

**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

**REPLY COMMENTS OF
THE DISPATCH PRINTING COMPANY**

The Dispatch Printing Company, d/b/a the Dispatch Broadcast Group (“Dispatch”), owner of television stations WTHR and WALV-CD, Indianapolis, Indiana, and WBNS-TV, Columbus, Ohio, replies here to the comments that were filed concerning a key question raised by the Commission in the Notice of Proposed Rulemaking (“NPRM”) in this proceeding: What facilities of full-power television stations and Class A television stations should the Commission protect in the repacking? This is a very important question for Dispatch and for the American public. The answer is provided by the Spectrum Act¹ and by the essential policy goal of not depriving viewers of access to free, over-the-air television service. A repacking process that fails to replicate the stations’ coverage areas and populations served would harm these viewers, would harm Dispatch’s stations, and would violate the requirements that Congress set forth in the Spectrum Act.

As it moves forward, the Commission should bear in mind its responsibility to preserve a robust broadcast television service for the American public. Viewers rely on

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156, Title VI (2012) (“Spectrum Act”).

Dispatch's television stations to provide popular CBS and NBC network programming, award-winning local news programming, professional and college sports, in-depth weather coverage, emergency information, and a wide range of other programming that is educational, entertaining, and important. Dispatch knows that its viewers rely heavily on the availability of free, over-the-air service. For example, as of February 2013, over 20% of the viewers watching WBNS's local news are tuning in over-the-air. And current viewership numbers do not tell the whole story: many viewers lost service from WBNS and WTHR in connection with the digital transition — and they *continue* to contact the stations to complain about lost reception. Many of these viewers are elderly and/or low-income households, households that the Commission should seek to protect.²

As described below, Dispatch is still grappling with the question of how to restore service to those viewers that lost reception of its stations' signals during the digital transition. It urges the Commission to avoid creating any additional service losses. Television viewers must not be forced to bear the loss of reduced access to their local television stations, particularly losses that could be impossible to redress following a repacking of the television band. Free, universal access has been a hallmark of our country's television service since it was established. The Commission can keep it that way by embracing the letter and spirit of the Spectrum Act's protections for broadcast stations and for viewers.

² See Comments of Raycom Media, Inc., GN Dkt. No. 12-268 (Jan. 25, 2013) ("Comments of Raycom"), at 5; Comments of Univision Communications Inc., GN Dkt. No. 12-268 (Jan. 25, 2013) ("Comments of Univision"), at 8; Comments of Entravision Holdings, LLC, GN Dkt. No. 12-268 (Jan. 25, 2013), at 14-15; Comments of Gray Television, Inc., GN Dkt. No. 12-268 (Jan. 25, 2013), at 8 (explaining that minority communities skew disproportionately toward over-the-air viewing, making it critical that the FCC not marginalize minority groups in the repacking process by diminishing broadcast television's vital communications resource to these communities).

I. THE COMMISSION MUST PROTECT ENHANCED COVERAGE MADE POSSIBLE BY WAIVERS OF THE POWER LIMITS.

In its initial comments, Dispatch discussed footnote 157 of the NPRM, which seemed to imply that the Commission did not propose to make all reasonable efforts to preserve the existing coverage areas of stations whose operations exceed the effective radiated power (“ERP”) limits.³ Specifically, in that footnote, the Commission stated that “We ... recognize that not all stations are currently in compliance with maximum effective radiated power (ERP) and antenna height above average terrain limits.... We propose to make all reasonable efforts to preserve the existing coverage areas of stations whose operations exceed the antenna height (*but not ERP*) limits.”⁴

Several commenters agreed with Dispatch that such a proposal would violate the Spectrum Act and undermine service improvements designed to mitigate issues caused by the digital transition.⁵ As a statutory matter, Congress clearly has required that the Commission protect “the coverage area and population served of each broadcast television licensee” as of February 22, 2012,⁶ *without regard* to whether the licensee’s operations are conducted pursuant to a waiver of the ERP limits granted by the Commission.⁷ Moreover, the Commission agreed that stations such as WTHR should be allowed to operate at higher ERP in order to restore service lost in connection with the digital transition. Unwinding protection for these power

³ Comments of The Dispatch Printing Company, GN Dkt. 12-268 (Jan. 25, 2013), at 1-2.

⁴ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, GN Dkt. No. 12-268, 27 FCC Rcd 12357 (Oct. 2, 2012) (“NPRM”), at para. 157 (emphasis added).

⁵ *See, e.g.*, Comments of Bonten Media Group, Inc. (“Bonten”), GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of Bonten”), at 9; Comments of Shenandoah Valley Educational Television Corporation, GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of Shenandoah Valley”), at 3.

⁶ Spectrum Act at § 6403(b)(2).

⁷ Comments of Shenandoah Valley at 2.

increases would compromise free, over-the-air service to viewers that the Commission has already determined is in the public interest.

Several stations — in particular, VHF stations — noted experiences similar to WTHR's, *i.e.*, that digital operations on VHF channels failed to replicate analog service areas and that power increases helped to mitigate, at least in part, those problems.⁸ These commenters agreed that the Spectrum Act requires protection for the maximized facilities authorized by the Commission.⁹ For example, Shenandoah Valley stated that:

After having authorized WVPT to operate [pursuant to a waiver of the ERP limits] to address the reception problems related to digital broadcasting on a VHF channel, in an area with rough terrain, and in light of the station's longstanding operations at this power level — since long before the Spectrum Act was enacted — the Commission should not jeopardize the service received by WVPT's viewers by not protecting the coverage area and population served by WVPT as of February 22, 2012. Failure to protect the station's entire footprint would create risks that existing viewers would lose the free, over-the-air public television service provided by WVPT. And it would be contrary to the requirements that Congress established in the Spectrum Act.¹⁰

Bonten similarly explained that “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

⁸ Comments of the Walt Disney Company, GN Dkt. No. 12-268 (Jan. 25, 2013) (“Comments of Disney”), at 32-34; Comments of the National Association of Broadcasters (“NAB”), GN Dkt. 12-268 (Jan. 25, 2013) (“Comments of NAB”), at 32-33; Comments of Raycom at 4, n.7; Comments of Shenandoah Valley at 1-3; Comments of Bonten at 9.

⁹ *See, e.g.*, Comments of Community Television, GN Dkt. No. 12-268 (Jan. 25, 2013), at 3; Comments of Carolina Christian Broadcasting, GN Dkt. No. 12-268 (Jan. 25, 2013), at 3 (the FCC should protect maximized digital television construction permits so long as a station held a license as of February 22, 2012, whatever facilities it was authorized – built or unbuilt).

¹⁰ Comments of Shenandoah Valley at 3.

problems.”¹¹ Bonten also noted that because its three stations with ERP waivers were operating with such waivers as of February 22, 2012, “the Spectrum Act does not permit the Commission to decline to protect these stations’ footprints.”¹² Consistent with the Spectrum Act and the public interest, the Commission should clarify that it will protect stations’ coverage areas and populations served, whether or not such coverage is provided pursuant to a waiver of the ERP limits that the Commission has already approved.¹³

II. THE COMMISSION SHOULD NOT DEPRIVE VIEWERS OF THE BENEFITS OF CONTINUED SERVICE IMPROVEMENTS.

Dispatch proposed in its initial comments that the Commission protect maximized facilities, even if such facilities are applied for or constructed after February 22, 2012.¹⁴ Dispatch explained that one of its stations, WTHR, operates on a VHF channel and is considering applying for an additional power increase because an earlier power increase has not fully addressed reception problems that viewers are experiencing.¹⁵ Service losses were widespread after the digital transition, and the power increase described above has not fully addressed those losses. Viewers that rely on free, over-the-air television service would be harmed if stations were discouraged from improving their facilities by a Commission policy not to protect additional service improvements.

¹¹ Comments of Bonten at 9.

¹² *Id.* at 9-10.

¹³ *See also* Comments of the NAB at 32-33 (noting that many broadcasters made service improvements to remedy service losses connected to the digital transition, with Commission blessing, and that the Commission should protect these authorized changes); Comments of Disney at 32-34.

¹⁴ Comments of Dispatch at 2-4.

¹⁵ *Id.*

Commenters from across the broadcast industry were supportive of extending protection to facilities that stations had not had an opportunity to place into service by February 22, 2012, but which are applied for, approved, and constructed in the ordinary course prior to the repacking.¹⁶ For example, the National Religious Broadcasters urged the Commission “to fully protect those construction permits issued to... maximize existing full power television facilities – even if not yet built – so long as the station held a license as of the February 22, 2012 Spectrum Act adoption date.”¹⁷ As one group of commenters stated, “[t]his way, the Commission will have prevented the resolution of this proceeding from, in effect, nullifying its prior actions in granting ... prior to the reverse auction, construction permits based on public interest determinations.”¹⁸

Stations are continuing to make improvements to their facilities, with Commission approval. These improvements entail substantial investments, and they clearly benefit viewers. Treating February 22, 2012 as a “cut-off” date for protection instead of the bare minimum required by the Spectrum Act “would effectively constitute a *de facto* freeze, which freeze would be applied retroactively to deny broadcasters—and their viewers—the benefits of facilities modifications that were implemented to valid FCC authorizations issued pursuant to

¹⁶ See, e.g., Comments of National Religious Broadcasters, GN Dkt. No. 12-268 (Jan. 25, 2013), at 19; Comments of Univision at 9 (the FCC should protect all construction permits *granted as of* February 22, 2012 held by new and existing licensees, including those that have not been completed). Indeed, one commenter even argued that, to give full effect to Congressional intent, the Commission *must* protect granted, but unbuilt, construction permits and other authorizations held by existing licensees, as well. Comments of Comcast/NBCU at 14. See also Comments of Cox at 7 (the FCC should establish a *future freeze date* before which applications for modified facilities and for new or modified digital replacement translators, as well as granted but unbuilt construction permits, will be protected in the repacking).

¹⁷ Comments of National Religious Broadcasters at 19.

¹⁸ Joint Comments of the Named State Broadcast Associations, GN Dkt. No. 12-268 (Jan. 25, 2013), at 14.

final Commission actions.”¹⁹ Accordingly, Dispatch urges the Commission not to adopt the proposal in the NPRM but rather to serve viewers by protecting improvements that stations make to their coverage areas and populations served, even if such improvements are made after February 22, 2012.²⁰

III. THE SPECTRUM ACT REQUIRES THE COMMISSION TO FULLY PROTECT THE VIEWERS OF CLASS A STATIONS.

Dispatch disagrees with the narrowness of the NPRM’s proposal concerning protection for Class A stations.²¹ The NPRM proposed to protect Class A stations only to the extent that Class A stations are protected from interference under the Commission’s rules.²² By contrast, however, the Spectrum Act requires the Commission to protect Class A stations’ “coverage area and population served.”²³ This standard unambiguously looks to the area and population served by Class A stations, not the footprint within which a Class A station receives regulatory protection from interference.

Commenters provided support for Dispatch’s interpretation of the statute and shared Dispatch’s concern that the NPRM’s proposed approach would be inconsistent with both Congressional intent and Commission policy against jeopardizing existing television service

¹⁹ Comments of Disney at 23.

²⁰ *See, e.g.*, Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (the “Affiliates Associations”), GN Dkt. No. 12-268 (Jan. 25, 2013), at 22 (“Because the actual repacking process is years away, allowing stations to complete construction, file for licenses to cover, and then have their new facilities protected in the repacking process will neither delay nor add any further complications to the repacking timeline or algorithm.”).

²¹ Comments of Dispatch at 5.

²² NPRM at para. 99.

²³ Spectrum Act at § 6403(b)(2).

received by viewers.²⁴ Accordingly, Dispatch urges the Commission to reconsider its approach and protect Class A stations in the repacking to the same extent that full power stations are protected — as Congress intended.

* * *

Finally, Dispatch points out a fact made clear by comment after comment filed in this docket, and by the lessons learned in the DTV transition: *the choices that the Commission makes now will have real-world consequences for viewers.*²⁵ In the DTV transition — a process that occurred after years of extensive planning, study, and investments by broadcasters, the Commission, and Congress — there were many markets in which viewers lost access to their over-the-air television service. From first-hand experience with its own stations, Dispatch knows that viewers experience hardship and distress when they can no longer receive access to their local television stations. (Of course, the stations suffer, too, from lost advertising revenue to diminished ability to reach cable headends.) After WTHR commenced its post-transition digital operations, numerous viewers called the station to complain about the loss of service, as the station explained to the Commission in applying for authorization to increase power. Likewise, many viewers of Dispatch’s Columbus, Ohio station, WBNS-TV, lost reception of the station’s

²⁴ See, e.g., Comments of the Affiliates Associations, GN Dkt. No. 12-268 (Jan. 25, 2013), at 25-26 (“To suggest, as the *Notice* does, that only the substantially smaller protected contour of Class A television stations should be preserved is to ignore both the language of the statute (‘coverage area’) and its intent (to hold harmless non-participating television licensees)’); Comments of Bonten at 11; Comments of Raycom at 10; Comments of Broadcasters Associations at 14; Comments of Casa En Denver, Inc., GN Dkt. No. 12-268 (Jan. 25, 2013), at 3-4.

²⁵ Comments of the Association of Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service, GN Dkt. No. 12-268 (Jan. 25, 2013), at 24-26 (explaining that previous spectrum clearing experiences like the DTV transition and the BAS relocation demonstrate that transitioning to new channel assignments takes longer than anyone ever predicts); Comments of CBS Corporation, Fox Entertainment Group, Inc., NBCUniversal Media, LLC, The Walt Disney Company, and Univision Communications Inc., GN Dkt. No. 12-268 (Jan. 25, 2013), at 4 (calling the DTV transition a “decades-long odyssey”).

signal after the digital transition. In each case, viewers that lost service from WTHR or from WBNS continue to complain to the stations, *years* after the digital transition. Viewer outcry over lost reception of over-the-air service is real, and it is enduring. In addition, the fact is that it is not always possible to restore lost service.²⁶ That risk is heightened in the repacking, because alternatives such as increasing power or constructing translators may be impossible in a more congested, tightly-packed band.

The Commission should take into account the lessons of the DTV transition and recognize how serious loss of over-the-air service is for viewers. Then it should adopt rules that protect viewers and the stations that they count on, as Congress intended and as the public interest demands.

Respectfully submitted,



Jennifer A. Johnson
Eve R. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
(202) 662-6000
Counsel for the Dispatch Printing Company

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²⁶ For example, WBNS has maximized its facilities so that it is operating at the highest permissible power level, yet it still has been unable to replicate its former analog service for all of the stations' viewers. Likewise, as discussed above, WTHR has increased its power, but has not been able to fully restore the service that viewers received pre-transition.