

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)

FILED/ACCEPTED
MAY 12 2011
Federal Communications Commission
Office of the Secretary

REPLY COMMENTS OF KING STREET WIRELESS, L.P.

King Street Wireless, L.P. ("King Street") by counsel, hereby submits its Reply Comments in the captioned proceeding. For the reasons set forth below, King Street renews its support for the subject Petition for Rulemaking ("Petition").

I. BACKGROUND

In the Petition, a modest request for only three avenues of relief was proposed. Specifically, requests were made to: (1) prohibit licensing new entities on DTV Channel 51; (2) freeze applications for modification of existing DTV Channel 51 operations; and (3) facilitate prompt implementation of voluntary settlements between DTV Channel 51 licensees and wireless carriers operating on A Block 700 MHz spectrum, which formerly housed DTV Channel 51 operations.

In support of the requests, Petitioners¹ demonstrated the moderate relief requested to be necessary in order to further the goals of both the President and the Chairman of the Federal Communications Commission, as well as the policies set forth in the National Broadband Plan.²

¹ Petitioners are CTIA-The Wireless Association and the Rural Cellular Association.

² Connecting America: *The National Broadband Plan*, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf. (2010)

No. of Copies rec'd 0+4
List A B C D E

King Street, by its Comments in this proceeding, voiced strong support for the Petition. Among other things, King Street showed that, absent the changes requested, the nation's broadband goals would be thwarted. Virtually all other wireless carriers who have participated in this proceeding to date have generally echoed King Street's position. Not surprisingly, broadcasters who filed comments in this proceeding took a more contrarian view.

II. DISCUSSION

A. **The Relief Sought in the Petition is Narrow in Scope.**

Petitioners were clear in what they requested – and what they did not request. See *Petition, at 2*, where Petitioners explained that “**Petitioners do not ask the Commission to disturb existing operations on Channel 51.**” (Emphasis added.) Notwithstanding that, a number of commenting parties mischaracterized Petitioners' requested relief to extend much further. See, e.g. Comments of Central Wyoming College, at 1, (objecting to the “proposal to remove all television broadcast stations from Channel 51”), and Comments of Michael Mahan, at 2, (opposing “the petition to remove RF Channel 51 from broadcast television use”). It is not clear whether the mischaracterizations reflect merely a fundamental misunderstanding of the relief requested or were an attempt to create a straw man that could be attacked more successfully than the actual proposal made. In any event, what is important is that the Commission's attention not be diverted from the actual, more reasonable request that is before the Commission.

B. **There is Unquestionably a Genuine Need for the Relief Requested.**

A handful of broadcast commenters argued that there is no demonstrated need for the relief requested, which comments apparently were directed at the core issue of potential

interference between wireless carriers and broadcasters. Fortunately, this is an issue upon which other broadcasters, wireless carriers and the Commission all agree, and which can be disposed of quickly. As Verizon Wireless succinctly explained:

A Block Licensees are experiencing technical challenges because of the A Block's close proximity to TV stations that are incompatible with mobile services. Because the lower A block is immediately adjacent to TV Channel 51, the risk of interference between the two services is significant. Moreover, the continued expansion of TV stations on Channel 51 creates significant uncertainty about the future interference environment and places at risk any deployment of broadband services using the A Block.

Comments of Verizon Wireless, at 2.

Cincinnati Bell echoed that sentiment and provided a specific example of problems in need of a solution.

CBW's build-out of its 700 MHz license in the Dayton-Springfield, OH market is directly impacted by an incumbent Channel 51 TV broadcast station, specifically, WKEF, the ABC affiliate in Dayton, Ohio. Although CBW is exploring the feasibility of deploying technical solutions to prevent interference from Channel 51, at this time, it appears that the technology does not yet exist to resolve the interference problems entirely.

Comments of Cincinnati Bell, at 2.

CellSouth provided further empirical evidence of this problem.

Cellular South, itself, has entered into agreements with two Channel 51 full service DTV licensees for relocation of their broadcast facilities to alternate channels. Cellular South has also explored other potential remedies for problems arising from operation of high power DTV facilities adjacent to Lower Block A systems.

Comments of CellSouth, at 2.

King Street also explained why the rules need to be corrected to facilitate resolution of interference issues. See, e.g. *King Street comments, at 4.*

There is nothing controversial or surprising about the interference concerns addressed above. The Commission itself recognized them years ago when it established initial mechanisms to address such developments. See e.g. *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and order, GN Docket No. 01-74, 17 FCC Rcd 1022, 1023 (2002).

Even other broadcasting commenters, while advocating a different disposition of the matter, recognized the existence of the interference concern that Petitioners raised. See e.g., *Comments of NAB and MSTV, at 4*, focusing on to whom the Commission has assigned responsibility for resolving interference, rather than whether interference could be a problem.

Under such circumstances, there can be no genuine dispute that there is a problem in need of a cure.³

C. The Relief Sought is Necessary to Further the Broadband Goals of the Administration, the Federal Communications Commission and the National Broadband Plan.

There can be no reasonable disagreement that broadband demand is exploding and that making more efficient use of existing wireless spectrum is an important tool to permit that demand to be satisfied.⁴ See e.g., *Petition, at 4*.

Given the above, broadcast commenters generally did not focus on the benefits to be derived from adoption of the relief sought by Petitioners – which King Street submits is, and

³ Certain broadcaster comments attempt to distinguish between possible interference and actual interference. Whereas, that distinction may well be significant in market-specific adjudicatory proceedings, it has no relevance in rulemaking proceedings of general applicability. This is particularly the case where the goal is to prevent interference problems before they arise and assign responsibility for curing any that do occur. (King Street is constrained to wonder aloud whether those broadcasters now arguing that there is no interference problem in need of a cure would take that same view if their facilities were the subject of interference.)

⁴ One commenter presented interesting, if not relevant, information that there is not a need for additional wireless spectrum. See *Comments of WHLV-TV, at Attachment*. Whereas that information (which is subject to considerable questions as to its accuracy) may well be relevant to the issue of re-purposing broadcasting spectrum generally, it is at best tangential to the issues here present.

always has been, the critical issue in this proceeding. Rather, a number of broadcasters attempted to draw attention to the ancillary issues of whether wireless carriers may receive some degree of unwarranted benefit from the rules being proposed, and whether broadcasters would be in any way disadvantaged by them. In all meaningful ways, those commenters failed on each of these secondary arguments.

1. Wireless Carriers Would Receive No Unwarranted Windfall By Grant of the Relief Requested

At the heart of the “windfall” theory of certain commenters is the argument that wireless carriers knew exactly what they were getting into and should not now be allowed to seek relief.

Initially, it bears repeating that the core issue here is whether the public interest would be served by grant of the relief requested, and not whether a particular license would benefit from such a change. For virtually every rule change that permits any segment of the telecommunications industry to operate more efficiently also impacts on carriers.

Moreover, it is important to appreciate that the core concern raised by Petitioners was both unknown and not foreseeable by wireless entities at the time of the auction. To be clear, basic obligations were laid out for all to consider – and wireless carriers are to be credited for never taking issue with that limited fact. But while auction applicants could know who was licensed over Channel 51 at a given location at the time of the auction, no one could foresee who would be licensed later, and under what parameters. Moreover, no one could reasonably predict the wholesale increase in DTV Channel 51 licensing since the close of the auction. See *Comments of Vulcan and RTC, at 4, 6*, explaining that there have been approximately 500 DTV Channel 51 applications filed since the close of Auction 73. Most certainly, no one could predict the many-fold increase in demand for broadband to be generated by wireless devices

that were non-existent at the time of the auction (such as tablets and enhanced smart phones), or the critical role that broadband has come to play in today's global economy.

King Street submits that the public interest would not be served if the Commission ignored these realities and pretending that we live in a static, non-competitive, non-global broadband environment.

2. The Impact on Broadcasters of Grant of the Requested Relief is Both Reasonable and Well Within the Scope of the Commission's Authority and Responsibility.

Here it is important that the issue be properly framed: Petitioners have not requested that broadcasters be banished from their spectrum, or be prohibited from operating, or be subjected to new interference from wireless carriers. See 1, supra. Rather, Petitioners urge only the Commission grant no new requests for facilities that, if granted, would present new opportunities for broadcasters – and new problems for both the Commission's broadband objectives and wireless carriers.

It is axiomatic that the Commission can change its rules as the public interest requires. See 47 CFR § 1.400 et. al.; 5 USC §553 et. al. In fact, the Commission is fully empowered to reverse any prior course of action, provided that it clearly enunciates such change and provides a cogent rationale for doing so.⁵ Here, there is ample support for the rule changes proposed.

The timing and scale of the proposed changes also demonstrate them to be appropriate. The only rules established by the Commission to date were pre-licensing. Now, with the benefit of licensing experience and carrier experience, the Commission is better positioned to reverse its rules. It would not be reasonable, and contrary to the public interest, for the Commission to turn a blind eye to that real-world experience.

⁵ The Commission is fully empowered to take such action even when the carriers impacted by the change have paid the Commission for their spectrum. Here, the majority of broadcasters that could be impacted have not done so. See, e.g., *Reservation Tel. Coop. v. FCC*, 826 F^{2d} 1129, 1130 N4 (D.C. Cir. 1987).

There is one final point that must be kept in mind; no one in this proceeding should lose sight of the fact that all licensees are on notice that the Commission can (and should) modify generic rules governing services, in order to serve the public interest. It does this all of the time. There is nothing materially different here, either in degree or in kind.

III. CONCLUSION

For all of the foregoing reasons, King Street renews its urging that the Commission promptly grant the Petition.

Respectfully submitted,

KING STREET WIRELESS, L.P.

By: 

Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive
Suite 1200
McLean, VA 22102
202.828-9470

Its Attorney

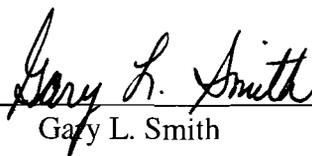
May 12, 2011

CERTIFICATE OF SERVICE

I, Gary L. Smith, a legal assistant of the law firm Lukas, Nace, Gutierrez & Sachs, LLP, hereby certify that on this 12th day of May, 2011, copies of the foregoing REPLY COMMENTS were forwarded by e-mail, in pdf format, to the following:

Best Copy and Printing, Inc.
fcc@bcpiweb.com

Shaun Maher
Media Bureau
Video Division
Shaun.Maher@fcc.gov



Gary L. Smith