

**Before the
Federal Communications Commission
Washington, DC 20554**

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

**Reply Comments of Mt. Mansfield Television, Inc., Vermont
Public Television, Nexstar Broadcasting, Inc., and Mission Broadcasting, Inc.**

Mt. Mansfield Television, Inc., licensee of Station WCAX-TV, Burlington, Vermont (“Mt. Mansfield”); Vermont ETV, Inc., d/b/a Vermont Public Television, licensee of Station WETK, Burlington, Vermont; Nexstar Broadcasting, Inc., licensee of Station WFFF-TV, Burlington, Vermont; and Mission Broadcasting, Inc., licensee of Station WVNY, Burlington, Vermont (collectively “Vermont Broadcasters”), submit these brief reply comments on the repacking issues raised in the *Notice of Proposed Rulemaking* in the above-referenced proceeding.¹ Vermont Broadcasters support the proposal to permit stations to propose alternative transmission facilities to those specified by the Commission’s replication software. *Notice* ¶ 101.

The constraints faced by Vermont Broadcasters exemplify the reasons why, to ensure the continued service to the public demanded by Congress,² the Commission should (1) seek

¹ Notice of Proposed Rulemaking, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268 (rel. Oct. 2, 2012)(“*Notice*”).

² In Section 6403(b) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012)(the “Spectrum Act”), Congress directed the Commission to make “all reasonable efforts to preserve . . . the coverage area and population served of each broadcast television licensee.”

comment from broadcasters before finalizing a repacking plan, (2) allow broadcasters to propose alternative transmission facilities, and (3) adopt the proposal in Paragraph 100 of the *Notice* to permit stations to use their existing antenna patterns, even if those patterns are inconsistent with the pattern specified by the Commission's replication software.

Vermont Broadcasters and the other major stations in the Burlington-Plattsburgh Designated Market Area all broadcast from a joint transmission facility constructed to facilitate the transition to digital television. The difficulties they faced in constructing this facility and obtaining Canadian coordination for their digital facilities exemplify the difficulties that Vermont Broadcasters and other stations will face in moving to a post-repacking channel plan. In order to avoid lengthy disruption of television service or delays in clearing spectrum the Commission decides to reallocate to wireless service, the Commission must ensure that its repacking plan reflects local conditions and limitations.

The shared transmission facility used by Vermont Broadcasters is located on Mt. Mansfield, the highest point in Vermont. The land on which the transmission facility sits is owned by the University of Vermont.

Negotiating a lease for the site and obtaining zoning and environment clearances to construct a broadcast transmission site took ten years, and the State imposed conditions that severely restricted the options Vermont Broadcasters had for their post-transition facilities. The State insisted that the visibility of the broadcast towers from the Champlain Valley to the West and from the populated areas to the East of Mt. Mansfield be limited to the extent possible. The State also flatly refused to consider proposals involving lighted towers, which meant that no tower could exceed 200 feet in height. The State and the University also imposed their own

requirements limiting radiation exposure at ground level across the entire site, a condition far more stringent than the Commission requires.

The State further demanded that all construction of the facility be undertaken in a limited time period. The parties were given only a one-time permission to cut down any trees. Given the weather conditions on Mt. Mansfield, construction can only be undertaken between June and October when the road to the site is open; during the rest of the year, access to the site is only by snowmobile.

Five television stations share three towers on the site. WETK, licensed to Vermont Public Television, has its omnidirectional antenna on one tower. A second tower supports two stacked antennas used by WFFF-TV, licensed to Nexstar Broadcasting, Inc., and WVNY, licensed to Mission Broadcasting, Inc. Due to height limitations, a stacked antenna could not be used for the third tower, shared by WCAX-TV, licensed to Mt. Mansfield Television, Inc. and WPTZ, licensed to Hearst Stations, Inc. Those stations share one antenna.

Since the Burlington-Plattsburgh market is on the Canadian border, Vermont Broadcasters faced great difficulties in finding channels that could (1) share these facilities, (2) be coordinated with Canada, and (3) replicate, as much as possible, their analog service areas. Both WVNY and WPTZ were required to directionalize their antennas to protect Canadian allocations to the Northeast. For WCAX-TV, Industry Canada and the Commission first proposed to allow it to operate on channel 22, but with a directional pattern that protected a Canadian station in Ottawa. The manufacturer of the proposed shared antenna to be used by WPTZ and WCAX-TV, however, could not construct one antenna that had “nulls” in two different directions. Ultimately, the Commission and Industry Canada agreed to allow WCAX-

TV to use an omnidirectional pattern with reduced power until the Canadian digital transition was completed, after which it was allowed to increase power.³

The situation faced by Vermont Broadcasters as they transitioned to digital demonstrates why the Commission should proceed with caution as it develops plans for repacking and a second transition. The channels and antennas that Vermont Broadcasters now use were carefully developed, not only to ensure that they would provide post-transition service to their viewing areas and comply with Canadian interference protections, but also to be compatible with each other – a requirement inherent in the limitations imposed on their use of the Mt. Mansfield site. Doubtless there are other similarly situated stations that share locations, towers and antennas and who will face the same challenges moving to a new channel plan as Vermont Broadcasters.

If the Commission’s replication software selects channels or antenna patterns for these stations that are not compatible with each other – or like the proposal Industry Canada first advanced for WCAX-TV, cannot be constructed – service to the public will be placed at risk.

The Spectrum Act, however, requires the Commission to make “all reasonable efforts” to avoid

³ Mt. Mansfield was granted a construction permit on February 23, 2012, to increase its power to the level specified in the U.S.-Canadian agreement for post-Canadian transition operation. FCC File No. BMPCDT-20080616ADK. It would have been impossible, therefore, for Mt. Mansfield to have constructed those facilities and applied for a license by February 22, 2012. Yet, under the proposal in Paragraph 113 of the *Notice*, its operation at the power level that was needed to replicate its analog service area and that was approved by Canada, would not be protected. Because Mt. Mansfield could not have increased its power before that date as a result of condition the Commission negotiated with Industry Canada, the Commission should not apply its proposed cut-off date to WCAX-TV. The Commission believes that the Spectrum Act does not “prohibit the Commission from granting protection to additional facilities where appropriate.” *Notice* ¶ 113. Mt. Mansfield suggests that its situation is one where that discretion should be exercised. *See, e.g.*, Comments of the National Association of Broadcasters, Docket No. 12-268 (filed Jan. 25, 2013) at 33; Comments of WGAL Hearst Television Inc., Docket No. 12-268 (filed Jan. 25, 2013) at 8; Comments of Gray Television, Inc., Docket No. 12-268 (filed Jan. 25, 2013) at 4-5; Comments of Tribune Company, Docket No. 12-268 (filed Jan. 25, 2013) at 20; Comments of Univision Communications Inc., Docket No. 12-268 (filed Jan. 25, 2013) at 8-13.

such reductions in service.⁴ Because it may be difficult or impossible for the Commission's replication software to take into account all factors affecting Vermont Broadcasters' or other stations' ability to execute a revised channel plan, the Commission should implement the statutory mandate to preserve broadcast service by allowing changes in the plan created by its replication software.

The Commission cannot assume that changes will not be needed. During the digital transition, the Commission made numerous changes in its post-transition DTV table, many of which were required because of particular conditions that were not taken into account by the Commission's software.⁵ Further, because television stations were operating on two channels during the pre-transition period, there were more options for post-transition operation. This will not be so in the post-auction repacking process, where stations will have only one facility and the number of available channels will be far fewer. Thus, in adopting rules to govern the auction and repacking process, the Commission should provide for the release of a draft repacking plan and a period for comments on the channels and patterns proposed for stations, as it did in the process leading up to the digital transition.

Vermont Broadcasters further support the Commission's proposal in Paragraph 101 of the *Notice* that would allow stations to propose alternative transmission facilities. That proposal, however, only permits the submission of alternative transmission facilities that neither extend a station's coverage area nor create any new interference. It is possible, particularly in markets with consolidated transmission facilities such as the ones used by Vermont Broadcasters, that if the Commission proposes an unworkable or unbuildable solution, there are no buildable

⁴ Spectrum Act § 6403(b).

⁵ See, e.g., Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order, *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 23 FCC Rcd 4220 (2008).

substitute facilities that would not cause interference or expand a station's coverage area. In that event, the Commission should determine whether alternative facilities can be specified, even if that results in changes to other stations' allotments. The statutory requirement to make "all reasonable efforts" to preserve over-the-air service to the public requires that the Commission at least consider such alternative channel plans.⁶

The Commission should also adopt the proposal in Paragraph 100 of the *Notice* to allow stations to use their existing antenna patterns even if the Commission's replication software proposes a different pattern. Particularly for stations with shared antennas, such as WCAX-TV and WPTZ, permitting use of existing antennas will make it easier to construct facilities according to a new channel plan. Doing so can also reduce the cost of the transition since existing antennas may be usable.

Finally, Vermont Broadcasters urge the Commission to provide sufficient time and flexibility for stations to transition to a new channel plan. Even with Canadian approval of new frequencies and power levels, Vermont Broadcasters lack authority to construct a temporary tower or to add antennas to the Mt. Mansfield site. Any change to the current configuration will require an extensive planning process involving the landowner (the University of Vermont), the State's Agency of Natural Resources, and likely a number of interested environmental groups which participated in the original site planning process, followed by a permitting process under Vermont's comprehensive land use law.⁷

If a new channel plan requires different antennas and Vermont Broadcasters can obtain approval for them, those stations may have to go off the air for at least the period needed to remove old antennas and mount new ones. To the extent that stations can keep existing

⁶ See Comments of Belo Corp., Docket No. 12-268 (filed Jan. 25, 2013) at 7-9.

⁷ See VT. STAT. ANN. Tit. 10 §§ 6001 *et seq.*

antennas, that may reduce or eliminate the necessity for going off air. Further, any construction that is required to transition to a new channel plan can only be undertaken between June and October, when the site is road-accessible. The Commission therefore should afford stations the maximum flexibility in developing and implementing a new channel plan.

Conclusion

For the foregoing reasons, the Commission should provide stations with an opportunity to comment on its post-repacking channel plan to allow stations to identify channels or patterns that simply cannot be constructed. The Commission should also adopt its proposal to permit stations to suggest alternative transmission facilities to those specified by the Commission's replication software, and should – where no alternatives are available – consider alternatives that may require adjustments to other stations. The Commission should permit stations to keep existing antenna patterns. Finally, the Commission should recognize the difficulties stations – particularly those on shared transmission facilities and requiring international coordination – will

have in transitioning to a new channel plan and provide maximum flexibility to stations in moving to that plan.

Respectfully submitted,



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