Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

To: Office of the Secretary
Attention: The Commission

COMMENTS

CHN Media, LLC, the licensee of low power station WRDH-LP, Ashton, IL, Facility ID No. 131157, respectfully requests leave to submit Comments in the above referenced docket.[1]

CHN Media, LLC desires to adopt the attached previously filed Comments of Mako Communications, LLC as its position. CHN Media, LLC fully supports Mako's arguments and urges the Commission to adopt those Comments in its ultimate ruling on the status of low power television in the repurposing of television spectrum.

CHN Media, LLC is aware that its comments are not timely filed. CHN Media, LLC requests leave to submit these comments. In this regard, the Commission has had the timely filed comments of Mako Communications, LLC before it. CHN Media, LLC is merely incorporating those comments. Accordingly, the instant submission will not result in any additional burden on the Commission. Thus, it is submitted that its comments be accepted.

[1] Docket No. 12-268, In The Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions Notice of Proposed Rulemaking FCC 12-118(rel. October 2, 2013)(the "Notice").

Respectfully Submitted,

Aaron P. Shainis

Aaron P. Shainis
Counsel for

CHN MEDIA, LLC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

FILED/ACCEPTED

JAN 25 2013

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attention: The Commission

COMMENTS OF MAKO COMMUNICATIONS, LLC

Mako Communications, LLC ("Mako") hereby respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking,[1] which invites comments with respect to the Commission's proposed incentive auction of broadcast television spectrum to be made available for wireless broadband use. Mako and its principals are the licensee of numerous low power television stations and Class A stations located throughout the United States, including several stations in the top 30 U.S. markets. Mako's Comments focus on its concern regarding the Commission's statement, at Paragraph 358, that, because low power television is a secondary service, in all cases low power television stations will have to relocate to a new channel or discontinue operations altogether so that the Commission may repurpose more spectrum for broadband service. Mako also comments on the Commission's request, at Paragraph 361, for information regarding "selection priorities," which will aid the Commission is choosing among mutually-exclusive low power television displacement applications.

[1] *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions* Notice of Proposed Rulemaking, FCC 12-118 (rel. October 2, 2012) (the "Notice").

STAMP & RETURN

The Commission acknowledges in the *Notice* that the central goal of the proceeding is to repurpose the maximum amount of UHF band spectrum for broadband use.[2] Previously, in its National Broadband Plan,[3] the Commission emphasized the importance of wireless spectrum and proposed incentive auctions as one way to facilitate spectrum reallocation. The Plan described an incentive auction as a voluntary means of reclaiming spectrum by encouraging existing broadcast television licensees to voluntarily relinquish spectrum usage rights in exchange for a share of the proceeds from the auction of new licenses to use the repurposed spectrum.[4] The Middle Class Tax Relief and Job Creation Act of 2012[5] authorized the FCC to conduct incentive auctions to reclaim spectrum for mobile broadband uses.

In its *Notice*, the Commission offers several proposals for the general configuration of the 600 mHz band. The Commission seeks comment on a band plan for reclaimed spectrum in which an uplink band would begin at Channel 51 (698 mHz) and expand downward toward Channel 37 and a downlink band would begin at Channel 36 (608 mHz) and likewise expand downward.[6]

Through the incentive auctions, a portion of the spectrum currently occupied by broadcast television licensees who are willing to be paid to relinquish their spectrum rights would be reclaimed for broadband use.[7] As to those broadcast television licensees that do not participate in the auction or whose bids are not accepted, the Commission proposes to take the

---

[2] *Notice* at para. 10.
[3] *See* Federal Communications Commission, *Connecting America: The National Broadband Plan* at 88-91 (2010).
[4] *Notice* at para. 25.
[5] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012) ("Spectrum Act").
[6] *Notice* at para. 9.
[7] *Notice* at para. 25.

remainder of the spectrum for the proposed uplink and downlink bands by reorganization or "repacking" these television stations in the broadcast television bands. This will free up a portion of the ultra high frequency (UHF) band for broadband use.[8] The Commission would also take the spectrum presently allotted to low power television stations and make it available for broadband services. Low power television stations would have the right to seek displacement to other channels, assuming such channels were available but, if none were available, the stations would have to go silent and terminate service without compensation.

According to the Commission, low power television stations have no rights when it comes to the reconfiguration of spectrum for broadband because low power television stations are provided only secondary interference protection status and must resolve any interference which they cause, including going off the air if necessary.[9] Because low power television has historically been considered a secondary service to full power television, the Commission chooses to portray the matter as that of low power television stations causing interference to primary full power television and Class A stations, which are being assigned new channels as part of the repacking process.[10] The Commission ignores the fact that low power television stations will be removed from that portion of the spectrum which is proposed to be reclaimed for expanded broadband service.[11] This spectrum will no longer be used by full power television

[8] *Notice* at paras. 7, 91. Repacking involves reorganizing broadcast television bands so that those television stations that remain on the air following the broadcast television spectrum incentive auction will occupy a smaller portion of the UHF band, thereby allowing the Commission to reconfigure a portion of the UHF band, creating contiguous blocks of spectrum suitable for broadband use.

[9] *See Notice* at paras. 74, 118, 358 and note 13.

[10] *Notice* at para. 358.

[11] And, even as to those low power television stations currently broadcasting on channels which will be assigned to full power television stations as part of the repacking process, the Commission has acknowledged that such low power television stations are to be removed in order to repurpose the maximum amount of UHF band spectrum for

stations and, as such, low power television stations will not need to provide secondary protection to full power television stations which will not be occupying that spectrum.

It cannot be overstated that low power television stations have secondary status within the relevant spectrum only when compared to full-powered television stations. As the Commission has noted, "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.'"[12]

The concept of "secondary spectrum priority" does not mean that low power television stations can be wiped out at any time for any reason to advance any service, but, instead, that such stations must yield to one specific superior primary service use, that of full power television. This concept is embodied in Sections 74.702(b) of the Commission'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

---

broadband use. *See* note 2, *supra*. Whether low power television stations are removed because they currently occupy spectrum which the Commission wishes directly to repurpose for mobile broadband use or are removed because they stand in the way of full power television stations which are being repackaged to new channels in order to repurpose spectrum for broadband use, the bottom line is that low power television stations would lose all of their spectrum rights so that the Commission might take additional spectrum for broadband use.

[12] *Establishment of Class A Television Service (Reconsideration)*, 16 FCC Rcd 8244, 8245 (2001) *quoting Report and Order* in BC Docket No. 78-253, 51 R.R. 2d 476, 486 (1982).

> station shall eliminate the interference or file an application for a change in channel assignment pursuant to Section 73.3572 of this chapter [emphasis added].

Even the Commission recognized in its *Notice* that low power television stations "are permitted to operate under Part 74 of the rules *on a secondary basis to full-service TV stations*."[13]

The Commission seeks to take these limited secondary interference rights with respect to full power television stations and apply them unilaterally to any other service, broadly concluding that "because low power television stations have secondary interference rights, these facilities do not impede the band clearing and repacking process...."[14]

The Spectrum Act specifies that "[n]othing in this subsection shall be construed to alter the spectrum usage rights of low power television stations."[15] The Commission may not limit the spectrum rights of low power television stations by treating low power television stations as a secondary service with respect to other non-broadcast services without violating the statute.

In its *Notice,* the Commission describes low power television as a source of diverse and local television programming.[16] The Commission has repeatedly recognized the importance of low power television as a service, stating, for example, that

> "in many cases, low power television stations may be the only television station in an area providing local news, weather and public affairs programming. Even in some well-served markets, low power television stations may provide the only local service to residents of discrete geographical communities within those markets. Many LPTV stations air 'niche' programming, often locally produced, to residents of specific ethnic, racial and interest

[13] *Notice* at note 537 (emphasis added) *quoting Unlicensed Operation in the TV Broadcast Bands*, 25 FCC Rcd 18661, 18665 (2010). *See also Notice* at note 13.
[14] *Notice*, Appendix B, para. 7.
[15] Section 6403(b)(5) of the Spectrum Act.
[16] *Notice* at para. 358.

communities within the larger area, including programming in foreign languages.

The low power television service has significantly increased the diversity of broadcast station ownership. Stations are operated by such diverse entities as community groups, schools and colleges, religious organizations and a wide variety of small businesses. The service has also provided first-time ownership opportunities for minorities and women."[17]

The Commission's proposed plan would ignore these benefits[18] and would provide no safeguards to protect low power television stations, therefore, placing the entire low power television service, which millions of viewers depend on for local programming, at substantial risk. Low power television station owners have invested literally hundreds of millions of dollars in reliance on Commission policies regarding low power television. Low power television licensees have accepted secondary status on the broadcast television band based on Commission pronouncements that low power television is secondary in the broadcast spectrum *only* to full-power television stations. By seeking to change the parameters under which low power television operates after such broadcasters, in many cases, have invested their life savings to provide meaningful service to the public based on repeated FCC policy pronouncements, the Commission is, essentially, seeking to commit a fraud upon the low power television industry by wiping out the service and harming the viewing public that low power television serves.

---

[17] *Establishment of Class A Television Stations (Reconsideration)* 16 FCC Rcd 8244, 8246 (2011).

[18] In other proceedings, the Commission has stressed the importance of localism and diversity, *See eg. Broadcast Localism,* Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, 1327 (2008) ("[t]he concept of localism has been a cornerstone of broadcast regulation for decades. The concept derives from Title III of the Communications Act of 1934, as amended, and is reflected in and supported by a number of critical Commission policies and rules. However, apparently in the interest of expanding broadband spectrum, all other FCC policies, even those cornerstone concepts derived from the Communications Act are to be ignored. Low power television service is treated as collateral damage, a casualty to be sacrificed for the greater good of unlimited broadband.

The Commission's treatment of low power television stations, which are secondary only to full power television, should be contrasted with the Commission's favorable treatment of unlicensed services which are secondary to all licensed services. Even though such unlicensed services, governed by 47 CFR Part 5, are completely secondary in nature, the Commission goes out of its way in the *Notice* to accommodate and encourage such services. As an example, noting that the repacking of television stations may result in a reduced amount of spectrum being available for use on a secondary basis by unlicensed wireless microphone operations, the Commission states that it will "seek comment on what steps we should take...to best accommodate wireless microphone operations along with other uses, as well as to ensure that the available spectrum is used efficiently and effectively by wireless microphones."[19]

With regard to white spaces and unlicensed operations, the Commission states that it will examine "how to best preserve and improve the use of the unused spectrum in the broadcast television bands for unlicensed operations, including the possibility of providing for additional spectrum, ideally on a nationwide basis, for unlicensed use in these bands."[20]

In sum, Mako strongly urges that the Commission not adopt procedures which would diminish the spectrum usage rights for low power television stations.

The Commission also seeks comment in its *Notice* regarding whether as well as how to avoid mutual exclusivity for low power television displacement applications which have been filed in an initial filing window after Commission repacking becomes effective. The Commission poses in its *Notice* whether the public interest would be served by establishing a set

[19] *Notice* at para. 224.
[20] *Notice* at para. 227.

of "selection priorities" to choose among low power television applications.[21] Under such an approach, low power television displacement filers would submit a showing during the filing window that they qualify for particular selection priorities and the Commission would, thereafter, rank those displacement applications when determining which applications to grant and in what order.

Mako submits that low power television stations willing to enter into Channel Sharing Agreements ("CSA's") should be included in a first priority grouping. The Commission has proposed CSA's for full power and Class A television stations. It should adopt a similar framework for and give the highest priority to channel sharing in connection with low power television stations' displacement applications.

As noted, the Commission has concluded that "participation in a channel sharing agreement [by full power and Class A television stations] has the potential to benefit broadcasters and the viewing public"[22] beyond freeing up spectrum for new wireless services. The Commission concluded that channel sharing has the potential to reduce operating costs, resulting in additional net income to television broadcasters to improve programming. The Commission further stated that channel sharing may provide existing small and minority-owned stations, as well as other niche stations, operating cost savings from sharing a transmission facility which will enhance or improve their local program offerings.[23]

---

[21] *Notice* at para. 361.
[22] *Innovation in the Broadcast Television Bands: Allocators, Channel Sharing and Improvements to UHF*, 27 FCC Rcd 4616, para. 12 (2012).
[23] *Id.*

As with full power television stations, channel sharing by low power television stations will constitute an efficient use of limited available spectrum and should be greatly encouraged. The Commission invites comments in its *Notice* on measures to help ensure that important programming provided by low power television stations will continue to reach viewers.[24] Channel sharing is one answer and it should rank high if not highest as a "selection priority" when comparing low power television displacement applications.[25]

[24] *Notice* at para. 359.

[25] Certainly, the Commission should expect no greater problems in permitting CSA's between low power television stations than those problems it faces with CSA's involving full power television and/or Class A stations. If anything, CSA's involving low power television stations should have fewer complications since, for example, the Commission will not have to deal with the differing technical requirements applicable under Parts 73 and 74 of the Commission's rules to full power and Class A television stations sharing a channel nor the problems with prohibited communications by and between parties to a Channel Sharing Agreement occurring during the reverse auction. *Notice* at paras. 268, 370.

As set forth herein, low power television should not be treated as a secondary service to mobile broadband and unlicensed services. If the Commission truly believes in the concept of localism, as it has professed, it can hardly take action which will lead to the dismantling of a service which the Commission has previously recognized as virtually unmatched in the provision of local service to the public. Additionally, should the Commission conclude that low power television stations will file displacement applications, the Commission should grant those stations willing to enter into Channel Sharing Agreements with a "selection priority" when judging those applications.

Respectfully submitted,

MAKO COMMUNICATIONS, LLC

By: _____
Lee J. Peltzman
Its Counsel

Shainis & Peltzman, Chartered
1850 M St NW
Suite 240
Washington, D.C. 20036
(202) 293-0011