

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

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

To: The Commission (Electronically Filed)

**COMMENTS OF SPECTRUMEVOLUTION, INC.**

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## SUMMARY

SpectrumEvolution, Inc. (“SEI”) is dedicated to the exploration of new technologies to allow all TV broadcasters, full power, Class A, and low power (“LPTV”) alike, together with TV translator stations, to participate in implementation of the National Broadband Plan through flexible spectrum usage that permits both broadcasting and broadband to be provided over a single TV channel.

The Commission has recognized the value of LPTV stations as a source of diversity, encouraging entry into the broadcasting business by small entities, well known to be the most prolific job creators in our economy, and ethnic, cultural, and racial minorities, which are undisputedly underrepresented in broadcast ownership. These stations also offer affordable advertising outlets to small business advertisers who are otherwise blocked from access to the airwaves by high cost. Yet the Commission apparently proposes to ignore LPTV and TV translator stations in its repacking algorithms, even if the industry and the investment of lifetime savings by LPTV operators and community civic groups are wiped out as a result. Congress intends otherwise, and so instructed the Commission when it legislated that the rights of LPTV stations should not be changed by the repacking and auction processes.

The Commission should undertake active and energetic efforts to facilitate the survival of the LPTV industry, including displacement only as a last resort, modifying or waiving technical rules which would otherwise prevent Class A and LPTV stations from surviving, easing the economic burden on stations while they await repacking results by allowing them to suspend operation and deferring the deadline for constructing all newly authorized digital stations, and allowing flexible technical standards to increase the chances of survival and to enhance the services that Class A and LPTV stations can provide to the public.

Apart from displacement by full power TV stations, LPTV stations have the same statutory right as anyone else to the application of the rule of law and the benefits of Section 316 of the Communications Act before their licenses can be modified without their consent. Moreover, an examination of the history of LPTV regulations indicates no statement by the FCC that LPTV stations would be secondary to any service except full power TV and land mobile stations sharing TV Channels 14-20. To change course, wiping out LPTV after so much has been invested by LPTV entrepreneurs, based on legitimate expectations, would be both unprecedented in the Commission's 75-year history and unconscionable.

The Media Bureau has suggested in discussions that all TV stations, including digital LPTV, must transmit signals using the uniform current ATSC standard. However, the Commission has decided otherwise in explicit language in the digital LPTV Report and Order. The only requirement is that the signals be receivable on ATSC TV sets, which is not difficult to accomplish in today's world of multi-input digital TV receivers. Thus there is no reason for withholding spectrum flexibility from LPTV stations. The Government will not be denied the revenue it seeks, since over time, more revenue, benefitting multiple generations, can be expected from the ancillary services fee than from auction revenues.

The Commission has an opportunity to step up to the plate and extend a helping hand to small businesses, underrepresented groups, and small communities that will never enjoy service from full power TV stations. It also has an opportunity, which it must not miss, to dramatically expand the availability of broadband pipelines to handle the video traffic that is the primary, if not the sole, cause of spectrum congestion, by unleashing TV broadcasters and allowing them to develop into providers of multiple and diverse services in a free market environment.

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1. Introduction. SpectrumEvolution, Inc. (“SEI”) hereby submits these Comments in response to the *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding, 27 FCC Rcd. 12357 (2012) (FCC 12-118, rel. Oct. 2, 2012). SEI is dedicated to the exploration of new technologies to allow all television broadcasters, including full power, Class A, low power television, and TV translator stations, to participate in implementation of the National Broadband Plan through flexible spectrum usage that permits the provision of both broadcast and broadband services to the public over an existing television channel.

2. Preservation of Important Service. As the Commission recognizes in the NPRM, Low Power Television (“LPTV”) stations are a source of diverse and local television programming.<sup>1</sup> Nevertheless, the Commission proposes to ignore LPTV stations in the spectrum repacking process,<sup>2</sup> relying on Section 6403(a)(1) of the “Spectrum Act.”<sup>3</sup> SEI submits that taken as a whole, the Spectrum Act requires the Commission to devote particular attention to the fate of LPTV stations and that the Commission should, and to fulfill the intent of Congress must, take

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<sup>1</sup> *NPRM* at p. 159, ¶ 119.

<sup>2</sup> *Id.*

<sup>3</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law 112-96, Feb. 22, 2012.

every possible step to protect and preserve the LPTV service, short of causing the anticipated spectrum auction to fail entirely. In these Comments, SEI will suggest a series of steps the Commission can take, including displacing operating LPTV stations only as a last resort; modifying or waiving rules which would otherwise prevent Class A and LPTV stations from surviving both during repacking and afterwards; allowing channel-sharing by LPTV stations; easing the economic burden on stations while they await the results of spectrum repacking; and allowing more flexible technical standards, both to eliminate objectionable interference and to increase and enhance the services that both Class A and LPTV stations can provide to the public.

3. Congressional Intent to Preserve LPTV, Small Business, and Diversity. All of these steps can be taken with no harm to the public interest. In contrast, not to make every effort to preserve LPTV service and to facilitate LPTV and Class A economic opportunities would fly in the face of the expressed intent of Congress that LPTV survive;<sup>4</sup> that the Commission eliminate market entry barriers for entrepreneurs and other small businesses;<sup>5</sup> and that the Commission “promote the policies and purposes of this chapter favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.”<sup>6</sup> To allow LPTV fall by the wayside would result in a crushing of small business enterprises, minority and female ownership, and media entry opportunity virtually unprecedented in the history of the agency over three-quarters of a century.<sup>7</sup> It would also do

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<sup>4</sup> Spectrum Act, § 6004(b)(5).

<sup>5</sup> Section 257(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 257(a).

<sup>6</sup> Section 257(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 257(a).

<sup>7</sup> The contrast between the Commission’s unbridled excitement and enthusiasm over promoting the Low Power FM Service, *see, e.g., Creation of a Low Power Radio Service, FCC 12-244*, rel.

violence to Section 307(b) of the Communications Act,<sup>8</sup> which requires a fair, efficient, and equitable distribution of radio service among the states and communities of the nation, by extinguishing a service that is often the only economically feasible video programming outlet for small communities that cannot economically support a full power station<sup>9</sup> and whose needs are met only occasionally in passing, if at all, by full power TV stations in larger markets that are often a long distance away.<sup>10</sup>

4. Interpretation of Section 6004(b)(5) of the Spectrum Act. SEI disagrees with the discussion in the *NPRM* to the effect that the Spectrum Act does not mandate any action to preserve LPTV service.<sup>11</sup> Section 6004(b)(5) states that nothing in the statute “shall be construed to alter the spectrum usage rights of low-power television stations.” The Commission’s apparent assumption that these stations have no such rights as against anything except other LPTV stations and TV translators is misplaced.

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Dec. 4, 2012, and its attitude toward LPTV is striking, inexplicable, and dismaying to LPTV operators. Both services provide otherwise unavailable opportunities for local community service and entry into broadcasting with minimal economic barriers.

<sup>8</sup> 47 U.S.C. § 307(b).

<sup>9</sup> The needs met by LPTV and Class A stations go beyond programming service to viewers. Businesses in small communities usually cannot afford the rates, and do not need the signal coverage, of full power stations in large markets. LPTV and Class A stations often provide the only realistic TV advertising outlet for these businesses, which are themselves additional job creators, if they can get realistic access to the advertising and sales eco-system.

<sup>10</sup> While the emphasis in these Comments is on Class A and LPTV stations, it is not intended to denigrate the critically important service provided by TV translators to many communities that cannot support any full power service or have only major network affiliates. The fate of TV translators is also at stake in this proceeding. They should be granted similar relief to that requested herein for LPTV stations, where they are subject to the rules discussed in these Comments.

<sup>11</sup> *NPRM* at p. 24, ¶ 74.

5. From the time when it created the Low Power Television Service in 1982, the FCC has consistently treated Low Power Television stations as secondary to only the needs of full power television stations and virtually nothing else.<sup>12</sup> This approach to “secondary status” is different from the pure “secondary” status afforded to unlicensed transmitters that must always yield to any licensed service.

6. In 2000, the FCC described LPTV as follows:

“From its creation by the Commission in 1982, the low power television service has been a ‘secondary spectrum priority’ service whose members ‘may not cause objectionable interference to existing full-service stations, and ... must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs,’” citing to *Report and Order* in BC Docket No. 78-253, 51 R.R. 2d 476, 486 (1982) [emphasis added].

The concept of “secondary” is thus not that LPTV stations may be wiped out any time for any reason but only that they must yield to one specific superior primary service – full power television. This concept is embodied in 47 CFR § 73.702(b) (FCC’s Rules):

Changes in the TV Table of Allotments or Digital Television Table of Allotments (§§ 73.606(b) and 73.622(a), respectively, of part 73 of this chapter), authorizations to construct new *TV broadcast analog or DTV stations* or to authorizations to change facilities of existing such stations, may be made without regard to existing or proposed low power TV or TV translator stations. Where such a change results in a low power TV or TV translator station causing *actual interference to reception of the TV broadcast analog or DTV station*, the licensee or permittee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel assignment pursuant to § 73.3572 of this chapter [emphasis added].

7. Apart from displacement by full power TV stations, LPTV stations have the same statutory right as anyone else to application of the rule of law before their licenses can be revoked. Section 316 of the Communications Act<sup>13</sup> gives an LPTV licensee the right to a

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<sup>12</sup> LPTV stations are also secondary to land mobile stations that share TV Channels 14-20. See 47 CFR §§ 74.909 and 90.303.

<sup>13</sup> 47 U.S.C. ¶ 316.

hearing before its license can be modified without its consent. Moreover, if the Commission initiates the proceeding, the Commission has the burden of proof.

8. In contrast, pure secondary services, governed by 47 CFR Part 5, are secondary to any licensed service and have no rights under 47 USC § 316:

47 CFR § 15.5 General conditions of operation.

(a) Persons operating intentional or unintentional radiators *shall not be deemed to have any vested or recognizable right* to continued use of any given frequency by virtue of prior registration or certification of equipment, or, for power line carrier systems, on the basis of prior notification of use pursuant to § 90.35 (g) of this chapter.

(b) Operation of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused and that interference must be accepted that may be caused by the operation of *an authorized radio station*, by another intentional or unintentional radiator, by industrial, scientific and medical (ISM) equipment, or by an incidental radiator [emphasis added]

Examples of Part 15 purely secondary services are Wi-Fi networks, wireless microphones, Bluetooth, and the TV “White Spaces” service that has been so heavily promoted by both industry and government. Even though all of those services are completely secondary, it is difficult to conceive of the FCC or Congress ever wiping them out. They may be required to improve their technology, and they may even have to shift channels; but the FCC has always found a way to keep them operating without any significant diminution of service or utility to the public. *See, e.g.*, the accommodation of wireless microphones, most of which were not only secondary but operated illegally before the FCC moved to preserve them while clearing the 700 MHz band for new wireless licensed operations, *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, 25 FCC Rcd. 643 (2010); and the Low Power FM service, which the Commission bent over backwards to accommodate even though it started with “pirate” radio operations.

9. The LPTV industry has grown under its limited secondary status and now includes far more stations than the full power TV industry. LPTV serves ethnic and cultural minorities and other niche groups that cannot support the economic model of full power TV yet still need and are entitled to a voice and to program services. Small business owners have invested their life savings in providing these services, relying on having to protect only full power TV stations and having a known number of TV channels available to find a home if they have to move.

10. While under 47 USC § 304, no FCC licensee of any class (including auction winners) has any property right in any specific frequency. Licensees have always had a legitimate renewal expectation if they have served the public. To take away 40% of the TV spectrum, as the Commission now proposes to do,<sup>14</sup> without securing a viable place for LPTV, will be unprecedented in the history of communications regulation in terms of extinguishing an established industry; suppressing minority, ethnic, and female voices; and destroying small businesses, which are at the heart of the American entrepreneurial spirit and are historically proven to be the most prolific job creators in our economy.

11. Congress directed the Commission not to alter the spectrum rights of LPTV stations. But the Commission is proposing effectively to alter those rights dramatically by destroying the spectrum environment in which LPTV operators made their decisions to invest and to serve the public. The Commission must pay serious attention to this problem, and find remedies that will work successfully, to fulfill the directive of Congress.

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<sup>14</sup> When some LPTV operators invested in their businesses, they evaluated their prospects in an environment of 68 television channels (Channels 2-69). If the Commission now reduces TV channels to Channels 2-31, more than half of the spectrum will have been removed from availability. This is a circumstance that LPTV operators could hardly have been expected to anticipate when they evaluated the probability of long-term survival as holders of secondary licenses.

12. LPTV Stations Should Be Displaced as a Last Resort. It appears that the Commission intends to leave LPTV stations entirely out of its database when determining how full power and Class A stations may be repacked. That approach is ill-conceived and does not further the intent of Congress to preserve LPTV or the Commission's own recognition of the value and uniqueness of LPTV programming.<sup>15</sup> The Commission should include LPTV in its database. Then, in situations where a computer run does not provide adequate channel space for full power and Class A stations remaining after repacking and the reverse auction, LPTV stations may have to be deleted one-by-one until enough room is found. SEI suggests that the LPTV stations to be deleted first be those for which displacement channels with comparable coverage are available and otherwise that longevity be given priority. While on the surface, there appears to be merit in favoring stations with the most local programming, or stations providing the only outlet for a particular network, SEI discourages that approach, because it is too difficult to avoid slipping into forbidden content-based decision-making.<sup>16</sup>

13. Spectrum Flexibility. "Flexibility" is a major watchword of the Commission these days – licensees should be able to use their spectrum for any lawful purpose.<sup>17</sup> But for some

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<sup>15</sup> See ¶ 2, *supra*.

<sup>16</sup> While local programming is recognized, and indeed required, for Class A stations, the quality and substance of local programming varies considerably from one station to the next. Quality is something the Commission should never try to evaluate, lest First Amendment free speech issues be implicated. It is one thing to require local programming as an initial entry requirement but quite another to use local programming as a way of establishing priorities among otherwise equal incumbent spectrum users. As to network service and other content, there is no rule requiring any station to continue to offer any specific programming, nor could or should the Commission mandate any specific content. A station may change its programming, or a network may terminate an affiliation, at any time; so any priority based on network service would provide no assurance of continuation of that service. Leaving aside programming choices that individual station licensees may make, no network would want to be bound to continue an affiliation in place beyond what it deems in its own best business interest.

<sup>17</sup> See *NPRM* at p. 125, § 374.

reason, the Commission has confined the freedom it has found to be in the public interest to everyone except broadcasters. Excluding broadcasters is unjustified and is harmful to the public as well as to the broadcasting industry. It is also contrary to the recognition by Congress of the benefits of spectrum flexibility when it directed the Commission to allow TV broadcasters to relinquish their right to compensation for giving up part of their spectrum in return for being allowed to make flexible use of the spectrum that they retain.<sup>18</sup> The Commission's recalcitrance should be abandoned now. There is no reason not to allow LPTV stations to make flexible use of their channels immediately.

14. It should be fully understood by this time that the one-to-one unicast model of the current cellular network cannot meet the mushrooming demands for video programming and entertainment applications, especially over the long term. Wireless carriers are already offloading traffic to wi-fi networks and have started discussing one-to-many services.<sup>19</sup> In other words, wireless carriers are migrating toward including a broadcast-type component in their services. Why, then, should broadcasters not be able to migrate toward providing broadband services on their channels, as long as they continue to offer a free over-the-air broadcast component? Why must the migration serve only the desires of the wireless industry?

15. If all TV (including LPTV) broadcasters are allowed spectrum flexibility, there will be two important benefits. One is the introduction of much-needed competition into a wireless industry that is rapidly consolidating into the hands of two players.<sup>20</sup> In this regard, TV

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<sup>18</sup> See § 6403(b)(4)(B) of the Spectrum Act.

<sup>19</sup> See <http://www.rethink-wireless.com/2011/10/25/wi-fi-offload-gives-att-breathing-space.htm>.

<sup>20</sup> While the Commission may ultimately encourage the growth of Sprint and/or DISH Network Corp. as a third major competitor, it remains to be seen whether there is still time or the regulatory will to slow down the consolidation train.

broadcasters stand in marked contrast to the wireless industry, as they maintain established roots in cities all over the country, and they employ local staffs who know and respond to local community needs. The second is that if OFDM modulation is made available to TV broadcasters, it will be possible to preserve more LPTV stations and to reduce the difficulty of accommodating Class A stations, because OFDM causes less interference to an adjacent-channel ATSC station than ATSC does.

16. While the Media Bureau Staff has expressed to SEI more than once in oral discussions that all TV stations must use the same modulation format, the Commission itself has in fact decided otherwise. The Commission should adhere to its own decision. In *Amendment of Parts 73 and 74*, 19 FCC Rcd. 19331 (2004), the Commission stated that Class A stations must adhere to Section 73.682, which specifies the ATSC standard, but not LPTV stations:

Under Part 74 of the rules, LPTV and TV translator stations are not required to comply with either Section 73.682(a) or (d). The list of broadcast regulations applicable to the low power television service does not include these rules [footnote referring to Rule Section 74.780 omitted].<sup>21</sup> .... Digital companion channels to Class A stations will be licensed on a secondary, LPTV basis and at this juncture operation of companion channels will not be subject to the requirements of Section 73.682(d) of the rules.<sup>22</sup>

The applicable rule in effect today is Section 74.795(b)(1), which states:

The transmitter shall be designed to produce digital television signals that can be satisfactorily viewed on consumer receiving equipment based on the digital broadcast television transmission standard in § 73.682 (d) of this chapter[.]

The only way to interpret Section 74.795(b)(1) consistently with *Amendments of Parts 73 and 74, supra*, is to require that the signal be viewable on an ATSC receiver, not that the signal be transmitted in an ATSC format. In today's digital world, where TV receivers have multiple

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<sup>21</sup> Quotation from ¶ 163.

<sup>22</sup> Quotation from ¶ 165.

inputs and are often used as display screens for multiple devices, it is not difficult to display an OFDM signal on an ATSC receiver with a low-cost simple set-top device that LPTV operators can easily make available at little or not cost to the viewing public. In light of the clear benefits to allowing spectrum flexibility for LPTV stations, the Commission should not hesitate to “unleash” LPTV, just as it has unleashed so many other services, to enhance the services available to the public and to increase the prospects of survival for LPTV operators.<sup>23</sup>

17. Rule Waivers. SEI supports the proposal to open an initial application filing window for displaced LPTV stations.<sup>24</sup> There are many Commission rules on the books today that will impede attempts by LPTV stations to find a way to survive repacking. The Commission should waive rules whenever possible, at least to ensure the survival of existing stations that cannot otherwise survive. Examples include the permissible level of interference caused to other stations,<sup>25</sup> the restriction on moving more than 30 miles when filing a displacement application,<sup>26</sup> and the requirements that new and old service contours overlap and that the same area be

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<sup>23</sup> To the extent that the Government thinks that unleashing TV broadcasters will reduce revenues it seeks to extract from the spectrum, it should reconsider that view, since broadcasters must pay 5% of their gross revenue to the Government in perpetuity (*see* 47 CFR ¶ 73.624(g)) – a revenue stream that will outstrip one-time auction revenues after a period of time and will allow each generation to enjoy the benefit of resource deployment instead of taking all the money now, spending it once, and leaving future generations with nothing. While revenues from TV ancillary services have been negligible up to now, much of the reason is the ATSC straightjacket that the Commission has imposed on broadcasters.

<sup>24</sup> NPRM at p. 120, ¶ 360.

<sup>25</sup> 47 CFR § 74.794(g) currently prohibits more than 0.5% interference to Class A stations, but 47 CFR ¶ 74.794(h) allows interference of up to 2% to LPTV stations and TV translators. Since the Commission is proposing for the first time to allow Class A stations to change channels and cause unlimited interference to LPTV stations, it should consider allowing displaced LPTV stations to cause up to 2% interference to Class A stations.

<sup>26</sup> 47 CFR § 74.787(b)(1)(iii).

served.<sup>27</sup> Replacement translators for full power stations should no longer have priority, or should no longer be permitted at all, since we are now more than three years past the end of the full power digital transition, and there has been more than ample time for full power stations to identify pockets of unsatisfactory reception and to apply for replacement translators. Replacement translators can easily become a way to block LPTV stations from improving their facilities by occupying desirable channels.<sup>28</sup>

18. As a last resort, if an LPTV station cannot otherwise survive, SEI suggests that the Commission allow the licensee to apply on a preferential basis and to receive a grant of one or more construction permits for LPTV stations in other communities with a total population coverage equal to the population covered by a station that cannot not be accommodated after repacking. While having to move to another community may not be an LPTV operator's first choice, it will at least avoid complete disastrous loss of an investment, which may represent the lifetime savings of the station owner.

19. Channel Sharing. The Commission has proposed to allow full power and Class A TV stations to share channels, with more than one licensee occupying one 6 MHz spectrum unit, but each one holding its own license. There is no reason not to allow LPTV operators to do the same thing, especially if it will avoid forcing some stations out of business. Multi-channel service is the economic linchpin for survival by many LPTV stations, so they may be reluctant to share channels and reduce the number of program services they can provide. However, where there is no other way to survive, some will choose to share, and there is no reason for the

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<sup>27</sup> 47 CFR §§ 73.3572(a)(4)(ii) and (iii).

<sup>28</sup> By simply eliminating the special treatment of replacement translators, the Commission can avoid the burden of having to analyze the true need for a replacement translator in terms of primary signal deficiencies or any motivation of the applicant.

Commission to refuse. There is an important difference between a time brokerage agreement and channel-sharing in terms of each party being free from legal responsibility for the activities of the other when each entity holds its own license. Thus channel-sharing is likely to lead to more joint operation on a channel than the currently available time brokerage arrangement.

20. There is also no reason not to allow LPTV stations to share channels with Class A stations and even full power TV stations. Even though the latter two classes hold more spectrum rights, they already hold those rights. Sharing a channel with an LPTV operator does not increase those rights in any way; nor indeed can it decrease those rights. A 6 MHz TV spectrum block must remain intact, at least under the ATSC system; so in the end, the block will have the protection of the highest class of user, regardless of the rights of other users.<sup>29</sup>

21. Easing Economic Burdens. The impending threat of extinction in the repacking process has made it extremely difficult for LPTV stations to attract investment, to affiliate with desirable programming sources, and to attract advertisers. Even Class A stations face uncertainty as to what spectrum they will obtain at the end of the repacking process. These stations should be permitted to suspend operations without threat of license expiration under Section 312(g) of the Communications Act, beyond a period of one year.<sup>30</sup> Class A stations should also not be threatened with downgrading to LPTV status if they remain dark, at least if they commit to offering their stations in the reverse spectrum auction. The statute permits the Commission to waive the expiration “to promote equity and fairness.” In this case, allowing Class A stations to remain silent would avoid their incurring additional losses that would encourage them to demand higher prices in the auction, while allowing them to remain dark

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<sup>29</sup> As the Commission has noted, sharing a channel with a higher class of user does not give the sharer any more MVPD carriage rights than it had before sharing.

<sup>30</sup> 47 U.S.C. § 312(g).

would lower prices and assist the Commission in attracting those stations to the auction. If the Commission's thinking is that stations which believe that their value in the auction exceeds their value as an operating business will participate, forcing stations to continue to stay on the air and lose more money will not encourage the desired voluntary participation.

22. It is also unfair for the Commission to require permittees of new digital LPTV stations to build them without knowing whether the stations will survive long enough to make a return on investment. A petition for reconsideration is pending in MB Docket No. 03-185,<sup>31</sup> asking that the deadline for constructing new permits be set at the same September 1, 2015, that applies to companion channel and flash cut construction permits. The petitioner filed a request on January 17, 2013, asking the Commission not to delay further in acting on the petition. Meanwhile, the Commission has received over 100 applications for extension of time to construct by permittees of new LPTV digital stations, underscoring the importance of this issue. Since the LPTV stations involved are secondary in any event, the harm in extending the construction deadline is minimal compared to the obvious benefit in terms of fairness to the permittees.

23. Conclusion. SEI urges the Commission to take this opportunity to step up to the plate and extend a helping hand to small businesses, minorities, and enterprises serving small communities that will never enjoy widespread full power television services. No matter how severe the spectrum crunch,<sup>32</sup> it is no excuse for an unprecedented wiping out of an industry. As

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<sup>31</sup> Petition for Reconsideration filed by the law firm of Cohn and Marks.

<sup>32</sup> SEI does not mean to concede that there is a spectrum crunch or that it is nearly as severe as wireless interests would paint it, since whatever congestion that may exist is driven by entertainment and games and not health care, student learning, public safety, or other socially critical needs. Much of the entertainment and games will have to migrate to one-to-many services sooner or later. The question is when the Commission will start to encourage that migration.

discussed in these Comments, there are many ways in which the Commission can mitigate the damage. It should take all those steps and should do so with enthusiasm. Unleashing LPTV stations, if not both Class A and LPTV stations, to adopt new technologies and to provide new services, as the Commission has done with so many other services, is a clear path toward benefitting the public in a substantial and meaningful way.

Respectfully submitted,



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