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

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these reply comments in response to the Commission's Notice of Proposed Rulemaking in the above proceedings.[2] We strongly oppose any efforts to repurpose spectrum from licensed LPTV and translator stations for unlicensed use through mandatory channel sharing. Such an

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[1] 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.

[2] *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").

approach turns the Commission's unlicensed rules on their head and prioritizes unlicensed services over licensed LPTV and translator stations currently providing service to their communities. NAB also opposes artificially and unnecessarily increasing the scope of repacking following the incentive auction to create contiguous bands of white space channels for unlicensed use. No station should be forced onto a new channel merely to create contiguous white spaces for unlicensed use.

DISCUSSION

NAB has accepted and supported unlicensed operations in the television band, as long as such use does not interfere with licensed services. Critically, however, white spaces devices must operate on, as the name implies, actual white spaces – channels not in use – so as to prevent interference with licensed services.[3] The Open Technology Institute at New American Foundation and Public Knowledge (collectively "OTI/PK") advocate a radical departure from the fundamental underpinnings of the white spaces regime.[4] In particular, they advocate forcing licensed LPTV and TV translator stations into mandatory channel sharing arrangements solely for the purpose of opening new white space opportunities for unlicensed operations.

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[3] In authorizing these unlicensed operations, the Commission "allow[ed] unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services," and stressed that new unlicensed devices would not "disrupt[] the incumbent television and other authorized services that operate in the TV bands." *Unlicensed Operation in the TV Broadcast Bands*, Second Report and Order and Memorandum Opinion and Order, 23 FCC Rcd 16807, 16809 (2008).

[4] Comments of Open Technology Institute at New American Foundation and Public Knowledge, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015) ("OTI/PK Comments").

That is an extraordinary position. Unlicensed operations do not have, and are not entitled to, any priority over licensed operations under the Commission's existing rules or in the incentive auction repacking process. To the contrary, while the Spectrum Act permits (but does not require) the FCC to allow unlicensed operations in guard bands, these bands must be "no larger than technically reasonable to prevent interference between licensed services."[5] The Act specifically prohibits the FCC from permitting "any use of a guard band that the Commission determines would cause harmful interference to licensed services."[6] Further, the Spectrum Act expressly does not "alter the spectrum usage rights of low-power television stations."[7] Coercing LPTV and translator stations into involuntary channel sharing arrangements to provide more white space channels would clearly alter the spectrum usage rights of those stations. It would upend the white spaces rules, marking a wholesale reversal from merely allowing unlicensed operations on available channels, to strip-mining licensed services to claim forcibly vacated channels for unlicensed users. OTI/PK is unjustifiably attempting to elevate expanded opportunities for unlicensed operations from an ancillary benefit of the auction to a primary goal of the auction, contrary to the terms of the Spectrum Act.

OTI/PK claims that this approach is warranted because LPTV and translator stations may occupy "far more spectrum capacity than they actually need to fulfill their mission," thereby "blocking access to fallow spectrum that could be accessible to

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[5] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6407 (Feb. 22, 2012) (codified at 47 U.S.C. § 1454) ("Spectrum Act").

[6] Spectrum Act at § 6407 (codified at 47 U.S.C. § 1454).

[7] Spectrum Act at § 6403(b)(5) (codified at 47 U.S.C. § 1452(b)(5)).

everyone in these same communities for unlicensed use."[8] Of course, OTI/PK do not even acknowledge that LPTV and translator stations are already using their spectrum to provide free, over-the-air analog, HDTV and other digital video service in their communities. Moreover, many LPTV stations use their spectrum for multicasting, providing diverse programming and foreign language services. Which, exactly, of those services should be eliminated to provide more white space channels, according to OTI/PK? Which under-served audiences should stop receiving free programming to provide more white spaces? OTI/PK never says.

OTI/PK finds it "troubling that the *Third NPRM* does not explicitly anticipate and request comment on how best to mitigate potential trade-offs between accommodating LPTV and TV translator operations while still 'preserv[ing] and improv[ing] the use of unused spectrum in the broadcast television bands for unlicensed operations'"[9] But this is not an oversight by the Commission. Despite OTI/PK's fervent belief that evicting licensed users to force open more unlicensed spectrum trumps all other priorities; *there is no tradeoff*. LPTV and translator stations are licensed services currently providing service to their communities. The Commission should not engage in any sort balancing or trading between licensed and unlicensed services; vacant channels should be available for displaced LPTV and translator stations before expanding unlicensed white spaces operations.

Of course, repacking following the incentive auction will eliminate many channels that would otherwise be available for displaced LPTV and translator stations. Accordingly,

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[8] OTI/PK Comments at 3.

[9] *Id.* at 5 (citations omitted).

NAB strongly supports the Commission's proposal to allow *voluntary* channel sharing to the extent these stations wish to engage in channel sharing arrangements; this may be the only way some stations are able to stay on the air. But simply shoving stations aside to make new white spaces is not an approach the Commission should endorse.

The Wireless Internet Service Providers Association ("WISPA") also attempts to introduce some sort of tradeoff or balancing equation for repacking purposes. It its comments, WISPA urges the FCC to incorporate "spectrum neighborhoods" in identifying and assigning displacement channels, to allow for contiguous bands of white space channels for unlicensed service.[10] NAB disagrees. By far the most important consideration in assigning LPTV and translator stations to displacement channels is that those stations be able to replicate, to the extent possible, their existing service areas on the new channels. LPTV and translator stations should not be assigned inferior channels to allow WISPs access to free spectrum they can use to sell wireless internet service to customers.

Moreover, while it may be unintentional, WISPA's comments are conspicuously unspecific with respect to what sort of "TV stations" the FCC should be assigning to "spectrum neighborhoods" to allow for contiguous white space channels. WISPA's assertion that the FCC should "ensur[e] that TV stations do not occupy channels in an inefficient manner" could be read to suggest the Commission should prioritize contiguous white space channels in repacking full-power and Class A stations.[11] NAB strongly

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[10] Comments of the Wireless Internet Service Provider Association at 5, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 (filed Jan. 12, 2015) ("WISPA Comments").

[11] *Id.* at 5.

opposes any proposal that would require stations to be repacked merely to allow for contiguous blocks of white space channels. Such a repacking priority would be contrary to the Spectrum Act, which directs the Commission to preserve stations' coverage areas and populations served, and makes no suggestion that repacking should be conducted to facilitate unlicensed use of spectrum. NAB has estimated that repacking expenses are likely to exceed the $1.75 billion fund established by Congress by hundreds of millions of dollars.[12] The FCC has not contradicted this estimate, nor has any stakeholder. The FCC certainly should not worsen this situation by introducing new repacking priorities that may require additional and unnecessary station moves.

NAB continues to support unlicensed use of TV white spaces under the principles set forth in the Commission's rules that unlicensed operations have no vested rights in the use of the spectrum and must not cause interference to any licensed operations.[13] In keeping with these principles, NAB urges the Commission to reject any efforts to create additional unlicensed opportunities at the direct expense of licensed broadcast services, including LPTV and translators. These stations should not be forced off the air, and not a single full-power or Class A station should be unnecessarily relocated, to make way for unlicensed services.

CONCLUSION

OTI/PK's and WISPA's comments are revealing of a disturbing – and growing – trend in the incentive auction. Instead of increased unlicensed spectrum being a secondary benefit of the auction, as Congress envisioned, unlicensed advocates are

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[12] Comments of the National Association of Broadcasters at 2-4, GN Docket No. 12-268 (filed Nov. 12, 2014).

[13] 47 C.F.R. § 15.5.

attempting to paint increased access to unlicensed spectrum as a chief goal of the auction. They are not painting an accurate picture. We urge the Commission to reject any effort to unduly elevate unlicensed spectrum as an animating principle of the auction. The Commission should not take its eye off the ball at this point; the primary goal of the auction is to create a voluntary market to set the price of *licensed* spectrum, and the primary actors in the auction are wireless carriers as buyers and broadcasters as potential sellers. To the extent the auction creates new opportunities for unlicensed operations, that is well and good. But the Commission should not contort the auction and harm licensed operations to create those new opportunities.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Rick Kaplan
Jerianne Timmerman
Patrick McFadden

Bruce Franca
Robert Weller

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