

**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
CIVIC AFFAIRS TV NETWORK**

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EXECUTIVE SUMMARY

The Civic Affairs TV Network (the “Network”)¹ hereby files these Comments to the above-captioned Federal Communications Commission (the “Commission”) Notice of Proposed Rulemaking (the “NPRM”). The Network is a new national video programming service of Federal, State, and local civic affairs content streams and archives for digital broadcast television stations and their companion digital Internet services. The intent of the Network is to address the lack of adequate civic affairs broadcast television programming (the “Civic Broadcast Digital Divide”), and how this problem could be made much worse by decreasing the available digital television spectrum after the auction in the top thirty TV markets, each of which is a large urban center with significant minority and economically disadvantaged populations.

The Civic Broadcast Digital Divide affects every television designated market area (DMA) and their corresponding local political jurisdictions (the “Local Jurisdiction”) of States, counties, towns, cities, and villages, and parishes in the United States. Simply put, the Civic Broadcast Digital Divide are those TV households and citizens who do not subscribe to pay cable and telco MVPD television services and are denied equal accessibility to the education and government access-channels produced with the Local Jurisdiction MVPD franchise fees. These are the E&G channels of the PEG MVPD access systems in many communities. The Network urges the Commission to immediately conduct research on the Civic Broadcast Digital Divide, and to consider a civic television station set aside plan (the “Civic Station Set Aside”) in every DMA as part of the Spectrum Auction television channel “repacking”² plan.

¹ Additional information about the Civic Affairs TV Network can be found at <http://www.civicaffairs.tv>.

² Repacking will involve the reorganization and reassignment of television channels to those broadcast stations that did not relinquish all or any of their spectrum rights in the reverse auction. See NPRM, at ¶¶ 35-71 and Appendix C.

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I. THE CIVIC BROADCAST DIGITAL DIVIDE

A. Definitions:

1. The Civic Affairs TV Network - a new national video programming service of Federal, State, and local civic affairs content streams and archives for digital broadcast television stations and their companion digital Internet services.
2. The Civic Broadcast Digital Divide - those TV households and citizens who do not subscribe to pay cable/telco MVPD television services and are denied equal accessibility to the education and government channels produced with the Local Jurisdiction cable franchise fees.
3. Local Jurisdictions - those State, County, City, Town, Village, and Parish local governments which are within the TV Designated Market Area (DMA).
4. Multichannel Video Programming Distributor (MVPD) - the FCC term of art for cable, satellite, and telco video subscription services.
5. Public Right of Ways (PROW) - what a Local Jurisdiction is leasing to a cable and/or telco MVPD and receiving franchise fees for.
6. Franchise Fees - what a Local Jurisdiction is paid by the MVPD for the PROW and is used by the Local Jurisdiction for the benefit of all of its' citizens.
7. Public, Education, and Government Access Channels (PEG) - defines both physical MVPD channels and the actual programming for those channels. For this discussion we are only concerned with the E&G programming of the PEG, and not the Public channel nor its programming.
8. The Repack - the reorganization and reassignment of digital broadcast television channels to those broadcast stations that did not relinquish all or any of their spectrum rights in the Spectrum Auction.

9. Localism - a term commonly used by the FCC as one of its' core missions and one of three top policy goals, along with diversity and competition.
10. TV Station Licensee - simply referring to full-power, Class-A, low power (LPTV), and translator (TX) stations.
11. White Space Guard Bands - proposed 6-MHz spaces between the digital television channel bands and the new wireless service bands where unlicensed electronic devices may operate.
12. State Public Affairs Networks (SPANs) - modeled on the national C-SPAN non-profit programming service, State SPANs only operate in less than ten States, are carried mainly on pay cable television systems (with a few airing on PBS stations), they usually do not allow their programming to be aired on commercial broadcast stations, and almost exclusively focus on State Legislative programming, with some Local Jurisdiction content.
13. Civic Affairs Programming - that content which a Local Jurisdiction or others may produce for use by Local Jurisdictions and/or its' citizens, which may include but not be limited to school board meetings, local user-generated student content, community college courses, meetings and hearings of elected bodies, their commissions and staff, informational content about Local Jurisdictions, Federal agency information, and other related content.
14. The Civic Station Set Aside - a recommendation to the Commission to incorporate as part of the TV spectrum Repack the setting aside of sufficient digital broadcast television station and channel capacity in each TV DMA, so that each Local Jurisdiction has the capacity to air their Civic Affairs Programming, utilizing either a pay-for-carriage and/or sponsorship economic arrangement, with participating local TV Station Licensees.

B. The Need for Pre-Auction Civic Broadcast Localism Research

In 2012, the Network, during its' initial research and business planning stages, conducted original research into the Civic Broadcast Digital Divide. It was also during this period that it developed its' proprietary research methodology for determining how to assess and quantify the Divide within each Local Jurisdiction. It initially relied on the FCC Report, *Information Needs of Communities*³, from June 9, 2011, which addressed the rapidly changing media landscape in a broadband age. An internal FCC Working Group drafted this Report based on 2009 bipartisan Knight Foundation Commission which found that,

“...while the broadband age is enabling an information and communications renaissance, local communities in particular are being unevenly served with critical information about local issues.”

Soon after the Knight Commission delivered its findings, the FCC initiated a staff-level working group to identify crosscurrents and trends, and make recommendations on how the information needs of communities can be met in a broadband world. While this 360-page Report is comprehensive in how it describes Civic and Community Media, and literally is a goldmine of important and useful research information, it never uncovered nor described the Civic Broadcast Digital Divide. The Report was totally focused on broadband, and while broadcast television is addressed in depth, as well as the cable PEG ecosystem, to this writer, the Report and its' authors never saw the forest through the trees when it came to the Civic Broadcast Digital Divide.

The results of the original research conducted by the Network during 2012, as part of actual TV station licensee business operations planning in over 10 TV DMAs around the country, showed a similar pattern. The Nielsen statistics relied on and used by television broadcasters, their trade association - the NAB, the MVPD, advertisers, and the FCC, did not provide the granularity

³ <http://www.fcc.gov/info-needs-communities#download>

needed to analyze nor understand the Civic Broadcast Digital Divide.

The Network developed its original research methodology by starting with the classic Nielsen numbers. It then conducted official records requests of Local Jurisdictions to obtain their latest reported MVPD (cable & telco) subscriber numbers as detailed with their franchise payments. Next, it matched those numbers against the official 2010 US Census Data, and determined the actual size of the Divide in the researched Local Jurisdictions and TV DMAs. Extensive research was conducted from additional industry sources to cross-reference and adjust the figures, but the pattern in each DMA and Local Jurisdiction was the same. The Civic Broadcast Digital Divide could range as high as 50% to as low as 25%, depending on the actual paid cable and/or telco MVPD subscription rates in those Local Jurisdictions.

In order to further refine and analyze the data, the Network compared the Internet Digital Divide statistics generated by the US Census, FCC, CTIA, and foundation studies, and both Divides seem to overlap significantly, encompassing close to 75% of the same citizens. The Network further determined that since high-speed broadband is mostly subscribed to by cable and telco MVPD users, that it was consistent that both Divides would map the same non-paying citizen households. The Network eventually ascertained that the remaining 25%+ of the Civic Broadcast Digital Divide which were not part of the Internet Digital Divide were composed of the cable-cutters and cable-nevers who only subscribed to high-speed broadband and not the paid cable/telco MVPD television services.

The Network presented its' research and findings to five Local Jurisdictions where it proposed beta-testing its' national programming and requested to include Local Jurisdiction civic affairs

content. It learned during these presentations and subsequently others, that there was a lack of knowledge of Federal and State MVPD franchise regulations, that there was bias against broadcast television as a means of distribution, and that there was fear of the MVPD since they were literally cash-cows for the Local Jurisdictions. It was also pointed out that the lack of FCC research to back up the research of the Network. None of the Local Jurisdictions presented to would believe that the Civic Broadcast Digital Divide was actually there, since they all had been told that the Nielsen statistics only showed a 10% at best local broadcast-only audience.

In response to these objections, the Network presented its' findings to the FCC, both at the staff and Bureau-level, and in open public session and private conversations. The accuracy of the data was disputed until it was shown by the Network that the statistics it was using came directly from official records requests from the Local Jurisdictions. However, with the Spectrum Auction NPRM being developed, adding in this not-yet-fully-developed Civic Broadcast Digital Divide research could not find its' way into the NPRM.

Therefore, the Network formally requests that the FCC conduct a nationwide research study of the Civic Broadcast Digital Divide prior to the implementation of the Auction. With potentially 40% of the US population possibly being described as part of this Divide, it is imperative to fully understand it prior to the final NPRM being issued.

C. The Failure of Local Jurisdictions to Provide Civic Broadcast Content

Despite decades of Rulemaking by the FCC to promote “localism”⁴ in programming and to assure that broadcast television licensees provide essential and community relevant content; and, despite almost three decades of Rulemaking to authorize and regulate the cable television industry⁵; and, despite more than two decades of Rulemaking to authorize and regulate the satellite broadcast industry⁶; there has developed a significant civic affairs content “accessibility-gap” (the “Civic Content Gap) in everyday American civic life.

Citizen households which are not subscribers to paid cable/telco MVPD television services do not have equal accessibility to the education and government access channels (the “E & G” of the “PEG” channels)⁷ which are authorized as part of most cable/telco MVPD television franchise negotiations and agreements. These E&G channels provide the most local of content, that of the local education institutions (local school boards and local community colleges), and Local Jurisdictions (local government meetings, notices, calendars, hearings, emergency content, etc.). If citizen households do not pay the ever higher cost of cable/telco MVPD television services they simply do not get on their televisions, as do the citizens who do pay for these services, the same level of accessibility to the local education and government content. The local cable/telco MVPD franchise fees come directly from the use of Public Right of Ways which is suppose to benefit all of the citizens in a Local Jurisdiction.

⁴ <http://transition.fcc.gov/localism/taskforce-archive.html>

⁵ <http://www.fcc.gov/encyclopedia/evolution-cable-television#sec1>

⁶ <http://transition.fcc.gov/osp/inc-report/INoC-28-Satellite.pdf>

⁷ <http://transition.fcc.gov/osp/inc-report/INoC-7-PEG-Access-Channels.pdf>

To make matters worse, during the past thirty years since the Cable Act authorized the PEG channels, most Local Jurisdictions have become dependent on the revenues from the cable/telco MVPD franchise agreements for use in their General Funds, and at best, most just fund the PEG channels with only a small portion of the franchise fees collected. In response to the ever increasing use by citizens of the internet and mobile services, many Local Jurisdictions have begun to host and stream the E&G content on their websites, thinking that this provides “equal access” to this vital and essential community content.

What Local Jurisdictions fail to understand is that, by simply providing “access” on their websites to the E&G content, they are only making it available to those who already have high-speed broadband, and this is not serving those without broadband service. Since most broadband services are cable and telco MVPD based, this means that providing the E&G content via the Internet still misses what are classically now considered the “Internet Digital Divide” households.

Local Jurisdictions have been making three basic and fundamental mistakes in how they understand their roles and responsibilities to the E&G content:

- 1) Providing the E&G content on the internet only makes that content from the Local Jurisdiction available to those citizens in the community who have broadband, or can travel to a public location to see it. This is not equal or timely access and does not at all solve the problems of either of the Divides;
- 2) The Local Jurisdictions have been misled into thinking that the E&G content may not be made available on broadcast television since it would compete with the cable or telco MVPD.

What the Local Jurisdictions fail to understand is that the programming they create cannot in any

way be restricted by the MVPD, it is public content, paid for with public funds, and should be available to everyone;

3) Most Local Jurisdictions incorrectly think that the cable/telco MVPD franchise fees they receive may not be used to support paying for carriage of that content on broadcast television channels. This is a two-part problem in that most Local Jurisdictions think they can not take the franchise fees and use them for broadcast, although in most communities they quite freely use them for their General Funds. The Network has found that Local Jurisdictions simply do not want to pay for carriage on broadcast to reach their Civic Broadcast Digital Divide citizens. Just like the PEG groups and their national associations, they all think that the cable franchise fees are theirs and any use of it for broadcast is not appropriate. The citizens of the Divides have as much right to those funds as cable subscribers do. The Public Right of Way is owned by the entire community and as such the programming created with those funds should be made available to all citizens including those of the Divides.

D. Why The Full-Power TV Licensees are Not Civic Broadcasters

The National Association of Broadcasters (the “NAB”), which is the main trade association of the full-power commercial licensees, makes their case of providing considerable amount of “minutes” of public service announcements and valuable local content⁸, and the Network does not dispute this at all. They each serve a very valuable and essential role in their communities-of-license and are many times the most important source of civic news, social commentary, public interest, and emergency communications. But, there is not one full-power commercial station that we know of which devotes a full-time digital subchannel to local E&G content so that citizens have that content. It is just a fact of the broadcast television business that these

⁸ <https://www.nab.org/resources/publicService.asp>

commercial digital subchannels are way too economically valuable, or are used as part of network affiliation agreements, or are just not available for local E&G content.

Direct conversations with two of the largest owners of local TV station licensees, representing over 100 local markets, have shown that these licensees and operators do not think they are responsible, nor do they want to be partners with local governments or educational institutions. This is in keeping with these local commercial stations being considered “the press” and at times adversaries of government, and that the bond between them and government should not be so economically entwined.

This is not to say that a new bond or public/private partnership could not be formed which would satisfy both the commercial broadcasters and the Local Jurisdictions. It will need however to be carefully crafted to each local situation and market, and any offers of paid carriage will probably need to be competitively put out to bid. Commercial broadcasters just do not see themselves as direct conduits of government content. They provide local communities with their own unique forms of journalism as part of their local news operations, and would not want to just air on a digital subchannel whatever the government is programming. To make the change to the civic broadcasting model, they would need to make both journalistic and economic model changes.

E. The Failure of the Class-A Television Service to Provide Civic Content

Congress has authorized that the Class-A broadcasters⁹ are eligible for the Spectrum Auction, and many of them will probably enter the Auction, in full or through channel sharing. This class of service has never really lived up to its’ role in achieving localism and in many cases do

⁹ <http://www.fcc.gov/encyclopedia/class-television>

not adhere to the FCC rules. Most Class-A's, at best, only devote a few hours a week to local programming and many are local affiliates of national networks of ethnic, religious, shopping, or entertainment channels. This is not to say there are no exemplary local Class-A broadcasters, there are, but they are few in comparison to the many who are not.

Since 2000, when the Class-A service was authorized, and a very short filing window was open and then closed, no new Class-A licensees have been authorized. Those LPTV licensees which did not file for Class-A, or have built-out their stations since 2000, are in many cases better local community broadcasters. The Network has looked closely all across the country and in most every DMA there are LPTV stations usually providing more locally produced content. So, if Congress and the FCC want to eliminate or reduce the Class-A service, that will actually help the cause of localism, but it does nothing to address the Civic Broadcast Digital Divide.

F. Post Repack Many LPTV Licensees Could Provide Civic Content

To further complicate matters, the Spectrum Act does not specifically guarantee that any LPTV license will survive the Repack, or will not be reduced to a single digital subchannel, nor maintain its' coverage area. Additionally, most LPTV stations do not cover an entire DMA but only part of it, so in order for the LPTV service to assist in a "Civic Station Set Aside" plan there would need to be multiple LPTV stations assigned in each community to cover the entire DMA. This is the same for the Class-A stations, which are also limited in their coverage of the DMA.

Paid carriage fees from Local Jurisdictions to air local civic affairs content could actually be a key economic component of the repacked LPTV service. Since most LPTV do not have valuable major national network affiliations, and those accompanying economic models which yield

cable and telco MVPD carriage, most get by with modest revenues. If a Civic Broadcast Station Set Aside plan could encourage and incorporate the LPTV service, it could help to ensure their financial and operational survival.

Even current faith, ethnic, and entertainment programmed LPTV stations could find excess digital subchannel capacity for paid carriage by Local Jurisdictions. The Network urges the Commission to explore this opportunity further, especially since many Class-A licensees are projected to cash-out in the Auction in the top thirty markets. In some markets, an LPTV can actually be seen by more people than many entire States, and in the top thirty markets there are plenty of potential Civic Broadcast Stations which could be set aside using the LPTV service without further disruption of the full-power service.

G. Why the NCE and PBS Stations Have Not Become Civic Broadcasters

The PBS/NCE full-power TV licensees have not, with a few exceptions, taken on the role of civic broadcaster. They will argue that they produce and air national and State-level civic content, but what they are really airing is public affairs content, produced and edited as they journalistically determine. There are only a few PBS State systems or local stations which carry local E&G content, and these are mostly focused on airing State Legislature meetings. The Network has had direct conversations with the Corporation for Public Broadcasting and PBS national management and they do not consider “local civic content distribution” as part of their mission. This is despite the facts that they are: a) uniquely positioned to do so since they have total DMA broadcast reach; b) have excess digital subchannel capacity; and, c) are always in need of additional revenue streams, which Local Jurisdictions could support through paid carriage agreements using the cable franchise fees.

H. The Inability and Failure of the DBS MVPD to Provide Civic Content

The satellite MVPD do not provide any space on their systems for the local E&G channels, and at best only provide a 4% channel capacity for national non-profit programming.¹⁰ However, the concept of “set asides” in the *Cable Television Consumer Protection and Competition Act of 1992* could become part of the solution to the Civic Broadcast Digital Divide.

This is not to say that the satellite MVPD do not provide a valuable service for non-profit and educational content, they do. It is just a fact that they are pressed to even provide the local full-power stations in each DMA with their spot-beam services, and have to charge extra for that. When you consider that there could be dozens of local Jurisdictions in a DMA there is no way that satellite MVPD could provide adequate channel capacity. Combined with the fact that most satellite MVPD subscribers have additional televisions in the household and in many cases digital broadcast television antenna, these subscribers can easily be served by the proposed local broadcast civic affairs stations.

I. The Failure of the SPAN Model To Become Widely Adopted

Less than ten States actually have a State Public Affairs Network (SPAN), and almost all are modeled on the C-SPAN model which prohibits broadcasters from freely airing and monetizing them on free digital broadcast TV. And this is after over thirty years of the PEG and SPAN model being promoted and used across the country. Most of the <10 SPANs are captive of the local cable industry MVPD, will not even talk about airing the channels on broadcast, and do not have an economic model to pay for broadcast carriage, nor allow sponsorship or advertising.

¹⁰ <http://transition.fcc.gov/osp/inc-report/INoC-28-Satellite.pdf>

While these SPANs provide to the cable subscriber a valuable and useful civic content service, they are basically marketing vehicles for the cable MVPD industry and are not replicable to broadcast stations unless they drastically change their operational and financial models.

II. THE CIVIC STATION SET ASIDE

A. Description

The Network recommends to the Commission to incorporate as part of the TV spectrum Repack the setting aside of sufficient digital broadcast television station and channel capacity in each TV DMA, so that all Local Jurisdictions have the capacity to air their civic affairs programming. The Network is advocating a pay-for-carriage and/or sponsorship economic arrangement between participating local TV Station Licensees and Local Jurisdictions.

This could be the only method and time when sufficient digital broadcast channel capacity is available to address the Civic Broadcast Digital Divide problem. Waiting to address this problem until post-Repack could possibly undermine not just the localism issue, but also diversity, both of which are pillars of the FCC core mission.

Most all of the TV DMA cores are urban areas with significant minority and economic disadvantaged populations. Further, these are the very same population centers which the Internet Digital Divide is also present, although the rural parts of each DMA also experience these same socio-economic patterns.

By adopting the Civic Station Set Aside proposal, the Commission can address both Divides at the same time by providing in the near-term (10-years) a free civic affairs content distribution method until the time when broadband eventually becomes economically feasible and universally adopted (again, 10-years) to these communities.

B. When To Do It? Pre or Post Repack?

The Network urges the Commission to research and study the Civic Station Set Aside proposal before issuing its' final Spectrum Auction rules. Local Jurisdictions and television licensees need time to adjust to this new means of distributing the E&G civic affairs content. If the Commission waits until after the Repack to address the Civic Broadcast Digital Divide issue, it will find itself in a limited-capacity channel environment, with many television licensees scrambling around for adequate frequencies to move to and operate on. This could all take years and in this ensuing time as much as 40% of the US population will be cut off from the civic affairs content of Local Jurisdictions in every TV DMA. Even if we assume that the Internet can supply this essential civic content to those with broadband, that will still leave almost 25% of the citizens in the country without it in their homes.

C. Methods of Encouraging Station Licensees and Local Jurisdictions

There are many potential methods of encouraging Station Licensees and Local Jurisdictions to work together to distribute civic affairs content in a mutually agreeable economic model. While the Network does not advocate tax-breaks, or subsidies of any kind, the easiest method may actually be to clarify a set of rules and regulations so that each side of the negotiation knows what is legally and operationally possible.

The Network has found in almost all cases Local Jurisdictions have been misled or bullied by the cable/telco MVPD as to what is legally allowed. This all can be highly specialized knowledge that even the lawyers of the Local Jurisdictions do not fully understand the law and contracts they have signed. The Network has experienced first-hand that the Local Jurisdictions are fearful that they will upset the goose that laid the golden egg of franchise fees, which are mostly used to support their Local Jurisdictional General Funds and vital community services and projects.

The broadcast licensees also need education and guidance about the Repack, the concept of a civic broadcast station set aside, and the potential of working with and not against a Local Jurisdiction. For many broadcasters this will be a new experience, and many will simply just not want to participate. But the Network predicates an overwhelming number of remaining Class-A and LPTV licensees will jump at the chance to obtain paid carriage deals for their digital subchannels.

D. White Space Guard Bands vs. Civic Stations, Which Comes First?

The Network believes that the National interest is better served by first provisioning adequate civic broadcast digital station and channel capacity in each TV DMA than it is to give away that spectrum in an unregulated fashion. As many as 40% of Americans need equal accessibility to Local Jurisdiction civic content using free digital broadcast television. No White Space Guard Band proposal yet shown can match this pressing national civic need. These unserved broadcast households and citizens already have purchased new digital televisions and are ready and eager to see their Local Jurisdictions in action.

E. Gender, Ethnic, Faith, and Small Business Set Asides, Are They Needed?

The Network believes that the post-Repack landscape should include as many gender-based, ethnic, faith, and small business owners, programmers, and operators as the marketplace will allow. But we do not believe that any of these groups should receive any special set aside before adequate civic broadcasting station and channel capacity in each TV DMA is provided for. Many of these are current licensees and could actually benefit from providing paid carriage channel capacity to Local Jurisdictions, but certainly none are more important than the actual civic content itself. The Federal government will always provide for its' own bandwidth needs before those of commercial enterprises, and as such the Civic Broadcast Station Set Aside will ensure that civic content is fully available to the broadcast television user.

F. The Economics of the Set Aside: The Washington, DC Example

As an example, the Network has been educating and negotiating with the District of Columbia government to air OTA in the DC DMA the four E&G channels the District produces. The DC government receives about \$7 million a year in public right of way fees from its' franchise agreements with cable and telco MVPD. In DC-proper, there is a 58% cable/telco MVPD subscription rate. The MVPD do not break-out residential versus commercial accounts but let's assume they are all residential. What this means is that 42% of DC households and citizens do not get the four E&G channels that the DC government has produced using the public right of way MVPD franchise fees. That is a significant Civic Broadcast Television Digital Divide!

Within DC-proper, the going rate for a cable television Leased Access channel is \$28,000 a month to reach 100% of the cable-only MVPD households (this is <58% of all TV households). If we round this down to the 42% non-cable/telco MVPD usage figure, the comparable

marketplace cost for carriage of one-channel OTA should be about \$20,000 a month. So with four DC-government channels it should be charged \$80,000 a month by a civic broadcaster for four digital broadcast subchannels. However, in the DC DMA, the going market-rate for an LPTV digital subchannel is about \$10,000 a month, and with multiple channels \$7,500 a month to reach most of the DMA.

The DC government, through a competitive bidding process with local broadcasters, may be able to drive the cost of the four E&G channel OTA carriage down to \$30,000 a month. This would cost them about \$360,000 a year for the four E&G channels delivered 24/7 to all citizens, including the 42% who do not subscribe to cable and telco MVPD providers. This works out to about \$1/citizen-served/year! Since the DC government is generating about \$7,000,000 a year in franchise fees, or about \$10.76 per citizen-subscriber, spending 1/10th of that amount to reach the all DC citizen households is warranted. But try telling that to a Local Jurisdiction using cable franchise fees to fix potholes and pay for vital and needed services!

DC-proper, some 650,000 citizens, is only about 1/12th the total number of citizens in the entire DC-DMA of about 8 million. There are dozens of additional Local Jurisdictions from Maryland and Virginia in the DMA. The largest LPTV station in the market will reach about 6,500,000 people, so in this top-10 TV market just one LPTV station could cover most of the DMA, but not all. Maybe with this type of economic incentive the NCE/PBS and possibly the full-power stations would participate. In most DMA around the country¹¹, excluding the top-30 markets, there should be ample channel capacity after the Auction Repack. However, in the top-30 DMA,

¹¹ The Network has studied 15 DMA and the numbers and process holds up in each of them. The FCC should immediately study all of the 210 DMA to fully understand what is going on.

where the FCC anticipates extensive Auction activity, the real and present danger is that there will not be adequate digital subchannel capacity for a Civic Television Broadcast Station.

III. CONCLUSIONS

Federal telecommunications law does not require that any Local Jurisdiction provide local E&G content, whether by cable, satellite, broadcast, or the Internet. The PBS and NCE stations are not required to provide this content, the full-power and Class-A services only have a minimal amount of hours a week for local content, and so the civic affairs content of each community has not been given any priority or authority to be made available to the non-cable/telco MVPD citizens. Many States are now limiting or totally eliminating any requirements for local content as part of local MVPD franchise agreements. Most all are fixated on delivery of this content via broadband.

The SPAN non-profit and cable TV model has only been adopted in <15% of the States, does not include local E&G content, and mainly focuses on State content. Providing the local civic content via high-speed broadband Internet is not providing equal accessibility to the content and its' adoption is limited by the Internet Digital Divide. Since all of the above is the reality of the community media marketplace, most Local Jurisdictions have taken the position that even if a local television broadcaster wanted to air the E&G channels they could not monetize the channel and the Local Jurisdiction would not pay for these commercial digital subchannels.¹² So, how could the FCC protect the rights of citizens to their E&G content, promote Localism, encourage Diversity, and create a framework for the Spectrum Auction post-Repack world to include the E&G content?

¹² Actual experience of the Civic Affairs TV Network in four TV DMA

The FCC can look to its' own *Cable Television Consumer Protection and Competition Act of 1992* in which it developed the concept and practice of set asides, and required the satellite television MVPD to set-aside 4% of their channel capacity for non-profit educational programming. The Network envisions a slightly different approach for the Spectrum Auctions and the Repack. What we are advocating is that a full 6-MHz station, covering the entire DMA, either through one full-power (TV or NCE) channel, or multiple 6-MHz Class-A, LPTV or TX channels, be designated to be the Civic Broadcast Station(s) and/or channels.

All Local Jurisdictions which are within the DMA would be eligible (but not required) to provide E&G content to this Civic Broadcast Set Aside Station. However, participating Local Jurisdictions would be required to cost-share the carriage of the Station and related channels. The rate of carriage would be determined by using a baseline starting with a comparison of what the local cable television MVPD charge for Leased Access. The actual costs of carriage could be driven down with competitive bidding if local TV, NCE, LPTV, and TX stations wanted to bid on providing the service and channel(s). This arrangement would not cost the FCC anything at all, would not take any funds away from the Auction proceeds, could be cost-shared among numerous Local Jurisdictions, would not give any unfair advantage to local broadcast competitors, and would provide ALL citizens equal accessibility to the E&G content.

Local Jurisdictions and local broadcasters could collaborate on provisioning additional Civic Broadcast Set Aside Station and channels if they wanted, since this model is driven and paid for with existing local funds generated by local cable franchise agreement public right of way franchise fees.

Yes, the PEG groups and their national associations will yell and scream about sharing the franchise fee pie since they have been under attack and drastic cuts have already been made to many systems. In addition, the Local Jurisdictions will balk at paying for broadcast carriage since they are counting on those franchise fees for many other vital civic uses. The network-affiliated full power commercial stations will want a lot more for their subchannels than this arrangement would yield, but the Network knows from first-hand conversations with Class-A and LPTV owners that they would welcome such a program and revenue-generating and community-serving schema.

The Network believes that the Civic Broadcast Station Set Aside is a much higher purpose goal than the proposed two 6-MHz White Space Guard Bands. If the FCC truly wants to promote Localism and protect Diversity, than there is no better method of protecting and encouraging them than researching and adopting the Civic Broadcasting Channel Set Aside proposal.

The precedent for it was incorporated into the *Cable Television Consumer Protection and Competition Act of 1992*, and if updated for today's multi-channel digital television service, a workable, cost-neutral solution can be developed for all citizens, Local Jurisdictions, and broadcasters.

By simply ensuring that at least one 6-MHz station is set aside in each TV DMA for civic affairs content, enough channel capacity will be available for even the largest populated and multiple Local Jurisdictional DMA. But this can only happen if the FCC conducts national research prior to the final NPRM, and then creates the rules and framework for it.. Without such an arrangement, and if left to current market conditions, as much as 40% of the nations' citizens

will be left out of the civic conversation of their communities for the near-term future unless they pay for high-speed broadband. The promise of broadband is just that, a promise, and for many an unattainable economic goal. Free, available to all, civic broadcast television content can be a reality today, next year, and as far as the future can promise.