May 6, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

This letter is to notify you that on May 6, 2014, Patrick Butler, President and Chief Executive Officer, and Lonna Thompson, Executive Vice President, Chief Operating Officer and General Counsel, of the Association of Public Television Stations; and Vincent Curren, Executive Vice President and Chief Operating Officer, of the Corporation for Public Broadcasting (collectively, "PTV") met with Commissioner Michael O'Rielly, Courtney Reinhard, Senior Legal Advisor and Chief of Staff, Media and Erin McGrath, Legal Advisor, Wireless, Public Safety and International.

PTV requested the meeting in order to discuss issues of importance to the public broadcasting industry in connection with the upcoming spectrum incentive auction and repacking process. PTV expressed appreciation for the Commission's willingness to recommend a number of regulatory safeguards that protect and preserve public television stations across the country. PTV recommended that the Commission take the following additional three steps to further ensure that the communities served by public broadcasting are not negatively impacted by the auction and repack.

First, consistent with longstanding congressional and Commission policy, the FCC should ensure that every community retains access to over-the-air public television service by structuring the incentive auction rules to protect and preserve the congressional mandate for universal service of public television throughout the country. The Commission has consistently worked to support and further this statutory universal service mandate of public television for decades and can continue to do so through prudent design of the upcoming incentive auction.[1]

PTV expressed support for the incentive auction generally, but advised that service to millions of Americans could be lost if the Commission were to accept a license termination bid from the sole or last provider of public television service to a community where the auction is held. While this result may seem unlikely, it is possible and the consequences could be dire and unprecedented. Attached is the April 24, 2014 Resolution of the CPB Board requesting that the FCC ensure that no "white areas" unserved by public television result from the incentive auction.

---

[1] *See, e.g.*, In the Matter of Deletion of Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania, *Memorandum Opinion and Order*, 11 FCC Rcd. 11700, ¶ 17-18 (rel. Aug. 1, 1996); In the Matter of Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania, *Report and Order*, MM Docket No. 01-276, ¶ 42 (rel. July 18, 2002) (granting the exceptional relief of dereservation to WQEX in 2002 due to the fact that it would "not cause a reduction in public television's coverage area" as "every viewer in WQEX(TV)'s coverage area will continue to receive educational service from WQED(TV)").

Universal service to all Americans is a core mission of public broadcasting. This principle is embodied in the Public Broadcasting Act enacted by Congress in 1967 and has been supported by established FCC policies since spectrum was first reserved for noncommercial use.[2] The Commission reaffirmed these longstanding policies in the 2012 Notice of Proposed Rulemaking by continuing to strongly disfavor modification of a station's facilities that would create unserved "white areas" and to strongly disfavor dereservation of noncommercial educational channels.[3]

These FCC policies were reaffirmed in analogous circumstances when the Commission adopted voluntary band-clearing mechanisms to facilitate clearing of the 740-806 MHz band for new wireless services. The Commission's determinations in that prior band clearing reflected its "intent to protect and preserve existing noncommercial educational service by carefully weighing the public interest effects of dereservation proposal[s] even in the context of band clearing."[4]

The FCC first reserved television channels for noncommercial use in 1952, in order to allow for the development of educational television service nationwide.[5] The importance of reserved channels has only grown over the ensuing six decades. The Commission "has historically sought to reserve approximately twenty-five percent of television channels for noncommercial use."[6] Furthermore, the Commission "has repeatedly denied requests to delete reserved channels, citing as a principal reason for doing so the need to preserve the future availability of the channels."[7] Allowing extensive dereservation through the incentive auction would be a dramatic reversal in course, which the FCC should not make without first specifically opening the subject for notice and comment.

A simple method can be used to incorporate this protection into the feasibility checking process planned for the auction through a constraint file that preserves a minimum of one qualified noncommercial educational station in each Designated Market Area.[8] PTV urges the Commission to adopt in the incentive auction Report and Order amended language for § 1.22002(b)(2)(iii) and § 73.3700(a)(9) as proposed in the *ex parte* letter filed by the Association of Public Television Stations on January 23, 2014 (attached hereto).[9] Nothing in this proposal is intended to conflict with the Commission's obligation to ensure that the auction is voluntary. All stations should be able to voluntarily participate in the auction through bids to channel share or relocate to the VHF band, with their participation of course subject to the possibility that a bid may not be accepted due to the bid amount, the

---

[2] 47 U.S.C. § 396(a)(7) ("[I]t is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States."); Amendment of Section 3.606 of the Commission's Rules and Regulations et al., *Sixth Report & Order*, 41 F.C.C. 148, 158 (1952).

[3] In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, 27 FCC Rcd. 12357, ¶ 48 n.88, ¶ 370 n.557 (rel. Oct. 2, 2012) [hereinafter "Incentive Auction NPRM"].

[4] In the Matter of Deletion of Noncommercial Reservation of Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania, *Memorandum Opinion and Order*, 11 FCC Rcd. 11700, ¶ 30 (rel. Aug. 1, 1996).

[5] Amendment of Section 3.606 of the Commission's Rules and Regulations et al., *Sixth Report & Order*, 41 F.C.C. 148, 158 (1952).

[6] *Id*. at ¶ 17.

[7] *Id*. at ¶ 18. Through 1996 the Commission notes that it had "never dereserved a noncommercial channel without substituting another reserved channel." *Id*.

[8] *See* 47 U.S.C. § 338(k)(6) (defining "qualified noncommercial educational television station").

[9] Incentive Auction NPRM, Docket No. 12-268, *Ex Parte* Letter, Association of Public Television Stations (Jan. 23, 2014).

market congestion, or the public interest considerations that have always informed and guided the Commission's spectrum policy.

Second, PTV expressed appreciation for the Commission's willingness to recommend that the negative impact on television translators be mitigated by ensuring that spectrum clearing in low occupancy markets not exceed major market recovery and by permitting out-of-core operation with a cessation mechanism similar to that used following the digital transition.[10] Translators serve hard to reach geographic areas and many cable and satellite receive facilities. Given that many translators will be displaced, PTV urged the Commission to provide a selection priority in the displacement application process for public television translators.[11] It is critical that PTV stations have priority in order to timely receive grants and other funding to pay for the costs of translator relocation.

Third, PTV expressed appreciation for the Commission's willingness to recommend that the TV Broadcaster Relocation Fund provide advance reimbursement to noncommercial educational licensees that incur repacking costs following the incentive auction. PTV urged the Commission to consider a greater percentage of advance reimbursement, as well as priority, for noncommercial educational stations. Given that the Widelity Report estimates costs could exceed $2.6 million for a single station in some cases; covering ten percent of such significant expenses could be a significant challenge for many noncommercial stations.[12]

---

[10] *See* 47 C.F.R. 74.703(g) (providing a mechanism for wireless licensees to notify translator operators of the likelihood of harmful interference and for translator operators to respond to such notification).

[11] Congress distinguished between CPB-qualified stations and other noncommercial educational television stations when it enacted the Satellite Television Extension and Localism Act of 2010 ("STELA"), in which Congress required that certain satellite television providers accelerate their timetable for carrying CPB-qualified stations in high-definition format. *See* 47 U.S.C. § 338(k)(6) (defining a "qualified noncommercial educational television station" to mean "any full-power television broadcast station that . . . is licensed by the Commission as a noncommercial educational broadcast station and is owned and operated by a public agency, nonprofit foundation, nonprofit corporation, or nonprofit association; and . . . has as its licensee an entity that is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto"). The distinction based on STELA's definition was upheld under First Amendment scrutiny in a case decided by the United States Court of Appeals for the Ninth Circuit. *See DISH Network Corp. v. Fed. Commc'ns Comm'n*, 653 F.3d 771 (9th Cir. 2011), cert. denied 132 S. Ct. 1162 (2012).

[12] Widelity, Inc., Response to the Federal Communications Commission for the Broadcaster Transition Study Solicitation, FCC 13R0003, at 45, Dec. 30, 2013.

Regards,

/s/_____

J. Westwood Smithers, Jr.
Senior Vice President and General Counsel
CORPORATION FOR PUBLIC BROADCASTING
401 Ninth Street, NW
Washington, DC 20004
Tel: 202-879-9600
wsmithers@cpb.org

/s/_____

Lonna Thompson
Executive Vice President, Chief Operating Officer and General Counsel
ASSOCIATION OF PUBLIC TELEVISION STATIONS
2100 Crystal Drive, Suite 700
Arlington, Virginia 22202
Tel: 202-654-4200
lthompson@apts.org