

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	ET Docket No. 13-26
Opportunities of Spectrum Through Incentive	)	GN Docket No. 12-268
Auctions	)	

**REPLY COMMENTS OF COMMENTS OF LIMA COMMUNICATIONS CORPORATION, INDEPENDENCE TELEVISION COMPANY, WAND(TV) PARTNERSHIP, IDAHO INDEPENDENT TELEVISION, INC., AND WEST CENTRAL OHIO BROADCASTING, INC.**

By their attorneys and pursuant to Section 1.415(c) of the Commission’s rules, Lima Communications Corporation, Independence Television Company, WAND(TV) Partnership, Idaho Independent Television, Inc., and West Central Ohio Broadcasting, Inc. (collectively, the “Block Stations”), hereby file these reply comments in the above-captioned proceeding.

**I. TO SATISFY CONGRESS’S MANDATE TO PROTECT OVER-THE-AIR TELEVISION VIEWERS, THE FCC MUST PERFORM SUBSTANTIAL FURTHER TECHNICAL STUDY AND PLANNING AND COMPLETE INTERNATIONAL COORDINATION PRIOR TO ADOPTING RULES.**

The Block Stations are filing these reply comments to reiterate that the Spectrum Act unequivocally requires the Commission to protect viewers full power and Class A TV stations from losing service.<sup>1</sup> Other important Congressional and Commission policies require the Commission to ensure sufficient spectrum is available to allow viewers to continue to enjoy the important local, network-affiliated, and foreign language services provided by low-power stations throughout the country. Congress’s strict order to the Commission is to reproduce today’s vibrant, free over-the-air television service – minus those stations that voluntarily exit the

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<sup>1</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6403(b)(2), 125 Stat. 156 (2012) (the “Spectrum Act”).

business – on a smaller swath of spectrum. To satisfy this mandate, the Commission must plan its post-auction band plan and TV repack methodologies very carefully and promulgate rules based on sound policies and engineering, not expediency a desire to maximize revenue or spectrum recovery.<sup>2</sup>

**A. The Commission Must Perform Further Testing To Determine the Interference Consequences of Its Proposed Repack Band Plans.**

The comments confirm that this planning will be a daunting and time-consuming task, and that the proposals in the *NPRM* will not get the job done.<sup>3</sup> In its initial comments, the Block Stations raised several issues concerning likely harmful interference among television stations in

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<sup>2</sup> In addition to the issues discussed below, the Commission has yet to determine what “protection” from interference will even mean in the context of the repack. Congress directed the Commission to protect station facilities based on OET Bulletin 69, Spectrum Act, §6403(b)(2), but the Commission recently released a Public Notice Seeking to revise OET-69 before the repack. See Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software, *Public Notice*, ET Docket No. 13-26, GN Docket No. 12-268, DA 13-138 (rel. Feb. 4, 2013). The FCC’s suggested changes to OET-69 are complex and the Block Stations are only beginning to understand their impact. Moreover, as NAB pointed out in a recent *ex parte* letter, there are substantial questions about whether the Commission even has the legal authority to use a revised OET-69 methodology in the repack. See Letter from Rick Kaplan, Executive Vice President, Strategic Planning, NAB, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 13-26, GN Docket No. 12-268, DA 13-138, filed Feb. 8, 2013. Given the importance of Congress’s mandate to the Commission to preserve viewers access to over-the-air television signals, the Commission must resolve these issues as soon as possible. Absent some compelling justification from the Commission for why it can and should use a revised OET-69 to fulfill Congress’s mandate, the Block Stations oppose using a revised OET-69 for repack purposes.

<sup>3</sup> Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, GN Docket No. 12-268, FCC 12-118 (rel. Sept. 28, 2012) (the “*NPRM*”). The FCC’s own laboratories identified some of these same problems when it conducted testing for the DTV converter box program a few years ago, and those problems cannot simply be ignored to make the TV repack more convenient. See Reply Comments of Cohen, Dippell and Eversit, P.C., GN Docket No. 12-268, filed Mar. 12, 2013 (citing Stephen R. Martin, *RF Performance of DTV Converter Boxes-An Overview of FCC Measurements*, IEEE TRANSACTIONS ON BROADCASTING, Dec. 2010).

the compressed TV band if the Commission moves forward with its proposed repack plan.<sup>4</sup> In their comments, both NAB and AT&T raise equally substantial questions about the potential for significant interference between repacked broadcasters and new wireless providers in the 600 MHz spectrum, and they note that these potential problems are exacerbated by the Commission's proposal to recover different amounts of spectrum from different markets depending on the results of the reverse auction.<sup>5</sup> Verizon Wireless also acknowledges the difficulties that will be created by the proposed variable band plan and briefly proposes some solutions that it acknowledges will be only marginally effective.<sup>6</sup> Thus, there is widespread agreement among both affected industries that the Commission's current proposals will not protect broadcasters as required by the Spectrum Act and will not maximize the value of the spectrum that is ultimately sold at auction.

Of course, both AT&T and Verizon Wireless encourage the Commission to continue moving swiftly towards adopting rules in 2013 and an auction in 2014. But their interest in acquiring TV spectrum – regardless of whether they can put it into operation immediately – clouds their judgment. Compliance with the Spectrum Act does not permit the Commission to move forward with a plan that *might* protect broadcasters and *might* make additional spectrum available for broadband. The Commission must take the time now to do the necessary planning to get the auctions and the repack right and to protect the nation's over-the-air broadcast system. If the Commission sacrifices sound engineering in favor of speed, its auction and repack rules

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<sup>4</sup> See Comments of Lima Communications, *et al.*, GN Docket No. 12-268, at 7-10 & Appendix A, filed Jan. 25, 2013 (“Block Station Comments”).

<sup>5</sup> Comments of the National Association of Broadcasters, GN Docket No. 12-268, at 39-45, filed Jan. 25, 2013 (“NAB Comments”); Comments of AT&T Inc., GN Docket No. 12-268, at 23-40, filed Jan. 25, 2013.

<sup>6</sup> Comments of Verizon and Verizon Wireless, GN Docket No. 12-268, at 13-14, filed Jan. 25, 2013.

will never stand up to judicial scrutiny. For these reasons, the Block Stations renew their call that the Commission perform further testing and analysis of the interference effects that will be caused by the Commission's various repack proposals.<sup>7</sup>

**B. Block Supports NAB's Proposal for Creating Discreet, Contiguous, TV and Wireless Broadband Spectrum Bands.**

The Block Stations expect that such testing will reveal that the best repack plan is that proposed by NAB. That plan calls for the Commission to abandon its variable band plan proposal in favor of the creation of two discreet, nationwide, and contiguous spectrum bands – one for TV and another for wireless broadband.<sup>8</sup> NAB's plan is not only likely the most technically feasible, it is also the most likely way the Commission will preserve enough broadcast spectrum to replicate the current over-the-air broadcast system.

As NAB points out, the variable band plan proposal appears to be a means for the Commission to recover large amounts of spectrum from markets with relatively few low-power and Class A stations.<sup>9</sup> But by seeking to maximize spectrum recovery in this way, the Commission will both needlessly complicate the repack and reallocate spectrum that otherwise might be used to accomplish important policies like providing local, network-affiliated, and foreign language services. In many markets, these services are provided by low-power stations, but if the Commission seeks only to maximize spectrum recovery, there likely will not be enough TV spectrum remaining in smaller markets for low-power stations to continue performing this vital role. Since this spectrum would only be recovered to implement the highly problematic variable band plan, there is no sound policy reason for adopting the maximal recovery approach.

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<sup>7</sup> Block Station Comments at 10.

<sup>8</sup> NAB Comments at 34, 38, 45-47.

<sup>9</sup> *See id.* at 7-9.

Instead, the Commission should recover only the spectrum necessary to create a contiguous national block of wireless broadband spectrum.

**C. The Commission Must Complete International Coordination Before It Settles on a Band Plan and Spectrum Repack Methodology.**

The Block Stations also agree with those commenters who note that the Spectrum Act requires the Commission to complete coordination with Canada and Mexico before it commences with the auctions and repack process.<sup>10</sup> This may be a lengthy process, given the considerable cross-border problems that broadcasters and the Commission experienced during the DTV transition and the foreseeable problems that will arise during this new round of international coordination. Accordingly, the Block Stations encourage the Commission to commence its international coordination efforts as soon as possible.<sup>11</sup>

Toward that end, the Block Stations endorse NAB's recently submitted five-step plan for completing international coordination in a deliberate and timely fashion.<sup>12</sup> NAB's letter accurately summarizes the importance of international coordination and some of the potential obstacles. The steps NAB advises are a sensible path forward on the international coordination issue, and the Block Stations recommend that the Commission begin pursuing that or a similar plan at its earliest opportunity.

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<sup>10</sup> See Spectrum Act, §6403(b)(1)(B); see also, e.g., NAB Comments at 11-17; Comments of Cox Media Group, GN Docket No. 12-268, at 7-9, filed Jan. 25, 2013; Comments of ABC Television Affiliates Association, CBS Television Network Affiliates Association; FBS Television Affiliates Association, and NBC Television Affiliates, GN Docket No. 12-268, at 11-19, filed Jan. 25, 2013; Comments of Sinclair Broadcast Group, Inc., GN Docket No. 12-268, at 13, filed Jan. 25, 2013; Comments of the New York State Broadcasters Association, Inc., GN Docket No. 12-268, at 15, filed Jan. 25, 2013.

<sup>11</sup> Accord Comments of CTIA – The Wireless Association, GN Docket No. 12-268, at 41, filed Jan. 25, 2013.

<sup>12</sup> Letter from Rick Kaplan, Executive Vice President, Strategic Planning, NAB, to Gary Epstein, Incentive auction Task Force Chair, *et al.*, GN Docket No. 12-268, filed Mar. 7, 2013.

## II. THE COMISSION SHOULD PROCEED DELIBERATELY RATHER THAN BLINDLY SEEKING TO MEET SELF-IMPOSED DEADLINES.

The Commission's mandate from Congress to protect the over-the-air broadcasting system in any spectrum auction and repack must take precedence over any perceived need to complete this process according to the ambitious schedule the Commission established before it had even commenced this complex process. As a committed broadcaster that intends to continue serving its viewers long into the future, the Block Stations have a strong interest in having this process completed as quickly as possible according to Congress's priorities. But the auctions and repack process must be done right; that is, they must maximize the value of the 600 MHz spectrum for both TV viewers and wireless broadband users. To accomplish that goal, the Commission must undertake the complex research and planning discussed above.

At this point, the only impetus to speeding through this process is coming from inside the Commission. Wireless companies are not clamoring for an immediate auction because they have solved their short-term and medium-term spectrum needs.<sup>13</sup> The much-discussed "spectrum crunch" is simply over for the present and intermediate future. And, the Commission may be planning today for mobile broadband spectrum needs that may never materialize. *Cisco recently slashed its forecast for global mobile data growth through 2016 by more than 30%.*<sup>14</sup> New technologies appear to be ameliorating any remaining demand for quick access to new spectrum,

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<sup>13</sup> See, e.g., David Talbot, *The Spectrum Crunch That Wasn't: Tiny Transmitters, Spectrum Sharing, and New Information-Coding Technologies Promise To Keep Wireless Data Capacity Increasing for Years*, MIT TECHNOLOGY REVIEW, Nov. 26, 2012, available at <http://www.technologyreview.com/review/507486/the-spectrum-crunch-that-wasnt/>; Phil Goldstein, *What Happened to the 'Spectrum Crunch?'*, FIERCEWIRELESS, Sept. 28, 2012, available at <http://www.fiercewireless.com/story/what-happened-spectrum-crunch/2012-09-28/>;

<sup>14</sup> See Tero Kuitinen, *Cisco Lowers Mobile Data Growth Estimates – While Doing Its Best to Hide the Drop*, BGR, Feb. 6, 2013, available at <http://bgr.com/2013/02/06/cisco-mobile-data-growth-estimates-320510/> (noting reduction in projected mobile data use in 2016 from 11.2 exabytes per month to 7.4 exabytes per month).

which means that the Commission has more than enough time to make sure that the auctions and repacks are intelligently designed to fulfill Congress's mandates. The Spectrum Act gives the Commission a decade to complete this process.<sup>15</sup> The Block Stations are not suggesting this process should take nearly that long, but in view of the declining need for wireless broadband spectrum and the Congress's expectations, the Commission has all the time it needs to engage in the sound planning and reasoned decision making necessary to complete a successful auction.

### **III. CONCLUSION**

For the reasons stated above, the Block Stations urge the Commission to adopt rules consistent with the principles described above and in their comments in this proceeding.

Respectfully submitted,

**LIMA COMMUNICATIONS, CORPORATION  
INDEPENDENCE TELEVISION COMPANY  
WAND(TV) PARTNERSHIP  
IDAHO INDEPENDENT TELEVISION, INC.  
WEST CENTRAL OHIO BROADCASTING, INC.**

/s/

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March 12, 2013

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<sup>15</sup> See Spectrum Act, §6403(g)(2)(C).