

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

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	

**COMMENTS OF THE
ADVANCED TELEVISION BROADCASTING ALLIANCE**

The Advanced Television Broadcasting Alliance (the “Alliance”) hereby files these Joint Comments in response to the above-captioned Notice of Proposed Rulemaking.¹ The Alliance is an organization comprised of low-power and full-power television broadcasters, and owners and operators of translators, as well as allied industry organizations and companies.² The Alliance urges the Commission to reconsider implementing its incentive auction, or in the alternative, to adopt strong safeguards to ensure the preservation of low-power television (“LPTV”) broadcasting as part of the “repacking” of the broadcast spectrum.³

Introduction

Approximately eleven million Americans continue to rely solely on free over-the-air broadcast television stations, including low-power stations, for news, local information and

¹ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions Innovation*, Notice of Proposed Rulemaking, Docket No. 12-268, FCC 12-118 (rel. Oct. 2, 2012) (the “NPRM”); *see also* DA 12-1916 (November 29, 2012) (extending, *inter alia*, the comment deadline until January 25, 2013).

² Additional information on the Alliance can be found at http://broadcastingalliance.org/?page_id=18 (last visited January 18, 2013).

³ Repacking will involve reorganizing and reassigning television channels to those broadcast stations that did not relinquish all or any of their spectrum rights in the reverse auction in order to create contiguous blocks of cleared spectrum suitable for mobile wireless use for successful bidders in the forward auction. *See* NPRM, at ¶¶ 35-71 and Appendix C.

entertainment.⁴ Among these are those who cannot pay the high costs of cable or satellite television subscriptions, those who cannot receive those pay services, and those who feel they should not be forced to pay for access to the programming on the nation's airwaves. These viewers also depend on critical public safety announcements from local broadcasters – a service the Commission repeatedly has acknowledged is critical under the Emergency Alert System for disseminating potentially life-saving, public safety messages during natural disasters and other emergencies.⁵ The Commission's plan to implement an incentive auction, particularly without strong safeguards to protect low power television stations in the repacking process, puts this local LPTV service that millions of viewers depend on at risk.

Also at risk are the investments that LPTV owners have made in reliance on Commission orders and policies regarding LPTV. When LPTV licensees accepted secondary status in the broadcast television band, it was with the understanding that LPTV was secondary in the broadcast spectrum only to full-power television stations and that the broadcast spectrum would be of sufficient size to accommodate secondary low-power service. Under such parameters, LPTV owners spent millions of dollars building out their broadcast facilities, as well as applying for new LPTV licenses in the last FCC window. By stating the risks and then changing the parameters after broadcasters had spent considerable amounts of money, the FCC has essentially pulled the rug out from under LPTV broadcasters and the viewing public they serve.

⁴ See, e.g., NPRM, at ¶ 13 (“A small but significant segment of the Nation’s population relies solely on over-the-air broadcast television stations for video programming service.”), ¶ 14 (“[D]uring the 2011-2012 television season, the Nielsen Company estimates that only 10.7 million television households, or approximately 10 percent of the total, rely solely on over-the-air broadcast television service.”), at ¶ 358 (“Low power television stations are a source of diverse and local television programming, and television translator stations are an important free, over-the-air television resource in rural and remote locations.”).

⁵ See NPRM, at ¶ 13 n. 15 (“During emergencies, broadcast television stations serve a vital role by providing critical local news and information, as well as emergency alert warnings.”); see also Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Network, at p. 27 (June 12, 2006).

Discussion

I. The Commission should reconsider whether any reallocation and reassignment of broadcast spectrum is truly necessary.

While Congress has granted the commission the authority it needs to conduct an incentive auction, the Alliance submits that such an auction and the attendant repacking process are an unnecessary expense and burden to the American people and ignores the value delivered by ‘the whole’ of television broadcast industry (full power, Class A, and LPTV, collectively). The current plan is based on the assumption that the incentive auction is necessary to solve a spectrum crisis and that wireless carriers have the only solutions. First, until wireless companies build out better systems and use better technologies, no amount of additional spectrum will solve the alleged crisis. Secondly, there is already a structure in place for broadcasters to roll out ancillary services and a wide variety of data delivery solutions quickly in both urban and rural areas. But, the television broadcast industry has been burdened by an inflexible broadcast standard that precludes its participation in a broader array of possible solutions to this alleged crisis. Removing this hurdle would provide our nation with opportunities otherwise ignored or not contemplated by the Commission in its search for solutions.

The Alliance continues to recommend that the Commission adopt a third-generation advanced television standard (“Next Generation” broadcast platform) that will not only free up broadcasters to provide more advanced free over-the-air services such as multiple HDTV channels, 3D and UltraHD, but also will allow broadcasters to provide delivery of advanced services to mobile, portable and fixed home devices. This could include a variety of mobile ‘off-loading’ capabilities to relieve wireless unicast networks of traffic well suited for broadcast delivery. The development of a “Next Generation” broadcast platform should happen whether or not there is a future repacking (and taking) of broadcast spectrum. The technologies are

available now that could create additional value to Americans through a more capable, globally harmonized and effective free over-the-air broadcast television platform. With sufficient effort, such a new broadcast platform will not only allow the roll out of advanced services to unserved and underserved areas (areas largely served today by the LPTV industry), but could provide what the Alliance calls a “broadcast overlay”⁶ through harmonization with various global standards and collaborative technological initiatives. Such a result would be in the interest of the American public, allowing the provisioning of many new, diverse and advanced products and services as an integral part of services offered by local broadcasters and free over-the-air television. It is also likely to generate considerable and ongoing revenues for the U.S. Treasury,⁷ as a result of the 5% fee that broadcasters are required to pay for ancillary and supplementary services.⁸

II. In the alternative, the Commission should adopt strong safeguards to ensure the preservation of low-power television broadcasting as part of the repacking of the broadcast spectrum

At least one year before any auction and spectrum repacking takes place, the FCC should release information regarding the spectrum inventory and the Allotment Optimization Model (“AOM”) to be used for the repacking.⁹ Station licensees and their viewers deserve to know how all the spectrum is currently being used and what the television landscape will look like after repacking of the spectrum takes place. Moreover, one member of Congress itself has demanded the release of the AOM on many occasions.¹⁰ Although the FCC has objected, claiming that it is unknown how many full-power stations will participate in the auction, thus affecting the

⁶ See <http://broadcastingalliance.org/wp-content/uploads/2012/06/Overlay-Simple-ATVBA.pdf>

⁷ See <http://broadcastingalliance.org/wp-content/uploads/2012/06/Economic-Report-Final-06122012-rev.pdf>

⁸ 47 C.F.R. § 73.624(g).

⁹ See NPRM, at ¶¶ 49-50.

¹⁰ See <http://www.tvtechnology.com/news/0086/dingell-and-nab-flame-fcc-chairman-for-withholding-spectrum-analysis-model/209990> and <http://www.tvtechnology.com/article/dingell-fcc-risks-lawsuit-for-withholding-tv-channel-repack-model-/214322> (last visited January 19, 2013).

available spectrum reclaimed, the Alliance proposes that the FCC release an AOM based on reclaiming varying amounts of spectrum up to the stated desired 120 MHz of broadcast spectrum, the goal proposed in the National Broadband Plan.¹¹

If the Commission then decides to move forward, it should ensure that LPTV stations will be accommodated as part of the repacking process. The FCC has acknowledged that it has authority to protect LPTV stations during the repacking process.¹² Moreover, during the December 2012 Energy and Commerce hearing, “Keeping the New Broadband Spectrum Law on Track,” Congressman Joe Barton made it clear that he understood the intention of Congress is to protect all licensed TV broadcasters including LPTV.¹³ Congressman Barton reminded the Chairman that the intent of Congress was to protect broadcasters, and it was therefore not their intention to force LPTV broadcasters off the air or remove them from the market. The Alliance believes the proposed incentive auction, as authorized by H.R. 3630, must protect the pre-auction spectrum usage rights of all operating LPTV & translator operators. The Alliance understands that these stations will be ineligible to participate in a reverse auction.¹⁴ However, they should nonetheless have rights with respect to participation in the repacking in light of the important role they serve to the American people.

¹¹ See Connecting America: The National Broadband Plan, at 98.

¹² See NPRM, at ¶¶ 113, 118.

¹³ See <http://energycommerce.house.gov/hearing/keeping-new-broadband-spectrum-law-track> (last visited January 17, 2013); see also Michael Grotticelli, “Will LPTV survive after spectrum auctions,” available at <http://broadcastengineering.com/regulation/will-lptv-survive-after-spectrum-auctions> (last visited January 13, 2013).

¹⁴ See NPRM, at ¶ 118.

Conclusion

The Alliance thanks the Commission for the opportunity to comment on this important and unprecedented proceeding. The Alliance asks the Commission to consider carefully the impact of the incentive auction and the repacking of broadcast spectrum on LPTV licensees, who have spent millions on building facilities to provide a public service, and on the millions of Americans who continue to rely solely on free over-the-air broadcast television for local news, public safety notifications, and entertainment programming.

Respectfully submitted,

Advanced Television Broadcasting Alliance



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