

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

To: The Commission

**COMMENTS OF  
RAYCOM MEDIA, INC.**

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Raycom Media, Inc. (“Raycom”) respectfully comments on the repacking proposals described by the Commission in the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding. Raycom is optimistic that the Commission will be able to move forward with the repacking and incentive auction in a manner that is truly “win-win” for all stakeholders, including the television viewers that the Commission must protect under the Spectrum Act and as a matter of public policy.

**I. INTRODUCTION AND SUMMARY.**

Raycom appreciates the opportunity to comment here on several issues important to its stations and to their viewers. First, Raycom strongly urges the Commission to grant the request of low VHF station WMC, Memphis, Tennessee, to move to Channel 17. This move would enable the station to dramatically improve its signal coverage and would be welcomed by the many WMC viewers who have not been able to receive a reliable signal since the station’s digital transition. Second, Raycom requests that the Commission reconsider its proposal to protect only those facilities that were licensed (or the subject of a license application) as of the date when the Spectrum Act was enacted, because certain stations — such as Raycom station WOIO — were authorized by the FCC to operate, and were operating, larger facilities as of that

date. The Spectrum Act does not impose a licensing requirement in order for such facilities to be protected. Third, Raycom provides background on the somewhat complex licensing history of its station WFXG, Augusta, Georgia, and explains why the Commission should protect WFXG's current coverage area and population. Fourth, and finally, Raycom notes that the Commission's proposal concerning protection for Class A stations falls short of what is required under the Spectrum Act. Class A stations are fully entitled to protection in the repacking for the areas that they serve.

## **II. THE COMMISSION SHOULD PROCESS AND GRANT WMC'S REQUEST FOR A UHF CHANNEL.**

Under the Spectrum Act,<sup>1</sup> the Commission generally may not move stations from VHF to UHF allotments until the earliest of (1) the date on which the reverse auction, channel repacking, and forward auction have been completed; (2) the date on which the FCC determines that the forward auction proceeds are not sufficient to reimburse all repacking costs and reverse auction bidders and to cover the costs of the forward auction; or (3) September 30, 2022.<sup>2</sup> Congress has, however, expressly determined that one group of stations should not be subject to this general rule: it specifically authorized the Commission to grant those VHF-to-UHF reallocation requests that were filed before the Commission issued its May 31, 2011 "freeze" on the filing of such petitions.<sup>3</sup> As noted in the NPRM, there are ten such requests pending at the Commission, two of which — including the request of Raycom station WMC, Memphis,

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<sup>1</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156, Title VI (2012) ("Spectrum Act").

<sup>2</sup> Spectrum Act at § 6403(g)(2).

<sup>3</sup> Spectrum Act at § 6403(g)(1).

Tennessee — request a move from a low VHF channel to a UHF channel.<sup>4</sup> The Commission can and should grant WMC’s request expeditiously.

In the NPRM, the Commission proposes not to grant the pending VHF-to-UHF channel change petitions that were filed before it issued the freeze on the filing of new reallocation petitions, on the view that doing so could “unnecessarily compromise [the FCC’s] flexibility in the repacking process.”<sup>5</sup> Raycom disagrees. As an initial matter, Congress already determined that proceeding with the limited number of channel change petitions filed prior to the FCC’s freeze is consistent with the intent of the Spectrum Act — the Act itself expressly authorizes the FCC to proceed. Moreover, WMC’s petition is one of only two petitions filed before the May 31, 2011 freeze that seek new UHF allotments for stations currently operating on low VHF channels. (The only other similar petition is that of station WCYB, Bristol, Virginia.) Low VHF channels pose special challenges for digital broadcasting, as the Commission has recognized.<sup>6</sup> Allowing two television stations to move from low VHF to UHF channels will not unduly hamper the Commission’s flexibility in the repacking process.

Permitting WMC to move from Channel 5 to Channel 17, as the station has requested, would advance the public interest by permitting the station to resolve ongoing service problems that have plagued the station’s viewers since the station commenced digital operations

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<sup>4</sup> NPRM at para. 117.

<sup>5</sup> NPRM at para. 117.

<sup>6</sup> See, e.g., NPRM at 127 (citing interference issues that create problems with reception of low VHF digital television signals); *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, ET Docket No. 10-235, 25 FCC Rcd 16498, para. 43 (2010) (acknowledging special difficulties of low VHF channels).

on Channel 5.<sup>7</sup> Many thousands of viewers in WMC’s core service area have reported to WMC that they lost reception of the station’s signal after the digital transition, and the station continues to receive several calls per day from viewers who are unable to receive the station’s signal. The Commission can enable WMC to improve its service to the viewing public without compromising the success of the repacking or related forward auction process and, in doing so, serve the public interest as Congress intended. Indeed, as several Senators have made clear, a successful forward auction is not mutually exclusive with providing targeted relief for stations such as WMC — and Congress intends for the Commission to move forward on processing these petitions. These Senators have noted that while earlier versions of the Spectrum Act ruled out granting any VHF-to-UHF reallocations, Congress expressly added language carving out petitions filed before the freeze, and they have pointed out that the FCC’s apparent reluctance to grant these petitions “is counter both to the specific legislative intent behind inclusion of the ‘freeze’ exception and to principles of fairness that entitle parties, who have proceeded in accordance with FCC rules and deadlines, not to have their rights truncated unexpectedly.”<sup>8</sup> Congress also has recognized the inferiority of low VHF channels for digital broadcasting, expressly providing that the Commission may not move even high VHF stations to low VHF channels in the repacking.<sup>9</sup>

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<sup>7</sup> As noted in the station’s channel substitution petition, WMC has also tried to remedy reception problems by increasing its power on Channel 5, but the power increase did not substantially alleviate the service losses experienced by the station’s viewers. *See* Amendment of Section 73.622(b), Final DTV Table of Allotments, Television Broadcast Stations (Memphis, Tennessee), Petition for Rulemaking, filed by WMC License Subsidiary, LLC (May 26, 2011).

<sup>8</sup> *See* Letter from Senators Kay Hagan, Lindsey Graham, and Saxby Chambliss to Chairman Julius Genachowski, May 1, 2012.

<sup>9</sup> *See* Spectrum Act at § 6403(b)(3).

Moreover, a disproportionate number of viewers affected by WMC's unreliable low VHF signal are senior citizens, African Americans, and low income households. WMC tracks the zip codes from which viewers call to report that they cannot receive the station's signal. According to data obtained by Raycom from Rentrak, out of the ten zip codes in WMC's service area from which the most viewers call the station to report reception problems, nine have populations of senior citizens, households with incomes less than \$25,000, and/or African American populations that exceed the relative populations of these groups in the overall market. In several zip codes, all three of these populations are overrepresented. All of these groups rely heavily on reception of free, over-the-air television and are disproportionately affected by the lack of a reliable signal from the station. The Commission should strive to protect these viewers, and it can do so by moving WMC to a UHF channel that can provide more reliable digital television service. By doing so, the Commission can ensure that these households can receive free access to WMC's news and weather coverage, emergency information, entertainment, and other programming.<sup>10</sup>

Raycom notes that in the NPRM, the Commission stated that one of the reasons it proposed not to act on the pending channel-change requests was that "granting these UHF channel substitution requests prior to completion of the incentive auction could create an opportunity for these stations to relinquish their newly allotted UHF channels through a UHF to

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<sup>10</sup> A supplement to the reallocation petition, filed by WMC on January 4, 2012, provides details concerning WMC's efforts to restore service to viewers who lost reception after the digital transition, including WMC's investment of over \$100,000 to purchase and give away thousands of indoor and outdoor/attic VHF antennas and other equipment and other viewer assistance measures. The supplement also describes the challenges of low VHF reception and the real-world improvements in service that would be enabled by a move to UHF Channel 17.

VHF bid.”<sup>11</sup> Raycom has no such plans (to the extent that this concern cannot be addressed in the rules concerning the incentive auction). For the reasons explained herein and in WMC’s channel substitution petition, broadcasting on UHF Channel 17 will provide superior service to viewers, including much-improved signal reception and the ability to offer mobile DTV. Should WMC receive its requested UHF channel, Raycom has no intention of foregoing that opportunity in order to keep WMC on an inferior low VHF channel, and would gladly accept a condition to grant of its reallocation petition that prohibited it from doing so.

Finally, if the Commission defers acting on WMC’s channel change request, despite the public policy arguments and the Congressional intent in favor of doing so, the Commission should at least afford WMC the opportunity to move to the UHF band as a part of the repacking. Viewers in WMC’s core service area have experienced reception problems since the digital transition occurred, and WMC’s petition was filed before the May 31, 2011 freeze. Accordingly, the Commission should provide relief for WMC and its viewers as soon as possible. Raycom strongly urges the Commission not to delay relief to WMC’s viewers any longer, but in no event should WMC be left without a UHF channel after the FCC’s repacking process.

### **III. THE COMMISSION SHOULD PROTECT THE COVERAGE AREA AND POPULATION SERVED BY WOIO AS OF THE DATE OF THE SPECTRUM ACT’S ENACTMENT.**

In the Spectrum Act, Congress provided that in the repacking, “the Commission shall make all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast television licensee....”<sup>12</sup> The

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<sup>11</sup> NPRM at n. 181.

<sup>12</sup> Spectrum Act at § 6403(b)(2).

Commission proposes to interpret this requirement to mean that it must preserve only “facilities that were licensed, or for which an application for license to cover authorized facilities already was on file with the Commission, as of February 22, 2012.”<sup>13</sup> This proposed interpretation falls short of what the Spectrum Act requires and would harm the public.

As of the date that the Spectrum Act was enacted, Raycom station WOIO, Shaker Heights, Ohio, was operating its Channel 10 digital facility at 9.5 kW effective radiated power pursuant to special temporary authority (“STA”).<sup>14</sup> WOIO has been serving its viewers with 9.5 kW facilities pursuant to STA since late 2009. Originally, WOIO sought STA to operate these facilities in order to allow the station’s viewers to receive improved digital television service while the station constructed a maximized digital facility pursuant to the construction permit found in FCC File No. BPCDT-20080620AKW. WOIO applied for a modification to that construction permit in February 2012 so that it could license the STA facility,<sup>15</sup> and since that time the station has continued to operate at 9.5 kW, under STA, while that application is processed (it requires Canadian coordination). In short, since late 2009, WOIO has been serving a larger coverage area (by 3,575 square kilometers) and a greater population (by 283,880 viewers) than that authorized by the station’s license.

The plain language of the Spectrum Act requires that the Commission protect the population and coverage area *served* by WOIO as of the date when the Spectrum Act was enacted, which means protecting the station’s 9.5 kW facility. It does not require that WOIO have licensed such facilities. Section 6403(b)(2) of the Spectrum Act defines *who* must be

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<sup>13</sup> NPRM at para. 98.

<sup>14</sup> See FCC File No. BEDSTA-20111101AJB.

<sup>15</sup> See FCC File No. BMPCDT- 20120224AAA.

protected (each broadcast television licensee), and also *what* must be protected (the coverage area and population served by each such licensee, as of February 22, 2012). Congress did not require this population and coverage area be licensed, *i.e.*, it did not refer to “licensed coverage area.” Thus, because WOIO was operating its Channel 10 digital facility at 9.5 kW as of February 22, 2012, the population and coverage area served by WOIO as of that date must be protected. The alternative would create a risk that many longstanding viewers would lose service from the station, contrary to the express requirements of the statute.

Finally, Raycom notes that WOIO constructed a digital “replacement” translator after the digital transition, which was placed into service prior to the Spectrum Act’s enactment.<sup>16</sup> This translator serves long-time station viewers who lost service after the station’s commencement of digital operations on VHF Channel 10. The NPRM does not specifically indicate how the Commission intends to treat replacement translators in the repacking process, although the NPRM notes that generally the Commission does not propose to protect low power stations and translator stations in the repacking.<sup>17</sup> Because of the unique nature of replacement translators, which are designed to serve the viewers that full power stations lost during the digital transition, and which are licensed in association with the full power station’s license, Raycom urges the Commission to protect the service area and viewers served by replacement translators (such as WOIO’s replacement translator) in the repacking.

#### **IV. THE COMMISSION SHOULD PROTECT WFXG’S EXISTING COVERAGE AREA AND POPULATION SERVED.**

Raycom station WFXG, Augusta, Georgia, has a somewhat complicated licensing history, and a brief explanation of this history could be of use as the Commission moves forward

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<sup>16</sup> See FCC File No. BLCDDT-20110817AAW.

<sup>17</sup> NPRM at para. 118.

with the repacking proceeding. WFXG constructed its digital facility on Channel 51, and filed a license application for that facility several years ago.<sup>18</sup> This is the facility that the station has continued to operate since filing its license application, including as of the date when the Spectrum Act was enacted, and Raycom believes that the coverage area and population served by WFXG with this facility are the coverage area and population that Congress intends the Commission to protect in the repacking.

Several years ago, the station's former licensee sought and ultimately received authorization to move the station to Channel 31, with a facility that would have had a different footprint than the one then and now served by WFXG.<sup>19</sup> However, after the station determined that constructing a brand new facility on Channel 31 was neither necessary nor feasible, the station's prior licensee requested authorization to simply maintain the station's existing facility on Channel 51. The FCC issued a Notice of Proposed Rulemaking, proposing to authorize just that.<sup>20</sup> However, the FCC has not yet proceeded to the stage of issuing an order in this proceeding. In the interim, the station's construction permit for Channel 31 has been tolled.<sup>21</sup> Raycom believes that for purposes of the repacking, the Spectrum Act would require the Commission to protect the "coverage area and population" served by WFXG as of February 22,

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<sup>18</sup> See FCC File No. BLCDDT - 20060630ACT.

<sup>19</sup> See Final DTV Table of Allotments, Television Broadcast Stations (Augusta, Georgia), *Report and Order*, 23 FCC Rcd 18020 (Video Division 2011).

<sup>20</sup> See Final DTV Table of Allotments, Television Broadcast Stations (Augusta, Georgia), *Notice of Proposed Rulemaking*, 26 FCC Rcd 3870 (Video Division 2011)

<sup>21</sup> See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to William H. Fitz, Esq., Covington & Burling LLP, Re: WFXG, Augusta, GA, File No. BPCDDT-20090303ABA (March 7, 2012).

2012, which is the station’s existing coverage area and population and which is subject to a license application filed before the Spectrum Act was enacted.<sup>22</sup>

**V. THE COMMISSION SHOULD FULLY PROTECT CLASS A STATIONS’ COVERAGE AREAS, AS REQUIRED BY THE SPECTRUM ACT.**

Raycom is concerned about the NPRM’s proposed protection methodology for Class A stations. Raycom operates Class A station WBXH-CA, Baton Rouge, Louisiana. Under the Spectrum Act, this Class A station is entitled to the full measure of protection provided by Congress for full-power stations, namely, that the Commission protect the “coverage area and population served” by this station as of the Spectrum Act’s enactment. The Spectrum Act makes no distinction between the amount of protection required for Class A stations and for full power stations. However, in the NPRM, the Commission proposes to “use a Class A station’s ‘protected contour’—the area within which it is protected from interference under our rules—as its coverage area for purposes of the repacking.”<sup>23</sup> The area within a Class A station’s “protected contour” is not a complete match for the area *served* by the station,<sup>24</sup> and it is the area *served* by the station that must be protected — as required by Congress — in the repacking. Accordingly, Raycom respectfully urges the Commission to protect in the repacking the complete area (and population) served by Class A stations such as WBXH-CA, as Congress intended.

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<sup>22</sup> See BLCDDT - 20060630ACT; see also BDSTA - 20110228ADH (STA application filed “out of abundance of caution” by station’s prior licensee to continue current Channel 51 operations; describing intervening developments concerning station’s antenna and concerning Channel 31 allotment petition).

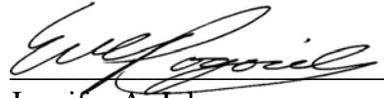
<sup>23</sup> NPRM at para. 99.

<sup>24</sup> Compare 47 C.F.R. § 73.622(e) (defining DTV service area) to § 73.6010(c) (defining digital Class A interference-protection contour).

A hallmark and a strength of our broadcasting system is that all households, regardless of income or other characteristics, are able to share in the high quality programming made available for free by our nation's television stations. Stations such as WMC offer programming ranging from the Super Bowl and the Olympics to entertainment programming to coverage of local news and weather. Unfortunately, those households that may be most vulnerable and hardest-hit in cases of life-threatening weather events or other disasters are the same households most affected by the lack of a reliable signal from WMC. And these households are the least able to pay for cable or satellite television subscriptions as an alternative means of accessing the station's programming. There is a clear interest in enabling WMC to improve the reliability of its free, over-the-air signal by moving to UHF Channel 17. A UHF channel also would permit the station to launch a mobile DTV service, providing viewers with the ability to access station programming anytime, anywhere. The relief that Raycom seeks here is firmly in line with the Spectrum Act, which authorizes the FCC to act now on the petition.

For the reasons set forth above, Raycom also urges the Commission to fully implement the protections required under the Spectrum Act for stations operating pursuant to STA when the Spectrum Act was enacted, such as WOIO, for stations with complex licensing histories, such as WFXG, and for Class A stations such as WBXH-CA. Raycom looks forward to continuing to work with the Commission throughout this process in order to achieve the goal of a "win-win" outcome that protects the public's essential television service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eve R. Pogoriler". The signature is fluid and cursive, with a horizontal line underneath it.

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