

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

In the Matter of)	
)	
Request for Licensing Freezes and Petition for)	RM-11626
Rulemaking to Amend the Commission's DTV)	
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)	

COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

Sinclair Broadcast Group, Inc. (“Sinclair”), by its attorneys, hereby submits its comments in response to the “Petition for Rulemaking and Request for Licensing Freezes” (“Petition”) filed by CTIA-The Wireless Association® and the Rural Cellular Association (collectively “Petitioners”) asking for a license freeze on Channel 51, and to eventually clear the bandwidth for their members. The Petition should be summarily dismissed. The FCC could not have been more clear since its original 700 MHz auction proceeding when it stated that the companies bidding on A Block Channel 52 licenses would be required to protect channel 51 TV stations, including later arrivals, and the bidders were thus aware of the risk of the potential for incoming interference from Channel 51 TV operations. In other words, the mobile wireless providers bought the spectrum “as is” and buyer’s remorse is an insufficient excuse to support the Petitioners’ unprecedented requests.

The Petition asks the FCC to: (i) change the rules to foreclose all future TV licensing on Channel 51; (ii) freeze all future and pending TV applications for operations on Channel 51; and

(iii) streamline procedures for facilitating “voluntary efforts” by incumbent Channel 51 television broadcasters to relocate to other channels.¹

Sinclair is a parent company of two television stations that operate on Channel 51: KGAN, Cedar Rapids, Iowa and WKEF, Dayton, Ohio. KGAN is a CBS affiliate and WKEF is an ABC affiliate. Both stations provide locally-produced news programs that cover breaking news events and emergencies, public affairs issues and elections, top-rated sports and entertainment programming, and free, universal service in their markets. Pursuing the Petitioners’ proposals would be contrary to the public interest because the proposals cannot be accomplished without service loss to Channel 51 stations, without creating interference to Channel 51 television operations, and without limiting the ability of Channel 51 stations to modify their facilities to improve service to the public. Any of these outcomes will cause certain and irreparable harm to television broadcasters and viewers, including to KGAN, WKEF and to their respective viewers.²

The Petitioner’s do not – because they cannot – cite any applicable precedent for their request.³ To Sinclair’s knowledge, never before has the Commission foreclosed the use of spectrum by a service in the way Petitioners request in order to create what amounts to a new guard band. It is difficult to envision a less efficient use of spectrum than handing mobile wireless providers 6 MHz of TV spectrum for this purpose. To be sure, the issues apparently facing the A Block licensees are not a surprise. The companies that bid on that spectrum knew

¹ Petition at 1.

² The Commission should also not forget that adopting the Petitioner’s proposals would require international coordination and approval to protect other television station broadcasts. For example, the modifications to the allotments requested in the Petition would be contrary to the legally binding letter agreement between Industry Canada and the FCC that lists all of the agreed upon assignments and allotments (including Channels 51 and 52) within 360 kilometers of the U.S./Canada border. *See* Letter from Helen McDonald, Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Industry Canada, to Kevin J. Martin, Chairman of the Federal Communications Commission (Dec. 15, 2008).

³ The Petitioners do spend several pages (at 7-12) on what they claim to be “precedent” for their proposals, but nothing they cite actually provides any support for the requests they make in the Petition. In fact, they mostly discuss the National Broadband Plan (“NBP”) as somehow supporting their proposals, yet the NBP does no such thing. And aside from the fact that the NBP is not a product of notice and comment rulemaking and does not reflect formally established FCC policy, the NBP is in no way “precedent” for the unreasonable rule revisions and freeze requests contained in the Petition.

they would have to protect Channel 51 TV stations and they knew the risk of potential incoming interference from TV operations on Channel 51.

The Commission was crystal clear when it addressed its Channel 51 interference protection criteria in 2004, stating that “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.*”⁴ This statement alone should preclude the Petitioners’ request. Not only did the Commission specifically protect adjacent operations on Channel 51, it went beyond the standard first-come, first-protected, interference protection customarily provided to co-primary allocations and required Channel 52 mobile wireless providers to protect even *later filed* television applications for Channel 51 operations.⁵

The Commission also unequivocally stated (and even did so in bold) in its 2002 *A Block Auction Public Notice* announcing due diligence procedures for the auction that: “[P]otential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 44.”⁶ The Commission further warned in the *A Block Auction Public Notice* that “licensees of new services in the Lower 700 MHz band will be permitted to operate during this transition *provided they do not interfere with TV or DTV operations.*”⁷ There is no question that the FCC fully intended to protect television stations on Channel 51 and made that fact well know to potential bidders well in advance of the A Block auction.

⁴ See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, *Report and Order*, 19 FCC Rcd 18279 at ¶ 124 (2004) (emphasis added).

⁵ *Id.*

⁶ Due Diligence Announcement For the Upcoming Auction of Licenses in the 698-746 MHz Band, DA 02-904, 17 FCC Rcd 7186, at 3 (rel. April 18, 2002) (emphasis in original).

⁷ *Id.* at 2 (emphasis added).

It was incumbent on mobile wireless providers to review the *Second Periodic Review Order* and the *A Block Auction Public Notice* (among many other FCC releases) prior to deciding to bid on and purchase the spectrum they are now complaining about. Moreover, given the FCC's unambiguous language in the *Second Periodic Review Order* and subsequent adoption of rules requiring Channel 52 operations to protect those on Channel 51 going forward,⁸ Channel 52 bidders likely benefitted from auction prices lower than those of other channels that are free from similar built-in interference restrictions. And having advance notice of the interference protection requirements as they did, the wireless companies could and should have solved their problems long ago by leaving portions of the lower part of the A Block vacant for themselves as a guard band.⁹

The procedures the Commission established for the A Block auction did not contain anything out of the ordinary when compared to other FCC spectrum auctions. The FCC's 700 MHz auction notices include the standard disclaimers to potential bidders that they would be bidding on the A Block spectrum at their own risk.¹⁰ The Commission has always relied on each auction applicant to make informed determinations about the value of the licenses they would like to win.

For this reason, among others, the Commission has long warned applicants to take care and make thorough due diligence evaluations as part of their decision to participate in any

⁸ See 47 C.F.R. § 27.60.

⁹ As the FCC pointed out in *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, First Report and Order, 17 FCC Rcd 1022, at ¶¶ 22-23 (2001), Qwest argued in its comments that there was no reason for the FCC to mandate a guard band because mobile wireless licensees "often establish their own 'guard bands' at the edges of their licensed spectrum in order to avoid adjacent channel interference", and stated that licensees should have the flexibility to "determine on their own" what needs to be done to avoid harmful interference to adjacent channel 51 broadcasters. It would have cost money, but A Block winners certainly could afford to pay for their own guard band in their own spectrum instead of trying to take spectrum properly licensed to TV broadcasters.

¹⁰ The Commission included similar language yet again in the more recent 700 MHz Auction Public Notice in clarifying A-Block bidders' obligations in setting forth procedures for the auction of 700 MHz spectrum. See *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, Public Notice, DA 07-4171, at ¶¶ 39-40 (Oct. 5, 2007).

