

**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
BONTEN MEDIA GROUP, INC.**

Jennifer A. Johnson
Eve R. Pogoriler
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
(202) 662-6000
*Counsel for Bonten Media Group,
Inc.*

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Bonten Media Group, Inc. (“Bonten”), owner of nine full power and Class A television stations¹ and dozens of low power television stations in eight markets, respectfully comments on the repacking proposals described by the Commission in the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding. The NPRM raises a number of important issues with respect to the repacking of the television band that are important to get right in order to effect the intent of Congress and protect television viewers. Striking the right balance will be a difficult task, but the Commission can and must get it right.

I. INTRODUCTION AND SUMMARY.

Bonten comments on two issues that are very important to its stations and to the many thousands of viewers who receive free television service from those stations. First, Bonten urges the Commission to act on Bonten’s long-standing request to give its Bristol, Virginia station WCYB a UHF channel. A UHF channel would allow WCYB to make its service much

¹ WCYB-TV, Bristol, Virginia; WCTI-TV, New Bern, North Carolina; KRCR-TV, Redding, California; KAEF-TV, Arcata, California; KTXS-TV, Sweetwater, Texas; KECI-TV, Missoula, Montana; KCFW-TV, Kalispell, Montana; KTVM-TV, Butte, Montana; K42BZ-D, Bozeman, Montana.

more reliable for the many viewers who lost service after the station commenced digital operations on its low VHF channel in connection with the digital transition. Second, Bonten comments on the scope of protection that the Commission should provide in the repacking to the stations who will remain on-the-air and are meant to be “held harmless” for their decision to continue to serve the public. Specifically, the Commission should protect: (1) stations’ “coverage area and population served” as of February 22, 2012 — without regard to whether or not stations are operating pursuant to waivers of the power limits granted by the FCC (a factor that is not relevant under the Spectrum Act or as a matter of policy); (2) the service provided by replacement translators, which are essential to restoring service that viewers lost in connection with full-power stations’ digital transitions; and (3) the entire service contours and populations served by Class A stations, in parity with the protections granted to full-power television stations under the Spectrum Act.

II. IT WOULD BE IN THE PUBLIC INTEREST TO PROVIDE WCYB WITH A UHF CHANNEL AS SOON AS POSSIBLE.

Bonten is the owner of WCYB-TV, Bristol, Virginia, which since the digital transition has operated on low VHF Channel 5. Since the station’s commencement of digital operations on Channel 5 three-and-a-half years ago, WCYB has been struggling to resolve the reception issues associated with its low VHF digital operations. Many viewers, particularly those in WCYB’s core service area, are unable to receive a reliable signal from the station. WCYB undertook several measures to attempt to address this issue. Following the digital transition in June 2009, the station sought and received special temporary authority (“STA”) to increase its power to 29.9 kW.² It ultimately was able to make operations at 29.9 kW

² See FCC File No. BDSTA-20090708AGZ.

permanent, but the power increase did not resolve the reception issues.³ The station then constructed a replacement translator to aid in addressing the post-transition service losses,⁴ but viewers continue to report reception problems.

After WCYB's adjustments to its Channel 5 operations failed to resolve the serious service problems being experienced by its viewers, WCYB on May 26, 2011 filed a petition to move to a UHF channel (before the Commission implemented a "freeze" on the filing of new channel reallocation petitions), and it has been urging the FCC to act on that petition since that time.⁵ In late 2011 to early 2012, when it appeared that the Spectrum Act as then-drafted could foreclose the FCC's grant of WCYB's petition, Bonten's representatives urged members of Congress to ensure that the FCC could grant the pre-freeze petition. As enacted, the Spectrum Act does just that.⁶ In the NPRM, the Commission notes that ten stations, including WCYB, have pending petitions to change their allotments from the VHF band to the UHF band that were filed prior to the FCC's freeze, but proposes to deny the opportunity that Congress expressly provided.⁷ The NPRM seeks comment on the Commission's initial view that granting WCYB's request would "unnecessarily compromise [the FCC's] flexibility in the repacking process."⁸

³ See FCC File No. BLCDDT-20100629AUD.

⁴ See FCC File No. BLCDDT-20121101ABC.

⁵ See Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Bristol, Virginia), Petition for Rulemaking, File No. BPRM-20110526AJO (May 26, 2011); Supplement to Petition for Rulemaking, File No. BPRM-20110526AJO (Dec. 5, 2011).

⁶ See Spectrum Act at § 6403(g)(1), providing that the Commission may "reassign a broadcast television licensee from a very high frequency television channel to an ultra high frequency television channel" if "a request from such licensee for the reassignment was pending at the Commission on May 31, 2011." Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156, Title VI, § 6403(g)(1)(B)(2) (2012) ("Spectrum Act"). An earlier draft of this legislation did not contain this authorization.

⁷ NPRM at para. 117.

⁸ NPRM at para. 117.

Bonten respectfully disagrees, and urges the Commission to grant WCYB's petition as soon as possible.

First, granting WCYB's petition would serve the public interest by providing the station — which currently operates on a low VHF channel — with the ability to substantially improve reception of its signal by its longstanding viewers. As the station noted in its petition, after WCYB commenced its digital operations on Channel 5, many viewers in the station's core service area reported that they lost the ability to receive the station's signal. The measures that WCYB undertook to try to improve service for its viewers, including increasing its power, have not adequately resolved the reception problems, and the station continues to receive calls from viewers unable to receive WCYB's signal. In addition, WCYB's low VHF channel impairs the station's ability to deliver a reliable signal cable headends, particularly when there is electrical interference (such as during severe weather).

The Spectrum Act itself acknowledges the problems with low VHF channels, expressly providing that the Commission may not involuntarily move a high VHF station to a low VHF channel in the repacking.⁹ And the Commission has repeatedly recognized that reception and interference problems make low VHF channels inferior for digital broadcasting.¹⁰ In light of concerns about the suitability of the low VHF band for digital broadcasting, licensees that received tentative channel designations on low VHF channels during the digital transition

⁹ Spectrum Act at § 6403(b)(3).

¹⁰ *See* NPRM at para. 127 (“Use of the ‘low VHF channels’ (channels 2-6) for digital television service can be particularly difficult because of increased signal interference caused by the higher levels of ambient noise from other electronic devices operating on or near the low VHF frequency range”).

process were permitted an opportunity to seek an alternative channel designation.¹¹ Indeed, digital reception on indoor antennas for VHF stations has turned out to be even more problematic than anticipated. Based on these problems, other stations have sought — and the Commission has allowed — post-transition channel changes to substitute UHF channels for low VHF channels.¹²

Second, granting WCYB’s petition would provide narrow relief without opening the floodgates to numerous other petitions. As the FCC noted, there are only ten pending channel change requests that were filed prior to the FCC’s May 31, 2011 freeze on such petitions. Of those ten, there are only two pending requests for *low* VHF-to-UHF channel changes: WCYB’s petition and the petition of WMC, Memphis, Tennessee. It would best serve the viewers that rely on WCYB’s free, over-the-air signal to allow WCYB — one of only two low VHF stations seeking a UHF channel — to resolve its longstanding reception problems as soon as possible by allowing the station to move to its requested UHF channel.

¹¹ *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, Report and Order*, 19 FCC Rcd 18279, at paras. 51 and 63 (2004). As the Commission has noted, in the digital transition process, “it was recognized that use of the low-VHF channels 2-6 for digital service could be particularly difficult because of the generally higher levels of background noise on those channels.” *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). *See also id.* at para. 44 (“it is likely that the reception capabilities of an indoor antenna at low-VHF will generally to be less than at high-VHF. We note that many indoor antennas are not marketed for reception of low-VHF channels.”); *id.* at para. 56 (citing indoor antennas’ poor low VHF reception capability).

¹² *See, e.g., Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Nashville, Tennessee)*, Report and Order, 26 FCC Rcd 7677 (2011). WTVF initially operated on low VHF Channel 5, like WCYB. The FCC allowed this station to move to UHF Channel 25 to improve service to viewers in its core service area. That change was accompanied by certain service losses in the outer portion of the station’s service area, which the FCC has allowed WTVF to address via a high-powered translator that continues to operate on Channel 5. *See* FCC File No. BELSTA-20121221ACL.

Third, to the extent that the Commission's hesitation to grant WCYB's petition is premised on a concern that it would reduce the Commission's flexibility in the repacking process, Bonten notes that the stations in this market could be repacked in a very efficient manner consistent with this channel change request. Specifically, WCYB seeks an allotment on channel 29, while Holston Valley Broadcasting station WKPT, Kingsport, Tennessee already is broadcasting on channel 27. Moreover, Media General has requested (also in a petition filed prior to the freeze) permission to relocate its station WJHL, Johnson City, Tennessee, from its high VHF channel to UHF channel 28. Thus, these three full-power closely-situated stations can be positioned on three adjacent channels, a very efficient arrangement. Moreover, Bristol, Virginia is located hundreds of miles from the distant markets on the East Coast where there are more television stations and accordingly where flexibility in the repacking will be more important.¹⁵

Fourth, grant of the petition would be consistent with Congressional intent. When an early draft of the Spectrum Act would have precluded the FCC from acting on WCYB's channel change petition, Bonten's representatives and other affected broadcasters urged members of Congress to change the pertinent provision so as to preserve the rights of stations that filed their channel change requests prior to the FCC's freeze, and Congress made this change, clearly showing its intent that television stations that filed before the freeze retain the opportunity to have their petitions processed in the ordinary course. The FCC's proposal not to proceed on any of these proposals, regardless of merit, clearly contravenes this intent. As noted

¹⁵ "Who might be interested in contributing to the incentive auction? Stations in major markets (where need for spectrum is greatest)... Rural areas would be likely to have fewer channels realigning than urban areas... Station density is lower in rural areas." "Incentive Auctions: New Options for Broadcasters," FCC State Broadcaster Association Webinar Series (March 2011), at pages 8 and 13.

by Senators Kay Hagan, Lindsey Graham, and Saxby Chambliss with respect to Section § 6403(g)(1)(B)(2) of the Spectrum Act:

Earlier versions of the statute had not included this exception for requests pending as of the imposition of the ‘freeze.’ Prior to adoption of the final Act, the bipartisan conferees included the exception for requests pending as of the ‘freeze’ date. This change was inserted to allow those broadcasters who had invested the time and resources necessary to file reallocation petitions to have their petitions considered in accordance with existing Commission standards and processes....

We believe that [the FCC’s reluctance to process 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.”¹⁶

Fifth, there is no need for concern that WCYB would seek to relinquish a long-awaited UHF channel in the incentive auction of broadcast spectrum. 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 VHF bid.” *See* NPRM at n.181. Bonten respectfully suggests that this possibility could be foreclosed in the rules that the Commission is crafting on the incentive auction. In any case, Bonten commits for the record that, if the Commission grants WCYB’s reallocation request, WCYB will not submit a UHF-to-VHF bid in the incentive auction, and it would gladly accept an FCC condition prohibiting it from doing so.

¹⁶ Letter from Senators Kay Hagan, Lindsey Graham, and Saxby Chambliss to Chairman Julius Genachowski, May 1, 2012.

Sixth, remaining on Channel 5 will harm WCYB and the service that it delivers to the public, because Channel 5 is not suitable for mobile DTV transmissions.¹⁷ With mobile DTV, stations can offer viewers the ability to watch live, local news, entertainment programming, and coverage of emergencies on mobile-DTV capable cell phones, netbooks, and other devices. However, if WCYB remains in the low VHF spectrum band, it will be unable to provide mobile DTV, and its viewers will be deprived of this innovative new service.¹⁸ Mobile DTV is a particularly promising means of delivering essential emergency information to viewers during times of weather and other emergencies. As disasters such as Hurricane Sandy show, these emergencies can cause viewers to lose power for days, rendering many information sources unavailable; however, mobile DTV will remain available to any viewer with a mobile DTV device. And in times of greatest crisis when one-to-one mobile technologies are overtaxed, mobile DTV's one-to-many technology will ensure that up-to-date information is available to everyone with a mobile device.

Finally, if the Commission does not grant Bonten's request prior to the repacking, despite the public policy arguments and the Congressional intent in favor of doing so, the

¹⁷ See *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Flagstaff, Arizona)*, Notice of Proposed Rulemaking, MB Docket No. 08-110, RM-11453, 24 FCC Rcd 10245 (2009) (proposing UHF channel substitution for VHF station seeking to provide mobile DTV services); Report and Order, MB Docket No. 08-110, RM-11453, 24 FCC Rcd 11892 (2009) (granting channel substitution). See also *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Colorado Springs, Colorado)*, Notice of Proposed Rulemaking, MB Docket No. 09-111, RM-11541, 24 FCC Rcd 8559 (2009) and Report and Order, 24 FCC Rcd 10259 (2009) (proposing and then granting UHF channel substitution for VHF station seeking to enhance its service and improve its ability to offer mobile DTV service).

¹⁸ “[T]he laws of physics and other unavoidable factors may constrain widespread use of the low VHF band for Mobile DTV.” Comments of Pearl Mobile DTV Company, LLC, Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, at 11 (March 18, 2011).

Commission should at least afford low VHF stations such as WCYB that timely filed channel reallocation petitions the opportunity to move to the UHF band as a part of the repacking of the television band. Bonten filed the channel change request for WCYB on May 26, 2011, and viewers in the station's core service area have been experiencing reception problems since the digital transition in 2009. It would not be fair to further delay relief for the station or its viewers.

III. THE COMMISSION SHOULD PROTECT THOSE VIEWERS RELYING ON STATIONS THAT ARE AUTHORIZED TO OPERATE ABOVE THE POWER LIMITS, REPLACEMENT TRANSLATORS, AND/OR CLASS A STATIONS.

The Commission is required, pursuant to § 6403(b)(2) of the Spectrum Act, to protect "the coverage area and population served of each broadcast television licensee" as of February 22, 2012. However, in a footnote of the NPRM, the Commission appears to propose that it will not make the statutorily-required effort to preserve the footprints of television stations whose operations exceeded the effective radiated power ("ERP") limits as of that benchmark date.¹⁹ Bonten owns three VHF stations that were operating at high ERPs as of February 22, 2012, and had been for quite some time, pursuant to waivers and licenses granted by the Commission after the digital transition.²⁰ In each case, following the digital transition and commencement of digital operations on the stations' former analog VHF channels, the stations' viewers experienced serious problems with signal reception. The power increases helped to alleviate those problems (although not completely, in particular for WCYB's viewers, as discussed above). Because these stations were serving these populations and coverage areas as of February 22, 2012, the Spectrum Act does not permit the Commission to decline to protect

¹⁹ NPRM at n.157.

²⁰ These stations are KTVM-TV, Butte, Montana (*see* FCC File No. BLCDDT-20100629AVB); KECI-TV, Missoula, Montana (*see* FCC File No. BLCDDT-20100701BOM); and WCYB-TV, Bristol, Virginia (*see* FCC File No. BLCDDT-20100629AUD).

these stations' footprints simply because the stations were operating pursuant to validly-granted waivers of the ERP limits.²¹

In addition, Bonten urges the Commission to protect the service provided by the replacement translators placed into service by Bonten stations KRCR-TV, Redding, California and by WCYB (in the latter case, such protection would be unnecessary if the Commission allows WCYB to move to its requested UHF channel).²² Given the reception problems that arose for stations operating on VHF channels after the digital transition, these replacement translators are essential means of providing service to at least some of viewers adversely affected by the digital transition. The NPRM does not propose any protections for translator stations,²³ but it would be consistent with the Spectrum Act's intent to preserve television service and in the public interest to prevent service losses for viewers that rely on replacement translators to maintain service that these viewers historically received from the primary station. Indeed, the special status of replacement translators is reflected by the fact that the license for replacement translators are associated with the full-service station's main license. Accordingly, the Commission should protect the service provided by replacement translators in the repacking.

Finally, Bonten operates a Class A station in Bozeman, Montana, K42BZ-D. This Class A station provides local news, NBC network, and other valuable programming to viewers in this part of Montana. 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

²¹ Of course, as noted above, Bonten believes that the Commission should grant WCYB's request for a UHF channel, in which case WCYB would not need a waiver of the ERP limits.

²² See FCC File Nos. BLCDDT-20100609ABL and BLCDDT-20121101ABC.

²³ NPRM at para. 118.

its coverage area for purposes of the repacking.”²⁴ Bonten respectfully disagrees with this interpretation and requests that the Commission protect the station’s actual coverage area and population served as of February 22, 2012. In the Spectrum Act, Congress has required that the Commission protect “the coverage area and population served of each broadcast television licensee” (including full power television stations and Class A television stations). The clear meaning and intent of this requirement is to avoid the loss of service to viewers or areas served by such stations, and Congress did not provide that the viewers relying on Class A stations’ service were any less entitled to protection than the viewers of full power stations. Accordingly, the Commission should define K42BZ-D’s “coverage area” as it would for a full-power station, using the station’s noise-limited contour. The area in which a Class A station is *protected* from interference is not the same area as the area *covered* by the station’s service, and the latter is the appropriate benchmark to use under the statute and as a matter of public policy.

* * *

For the reasons set forth above, Bonten respectfully requests that the Commission promptly grant WCYB’s petition seeking a UHF channel, and that the Commission hold harmless Bonten’s stations by protecting the footprints of the three Bonten stations operating pursuant to validly-granted waivers of the Commission’s power limits; the viewers and coverage provided by Bonten’s replacement translators; and the complete coverage area of Class A station K42BZ-D.

²⁴ NPRM at para. 99.

Respectfully submitted,

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

Jennifer A. Johnson

Eve R. Pogoriler

COVINGTON & BURLING LLP

1201 Pennsylvania Avenue, N.W.

Washington, DC 20004-2401

(202) 662-6000

Counsel for Bonten Media Group, Inc.

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