

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission (electronically filed)

OPPOSITION TO PETITION FOR RULEMAKING

1. DTV America Corp., Image Video Teleproductions, Inc., Indiana Wesleyan University, Las Americas Supermercado, Inc., and WatchTV, Inc. (“LPTV Parties”) hereby oppose the Petition for Rulemaking captioned above (“Petition”).¹ The LPTV Parties are all licensees of and/or applicants for LPTV stations operating on Channel 51.²

2. The Petitioners are improperly attempting to exercise control over more spectrum than they bought at auction. Moreover, they knew when they bought that the Commission had made an explicit decision not to restrict television broadcasting on Channel 51 to protect wireless services. But even if the Commission decides to limit future television station expansion on Channel 51, there is no need or reason to place any constraint on Class A, Low Power Television, and TV Translator stations (together “LPTV”).

¹ A comment deadline of April 27, 2011, was established by Public Notice, *Media Bureau Seeks Comment on a Petition for Rulemaking and Request for Licensing Freezes*, DA 11-562, released March 28, 2011.

² DTV America Corp., its affiliates, and companies to which it has provided consulting services, hold three granted construction permits and have six pending applications for Channel 51 stations; Image Video Teleproductions, Inc. is the licensee of Station WIVX-LD, Loudonville, OH; Indiana Wesleyan University is the licensee of Station WIWU-CD, Marion, IN; Las Americas Supermercado is the licensee of Station KXAP-LP, Tulsa, OK.; and WatchTV, Inc. is the licensee of Station KOXO-CA, Vancouver, WA.

3. The Petition is based on anticipation that Channel 51 TV broadcast stations, operating in the 692-698 MHz band, will cause interference to future wireless systems operating above 698 MHz. The fear of interference arises primarily from the disparity in the permissible power levels between the two services. Regardless of whether this concern is justified with respect to full power television, which the LPTV Parties are not convinced is the case in terms of either law or engineering,³ the potential for interference from LPTV stations is far less and does not justify any constraints on grants of new licenses and/or modifications for Channel 51 LPTV stations.

4. Moreover, the heavy disadvantage faced by most LPTV stations because they do not have mandatory carriage rights on multichannel video program distribution systems (“MVPDs”)⁴ and thus must rely exclusively on over-the-air delivery makes flexibility in constructing and modifying station facilities critically important to the ability of LPTV stations to survive in a competitive marketplace.

5. Section 27.50 of the Rules allows 700 MHz A Block base stations to operate with up to 1,000 watts effective radiated power (“ERP”). The maximum ERP for LPTV stations on

³ Section 27.60 of the Commission’s Rules explicitly requires Lower A Block licensees operating in the 698-704 MHz band (formerly TV Channel 52) to protect television broadcasting operations in the 692-698 MHz band (TV Channel 51). Moreover, Lower A Block licensees bought their licenses with knowledge of and subject to that rule. The Commission stated: “We will accord the same level of adjacent channel protection to both incumbent and future analog and digital broadcast facilities on channel 51. Thus, wireless and other operators on channel 52 must provide the interference protection prescribed in the *Lower 700 MHz Report and Order* to all broadcasters on channel 51, including any that may commence operation after the auction of the adjacent channels in the 52-58 band....Channel 51 is part of the core channels reserved for broadcast use, and we do not believe use of channel 51 for broadcast purposes should be restricted in order to protect operations on channel 52, even if those operations predate the commencement of operations on channel 51.” *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 18 FCC Rcd. 1279 (2003) at ¶124.

⁴ See Sections 614(c)(1) and (h)(2) of the Communications Act, 47 USC §§534(c)(1) and (h)(2), with respect to cable television and Section 338(a)(3), 47 USC §338(a)(3), with respect to direct broadcast satellites.

Channel 51 is only 15,000 watts,⁵ which contrasts dramatically with the 1,000,000-watt limit for full power TV stations.⁶ The LPTV-Block A disparity is only 12 dB, which is only a tiny amount of variation in the strength of a single desired signal experienced in everyday signal propagation. Surely at that level, the issue is not blanketing; rather it must be adjacent-channel interference. But Block A receivers must be able to reject far greater undesired adjacent-channel signals than LPTV stations will deliver, so there is no need or reason to constrain LPTV stations.⁷

6. Moreover, LPTV stations normally transmit from a single transmitter site, whereas the transmission plants of Block A licensees are likely to be cellularized with multiple base station locations. A Block A receiver is likely to be reached with a signal that is less than 12 dB below the level a LPTV signal, if not greater than the LPTV signal, because it is likely that the Block A receiver will be closer to a Block a cell site than to an LPTV transmitter site.

7. In other words, the TV interference problem that the Petition suggests will occur is highly unlikely in the case of LPTV stations. Therefore, regardless of how the Commission may treat full power stations, constraints on LPTV stations on Channel 51 are not justified.

8. It bears repeating that LPTV stations are especially dependent on over-the-air reception because of lack of MVPD carriage. Those LPTV stations that have not yet transitioned

⁵ Section 74.735(b)(2) of the Commission's Rules.

⁶ Section 73.622(f)(8) of the Commission's Rules.

⁷ Block A licensees certainly do not have the right to deploy receivers without state-of-the-art undesired signal rejection capability. Receiver standards are receiving increased regulatory attention. *See e.g., Spectrum Task Force Requests Information On Frequency Bands Identified By NTIA As Potential Broadband Spectrum*, 26 FCC Rcd. 3486 (DA 11-444), rel. March 8, 2011, at page 3; *Fixed and Mobile Services in the Mobile Satellite Service Bands*, FCC 11-57, rel. April 6, 2011, at par. 28.

to digital operation also face an impending mandatory transition.⁸ There is no assurance that LPTV stations will be able to transition successfully if they are not able to relocate their transmitters and otherwise modify their facilities to avoid interference to other stations. A freeze on modifications will paralyze stations and may force some to shut down for technical and/or economic reasons. Freezing applications for new stations is equally unnecessary and is in effect a solution in search of a problem.

9. Historically, LPTV stations have not been required to vacate their channels or reduce facilities unless and until actual interference occurs. They have even been permitted to remain on Channels 52-69 pending actual occupancy of that spectrum by new wireless operators.⁹ Similarly, in the case of Channel 51, LPTV stations should be permitted to continue to operate and to make use of spectrum that would otherwise lie fallow until such time as a real-life problem arises – if it ever does arise.¹⁰ LPTV stations provide important services to rural communities, minorities, and niche audiences of all kinds that cannot economically support a full power TV station. Indiana Wesleyan University's WIWU-CD, for example, serves a university community that otherwise would remain unserved or underserved by other stations. Putting another technical yoke around the necks of these stations would penalize their audiences and the stations themselves and is simply not necessary to enable Block A licensees to launch their services.

⁸ 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* (Further Notice of Proposed Rulemaking in MB Docket No. 03-185), 25 FCC Rcd. 13833, FCC 10-172, 75 FR 63766 (Oct. 18, 2010).

⁹ *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd. 1022 (2001) at ¶27.

¹⁰ Paralyzing Channel 51 stations would also reduce the value to the public of government grants through the National Telecommunications and Information Administration to assist LPTV stations make the transition from analog to digital operation. Image Video Teleproductions, Inc. received such a grant to finance the migration of WIVX-LD from Channel 69 to Channel 51.

10. In sum, the relief requested by the Petitioners is not necessary in the case of LPTV stations operating on Channel 51. It would cause serious harm to LPTV stations without meeting an offsetting need. It would also result in spectrum waste and inefficiency. For some 30 years, LPTV stations have made efficient use of TV spectrum that might otherwise have lain fallow. They should not be precluded from continuing to do so in the future to the maximum extent they are able. If by any chance interference does occur in practice in a particular situation, it should be addressed using established interference-resolution principles and resolution procedures.

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April 27, 2011

CERTIFICATE OF SERVICE

I, Evelyn M. Ojea, do hereby certify that I have, this 27th day of April, 2011, caused copies of the foregoing "Opposition to Petition for Rulemaking" to be sent by first class United States mail, postage prepaid, to the following:

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