

To: Federal Communications Commission
Re: Public Comment on Proposed Rule, Docket No. FCC-2011-0042
Date: February 24, 2011

The FCC's proposed plan, Innovations in the Broadcast Television Bands, represents a vital early step in the critical process of adapting the American broadcasting landscape to meet the demands and expectations of the continuing communications revolution. By urging broadcasters to engage in channel sharing, and reacquiring valuable bandwidth, the FCC can achieve the goals of keeping pace with the increased demand for bandwidth that attends fast-moving innovation in telecommunications, expanding broadband internet access to all Americans, and helping to preserve the integrity and viability of non-commercial and public broadcasting. Below, I shall comment on these latter two goals.

As the Commission notes in its proposed rule, over-the-air broadcast television has played a vital role in disseminating diverse forms of information and entertainment to the American public. Just as VHS so dramatically altered the film industry, and downloadable music the recording industry, so too is the Internet poised to drastically change the television landscape. A generation of Americans is increasingly turning to the Internet not only for original content, but also for the very content being broadcast on network television. While the advent of cable and satellite television has already provided many American consumers with dramatically more choices than those available on traditional over-the-air broadcasting, such offerings do not represent the revolutionary changes that the Internet is heralding, and it is clear that broadcasters are rapidly adapting to the new medium. In addition to its impending likely subjugation of broadcast television, the Internet offers citizens access to an ever-expanding range of information and services that traditional media can never approach. For these reasons, it is vital that the foremost goal of any plan be universal access to broadband internet access for all Americans. Since the Internet is a unique form of public good that, in many respects, benefits directly from the input of ordinary users, it is in the public interest to expand its presence as widely as possible. To this end, it is vital that underserved communities be provided with broadband as quickly as possible. For areas in which providing such access through cable is impractical, the freeing up of broadband spectrum can better serve to supply access, and channel sharing represents a sensible and innovative way of freeing up the spectrum. In Paragraph (19), the Commission seeks comments on the balancing test that should be applied when making spectrum alterations that will cause loss of service to certain segments of the populations. The Commission should weigh heavily the concomitant expansion of broadband access as a mitigating factor in loss of signal of over-the-air broadcasts. Since it is clear that the emergence of Internet television is ongoing and far from complete, it is crucial to ensure that over-the-air broadcasting be maintained in remote areas; however, the long-term priority should be universal broadband Internet access.

The Commission suggests in its Plan that existing broadcasters could be incentivized "to relinquish spectrum for a portion of the proceeds of the revenues of a U/V Band spectrum auction...." Since the spectrum itself belongs to the public, the need to incentivize broadcasters to relinquish it for the public good seems somewhat perverse. Broadcasters' licenses should instead be made to expire, and broadcasters forced to bid for spectrum space. (Non-commercial and public broadcasters should be exempt from this process.) This would provide a market-driven solution that would have the added benefit of raising capital for providing broadband Internet access to underserved communities. Content providers would benefit directly from the

expanded reach of broadband Internet service since their online advertisers (an increasing source of their revenue) would reach more viewers.

In addition to aiding the process of expanding broadband Internet access, the Plan also has the potential to improve the position of noncommercial educational stations (“NCEs”). Public television has long served the public interest by providing educational and informational programming free from influence by corporate interests. Recently, public television has been under assault by members of Congress intent on cutting the federal budget. Whatever the future holds for federal funding of public television, it is clearly in NCE’s interest to seek ways of trimming costs in order to sustain and improve the quality and reach of their programming. Channel sharing would offer NCEs an opportunity to recognize significant cost reductions that could offset cuts in federal funding and declining viewer donations likely to accompany an economic downturn.

In Paragraph (16), the Commission seeks comment on whether commercial stations and NCEs should be permitted to share a single channel. Although this would require that the commercial channel and NCE share facilities for broadcasting, as long as an adequate and nonporous wall exists between the managerial and editorial functions of each entity, such a relationship on an operational level should not pose a problem. It will be important to ensure that the NCE has a legally enforceable interest in its share of the channel with adequate means of enforcement. Moreover, such an arrangement could provide additional opportunities for cost-savings by NCEs. Since commercial broadcasters would be operating within the facilities as well, and since there would likely be some resulting duplication of efforts, it is conceivable that the commercial station could recognize an opportunity (or be compelled) to donate some labor and/or equipment to operate the broadcasting of the NCE’s signal in exchange for tax deductions.

This Plan constitutes an innovative way of using advances in digital broadcasting to increase the efficiency of traditional broadcasting in order to free up spectrum space for important uses. The plan should be implemented in a manner consistent with the goals of expanding broadband Internet access to underserved communities and preserving the integrity of noncommercial and public television stations.