' continuing service to the public and Petitioners' proposals in the instant proceeding are, unfortunately, indicative of the wireless industry's general approach to spectrum allocation: grab spectrum now, cooperate and problem-solve later. Of course, it is the responsibility of the Commission to monitor the wireless industry and cure it of its excesses.

The one-sided approach on display in the Petition is at odds with the Commission's own (already broadband-friendly) spectrum plans. For instance, if wireless providers are unwilling or unable to consider creative, spectrum-efficient solutions to interference issues in adjacent spectrum cases, what are the chances wireless providers will seriously consider the Commission's channel-sharing proposals set forth in

the recent *Innovations in the Broadcast Television Bands Rulemaking*?<sup>8</sup> Once again, as Petitioners' Channel 51 proposals demonstrate, the wireless industry's current *modus operandi* appears to consist of a spectrum grab, rather than a creative, deliberative consideration of how to maximize spectrum efficiency while coexisting with other communications services.

This criticism has been raised before. Throughout the Commission's proceedings leading up to the National Broadband Plan as well as in recent offshoots such as the *Innovations in the Broadcast Television Bands Rulemaking* and the *Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies Rulemaking*, numerous broadcast groups have pointed out that the wireless industry's claims rested upon untested assumptions rather than hard facts.<sup>9</sup> Further, numerous parties, including non-broadcast groups, have called for objective tools – such as a comprehensive inventory of available spectrum (including underutilized spectrum) and a realistic picture of technologies capable of optimizing spectrum efficiency vis-à-vis existing allocations – to help gauge the need for spectrum reallocation efforts.<sup>10</sup> It is a truism of the wireless

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<sup>8</sup> 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.

<sup>9</sup> See, e.g., *Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc.*, Innovation in the Broadcast Television Band Proceeding, *supra* at 4 ("policies to reach [the goal of expanding access to broadband] should not move forward on the basis of untested assumptions that give precedence to the wireless industry over the public's broadcast services").

<sup>10</sup> See, e.g., *Reply Comments of the Public Interest Spectrum Coalition*, Promoting More Efficient Use of Spectrum Proceeding, ET Docket No. 10-237 (March 28, 2011) at 2 (noting that while CMRS bands are "among the most intensively and efficiently used... it is important to make a distinction between licensed spectrum that is being used to serve the public interest and licensed spectrum that lies fallow"); *Comments of the Public Interest Spectrum Coalition*, Promoting More Efficient Use of Spectrum Proceeding, ET

industry that the greatest efficiency gains stem from technological exploitation of existing spectrum rather than acquisition of new spectrum. For example, Cooper's Law, named after Martin Cooper, who invented the first mobile phone at Motorola, states that frequency re-use is responsible for 64 times more improvement in wireless utilization in the past four decades than any improvement traceable to increases in available spectrum.<sup>11</sup> Accordingly, common sense steps, such a comprehensive spectrum inventory and a realistic account of optimal-use technologies, must be considered before turning to such a drastic measure as the wholesale repurposing of Channel 51 spectrum.

Finally, in the course of proposing reallocation of Channel 51 from broadcast to wireless operations, Petitioners nowhere consider the costs of their proposals, i.e., the downside for the broadcast industry and the viewing public. Channel 51 broadcast Stations provide an important service in the public interest, particularly Stations such as KXLA that cater to minority communities with significant over-the-air ("OTA") viewership.<sup>12</sup> The Commission itself has recognized the continued reliance on OTA services among members of vulnerable and marginalized communities.<sup>13</sup> Indeed,

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Docket No. 10-237 (February 28, 2011) at 12 (noting the need to for a comprehensive spectrum inventory and actual use measurements).

<sup>11</sup> See Martin Cooper, "Cooper's Law," ArrayComm, available at <http://www.arraycomm.com/serve.php?page=Coope> (visited April 18, 2011).

<sup>12</sup> KXLA currently provides Asian-language programming to local Japanese, Korean and Vietnamese communities in Southern California. See [www.kxlatv.com](http://www.kxlatv.com).

<sup>13</sup> 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");

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.<sup>14</sup>

RPVB urges the Commission to continue to recognize the role broadcast television plays in bringing local news, public affairs and entertainment programming to minority communities.<sup>15</sup> Rather than write Channel 51 stations out of the broadband future, the Commission must consider the extent to which broadcast 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. RPVB submits that at this point in time, the tangible benefits broadcast stations provide to minority communities and others should not be sacrificed in furtherance of Petitioners' self-interest and speculative claims.

Further, Channel 51 station owners have made and continue to make substantial investments in their stations to achieve full power digital operations, based on the digital transition promoted by the Commission. Such investment insures that the minority programming discussed above will continue to be available to audiences via a free, OTA

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*Over-the-Air Broadcast Television Viewers*, MB Docket No. 04-210 ("Over-the-Air Proceeding").

<sup>14</sup> See, e.g., Brian Stelter, *DTV Transition Wins Delay to June 12*, The New York Times, February 5, 2009, at B8.

<sup>15</sup> See generally *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 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").

broadcast platform. Having required the broadcast industry to assume the financial risk of the digital transition, the Commission should not now ask broadcasters to assume the regulatory risk that, having completed the digital transition, they may yet lose their broadcast station and with it their ability to serve the public.

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,<sup>16</sup> while another part of the Commission considers proposals to reclaim fully-utilized broadcast spectrum. Channel 51 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 Channel 51 broadcast services.

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<sup>16</sup> See, e.g., *Structuring of the 2010 Media Ownership Review Proceeding*, MB Docket No. 09-182.

In sum, Rancho Palos Verdes Broadcasters, Inc. urges the Commission to reject the proposals put forward by Petitioners, and to maintain Channel 51 as eligible broadcast spectrum entitled to the full array of licensing and interference rights and responsibilities without the changes or restrictions suggested by the Petition.

Respectfully submitted,

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