

**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
	)	
Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement	)	ET Docket No. 14-175
	)	

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)<sup>1</sup> submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above proceedings.<sup>2</sup> We strongly support efforts to preserve free over-the-air service for millions of Americans served by LPTV and TV translator stations. Unfortunately, while well-

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<sup>1</sup> The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

<sup>2</sup> *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement*, Third Notice of Proposed Rulemaking, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175, FCC 14-151 (rel. Oct. 10, 2014) (“LPTV NPRM”).

intentioned, the practical benefits of the Commission's proposals are limited. After-the-fact mitigation steps such as those proposed here cannot address the fundamental problem that the FCC is unnecessarily reducing the number of channels available for licensed LPTV and translator stations following the incentive auction. This will inevitably lead to losses in service, especially in many rural and hard-to-reach communities.

## DISCUSSION

It is refreshing to see the Commission once again acknowledging the value of broadcasting service. We agree that LPTV and translator stations “are a source of diverse and local programming for viewers, especially in rural and remote locations.”<sup>3</sup> We agree that these stations provide “important services.”<sup>4</sup> LPTV stations and TV translators often provide service where there are no other viable outlets, and are essential sources of diversity in television programming and ownership. Prior to the auction process, the Commission routinely and expressly highlighted the value of LPTV stations and translators as providers of diverse programming options, ownership opportunities for minorities and women and as a lifeline where LPTVs and translators provide the only means for obtaining free over-the-air television.<sup>5</sup>

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<sup>3</sup> LPTV NPRM at ¶ 1.

<sup>4</sup> *Id.*

<sup>5</sup> See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television*, Report and Order, 19 FCC Rcd. 19331, 19342 (2004) (“Television translators have played a unique role in delivering over-the-air programming of TV broadcast stations to many communities otherwise unable to receive such service, and we want this service to continue in the digital age.”); see also *Ex parte* letter from Richard Zaragoza on behalf of Colorado Broadcasters Association, *et al.*, in GN Docket No. 12-268 (filed March 7, 2013), at 1 (“Approximately 500,000 residents, from the Denver DMA northward, are served by an estimated 450 LPTV stations and TV Translators which are a vital part of the Federal and State emergency alert systems protecting those residents. In addition, many of those TV Translators also function as

Accordingly, we support the FCC’s decision to allow LPTV and translator stations to continue providing these important services until a 600 MHz licensee provides notification that it actually intends to commence operations.<sup>6</sup> This was a wholly sensible conclusion – there is no good reason to displace stations currently providing service until the relevant 600 MHz licensee is prepared to commence real operations. NAB also is not opposed to LPTV and translator stations being eligible for channel sharing on a voluntary basis.

Similarly, we support the FCC’s tentative conclusion that it would be appropriate to postpone the September 1, 2015 deadline for LPTV and translator stations to transition to digital service.<sup>7</sup> We agree with the Commission that the current deadline could force stations to incur significant costs associated with the digital transition prior to the auction, which will end up displacing a large number of these stations. Accordingly, we urge the Commission to postpone this deadline, and to wait until after the incentive auction to set a new deadline. Given the widespread impact the repacking process will have on LPTV and translator stations, waiting until after the auction will allow the Commission and broadcast stakeholders time to assess the effects and set an appropriate transition date.

Unfortunately, however, these and other proposals in the NPRM are unlikely to stem the potentially significant losses of service after the auction, in part because the

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necessary links in daisy chains in order to cover rural populations in mountainous terrain. For that reason, the loss of a single TV translator could have a cascading, disabling effect on the other translators in a chain.”); see also *Ex parte* letter from Frank Jazzo on behalf of the New Mexico Broadcasters Association in GN Docket No. 12-268 (filed March 7, 2013).

<sup>6</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 670 (2014) (“Incentive Auction Order”).

<sup>7</sup> LPTV NPRM at ¶ 6.

Commission is apparently unwilling to confront the consequences of important decisions it has already made.

The NPRM discusses displacement of LPTV and translator stations as if displacement were outside the Commission's control. But the auction and repacking process are designed and implemented by the Commission, and the Commission has made a number of significant decisions as to how the auction and repacking process will unfold. At least two of those decisions are particularly critical with respect to the displacement of LPTV and translator stations.

First, the FCC's adoption of a variable band plan, under which it will recover more spectrum in less populated areas than in the most congested, highest-demand markets, will result in the displacement of far more LPTV and translator stations than necessary as the Commission will conduct extensive repacking to recover more spectrum in these less populated areas. This will dramatically and disproportionately affect viewers relying on LPTV and translator stations. Nothing in the Spectrum Act *requires* such an approach. Instead, the Commission could have elected to concentrate resources on the most highly constrained markets to make the so-called "least common denominator" as high as possible – and use that number as the basis for a nationwide band plan. This approach would have the added virtue of simplifying the forward auction and reducing potential interference concerns. There is no reason to fear that a nationwide plan would depress bidding. In fact, bidding in Auction 97, an auction with a nationwide band plan for 65 MHz of spectrum, has already exceeded *\$44 billion*. Certainly all stakeholders would view the broadcast incentive auction as a smashing success if it produced a similar outcome.

Second, in its Incentive Auction Order, the FCC predicted that there will be at least one channel not assigned to a full power station "in all areas of the United States at the

end of the repacking process.”<sup>8</sup> The Commission’s decision to designate at least one such channel for unlicensed use, rather than use by licensed services such as LPTV and translator stations, is unprecedented and further reduces the pool of available channels to which LPTV and translator stations might otherwise be relocated. In making this decision, the Commission is flatly prioritizing hypothetical unlicensed services over licensed stations currently providing valuable services to viewers.

Against this backdrop, even the best-intentioned mitigation efforts will fail to preserve sufficient channels for existing LPTV and translator stations, which is ultimately what matters for preserving service. The FCC’s proposal to use its auction software to identify available channels to which LPTV and translator stations could relocate thus misses the point. The problem these stations will face is not identifying potentially available channels; rather, it is that there will not be *enough* available channels. Providing stations with a list of available channels is not objectionable; it just is not particularly helpful when the list will likely contain no available channels.

Similarly, the FCC’s proposal to allow low power stations to enter into channel sharing arrangements will not avoid disruptions in service. NAB certainly agrees that low power stations should be able to enter into channel sharing arrangements if they choose to do so. But many low power stations currently multicast using their full current channel. If they enter into channel sharing arrangements, they will lose the ability to provide some of the programming they currently make available to viewers. Additionally, low power stations sharing a single channel may not be able to offer HD streams.

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<sup>8</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 265 (2014) (“Incentive Auction Order”).

Channel sharing and identifying available channels are not silver bullets. They cannot undo the harm the Commission's auction choices will likely inflict. The Commission's decisions as to how it will conduct the auction and repacking will result in significant displacement and significant loss of service. If the Commission is eager to address this problem, there is still time for it to do so, as both the variable band plan and the prioritization of unlicensed service over displaced LPTV and translator stations, are before the Commission on reconsideration.<sup>9</sup>

### **CONCLUSION**

We appreciate the FCC's willingness at least to entertain suggestions for mitigating service disruptions that will result from the displacement of LPTV and TV translator stations. Ultimately, however, the best way to avoid those service disruptions is to take steps to preserve more channels for LPTV and translator stations. The Commission can accomplish this by abandoning its pursuit of a variable band plan, and by not favoring unlicensed service over existing, licensed services in the allocation of vacant channels following the auction and repacking.

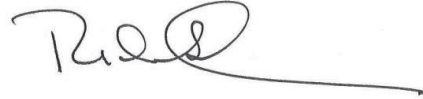
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<sup>9</sup> See Petition for Reconsideration of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, NBC Television Affiliates, 15-19, GN Docket No. 12-268 (filed Sept. 15, 2014); Petition for Reconsideration of the Advanced Television Broadcasting Alliance, 7-11, GN Docket No. 12-268 (filed Sept. 15, 2014).

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal flourish extending to the right.

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Rick Kaplan  
Jerianne Timmerman  
Patrick McFadden

Bruce Franca  
Robert Weller

January 12, 2015