

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Request for Licensing Freezes and Petition for ) RM-11626  
Rulemaking to Amend the Commission’s DTV )  
Table of Allocations to Prohibit the Future )  
Licensing of Channel 51 Broadcast Stations and )  
To Promote Voluntary Agreements to Relocate )  
Broadcast Stations from Channel 51 )

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS AND  
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

Pursuant to Section 1.405 of the Commission’s rules, 47 C.F.R. § 1.405, the National Association of Broadcasters (“NAB”) and the Association for Maximum Service Television, Inc. (“MSTV”)<sup>1</sup> submit these reply comments on the above-captioned Petition for Rulemaking.<sup>2</sup> Petitioners ask the Commission to freeze the licensing and modification of television (“TV”) stations on Channel 51, to avert potential interference to prospective wireless operations in the adjacent A-Block of the 700 MHz frequency band. Petition at 1. As discussed below, the initial record supports NAB’s position that the Commission should retain its well-reasoned decision that broadcast services on Channel 51 should not be restricted in order to protect wireless operations in the A-

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<sup>1</sup> NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts. MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

<sup>2</sup> Petition for Rulemaking and Request for Licensing Freezes by CTIA – The Wireless Association® (“CTIA”) and Rural Cellular Association (“RCA”) (jointly, “Petitioners”), DA 11-562, RM-11626 (filed Mar. 15, 2011) (“Petition”).

Block.<sup>3</sup> Wireless operators couch the alleged benefits of the requested rule changes in terms of “regulatory certainty” for future A-Block services.<sup>4</sup> However, upon closer review, their arguments reveal little more than a blatant effort on the part of A-Block auction winners to enhance their position or make up for their own failed due diligence, and a belated plea for the Commission to shift their long-standing duty to prevent interference to the shoulders of broadcasters. Essentially, wireless operators want to make Channel 51 so inhospitable that TV stations will be forced to vacate. The Commission should not endorse such an approach, and therefore should dismiss the Petition. 47 C.F.R. § 1.401(e).

**I. Wireless Industry Commenters Repeat Petitioners’ Claims But Fail to Offer Evidence or Precedent Sufficient to Support Petitioners’ Requests, While Ignoring Harms to the Viewing Public**

Without providing actual evidence, commenters from the wireless industry largely repeat and support Petitioners’ requests for freezing licensing and modification of Channel 51 TV operations.<sup>5</sup> Indeed, certain parties depict the Petition’s proposals as

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<sup>3</sup> Comments of the National Association of Broadcasters, RM-11626, at 2 (filed Apr. 27, 2011) (“NAB Comments”) citing *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, MB Docket No. 03-15, 19 FCC Rcd 18279, 18334 (2004) (“Second Periodic Review”).

<sup>4</sup> Comments of Vulcan Wireless LLC and the Rural Telecommunications Group, Inc., RM-11626, at 2 (filed Apr. 27, 2011) (“Vulcan/RTG Comments”); Comments of Verizon Wireless, Inc., RM-11626, at 4 (filed Apr. 27, 2011) (“Verizon Comments”); Comments of CTIA – The Wireless Association, RM-11626, at 2 (filed Apr. 27, 2011) (“CTIA Comments”); Comments of AT&T Services, Inc., RM-11626, at 3 (filed Apr. 27, 2011) (“AT&T Comments”).

<sup>5</sup> Vulcan/RTG Comments at 2; Verizon Comments at 1; Comments of Frontier Communications, RM-11626, at 1 (filed Apr. 27, 2011) (“Frontier Comments”); Comments of King Street Wireless, L.P., RM-11626, at 2 (filed Apr. 27, 2011) (“King Street Comments”); Comments of Cellular South, Inc., RM-11626, at 1 (filed Apr. 27, 2011) (“Cellular South Comments”); AT&T Comments at 1-2.

“modest,” even though they would cripple broadcasting on Channel 51.<sup>6</sup> Other commenters even would have the Commission force “non-protected” services off Channel 51 in the next 25 months, without concern for the viewers of these 56 digital TV translators and low power television stations (“LPTV”). Vulcan/RTG Comments at 14.<sup>7</sup>

While ignoring the impact of their proposals on the public interest in free, over-the-air television service, wireless providers contend the requested freezes will provide wireless operators with “greater certainty” regarding the interference environment, and in turn, encourage wireless broadband deployment.<sup>8</sup> Accordingly, the wireless industry asks the Commission to instead undermine certainty and investment in television broadcasting by granting the Petition. This approach ignores several important considerations: (1) the wireless providers were aware prior to auction of the A-Block of the potential impact of adjacent TV operations and apparently took these operations into account when bidding on A-Block licenses; (2) the wireless providers do not offer real-world evidence that TV operations are the primary cause of delays in A-Block development, or dispute the fact that less draconian measures are available to address these issues; and (3) underlying the entire Petition and supporting comments is a disregard for the interests of the viewers of TV stations on Channel 51.

First, given repeated warnings by the Commission, wireless providers were well-aware of the potential impact that TV broadcasters on adjacent Channel 51 could have

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<sup>6</sup> Cellular South Comments at 1-2.

<sup>7</sup> Vulcan ignores the fact that, while translators and LPTV stations may be secondary services, they are only secondary to primary full-power TV broadcasting within the TV band, and not secondary to wireless or other services in a separate frequency band.

<sup>8</sup> See, e.g., CTIA Comments at 9; Comments of Cincinnati Bell Wireless, RM-11626, at 5 (filed Apr. 27, 2010) (“CBW Comments”); Verizon Comments at 2; Frontier Comments at 3.

on A-Block operations, prior to the 700 MHz spectrum auction. The Commission adopted 47 C.F.R. § 27.60 in 2002, setting forth the interference standards between digital television (“DTV”) and the A-Block.<sup>9</sup> The Commission made clear that it would be the responsibility of new 700 MHz licensees to protect core DTV operations, “including those on Channel 51,” and that the need for such protection “will continue indefinitely.”<sup>10</sup> This is consistent with Commission policy which dictates that it is the responsibility of new entrants to minimize interference between their services and those of incumbent, neighboring services. NAB Comments at 8.

Subsequently, in the Second Periodic Review, the Commission rejected calls for reciprocal interference protection standards, such that Channel 51 stations would have a comparable duty to protect wireless services in the 700 MHz band from DTV interference.<sup>11</sup> The Commission explained that Channel 51 is part of the core channels reserved for broadcast use, and declared it did not believe that “use of channel 51 for broadcast purposes should be restricted in order to protect operations on channel 52, even if those operations predate the commencement of operations on channel 51.”<sup>12</sup>

The Commission also issued multiple similar warnings in various instructions for the 700 MHz spectrum auctions. As Media General notes, with respect to Auction No. 44 (later postponed), the Commission cautioned bidders to “thoroughly research the

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<sup>9</sup> *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, GN Docket No. 01-74, 17 FCC Rcd 1022, 1023 (2002) (“Lower 700 MHz Reallocation Order”).

<sup>10</sup> *Id.*, at 1033. In that proceeding, the Commission also specifically rejected creation of a guard band between the respective services, instead choosing to “rely on our interference protection criteria to ensure that new licensees adequately protect core TV channel operations.” *Id.*

<sup>11</sup> Second Periodic Review, 19 FCC Rcd at 18334, citing Comments of Flarion Technologies, Inc., MB Docket No. 03-15, at 4 (filed Apr. 21, 2003).

<sup>12</sup> *Id.*

nature and extent and probably broadcast incumbencies . . . on adjacent channels (e.g., channels 51 and 60),” and even provided a list of these facilities to facilitate bidders’ further research.<sup>13</sup> Later, in restarting the 700 MHz auction process in Auction No. 73, the Commission highlighted Section 27.60 and the obligation to protect broadcast services after the DTV transition.<sup>14</sup> The Commission also cautioned A-Block applicants to formulate their bidding strategies based on a thorough investigation and understanding of “all technical and marketplace factors that may have a bearing on the value of 700 MHz licenses.”<sup>15</sup>

A-Block licensees apparently heeded these warnings, and accounted for the presence of Channel 51 stations in their bidding strategies. As Media General notes, AT&T has stated that “A Block licenses brought far lower prices in the auctions than other 700 MHz licenses that were not adjacent to high power broadcast licenses.”<sup>16</sup> Similarly, Motorola has explained that “lower 700 MHz block licenses were auctioned for *less than half* the value of the B Block licenses.”<sup>17</sup>

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<sup>13</sup> Comments of Media General, Inc., RM-11626, at 6-7 (filed Apr. 27, 2010), citing Public Notice, *Due Diligence Announcement for the Upcoming Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002*, DA 92-904 (rel. Apr. 18, 2002).

<sup>14</sup> Public Notice, *Auction of 700 MHz Licenses Scheduled for July 24, 2008*, 22 FCC Rcd 18141 (2007).

<sup>15</sup> Public Notice, *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, DA 07-4171, AU Docket No. 07-157, at ¶¶ 39-40, 44 (Oct. 5, 2007).

<sup>16</sup> Media General Comments at 9, citing Letter from Joseph P. Marx, Assistant Vice President – Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, RM-11592, at 2 (Nov. 2, 2010).

<sup>17</sup> Comments of Motorola, Inc., RM-11592, at 10 (Mar. 31, 2010) (emphasis added). Vulcan/RTG complain that A-Block licensees have already created a guard band within their licensed spectrum, using up approximately 17% of their spectrum and its value, because the Commission decided against creating an external guard band between the A-Block and Channel 51. Vulcan/RTG Comments at 5. Given that A-Block licensees paid less than 50% the amount that B-Block licensees incurred for their spectrum, it still appears they received a bargain.

Nevertheless, wireless providers now affect surprise at the presence of TV broadcasting on Channel 51,<sup>18</sup> and seek to expand upon the rights they bargained for at auction, at the expense of TV broadcasters and their viewers. Indeed, it appears that the Petition is a thinly disguised attempt to promote their ultimate goal of clearing Channel 51 of all broadcast operations.<sup>19</sup>

Second, the initial record does not contain persuasive evidence that Channel 51 TV stations are the main reason for the delay of A-Block development. Some commenters note that a number of applications have been filed by broadcasters seeking to modify their facilities, and contend that such changes have created a “moving target” with respect to the interference environment that A-Block licensees may face. Vulcan/RTG Comments at 6. However, no wireless provider offers any concrete evidence in support of these claims.<sup>20</sup>

In fact, one A-Block spectrum holder, Cincinnati Bell, readily admits there are less draconian measures available to resolve potential interference with Channel 51 stations, such as “filters . . . that will mitigate interference from the Channel 51

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<sup>18</sup> Certain A-Block licensees recognize their obligations. King Street, for example, states that “A Block licensees were generally alerted to certain of the above obligations prior to Auction No. 73,” and “were thus afforded an opportunity to minimize proximity to Channel 51 licensees.” King Street Comments at 2.

<sup>19</sup> Certain commenters level speculative, unsubstantiated charges that broadcasters will file frivolous applications for new Channel 51 licenses in order to shake down A-Block licensees for compensation to vacate. Vulcan/RTG Comments at 7-9; CTIA Comments at 8; Cellular South Comments at 2-3. The Commission should disregard these baseless allegations. In any event, initial applications for new TV stations would have to be filed under standard procedures after the Commission opens a filing window.

<sup>20</sup> We also note that Petitioners and the wireless providers who filed in support of the Petition fail to provide sufficient legal precedent to support the requested rule changes. Unlike the circumstances here, they only note earlier instances that involved spectrum already the subject of final Commission relocation decisions. See NAB Comments at 12-15.

transmitter into the CBW A block base station.” CBW Comments at 3. Resolution of the potential problem is simply a matter of money, namely, the cost of producing equipment that is interoperable across the entire 700 MHz spectrum band, currently under consideration in another proceeding (RM-11592). As noted by Media General, wireless providers in that proceeding also concede that technical solutions are within the control of A-Block licensees themselves,<sup>21</sup> and two wireless providers spend much of their comments on the instant Petition discussing 700 MHz interoperability concerns.<sup>22</sup> Based on these submissions, it is apparent that the problems raised by interoperability across the entire 700 MHz spectrum band are much more substantial obstacles to deployment of services in the A-Block than potential interference from Channel 51 TV stations.

Additional steps, which are less severe than the freezes proposed by Petitioners, also exist to address their concerns. For example, Cellular South notes that it has already entered into agreements with two Channel 51 licensees for voluntary relocation of their broadcast operations to alternate channels. Cellular South Comments at 2. There is seemingly nothing to prevent other wireless operators from pursuing similar arrangements with adjacent Channel 51 stations.

Before the Commission takes irrevocable action to strip Channel 51 broadcasters of their rights to locate or modify facilities on Channel 51, there must be evidence that potential interference from Channel 51 services is a primary hindrance to A-Block development. There must also be a showing that other, less draconian options have

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<sup>21</sup> Media General Comments at 9-11, citing comments by Verizon Wireless and Cellular South in RM-11592.

<sup>22</sup> Rural Cellular Comments at 4-6; Frontier Comments at 2-4.

been fully explored and proven infeasible. Neither is the case here. Wireless providers further support the notion of voluntary agreements that will allow broadcasters to relocate off Channel 51, and ask the Commission to accelerate the processing of these agreements.<sup>23</sup> However, it is important to recognize that, if the Petition is granted, the restrictions placed on Channel 51 operations would be such that for broadcasters these agreements would be far from truly voluntary.<sup>24</sup> Accordingly, for all these reasons, the Petition should be dismissed as not warranted by the record.

Finally, NAB again notes the real harm that granting the Petition would cause to broadcasters and their viewers. TV broadcasters operate on Channel 51 in 34 markets, including 25 of the top 100 markets, and eight of the top 20 markets. These stations, together with the many translators and low power TV stations on Channel 51, cover millions of viewers with important, free public service.<sup>25</sup> For example, Station KXLA(TV), Rancho Palos Verdes, California, provides programming and services to minority communities with significant over-the-air viewership.<sup>26</sup> Similarly, Wyoming PBS notes that translator station K51IZ-D provides the only source of public broadcasting to several communities in Wyoming.<sup>27</sup> Chairman Genachowski has recognized the critical

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<sup>23</sup> CBW Comments at 4; AT&T Comments at 6; Cellular South Comments at 3.

<sup>24</sup> See, e.g., Comments of Entravision Holdings, LLC, RM-11626, at 3 n.3 (filed Apr. 27, 2010).

<sup>25</sup> Data extracted from the Commission's CDBS public search system, July 2010.

<sup>26</sup> Comments of Rancho Palos Verdes Broadcasting, RM-11626, at 7 (filed Apr. 27, 2010) ("RPVB Comments").

<sup>27</sup> Comments of Wyoming PBS, RM-11626, at 1 (filed Mar. 31, 2010); see also Comments of WHLV Comments, RM-11626, at 2-3 (filed Apr. 27, 2010) (describing its use of Channel 51 to multicast five free channels of service, including valuable religious, cultural and educational programming).

continued value of over-the-air services to vulnerable and marginalized communities.<sup>28</sup>

The Commission must recognize the unique role broadcasters play in delivering local news, public affairs, life-saving emergency information, and entertainment programming to the public, including minority and other traditionally underserved communities.<sup>29</sup>

It is also important to note that broadcasters have made substantial investments in facilities operational on Channel 51; investments that should not be stranded. The New Jersey Public Broadcasting Authority (“NJPBA”), for one, explains that it struggled to complete the DTV transition for WNJN(TV), Channel 51, and its potential 7.5 million viewers in the New York/New Jersey area.<sup>30</sup> NJPBA should not be hindered from fully utilizing its Channel 51 to serve the needs and interests of its viewers, including modifications, improvements and facility maximizations.

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<sup>28</sup> RPVB Comments at n.13, citing Statement of Julius Genachowski, Chairman, FCC, Before the U.S. Senate Committee on Commerce, Science, and Transportation, Hearing on “Rethinking the Children’s Television Act for a Digital Media Age” (July 22, 2009).

<sup>29</sup> See RPVB Comments at 8 (the “tangible benefits broadcast stations provide to minority communities and others should not be sacrificed in furtherance of Petitioners’ self-interest and speculative claims.”).

<sup>30</sup> Comments of the New Jersey Public Broadcasting Authority, RM-11626, at 1 (filed Apr. 27, 2010).

**II. Conclusion**

For the reasons stated above, NAB and MSTV respectfully request that the Commission dismiss the Petition for Rulemaking jointly submitted by CTIA and RCA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. a. Walke".

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