

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	

REPLY COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation (“USCC”), by its attorneys and pursuant to Section 1.405(b) of the Commission’s Rules, submits these reply comments in support of the Petition for Rulemaking and Request for Licensing Freezes filed by CTIA – The Wireless Association[®] (“CTIA”) and Rural Cellular Association (“RCA”).¹ In order to address current and future interference issues in the LTE Band 12 spectrum, which includes Lower 700 MHz blocks A, B, and C, USCC joins the Petitioners and many commenters in this proceeding in urging the Commission to: (1) revise its rules to prohibit future licensing of TV broadcast stations on Channel 51; (2) implement freezes, effective immediately, on the acceptance, processing and grant of applications for new or modified broadcast facilities seeking to operate on Channel 51; and (3) accelerate clearance of Channel 51 where incumbent Channel 51 broadcasters reach voluntary agreements to relocate to an alternate channel.

As already demonstrated in this proceeding, even though the National Broadband Plan described the 700 MHz band as a “foundation for the nation’s 4G wireless networks,” the efforts of LTE Band 12 operators to deploy wireless broadband services in this spectrum have been

¹ See Petition for Rulemaking and Request for Licensing Freezes by CTIA – The Wireless Association[®] and Rural Cellular Association, RM-11626 (filed Mar. 15, 2011) (“Petition”).

greatly impaired by the interference caused by current Channel 51 broadcasters and, more importantly, by the ongoing uncertainty created by unknown future broadcast operations on Channel 51.² Because of the potential interference from a host of new Channel 51 operations, wireless operators planning band 12, LTE deployments face the very real risk that their substantial investments in building extensive networks will be undermined by new Channel 51 licensees. USCC therefore urges the Commission to take the proposed actions because it is “incumbent on the Commission to take all the steps necessary to make this spectrum effectively available” for its intended purposes,³ and thereby fully utilize this already allocated broadband spectrum in accordance with the stated goals of the Broadband Plan and the Obama administration.⁴

I. THE COMMISSION HAS SUFFICIENT AUTHORITY TO IMMEDIATELY IMPOSE THE REQUESTED FREEZES.

As discussed in the Petition, as well as by various commenters, Commission precedent supports the immediate adoption of the requested freezes pending the outcome of the proposed rulemaking.⁵ Moreover, absent an immediate freeze, broadcasters anticipating future filing restrictions may flood the Commission with Channel 51 proposals, and thus undercut the purpose of the freeze.⁶

² See Petition, pp. 3-6; Comments of RCA, p. 2 (filed Apr. 27, 2011).

³ *Service Rules for the 698-746, 747-762, and 777-792 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064, 8066 (2007) (“700 MHz Order & FNPRM”).

⁴ See Comments of AT&T Services, Inc., p. 5 (filed Apr. 27, 2011).

⁵ See Petition, pp. 12-18; Comments of Cellular South, Inc., p. 3 (filed Apr. 27, 2011); see also *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 and Memorandum Opinion and Order, 25 FCC Rcd 13833, 13843 (2010) (“*Low Power DTV FNPRM*”) (“The decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.”).

⁶ See *Low Power DTV FNPRM* at 13843 (“[F]reezing the filing of low power television applications for the 700 MHz band will ensure that new applications are not filed in anticipation of future limitations, thus defeating the administrative purpose of the action herein.”).

II. THE PETITION SIMPLY SEEKS TO MAINTAIN THE STATUS QUO.

Although current Channel 51 broadcast operations pose significant interference issues, LTE Band 12 operators have the ability to design their networks to address this interference. Moreover, they can, and already have begun to, enter into agreements to relocate Channel 51 operations to alternate channels. However, LTE Band 12 operators cannot plan for interference issues that may arise in the future from currently unknown broadcast operations, whether by new stations or from expanded operations by existing stations. The Petition, therefore, simply requests that the Commission take a few modest steps that will permit LTE Band 12 operators to plan for, or correct, the interference currently inhibiting their provision of wireless broadband services.

The requested relief would not in any way disturb existing Channel 51 operations.⁷ The Petition does not ask the Commission to remove broadcasters from Channel 51, decrease the coverage of current Channel 51 broadcast services, or require broadcasters to offer any degree of new interference protection to LTE Band 12 operators. Rather, the Petition simply seeks to maintain the status quo – *i.e.*, to permit full power stations currently broadcasting on Channel 51 to continue their operations without any detrimental modifications of those operations.

Moreover, the Commission already prohibits the filing of many broadcast applications relevant to the Petition. For instance, since 2004, broadcasters have been prohibited from petitioning for new DTV allotments.⁸ The Commission also will not accept applications for new LPTV or TV translator stations or for major changes to existing low power stations.⁹

⁷ See Comments of King Street Wireless, L.P., p. 1 (filed Apr. 27, 2011) (“King Street Comments”).

⁸ See *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (2004) (“2004 DTV Freeze”).

⁹ See *Initiation of Nationwide, First-Come, First-Served Digital Licensing for Low Power Television and TV Translator Services Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (2010); *Freeze on the Filing of Applications for New Digital Low Power Television and TV translator Stations*, Public Notice, 25 FCC Rcd 15120 (2010).

Significantly, the reason for these low power filing freezes is to permit the Commission to evaluate its reallocation and repacking proposals and their impact on future licensing in the TV bands as part of its efforts to make additional spectrum available for mobile broadband services.¹⁰ As detailed below, these same policy considerations justify granting the Petition.

III. CHANGED CIRCUMSTANCES JUSTIFY THE PROPOSED ACTIONS.

The Commission first adopted allocation and service rules for the Lower 700 MHz band in 2001,¹¹ and it completed Auction 73 in early 2008. Since that time, the circumstances underlying these actions have changed significantly.¹² These changed circumstances have impeded broadband deployment across the entire Lower 700 MHz A, B, and C Blocks and threaten to undermine the goal of ensuring “that every American has access to broadband capability.”¹³ Accordingly, they require the Commission, as it has done in the past, to revisit its regulation of the 700 MHz band.¹⁴

When the Commission auctioned the 700 MHz spectrum, bidders reasonably concluded that new Channel 51 operations would be limited to those proposals currently pending before the Commission. At that time, the Commission was not accepting petitions to change DTV channels, petitions for new DTV allotments, or modification applications that would increase a

¹⁰ *Id.*

¹¹ See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002).

¹² See Comments of Vulcan Wireless and The Rural Telecommunications Group, Inc., p. 3 (Apr. 27, 2011) (“Vulcan/RTG Comments”)

¹³ See FCC, *Connecting America: The National Broadband Plan*, p. 3 (rel. Mar. 16, 2010).

¹⁴ See *700 MHz Order & FNPRM*, 22 FCC Rcd at 8066 (“We are revisiting these rules due to the significant changes that have occurred over the past several years in the statutory framework governing this spectrum, the continuing advances in a rapidly developing market for wireless communications, and the needs of the public safety community.”); *Low Power LPTV FNPRM*, 25 FCC Rcd at 13841 (“We believe that the continued successful development of new commercial wireless and public safety facilities in the 700 MHz band will be facilitated by clearing all remaining analog and digital low power television stations from these channels by a date certain, and that the balance of interests has changed since the digital rules were adopted in 2004 so as to enable such clearing without premature disruption or cessation of digital low power television service.”).

station's service area beyond that specified in the DTV Table of Allotments.¹⁵ Also, in adopting the Channel 51 interference criteria, the Commission only referred to the subsequent "commencement," rather than future application for, new or modified operations on Channel 51.¹⁶ Further, it would have been unreasonable for the Commission to expect bidders to expend large sums of money when they "had no reasonable means of assessing who these Channel 51 licensees would be or where they may be located."¹⁷

Moreover, the explosive demand for wireless broadband services in recent years and the Commission's proposed reallocation of broadcast spectrum for wireless uses have created new incentives for entities to engage in "regulatory arbitrage" by exploiting opportunities for personal gain at the expense of not only LTE Band 12 operators, but the public, the Commission, and the U.S. Treasury.¹⁸ The Commission's recent repacking and incentive auction proposals had the unintended effect of incentivizing broadcasters to act in ways that will not only make it more difficult for LTE Band 12 operators to relocate interfering Channel 51 broadcasters, but will likely increase the level of interference to LTE Band 12 operations.¹⁹

For instance, a Channel 51 broadcaster contemplating whether to relinquish its spectrum in exchange for a share of auction proceeds likely would be unwilling to undertake the effort, and potential expense, of moving to another channel at the request of an LTE Band 12 operator. Even Channel 51 licensees that do not intend to relinquish their spectrum have a similar disincentive to move to another channel at this time because the repacking process very well

¹⁵ See *2004 DTV Freeze*, 19 FCC Rcd 14810.

¹⁶ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, 18334 (2004) (according interference protection to broadcasters, "including any that may commence operation after the auction of the adjacent channels in the 52-58 band," "even if [the A Block] operations predate the commencement of operations on channel 51.") (emphasis added).

¹⁷ King Street Comments, p. 2.

¹⁸ See Vulcan/RTG Comments at 7; Comments of CTIA, pp. 7-8 (filed Apr. 27, 2011); Comments of Cellular South, Inc., p. 2; Comments of Verizon Wireless, pp. 4-5 (filed Apr. 27, 2011); Comments of RCA, p. 3.

¹⁹ See Vulcan/RTG Comments, pp. 6-8.

could force it to again undertake a channel change. Moreover, a Channel 51 station that had planned to change channels to improve signal coverage understandably would delay these plans in the hope that the attendant costs will be paid for as part of the repacking process. The Commission should not “ignore the unintended consequences of [its] prior actions;” rather, it “need[s] to address existing impediments to investment like the channel 51 issue in an equitable and expedited manner.”²⁰

Recent broadcast actions appear to demonstrate that these unintended and detrimental effects already are occurring. For example, in 2008, WFXG(TV) requested, and the Commission granted, the substitution of Channel 31 for Channel 51 for its post-transition DTV operations because Channel 31 operations would increase the station’s population coverage by 51 percent.²¹ Channel 51 was WFXG’s pre-transition DTV channel, so, at the time of its request, the station already was broadcasting a DTV signal on Channel 51. Nevertheless, WFXG determined that the substantial increase in population justified the expense of a channel change. However, due to the economic recession and the related decrease in advertising revenues, WFXG later determined that it could not afford to construct the proposed Channel 31 facilities.²² As a result, in February 2011, WFXG again requested that the Commission amend the DTV Table of Allotments, this time to allow the station to continue operating on Channel 51.

Although USCC has no comment on WFXG’s specific applications, this type of situation demonstrates how the Broadband Plan has created a disincentive for Channel 51 broadcasters to change channels.²³ Specifically, any broadcast spectrum reallocation plan, even one significantly

²⁰ *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16543 (2010) (Statement of Commissioner Baker).

²¹ *See Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Augusta, Georgia)*, Report and Order, 23 FCC Rcd 18020 (2008).

²² *See* Petition for Rule Making by Southeastern Media Holdings, Inc., MB Docket No. 11-54 (filed Feb. 25, 2011).

²³ In petitioning to remain on Channel 51, WFXG did, however, note the current uncertainty of broadcast TV. *Id.* at 2-3 (“[I]n the interim since the Channel 31 permit was granted, the continued viability of television spectrum as a

lesser in scope than the proposed repurposing of 120 MHz of broadcast spectrum, would involve auctioning off Channel 51.²⁴ Stations currently operating in the reallocated spectrum then would be involuntarily “repacked” into the remaining TV channels. This future repacking process deters channel relocations at this time because, in contrast to a voluntary channel change, repacking costs will be reimbursed.²⁵

In addition to this disincentive, detrimental effects may already be arising as a result of unintended incentives created by the Broadband Plan with respect to LPTV and TV translator applications. For instance, as a result of a limited filing opportunity, 2,273 construction permits for new LPTV and TV translator stations are currently pending, 79 of which propose new operations on Channel 51.²⁶ This flood of applications for additional services in already crowded spectrum, including on a channel that has a direct negative effect on the deployment of wireless broadband services, demonstrates why the Commission must not only impose a freeze on the filing of applications for new or modified Channel 51 facilities, but also freeze the processing of pending Channel 51 proposals.²⁷

Specifically, a freeze on the processing of pending applications is necessary because, “[o]nce a party has a Channel 51 construction permit, they effectively have an asset that can be

whole has become more uncertain due to the pressures created by the search for more spectrum from broadband. With the uncertainty created by the broadband proceeding and proposed television spectrum reallocation, infusion of a large amount of capital into particular TV spectrum would be a risky venture at this time.”)

²⁴ See FCC, *Spectrum Analysis: Options for Broadcast Spectrum, OBI Technical Paper No. 3*, p. 42 (June 2010) (“*Spectrum Analysis Paper*”) (“The [optimization] model seeks to clear a contiguous block of channels, starting at the top of the UHF band (Channel 51) . . .”).

²⁵ *Id.* at 18 (“In all scenarios, the FCC would require auction winners to reimburse stations for all expenses incurred as a result of a repacking effort.”).

²⁶ The applications proposing new Channel 51 operations represent a disproportionate number of the total pending applications. Specifically, the Channel 51 proposals constitute 3.5% of the pending applications even though Channel 51 represents only 2.0% of the available channels (*i.e.*, channels 2-51, excluding channel 37). This data was accumulated using the Commission’s online Consolidated Database System.

²⁷ See Reply Comments of The Association for Maximum Service Television, Inc. and The National Association of Broadcasters, MB Docket No. 03-185, p. 7 (filed Dec. 29, 2003) (“[S]queezing more channels, regardless of their status, into already crowded broadcast spectrum that must be repacked . . . contravenes the public’s interest in a swift transition.”).

used against” an LTE Band 12 operator.²⁸ While a Lower 700 MHz licensee has a legal right to terminate the interfering secondary operations of an LPTV or TV translator station, vindicating that right can be difficult, costly, and time-consuming, and thus delay broadband deployment. The processing of these applications also would be a waste of Commission resources that could be better utilized in achieving its broadband goals. Moreover, investments made by broadcasters in reliance on granted construction permits likely would be lost once these stations are displaced from Channel 51 either because of interference to LTE Band 12 operators or the proposed spectrum reallocation process.²⁹ Finally, although USCC assumes that most low power applicants fully intend to build broadcast facilities in furtherance of the public interest, it notes that the sheer number of filings made by certain applicants suggests that spectrum speculation may already be occurring.³⁰ Senators Snowe and Kerry already have expressed their opposition to spectrum speculation in anticipation of the upcoming incentive auctions.³¹ However, even assuming their proposed legislation passes, it would not rectify the successful speculation that would occur if the Commission grants these numerous Channel 51 low power proposals.³²

As recommended in the Petition and supported by commenters, the Commission should permit applicants with pending Channel 51 proposals to amend their applications in order to specify an alternate channel.³³ These applicants would have the advantage of submitting new

²⁸ Vulcan/RTG Comments, p. 10.

²⁹ See Comments of The Association for Maximum Service Television, Inc. and The National Association of Broadcasters, MB Docket No. 03-185, p. 8 (filed Nov. 25, 2003) (“Cluttering up limited spectrum with more channels, all of which have a significant chance of being displaced through the repacking process, merely encourages the investment of money by service providers and time by the Commission that in many cases would end up wasted.”).

³⁰ As one example, Landover 2 LLC has 798 pending applications for new low power operations, 37 of which propose new operations on Channel 51 (*i.e.*, 4.6% of its pending applications propose Channel 51).

³¹ See Sen. 455, 112th Cong., §9(a) (introduced Mar. 2, 2011) (“PROHIBITION OF SPECTRUM SPECULATION. The Commission shall take such actions, as the Commission deems necessary, to prohibit speculation with respect to incentive auctions authorized under this subparagraph . . .”).

³² After all, the Commission has recommended that even low power broadcast licensees be permitted to participate in incentive auctions. See *Spectrum Analysis Paper*, p. 33.

³³ See Petition, p. 12, n. 30; Comments of Verizon Wireless, p. 4.

proposals even though the Commission has since imposed a filing freeze on applications for new low power stations. Further, assuming the Commission treats these filings as minor change amendments, the applicants would retain their “first-come, first-served” processing priority.

IV. THE COMMISSION SHOULD ACCELERATE THE VOLUNTARY CHANNEL CLEARING PROCESS.

Although the requested freezes would provide LTE Band 12 operators with the certainty needed to build out their networks and provide valuable wireless broadband services to the public, LTE Band 12 operators must rely on voluntary agreements with current Channel 51 licensees in order to address the threat of interference from these operations. USCC therefore strongly encourages the Commission to adopt accelerated procedures to relocate consenting Channel 51 broadcasters to alternate channels, a proposal supported by a large majority of commenters, including broadcasters.³⁴ Specifically, USCC urges the Commission to establish a presumption favoring grant of an application filed pursuant to a voluntary agreement, make these channel changes effective immediately upon publication in the Federal Register,³⁵ and require a Channel 51 licensee requesting a change channel to submit an application with its rulemaking petition.³⁶

V. CONCLUSION.

The requested rulemaking and the immediate filing and processing freezes are necessary steps toward ensuring the rapid deployment of wireless broadband services, as well as mitigating the upcoming “spectrum crunch” by fully utilizing spectrum already licensed for these services. The proposals set forth in the Petition therefore are entirely consistent with the expressed goal of

³⁴ See Opposition of Media General, Inc., p. 2 (filed Apr. 27, 2011); Comments of The National Association of Broadcasters and The Association for Maximum Service Television, Inc., p. 15-16 (filed Apr. 27, 2011).

³⁵ See Petition, pp. 21-22.

³⁶ See Comments of Cellular South, Inc., p. 3-4.

the Commission, Congress, and the Obama administration of furthering the public interest by ensuring that every American has broadband access.

Respectfully submitted,

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