Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

Amendment of Parts 73 and 74	)	
of the Commission's Rules to	)	
Establish Rules for Digital	)	
Low Power Television, Television	)	MB Docket No. 03-185
Translator, and Television Booster	)	
Stations and to Amend Rules	)	
for Digital Class A Television Stations	)	

LPTV Spectrum Rights Coalition

Comments on the Advanced Television Broadcasting Alliance Petition for a blanket waiver for LPTV construction permits

August 14, 2014

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COALITION

August 14, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth St, S.W.
Washington, DC 20554

Re: Comments on the Advanced Television Broadcasting Alliance Petition for a blanket waiver for LPTV construction permits - MB Docket No. 03-185

Dear Ms. Dortch:

The LPTV Spectrum Rights Coalition represents more than 155 independent FCC broadcast television LPTV licensees which operate and are building out more than 975 LPTV stations and new construction permits in most all 50 states and territories. We are a cross-section of the LPTV industry, nearly evenly split between licensed LPTV digital TV stations, new construction permits, and TV translator groups.

We also represent more than a dozen national networks which rely on LPTV stations for local affiliation. Coalition members air hundreds of local and national culturally diverse channels of content, available to over 75 million viewers in urban, suburban, and rural communities. We also provide strategic guidance and technical assistance to new LPTV entrants which are in the process of building more than 1500 construction permits which want to use new flexible-use transmission systems in support of the National Broadband Plan.

The Coalition recommends that the Bureau deny the Petition. We do this based on three key factors:

1. **The FCC, in the recent Incentive Spectrum Auction Report & Order, has signaled that it will consider this issue as part of the Further Notice of Rule Making for LPTV which is slated to be conducted the fall of 2015.** It is only within the total context of the auction and the subsequent channel displacement process for LPTV that the FCC can make any determination as to when LPTV construction permits should be readjusted to. The law of unintended consequences is in play with the auction, and it would not be prudent to introduce a forced LPTV CP build anytime at all within the pre-auction timeframe. An especially not with more than 3,500 outstanding construction permits (from both

the remaining analog to digital conversion, and the 2009 rural filing window filings).

2. **Not all construction permits need the same type of consideration**

   a. **The approximate 1000 remaining analog to digital permits have existing licensed operations, and many with digital companion channels.** Until such time that these licensed facilities know if they will be displaced in the post auction repacking it simply is not fair to have them conduct and pay for a "double-build". This would not serve their audiences, nor the primary objective of the FCC to conduct a successful auction. When the auction is completed, and the remaining primary stations have submitted any modifications within the first six months, then the FCC has said it will open an LPTV displacement window. This is the proper time for these 1000 or so remaining analog to digital conversions to be given a new construction permit schedule.

   b. **The only exception within the analog to digital conversion permits should be the VHF LPTV channel 6 radio operators.** There are about a dozen of these across the country from NYC, LA, Chicago, DC, Denver, and others. They currently serve almost 50 million listeners with some of the most diverse audio content, and are doing so on a non-interfering basis. The Coalition recommends that the channel-6 analog licensees which are providing an FM audio channel be allowed to continue analog operations until month-39 post auction plus one year, or 51 months post auction.

      The reasoning is that this is a very much needed and successful LPTV operational model which is serving underserved audiences. (ie, in NYC the channel 6 is airing Russian language radio during the day, and Korean language radio during the evening, and many others are Hispanic, and various Asian languages). The Coalition is working with most of the channel 6 licensees to develop and implement a digital channel 6 transmission model, which could provide a huge new opportunity for flexible use services, including the airing of multiple new FM channels using LPTV. If a digital 6 with FM operational model can be approved for deployment, then these channels could convert to digital very fast, but we need to give them the time to get their experimental license process completed. This is also essential for all other LPTV future flexible use possibilities.

   c. **The 2009 rural filing window construction permits make up the bulk of LPTV permits, with some 2500 of these are varying points in the process.** There are most each week now applications for these to enter into the 3rd extension permit, which are Commissioner-level decisions. The FCC has signaled that these 3rd extensions will be warehoused until

such time that their final extensions can be coordinated with the auction, repack, and displacement process. A key factor to remember with these permits is that they are in a staggered pattern, with some in the 1st, or 2nd, and now 3rd extensions. Providing a "blanket waiver" for them may in some cases not be fair. There are those which have within the last year been given their permits and still have a couple years to go on them. Cutting back on their time to build is a take-back of their rights and would not be allowed.

Another consideration for the 2009 filers is that they will need to see how the auction and primary repacking affects the channels they have permits for, and some may actually not be displaced by a primary, or were not in the new national mobile band from 51-3X. The real question which will need to be asked and commented on in the LPTV FNPRM is what happens if a built licensed LPTV station, which was displaced in the auction and or the primary repack, would they have the right to select a new channel which currently has an LPTV CP? Or are all LPTV CPs wiped clear and everyone starts over? This is just one of the examples why this Petition should be denied and all discussion and comments be part of the LPTV FNPRM process this fall.

d. **There is another class of 2009 filing window construction permits, which could total as many as 1500, which were applied for in order to use them to build out flexible use transmission facilities in support of the National Broadband Plan.** Since the auction legislation did not pass until early 2012, most of these permits and developers have been in limbo waiting to see what will happen so that they can continue on with their substantial investments in support of the national goals. The last thing they need is to be forced to build before the dust settles with the primary repack and six months later the built and licensed LPTV displacement process. What would be best for this substantial group of permits is for them to have as much runway as possible to apply for waivers, build, and launch their services.

The trick here is not giving anyone one group special consideration over the other, but taking into account what each is providing to the public and the stated national goals.

3. **The FCC should not risk the primary station displacement and repacking process by forcing over 4000+ LPTV licensees and permits to be built during the first 39 months post auction**. There have been considerable comments into the 12-268 record that there will be a lack of tower crews to accomplish the anticipated primary station rebuild with the 39 months allotted by Congress for use of relocation funds. There simply will not be adequate tower crew capacity to accommodate a "forced build" of LPTV CPs.

The Coalition recommends that the FCC consider pushing back all current LPTV construction permits to at least one year after the end of the primary relocation funds process, or about month 51 post auction. We do not recommend that all CPs must wait until then, as we know first-hand that many CPs will be built as soon as they know where they will be located, can schedule equipment and tower crews. But these will be greatly staggered and will take into consideration the schedules of the tower crews. A key point to remember is that a tower crew would rather contract for three LPTV installations instead of one tall tower heavy metal assignment. They make more profit, have less risk, and less bonding exposure.

We also need to take into consideration the tower operators themselves in this process, as they now hold contracts for over 3500 LPTV construction permits. They need clarity as soon as possible about what the process will be and when.

In conclusion, the Coalition recommends that the Advanced Television Broadcast Alliance Blanket Waiver Petition be denied. We recommend that all of the issues it raises, and those of this submission and others in the Proceedings be part of the LPTV FNPRM this fall.

We further state that if the Coalition recommendations are not followed, we fear that about 1000 LPTV licensees will be forced to double-build facilities, a dozen top-20 DMA stations would lose their large diverse audiences totally in the tens of millions, that 2500 LPTV CPs could clog up the primary repacking and rebuilding process, and finally, that a quick and orderly implementation of licenses into flexible use service in support of the National Broadband Plan could be jeopardized.

Congress did not authorize LPTV to receive any channel relocation funding due to displacements. Combined with the lengthy ramp up time for the auction (3 years) and the potentially long wait for new channels to move to (another 4 years), the LPTV service could be facing a collective $1 billion unfunded mandate in the Incentive Spectrum Auction. The 112th Congress never did a study of the impacts on LPTV, and the FCC has declined to do so as it declares in the Report and Order that it is not subject to the Unfunded Mandates Regulatory Act.

Our Coalition is seeking from 113th Congress a GAO study similar to what was done on the DTV transition impacts on LPTV. The question of LPTV construction permits and when they need to be built is a complicated issue in which no single silver bullet approach will work, and history gives us only partial answers. We urge the Commission to reject the blanket waiver approach, and use the upcoming LPTV FNPRM to craft a set of customized solutions for the various component parts of the LPTV service.

Respectfully submitted,
_____/S/_____
Mike Gravino, Director