

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

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations)	MB Docket No. 03-185
)	
)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
)	

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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CTIA – The Wireless Association® (“CTIA”) hereby submits these reply comments in response to the Commission’s Third Notice of Proposed Rulemaking (“*Third NPRM*”), which requests comment on a number of issues involving low power television (“LPTV”) and TV translator stations in connection with the upcoming broadcast television incentive auction.¹ Although the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) – consistent with the secondary status of LPTV and TV translator stations – does not grant auction participation or repacking rights to LPTV and TV translator licensees, the Commission has initiated this proceeding “to consider additional measures that may help alleviate the consequences of LPTV and TV translator station displacements resulting from the auction and repacking process.”²

¹ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Notice of Proposed Rulemaking, FCC 14-151 (2014) (“*Third NPRM*”).

² *Id.* ¶ 3, quoting *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 664 (2014) (“*Incentive Auction R&O*”).

I. INTRODUCTION AND SUMMARY

In the *Third NPRM*, the Commission has sought comment on a variety of issues related to LPTV and TV translator stations, with the goal of “ensur[ing] the successful completion of the LPTV and TV translator digital transition and to help preserve the important services LPTV and TV translator stations provide, and other related matters.”³ In pursuing that goal, the Commission must of course be mindful that LPTV and translator stations operate on a secondary basis and that Congress conferred no rights upon them in the incentive auction process.⁴ Consistent with this classification, and with the incentive auction’s overall goal of making available additional spectrum for wireless services, the Commission should only take steps with respect to LPTV and TV translator stations that will comply with the Spectrum Act and not jeopardize the auction’s success. CTIA proposes that the Commission take the following steps with respect to LPTV and TV translator stations:

- To ensure the success of the incentive auction, the Commission should reject proposals that would artificially limit the amount of spectrum cleared for 600 MHz wireless services.
- To comply with the Spectrum Act and the Commission’s overall spectrum policy framework, the Commission must reject calls to establish and elevate protection rights of LPTV and TV translator stations to the detriment of the incentive auction’s success.
- The Commission should explore channel sharing as an option for LPTV and TV translator stations outside of the incentive auction process. Interested parties should review the results of last year’s channel sharing pilot by Los Angeles television stations KLCS and KJLA to determine whether channel sharing is an

³ *Third NPRM* ¶ 4.

⁴ Congress explicitly limited auction participation and repacking/compensation rights to broadcast television licensees. Congress’ definition of “broadcast television licensee” is unambiguous – the only parties included are full-power television stations and Class A licensees. Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6001(6); 6403(a)(1); 6403(b)(2); 6403(b)(4) (codified at 47 USC §1452), 126 Stat. 156 (2012) (“Spectrum Act”)

option they wish to pursue. The Commission should also take this opportunity to correct certain misconceptions regarding channel sharing.

II. THE COMMISSION SHOULD REJECT PROPOSALS THAT WOULD UNDERMINE THE GOALS OF THE INCENTIVE AUCTION.

In light of the Spectrum Act’s clear mandates, the Commission should not adopt any LPTV-related proposals that would threaten to dilute the auction’s success. To that end, CTIA opposes proposals to: (1) adopt artificial constraints on the amount of spectrum reclaimed, and (2) unduly elevate the protection rights of LPTV and TV translator stations. Such action is plainly consistent with the statute and the historical status of these services. Indeed, LPTV and TV translator stations have always had secondary status under the Commission’s rules, and the Spectrum Act was explicit that nothing in Section 6403 “shall be construed to alter the spectrum usage rights of low-power television stations.”⁵ In its *Report and Order* adopting rules for the incentive auction, the Commission correctly noted that extending protection of LPTV and TV translator stations in the repacking process would “increase the number of constraints on the repacking process significantly, and severely limit our recovery of spectrum to carry out the forward auction, thereby frustrating the purposes of the Spectrum Act.”⁶ These licensees have operated with “explicit, full and clear prior notice that operation in the LPTV [and TV translator] service entails the risk of displacement.”⁷ Thus, the actions the Commission has taken thus far with respect to LPTV and TV translator services have been appropriate, and it should not adopt

⁵ *Incentive Auction R&O* ¶ 236.

⁶ *Id.* ¶ 241.

⁷ *Id.*, quoting *In the Matter of Petition by Community Broadcasters Association to Amend Part 74 of the Commission's Rules*, Memorandum Opinion and Order, 59 Rad. Reg. 2d (P&F) 1216 ¶ 4 (1986).

any proposals that would improperly elevate the rights of these services at the expense of a successful auction.

A. The Commission Should Not Adopt Artificial Constraints on the Amount of Spectrum Reclaimed.

The Commission should reject calls to: (1) adopt a national band plan, and (2) limit the amount of spectrum reclaimed in border areas. The ultimate goal of the incentive auction is to reclaim as much spectrum as possible for mobile broadband services. While several factors may *necessarily* limit the amount of spectrum that can be reclaimed through the auction, the Commission should not take action that would *artificially* constrain the amount of spectrum that can be repurposed for mobile broadband.

The record in this proceeding has made clear that a certain amount of variation in the 600 MHz band plan is necessary, and that the adoption of a rigid nationwide band plan would undermine the public interest and the goals of the Spectrum Act.⁸ Once again, the Commission should reject the National Association of Broadcasters' ("NAB") call for a nationwide band plan.⁹ NAB argues that the adoption of a variable band plan will displace more LPTV and TV

⁸ See, e.g., *Incentive Order R&O* ¶ 82 ("If the 600 MHz Band Plan could not accommodate some market variation, we would be forced to limit the amount of spectrum offered across the nation to what is available in the most constrained market. . . even if more spectrum could be made available in the vast majority of the country. . . [b]y allowing for market variation in our 600 MHz Band Plan, we can ensure that broadcasters have the opportunity to participate in the reverse auction in markets where interest is high. As a result, more spectrum can be made available nationwide in the forward auction"); See, e.g., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software, Office of Engineering and Technology Seeks to Supplement the Incentive Auction Proceeding Record Regarding Potential Interference Between Broadcast Television and Wireless Services, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 14-157, ¶ 26 (2014) ("*ISIX Order and FNPRM*").

⁹ Comments of the National Association of Broadcasters, MB Docket No. 03-185, at 4 (Jan. 12, 2015) ("NAB Comments").

translator stations than is necessary.¹⁰ However, NAB’s proposal would force the Commission to be bound by the “least common denominator” problem that it seeks to avoid.¹¹ As CTIA and others have observed throughout this proceeding, there are certain uncontrollable factors that may result in less spectrum being reclaimed in certain markets.¹² These markets should not be permitted to constrain the rest of the nation, and such an outcome would contravene the ultimate objectives of the Spectrum Act. Given the secondary status of LPTV and TV translator stations, permitting the “least common denominator” problem as a means of protecting secondary licensees – who were granted no expanded rights under the Spectrum Act – would be particularly problematic. The Commission should therefore once again reject calls for a nationwide band plan.

The Commission should also decline the requests of several commenters to limit the amount of reclaimed spectrum to 82 MHz in border areas.¹³ Supporters of this approach argue that because coordination with Mexican broadcasters is required in these areas, additional spectrum is needed to accommodate LPTV, and therefore the amount of spectrum cleared for wireless should be limited.¹⁴ As CTIA has repeatedly emphasized, to accommodate surging demand for mobile broadband services it is key that the Commission clear as much spectrum as

¹⁰ *Id.*

¹¹ *See, e.g., ISIX Order & FNPRM*, ¶ 26.

¹² *See, e.g., Comments of CTIA – The Wireless Association*, GN Docket No. 12-268, at 4 (Jan. 21, 2015).

¹³ *See, e.g., Comments of LMO Christian Media, Inc.*, GN Docket No. 03-185, at 6 (Jan. 12, 2015); *Comments of CTV Broadcasting, LLC*, GN Docket No. 03-185, at 8 (Jan. 12, 2015).

¹⁴ *Id.*

it is able to during the incentive auction process.¹⁵ It should not adopt an artificial constraint on spectrum clearing to accommodate licensees that were not given such rights under the Spectrum Act. Indeed, the Commission has already taken steps to protect the interests of LPTV and TV translator licensees, above and beyond what is required by the Spectrum Act.¹⁶ Further, the Commission's ongoing proceeding on inter-service interference demonstrates that accommodating market variability will be an extremely complicated endeavor.¹⁷ Thus, the Commission should limit variation to only those markets that are truly constrained based on Spectrum Act requirements.

B. The Commission Must Reject Calls to Elevate the Protection Rights of LPTV and TV Translator Stations In Contravention of the Spectrum Act.

The Commission should reject calls that would elevate the protection rights of LPTV and TV translator stations to the detriment of the incentive auction's success. Indeed, the Spectrum Act was explicit that LPTV and TV translator stations were to be excluded from the Spectrum

¹⁵ See, e.g., Opposition and Reply of CTIA – The Wireless Association® to Petitions for Reconsideration, GN Docket No. 12-268, at 2 (Nov. 12, 2014); Reply Comments of CTIA – The Wireless Association®, GN Docket No. 12-268, at 14-16 (June 28, 2013).

¹⁶ Specifically, the Commission has stated its intent to open a special filing window for displaced LPTV and TV translator stations that will allow them to select a new channel. *Incentive Auction R&O* ¶ 659. Further, consistent with the Commission's actions in the 700 MHz band, an LPTV station will be permitted to continue operating until it receives notice from an incoming wireless licensee that it is preparing to deploy service. *Id.* ¶ 669. And, simply by launching this proceeding and discussing proposals that would accommodate LPTV and TV translators post-auction, the Commission has gone above and beyond the requirements of the Spectrum Act, given that the Spectrum Act imposed *no* new obligations on the Commission with respect to LPTV.

¹⁷ See, e.g., *ISIX Order and FNPRM* ¶ 25 (“As discussed in detail below, although the ISIX Methodology may be characterized as more complex than the distance-based approach advocated by some commenters, we conclude that the ISIX Methodology's ability to account for different inter-service interference scenarios, local terrain obstacles and other factors make it significantly more spectrally efficient than a distance-based approach, and these benefits outweigh the costs of greater complexity.”).

Act's reverse auction procedures and repacking protections.¹⁸ This action was consistent with the secondary status of these licensees and the fact that they have long been on notice that they bear the risk of displacement.¹⁹ However, several parties have made arguments essentially calling for the Commission to elevate the rights of LPTV and TV translator stations to be closer to those of full power broadcasters, an act that is plainly at odds with the Spectrum Act's requirements. Indeed, these proposals are simply requests to overrule decisions made by Congress in the Spectrum Act and implemented by the FCC in the *Incentive Auction Order*.²⁰ The Commission should reject any proposal that would grant rights to LPTV and TV translator stations that the Spectrum Act reserved for full power and Class A broadcast licensees. Not only would such action be at odds with the Spectrum Act's specific language, but it would also unduly complicate the repacking process and undermine the incentive auction.²¹ These proposals included, but are not limited to:

¹⁸ See note 4, *supra*.

¹⁹ *Incentive Auction R&O* ¶ 241, quoting *In the Matter of Petition by Community Broadcasters Association to Amend Part 74 of the Commission's Rules*, Memorandum Opinion and Order, 59 Rad. Reg. 2d (P&F) 1216 ¶ 4 (1986).

²⁰ *Incentive Auction R&O* ¶¶ 236-244 (considering and rejecting numerous arguments related to elevated status for LPTV and translator licensees and concluding that “we do not believe that extending protection to LPTV and TV translator stations in the repacking process would be consistent with the goals of the Spectrum Act”); see also *id.* ¶¶ 232-235 (declining to extend Class A protection to the vast majority of LPTV licensees that were eligible for Class A status but had not filed an application for such license until after February 22, 2012); *id.* ¶ 667 (declining to adopt a proposal to set aside channels for the exclusive use of LPTV and/or TV translators, as “[s]uch a set-aside would eliminate available channels that otherwise could be assigned to full power and Class A stations and would require relocating a number of full power and Class A stations to different channels”).

²¹ Separately, the Commission should reject Spectrum Evolution's request that *all* broadcast licensees, including LPTV and translator stations, be permitted to provide both broadband and broadcast services in their licensed spectrum. Comments of Spectrum Evolution, Inc., MB Docket No. 03-185 (Jan. 15, 2015) This proposal is plainly outside the scope of the *Third NPRM*, which is focused on mitigating the impact of repacking on LPTV and TV translator stations

- Requests that the Commission extend repacking protection rights to LPTV stations that are the “functional equivalent” of full power stations;²²
- Proposals that households served by TV translators be included in the “coverage area” and “population served” of the associated full-power broadcaster;²³
- Calls for the Commission to permit LPTV stations to convert to Class A status prior to the auction;²⁴
- Suggestions that the Commission guarantee the availability of spectrum in the repacking that would accommodate LPTV and/or TV translators.²⁵

There is no way to achieve these and other requested actions without elevating LPTV stations and/or TV translators to the status of full power broadcasters, or to otherwise deviate from the Spectrum Act and/or the rules already adopted in this proceeding. As the record makes clear, the Commission’s actions are entirely consistent with the Spectrum Act,²⁶ and actions by the Commission to elevate the status of LPTV and/or TV translator licensees would both run afoul of the Spectrum Act and threaten the incentive auction’s ultimate success.

specifically, and other closely related issues specific to LPTV and translators. *Third NPRM* ¶¶ 3-4.

²² Comments of Weigel Broadcasting Co., MB Docket No. 03-185, at 5-9 (Jan. 12, 2015).

²³ National Translator Association Comments at 4.

²⁴ Comments of Lotus Communications Corp., GN Docket No. 03-185, at 5 (Jan. 12, 2015) (“Lotus Comments”).

²⁵ *See, e.g.*, Comments of the Pacific Mountain Network, GN Docket No. 03-185, at 2 (Jan. 12, 2015).

²⁶ For this reason, the Commission should reject Lotus Communications’ argument that the Commission’s actions have downgraded LPTV stations to “tertiary” status and must provide redress or remedy to these stations. Lotus Comments at 4-5. As the record in this proceeding – and the plain language of the statute – makes abundantly clear, the Commission’s actions thus far have been entirely consistent with the Spectrum Act.

III. CHANNEL SHARING SHOULD BE EXPLORED AS AN OPTION FOR LPTV AND TV TRANSLATOR STATIONS.

While LPTV and TV translator licensees have never had extensive rights to continued operation, and do not have any such rights under the Spectrum Act, there are steps the Commission could take to protect LPTV and TV translator stations by exploring channel sharing as an option for these stations post-auction and post-repacking. CTIA has no objection to this concept and agrees with the Commission's and commenters' statements that such an approach has several potential benefits.²⁷ However, CTIA also takes this opportunity to provide more information – and correct the record – regarding the potential of channel sharing. This will enable LPTV and TV translator licensees to make more informed choices regarding their post-auction operations.

As the Commission observed in the *Third NPRM*, there are many benefits to channel sharing for LPTV and TV translator licensees.²⁸ In particular, channel sharing could “ensure the continued viability of LPTV and TV translator services through new programming and business arrangements, to promote spectral efficiency by freeing up spectrum, and to promote the use of available digital capacity on other platforms to distribute programming.”²⁹ The Commission also noted that channel sharing may reduce the costs of participating licensees, assist stations in meeting the digital transition deadline, and mitigate the impact of the auction and repacking

²⁷ In the *Third NPRM*, the Commission observed that while not eligible to pursue channel sharing via the reverse auction, LPTV and TV translator stations could benefit from channel sharing outside of the incentive auction context. The Commission tentatively concluded that it should adopt rules to permit channel sharing by and between LPTV and TV translator stations. *Third NPRM* ¶ 13.

²⁸ *Id.* ¶¶ 13-15.

²⁹ *Id.* ¶ 14, quoting *Incentive Auction R&O* ¶ 665.

process.³⁰ The Commission’s proposed rules for channel sharing in the LPTV and/or TV translator context are modeled after those adopted for full power and Class A stations.³¹ In their opening comments, several parties affirmed that channel sharing may be an attractive option for LPTV and/or TV translator stations post-transition.³²

The potential benefits of channel sharing were borne out last year in a pilot project in which CTIA partnered with Los Angeles television stations KLCS and KJLA to explore the technical details of channel sharing. This pilot revealed that channel sharing on both a physical and virtual level is possible.³³ The testing also demonstrated that it is technically feasible for two 720p high definition streams to be combined into a single channel, and that these two HD streams could also be combined with several variations of standard definition program streams.³⁴ The successful results of the channel sharing pilot demonstrate that LPTV and TV translator

³⁰ *Id.*

³¹ *Id.* ¶ 15.

³² *See, e.g.,* Comments of the Advanced Television Broadcasting Alliance, MB Docket No. 03-185, at 5 (Jan. 12, 2015); Comments of Hispanic Family Christian Network, Inc., MB Docket No. 03-185, at 7 (Jan. 12, 2015); Comments of Block Communications, Inc., Lima Communications Corporation, Independence Television Company, WAND(TV) Partnership, Idaho Independent Television, Inc., and West Central Ohio Broadcasting, Inc., GN Docket No. 03-185, at 4 (Jan. 12, 2015).

³³ Alan Popkin, Roger Knipp, and Eddie Hernandez, *Overview of the KLCS/KJLA Channel Sharing Pilot – A Technical Report* at 1 (March 28, 2014) (“Channel Sharing Pilot Report”), available at <http://www.ctia.org/docs/default-source/fcc-filings/technical-report-of-the-klcs-kjla-channel-sharing-pilot.pdf>.

³⁴ *Id.* at 1-2. *See also* National Translator Association Comments in the Third Notice of Proposed Rulemaking, MB Docket No. 03-185, at 6 (Jan. 12, 2015) (“National Translator Association Comments”) (“The major drawback of channel sharing is that the bandwidth/payload of a single broadcast television channel normally allows only one high definition program with the necessity that additional programs be standard definition.”).

stations concerned about their post-auction operations can and should explore channel sharing as a solution.

Not only does the successful pilot project demonstrate the great potential of channel sharing, but it also directly refutes arguments – including those made in this proceeding – that channel sharing must result in a reduction of the amount or quality of programming offered. NAB, for example, stated that low power stations sharing a single channel may not be able to offer HD streams – a statement clearly refuted by the results of the channel sharing pilot.³⁵ Similarly, arguments that “the full definition of the programs will likely be reduced” are not supported by the results of the pilot project.³⁶ And because the pilot project demonstrated that numerous standard definition streams can be combined in a single channel, it need not be the case that LPTV channel sharers “will lose the ability to provide some of the programming they currently make available to viewers.”³⁷

Upon touring KLCS’ facility last year, Chairman Wheeler announced that “I’ve seen the future, and it is using 50% less bandwidth to produce a picture with increased quality of up to 300% . . . [i]f the pilot works as engineers expect it will, this could be a game changer for the concept of channel sharing.”³⁸ CTIA too is extremely enthusiastic about the potential of channel sharing, and believes that this option should be made available to LPTV and TV translator licensees outside of the incentive auction context. These licensees may find that channel sharing

³⁵ NAB Comments at 5.

³⁶ Comments of Byron W. St. Clair, MB Docket No. 03-185, at 2 (Jan. 12, 2015).

³⁷ NAB Comments at 5.

³⁸ Tom Wheeler, “Channel Sharing: A New Opportunity for Broadcasters,” Official FCC Blog (Feb. 11, 2014), at <http://www.fcc.gov/blog/channel-sharing-new-opportunity-broadcasters>.

is a highly beneficial arrangement, and the Commission should promote voluntary channel sharing as a means of promoting an active LPTV and TV translator ecosystem post-repacking.

IV. CONCLUSION

LPTV and TV translator services have always been secondary services, and have always borne the risk of displacement. The Spectrum Act did nothing to change this fact. Any action taken by the Commission with respect to LPTV and TV translator stations must reflect their extremely limited rights and the Spectrum Act's objectives of balancing the rights of higher-priority broadcasters with the need to reclaim spectrum for mobile broadband services. CTIA supports the Commission's proposal to make channel sharing available to LPTV and TV translator stations post-repacking as it offers a means to assist these licensees in preserving their programming while making more efficient use of spectrum. However, the Commission should only accommodate these licensees to the extent such action is consistent with the Spectrum Act and does not dilute the incentive auction's ultimate success.

Respectfully submitted,

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