

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268
	)	
	)	
Policies Regarding Mobile Spectrum Holdings	)	WT Docket No. 12-269
	)	
Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auction 1001 And 1002	)	AU Docket No. 14-252
	)	
	)	
Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Spaces Devices and Wireless Microphones	)	MB Docket No. 15-146
	)	

**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

October 30, 2015

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## SUMMARY

The Commission's central thesis that it can hand to Google and Microsoft spectrum that would otherwise be used by displaced broadcasters without creating any loss of service is unfounded. Unfortunately, some commenters in this proceeding have uncritically and opportunistically accepted this proposition, and structured their comments around the false notion that the Commission's so-called "vacant channel" proposal will have no victims. In fact, the clear losers are television viewers who will no longer have access to the stations on which they currently rely. Making this situation even worse, viewers in underserved communities are even more vulnerable as a result of the Commission's unprecedented proposed spectrum handout.

Beneficiaries of the Commission's largesse, including corporations such as Google and Microsoft, continue to make expansive promises about the potential of white spaces devices. In reality, these airy promises about limitless innovation and expanded broadband access are familiar and have proven to be hollow. After years of access to white spaces, the promises of this technology remain unfulfilled. If Google and Microsoft wish to structure their business models around access to spectrum, they should not count on the government to provide them with an expansive testing ground with no discernable public interest benefit; rather, they should participate in the incentive auction the FCC is using to create this new neighborhood in the first instance. At the very least, the FCC should not permit these multi-billion-dollar multinational corporations to profit from the displacement of television translators and low power television stations currently providing critical services for free to millions of Americans.

Indeed, it is baffling, given the importance of attracting broadcaster participation to the success of the incentive auction, why the Commission, already down one nationwide carrier in the forward auction and facing another gleeful over the below-market rates it

intends to pay for licenses, is considering this spectrum handout to corporations that clearly can afford to participate in the auction in a meaningful way. This transfer of spectrum removes any incentive for Google or Microsoft or other technology companies to participate in the auction. Why would they bid competitively for access to spectrum when they can get it for free from the Commission? The proposal should concern anyone – as it does broadcasters – who is seeking to have a very successful incentive auction.

Finally, while some at the Commission appear to believe that this proposal is going to jump-start innovation, the only likely result is that innovation will be stifled. Forcing broadcasters to protect, for the first time, allocations for unlicensed operation will severely hamper their ability to, for example, pursue the promise of ATSC 3.0 at the outset. The Commission's reversal of years of decisions regarding the priority of licensed over unlicensed services is not only legally questionable, it also represents picking winners and losers in the marketplace. The Commission should not move forward with this proposal.

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The National Association of Broadcasters (NAB)<sup>1</sup> submits these reply comments in response to the Notice of Proposed Rulemaking released in the above-referenced proceedings,<sup>2</sup> as modified by the Commission's Incentive Auction Procedures Public Notice.<sup>3</sup>

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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 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Space Devices and Wireless Microphones, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, MB Docket No. 15-146, GN Docket No. 12-268, FCC 15-68 (June 16, 2015) (NPRM).

<sup>3</sup> *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, MB Docket No. 15-146, FCC 15-78 (Aug. 11, 2015) (Procedures PN).

I. THE COMMISSION'S PROPOSAL WILL CAUSE SUBSTANTIAL HARM TO LOW POWER AND TRANSLATOR STATIONS AND THEIR VIEWERS

A. Unlicensed Advocates Avoid the Central Question of This Proceeding

Numerous comments in this proceeding uncritically and opportunistically accept the Commission's representations that, because there will be some minimum amount of channels available in many markets after the auction and repacking, the Commission's proposal to remove a channel (or two) from broadcasting to designate it/them for unlicensed use would have no significant impact on television viewers. Several commenters cite the Commission's assertion that there will be at least two vacant channels in most areas of the country as demonstrating that the Commission's proposal will not have an outsized impact on translators and LPTV stations.<sup>4</sup>

The fact that there will be *some* number of available channels in all or most areas after the auction tells us nothing about the impact on LPTV and translators. The FCC's NPRM sidesteps this question. As a result, instead of directly engaging the central question of whether there will be enough spectrum available to accommodate displaced stations, many commenters are content to point out that because there may be *some* spectrum available in the television band after the auction, everything will be fine. Taking this Pollyannish thinking to its extreme, Google manages to claim that there will be *no* impact on LPTV and translator stations if the Commission's proposal is enacted.<sup>5</sup> According to Google, "in the rural areas where many LPTV stations operate, unused television spectrum is abundant, and preserving a vacant channel for white space use will have no impact on the ability of LPTV stations to secure spectrum for their operations."<sup>6</sup> Of course, if Google is right, there is no point in

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<sup>4</sup> See, e.g., Comments of T-Mobile at 3; Comments of Competitive Carriers Association at 6.

<sup>5</sup> Comments of Google Inc. at 20.

<sup>6</sup> *Id.*

adopting the Commission's proposal. If there will be plenty of channels for everyone, both displaced licensed users and unlicensed users, there is no need to reserve a channel for unlicensed use.

In fact, Google is wrong. The Commission's proposal will have a significant impact on low power and translator stations throughout the country. In its initial comments, NAB provided estimates of the total numbers of translator and LPTV stations that could be displaced by the combined effects of the auction and the Commission's proposed spectrum transfer. To demonstrate just how wrong Google is, consider just two more granular examples of what's at stake.

Most full power TV stations in Utah transmit from Farnsworth Peak near Salt Lake City. However, signals from this location cannot directly reach suburban and rural communities that are obstructed by the terrain of the Wasatch Front, or communities far from Salt Lake City. Because of the distances involved, as well as terrain features, the state of Utah uses the greatest number of translators in the United States. Utah's translator network covers over 90 named communities, most of which are extremely rural. Communities served solely by translators include Native American reservations and pueblos of the Duchesne, Uintah, Ouray, and Goshute peoples.

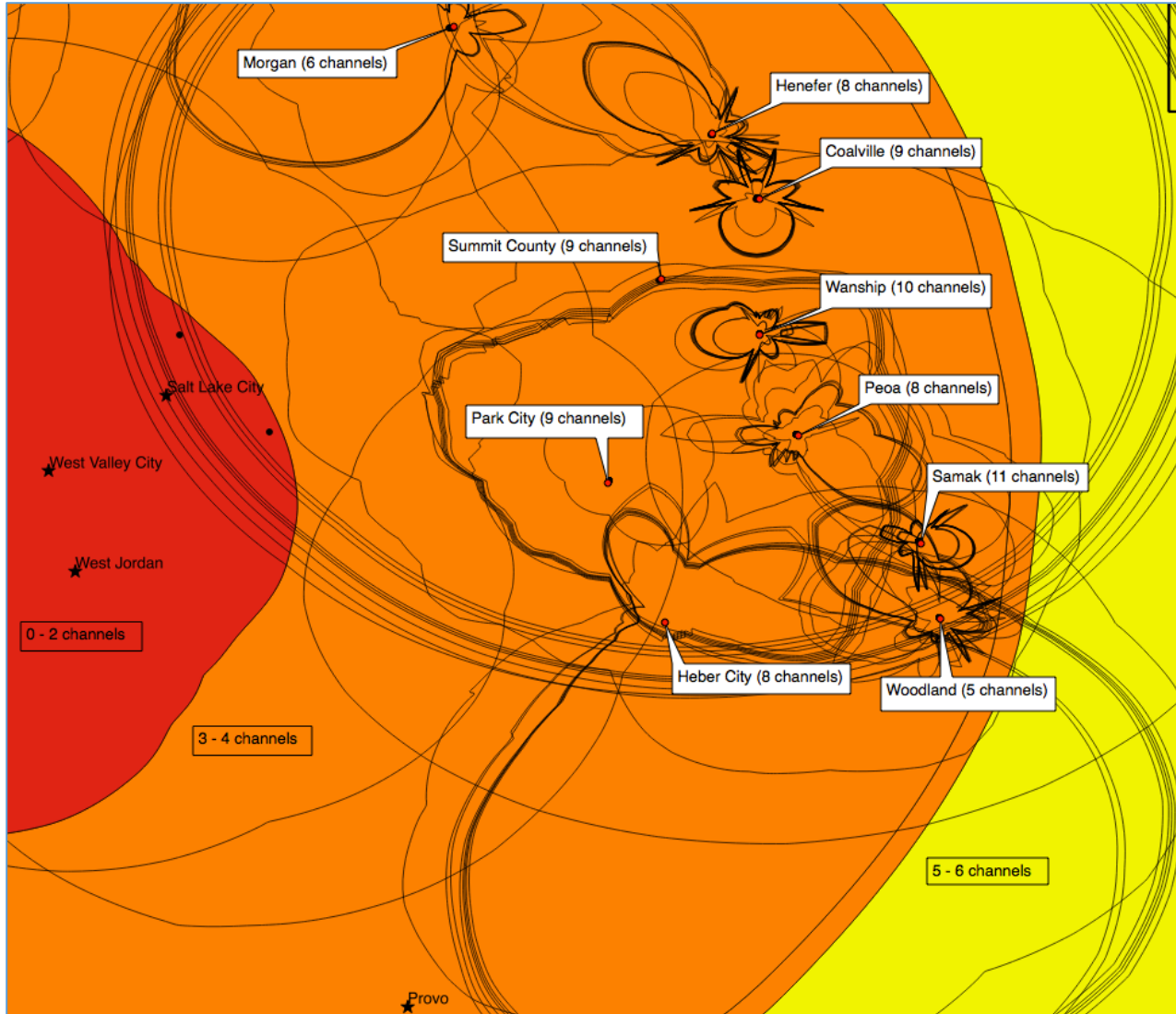
There will be a severe shortfall in available channels for translators in this area. For example, the small agricultural community of Wanship and its surrounding area is served by 10 over-the-air translators. Yet, following the auction, there will be at most four vacant UHF television channels available in this area. Reserving one or more channels in this area for flailing white spaces technology will inevitably create even greater displacement, above and beyond that caused by the auction and repacking. The math is simple.

To demonstrate this, the map below illustrates the density of translators serving suburban and rural communities surrounding just one area in Utah where there will be severe shortfalls in available channels following the auction and repacking. This map overlays the contours of UHF translators and LPTV stations with channel availability following the incentive auction.<sup>7</sup> Areas that will have two or fewer channels available after the auction are shown in red, areas that will have three or four channels available are shown in orange and areas that will have five or six channels available are shown in yellow.

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<sup>7</sup> Channel availability was determined from a randomly selected scenario, based on a 120 MHz clearing target, from the FCC's publicly-available repacking simulations.

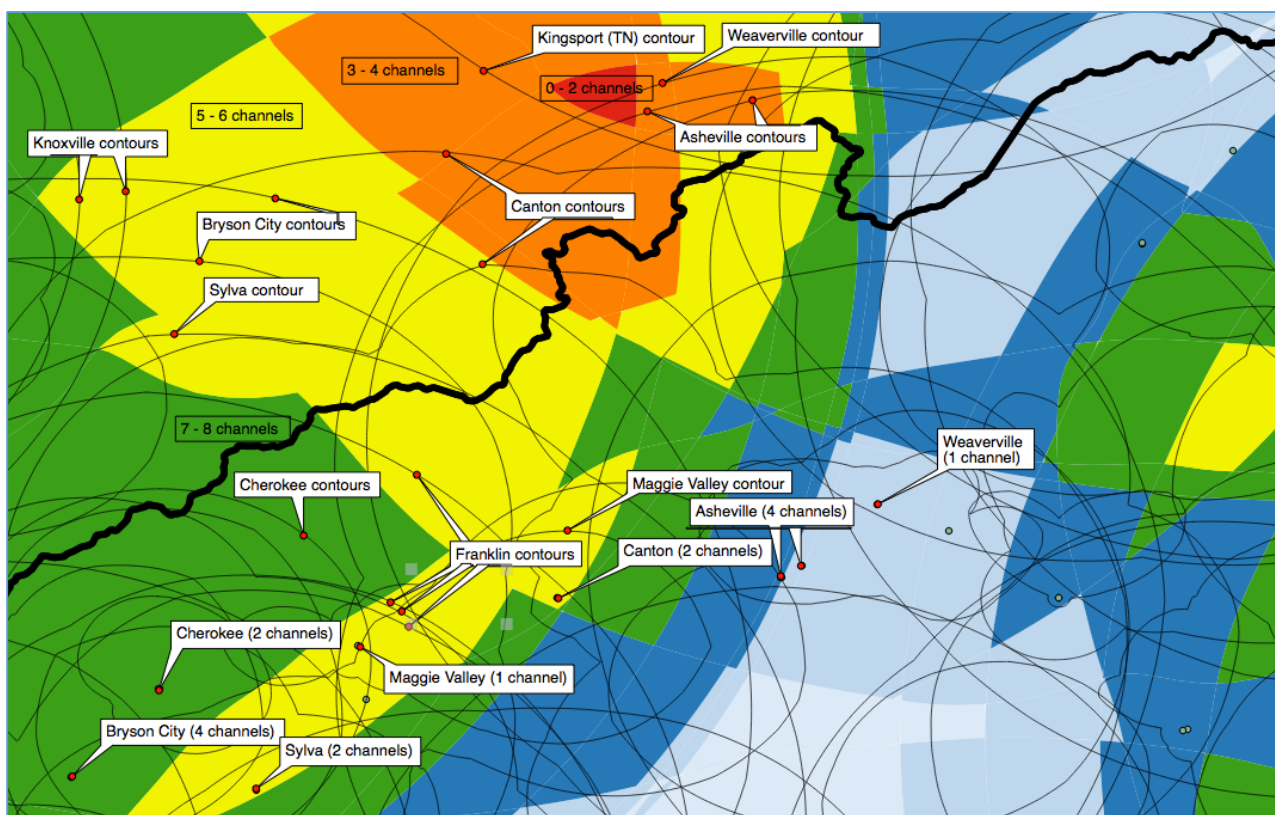




This analysis is conservative in a number of respects. First, TV translators require one channel for input and one channel for output. In this analysis, we assumed the input would always be one of the Farnsworth Peak stations, so no additional input channels would be required. In reality, Utah includes cascades or chains of up to five intermediate translator stations, greatly increasing the number of channels necessary to maintain service. Second, we assumed that all translator service areas are completely isolated, so each translator site

can operate using the same channels as other sites. In reality, many sites cover common areas – and thus require different channels to avoid interference.

Similarly, Figure 2, below, shows some of the suburban and rural communities in the Smokey Mountains, straddling the Tennessee-North Carolina border. Again, we have conservatively assumed that the input channel will always be one of the full-power television stations in the area, so that no additional channels are required for intermediate relays. We have also assumed that all translator service areas are completely isolated.



The community of Maggie Valley lies within the service contour of 10 translator stations– yet is located in an area where only five or six channels may be available following the incentive auction. Requiring that displaced translator or low power stations demonstrate

that remaining on air will not eliminate the last free channel in the area will only compound this problem, resulting in additional loss of service in the region.

Unfortunately, the lack of specificity underlying the Commission's assertion that there will be plenty of room for everyone has apparently led some commenters to disregard the potential harm associated with the Commission's proposal. Before considering the adoption of this proposal, the Commission should, at a minimum, seriously study the question of how many low power and translator stations will be displaced as an inevitable result of the auction, and how many additional low power and translator stations will be displaced by giving away free spectrum to behemoths such as Microsoft and Google.

**B. Low Power and Translator Stations Provide Vital Services to Viewers**

Not content merely to pretend there will be no loss of service to viewers, some commenters assert that service losses do not matter, because low power and translator stations don't provide any value to their communities.<sup>8</sup> This is an extraordinary position that is flatly inconsistent with years of FCC precedent and findings and the record of this proceeding.

The Commission itself has described LPTV and translator stations as a "source of diverse and local programming for viewers, especially in rural and remote locations."<sup>9</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. Television translators "provide free over the air TV service to millions of rural U.S. residents who live in

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<sup>8</sup> Comments of Microsoft Corporation at 12; Comments of Google Inc. at 16-17.

<sup>9</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, 29 FCC Rcd 12536, ¶ 1 (2014).

areas not effectively covered by over the air TV broadcast service from full service television broadcast stations.”<sup>10</sup> The Commission has 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>11</sup>

Indeed, as NAB pointed out in its original comments, due to the distances involved in some Western states, such as New Mexico, main station signals simply cannot cover the entire market. Television translators are vital to providing roughly two thirds of the state of New Mexico with free over-the-air televisions signals. For example, the Pueblo of Zuni, New Mexico lies far outside the service area of full power stations in New Mexico. This community has a population that is roughly 97 percent Native American, and a median household income of just over \$31,000. More than 37 percent of families in Zuni live below the poverty line.<sup>12</sup> This community is not passed by cable service providers. If the television translators serving

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<sup>10</sup> Comments of the National Translator Association at 1.

<sup>11</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 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>12</sup> See “American Fact Finder,” United States Census Bureau, available at: <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

Zuni are displaced, what, exactly, does Microsoft propose viewers do? Which bills, exactly, does Microsoft want residents not to pay so they can instead subscribe to satellite service?

Ironically, Google feigns ignorance of the value of service that low power and translator stations provide, claiming that, because these stations do not have the same public service obligations and reporting requirements as full power stations, there is no way for the Commission to know whether or not they are actually serving their communities.<sup>13</sup> Yet, as far as NAB knows, Google has not proposed that any public service obligations or reporting requirements should be imposed on the use of the free spectrum around which Google builds one of its many business models.

## **II. THE BENEFITS OF ADDITIONAL TVWS CHANNELS ARE SPECULATIVE AND OVERSTATED**

While the value of the service translators and low power stations provide is concrete and well-documented, the value of the reserving one or more channels in a reduced television band for unlicensed use is speculative at best. Despite the passage of more than five years since the adoption of the current framework for white spaces operation, there are only approximately 600 white spaces devices actually in operation today across the entire country. It is unclear what value, if any, many of these devices are actually providing. Many of the registered white spaces devices do nothing more than transmit a video feed to television screens in department stores or other locations.

Those few providers actually offering internet service using white spaces technology are not meeting the lofty promises of “super Wi-Fi hot spots – with extended range, fewer

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<sup>13</sup> Comments of Google Inc. at 16-17.

dead spots, and improved individual speeds” the Commission cited in adopting its current white spaces rules.<sup>14</sup> For example, various providers offer white spaces solutions promising:

- “Super-Fi” with speeds up to 6 Mbps download and 3 Mbps upload, for \$39.95 per month for the first year, with a minimum two-year contract and higher rates the second year;<sup>15</sup>
- Speeds up to 1 Mbps download and 512 Kbps upload for \$34.99 per month, on top of a \$10 per month equipment lease and a \$99 setup fee;<sup>16</sup>
- Speeds up to 2 Mbps download and 1 Mbps upload speeds for \$99.95 per month for, on top of an installation fee of \$129.95<sup>17</sup>
- Speeds up to 6.5 Mbps download and 1.6 Mbps upload, with a 10 gigabyte data usage cap, for \$45 per month in addition to \$100 in installation charges.<sup>18</sup>

However one wishes to describe these offerings, they are not “super.” According to the Commission’s own definition, *they are not even broadband*.<sup>19</sup> All of these providers operate in areas where there are at least 12 channels available for white space operations. Yet, after five years, the best the white spaces industry can do is deploy rickety Internet service in a few areas with fewer than 600 customers. For this “industry,” the Commission is upending its

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<sup>14</sup> *Unlicensed Operation in the TV Broadcast Bands*, Second Memorandum Opinion and Order, 25 FCC Rcd 18661, ¶ 1 (2010) (TVWS Second MO&O).

<sup>15</sup> [www.asanetworks.com/how-do-i-get-it.html](http://www.asanetworks.com/how-do-i-get-it.html).

<sup>16</sup> [www.alsatwireless.com/residential.html](http://www.alsatwireless.com/residential.html).

<sup>17</sup> [www.crossroadswifi.com](http://www.crossroadswifi.com)

<sup>18</sup> [www.101netlink.com/N\\_Humboldt\\_Residential.html](http://www.101netlink.com/N_Humboldt_Residential.html)

<sup>19</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375 (2015).

entire spectrum policy framework to ensure that *three* channels remain available in all areas of the country. What service speeds can users look forward to then?

White spaces proponents attempt to excuse the abject failure of this technology to date by claiming that all of the promised benefits of “Super Wi-Fi” will surely materialize if only device manufacturers are provided with absolute certainty regarding the availability of channels.<sup>20</sup> This is a blatant effort to rewrite the terms of the Commission’s original decision to allow white spaces operations and ignores the praise these same companies heaped on the Commission when the 2010 rules were passed. White spaces operations were never intended to have any degree of certainty. They were, rather, designed to make *opportunistic* use of spectrum that would otherwise lay fallow.<sup>21</sup> White space operations have always been and are still subject to displacement by any licensed user in the television band.

By claiming that white spaces technology cannot possibly thrive without iron-clad assurances that it will have exclusive use of a dedicated block of spectrum, unlicensed advocates are engaged in a remarkable regulatory bait and switch. The cornerstone of Part 15 of the Commission’s rules is precisely that unlicensed users do *not* have certainty regarding their ability to operate. White spaces were permitted to operate on vacant television channels based on the understanding that their access to spectrum was not guaranteed, that they could not cause harmful interference to any licensed user and that they were subject to displacement at any time. If the claim now is that certainty is required to drive investment in the technology, the answer is simple: *licensed* spectrum provides that certainty. Google, Microsoft and other companies designing business models around spectrum in the television

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<sup>20</sup> See Comments of Open Technology Institute at New America and Public Knowledge at 2, 5; Comments of Wi-Fi Alliance at 3; Comments of Google Inc. at 22.

<sup>21</sup> TVWS Second MO&O at ¶ 1.

band are free to bid in the forward auction to acquire the exclusive-use spectrum rights that will provide the certainty they now seek.

NAB has repeatedly stressed our support for unlicensed operations, including those in the television band, as long as those operations do not interfere with licensed use. We hope to see innovation and improved service offerings at some point in the future. But stakeholders, and the Commission itself, should not overstate the achievements of white spaces technology, nor should they simply assume away the balance of interests at stake in depriving millions of viewers of free over-the-air television service to provide a handful of customers with costly, slow internet access that does not even meet the Commission's definition of broadband.

### **III. UNLICENSED ADVOCATES MISSTATE THE COMMISSION'S LEGAL AUTHORITY**

#### **A. The Spectrum Act Does Not Grant the Commission Authority to Repack Television Stations to Create Unlicensed Spectrum Opportunities**

Some commenters assert that the repacking authority Congress provided the Commission in the Spectrum Act allows the FCC to repack the television band specifically to provide new unlicensed spectrum opportunities. Microsoft asserts that the Spectrum Act "leaves the repacking process almost entirely to the Commission's discretion," and that none of the limitations on this authority bear on the Commission's proposal.<sup>22</sup> Similarly, New America and Public Knowledge claim that the Spectrum Act provides the Commission with almost unfettered discretion to repack the television band, including to continue to allocate spectrum for unlicensed users.<sup>23</sup>

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<sup>22</sup> Comments of Microsoft Corporation at 7-8.

<sup>23</sup> Comments of Open Technology Institute at New America and Public Knowledge at 8.



This misreads a critical component of the Spectrum Act. Section 6403(b) of the Spectrum Act provides the Commission with the authority to repack television stations. The very first words of that section grant this authority solely “for purposes of making available spectrum to carry out the forward auction.”<sup>24</sup> That is, the Commission may reorganize the television band solely to make available spectrum for *auction*, not to give away new spectrum rights to unlicensed users. The language could not be any clearer.

New America and Public Knowledge also make much of the Spectrum Act’s reference to the Commission’s White Spaces Second Report and Order.<sup>25</sup> They place more weight on this reference than it will bear. While it is true that the Act does not prevent implementation of the Commission’s order, implementation of that order would contradict the Commission’s current proposal. The order to which the Spectrum Act refers states, in the clearest possible language, that, “future broadcast uses of the television band will have the right to interference protection from TV band devices.”<sup>26</sup> New America and Public Knowledge triumphantly cite the Spectrum Act’s reference to the Commission’s earlier order, but they want that order to say something other than what it does.

Some commenters stress that LPTV and translator stations are “secondary” in status, as if this somehow subordinates them to unlicensed users.<sup>27</sup> Similarly, they claim that low power stations have always been at risk of displacement, and that these stations thus cannot

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<sup>24</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(b), 126 Stat. 156, 226 (2012) (Spectrum Act).

<sup>25</sup> Comments of Open Technology Institute at New America and Public Knowledge at 8.

<sup>26</sup> *Unlicensed Operation in the TV Broadcast Bands*, Second Report and Order and Memorandum Opinion and Order, 23 FCC Rcd 16807, ¶ 50 (2010) (TVWS Second Report and Order).

<sup>27</sup> Comments of the Competitive Carriers Association at 3 (“These users operate on a secondary basis and are afforded only limited rights under the Commission’s rules.”).

complain if they are displaced by unlicensed operations.<sup>28</sup> This argument ignores the fact that the Spectrum Act expressly provides that it does not alter the spectrum usage rights of low power stations. Those spectrum usage rights, while “secondary” to primary broadcast stations, are in no way secondary to unlicensed operations, which have precisely no status of any kind. And, while it is true that low power stations have been at risk of displacement by full power stations, they have *never* been at risk of displacement by unlicensed users. Rather, under the plain terms of Part 15 of the Commission’s rules, it is unlicensed users that are put on notice *they* have no recognized right to continued use of any frequency.<sup>29</sup> Unlicensed users are prohibited from causing harmful interference to *any* licensed service, “secondary” or otherwise, and unlicensed users are required to accept harmful interference from any licensed service.<sup>30</sup> In any event, the Commission’s White Spaces Second Report and Order, cited in the Spectrum Act and heralded by white spaces proponents, expressly states, “not only must future primary use of the band by broadcasters be protected, but secondary uses such as low power auxiliary devices and broadcast auxiliary service (BAS) must also be protected.”<sup>31</sup>

**B. If the Commission Relies on Its General Authority, It Can Reserve Spectrum in the 600 MHz Band to Accommodate Unlicensed Users**

Other commenters try a different approach, suggesting that the Commission’s general authority under Title III of the Communications Act provides all the legal basis needed to make low power and translator stations subservient to unlicensed operators, regardless of what the

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<sup>28</sup> Comments of Microsoft Corporation at 12-13; Comments of Google Inc. at 18.

<sup>29</sup> 47 C.F.R. § 15.5(a).

<sup>30</sup> *Id.* at § 15.5(b).

<sup>31</sup> TVWS Second Report and Order at ¶ 50.

Spectrum Act provides.<sup>32</sup> While Title III does convey broad authority, that authority is not unlimited.

First, as NAB noted in its opening comments, when an agency completely reverses course, as the Commission proposes to do here in elevating unlicensed users over licensed users, it is “obligated to supply a reasoned analysis for the change.”<sup>33</sup> Failure to provide such a reasoned analysis is arbitrary and capricious, and constitutes grounds for reversal. In this case, the Commission offers only a limited explanation for its dramatic about face. It claims the change is necessary because there will be fewer vacant channels available after the auction and the public should not lose the benefits of white space devices.<sup>34</sup> In fact, in many key areas, including New York and Los Angeles, there will be *more* spectrum available for unlicensed operations after the auction than there is today.

Further, under Title III and the Commission’s existing rules, mutually exclusive applications are resolved through competitive bidding procedures.<sup>35</sup> In its Incentive Auction Report and Order, the Commission concluded it would allow mutually exclusive displacement applications to explore engineering or settlement solutions.<sup>36</sup> The Commission did, however, provide that, in the case of unresolved mutually exclusive displacement applications, it would “use an auction as a last resort to resolve remaining displacement groups.”<sup>37</sup> The Commission’s proposal to give away, rather than auction, spectrum subject to mutually

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<sup>32</sup> Comments of T-Mobile USA, Inc. at 4; Comments of Competitive Carriers Association at 3.

<sup>33</sup> *Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 41 (1983).

<sup>34</sup> NPRM at ¶ 19.

<sup>35</sup> See 47 U.S.C. § 309(j); 47 C.F.R. § 73.5000, *et seq.*

<sup>36</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 661 (2014).

<sup>37</sup> *Id.*

exclusive applications thus appears to contradict both the Communications Act and the FCC's own rules.

Moreover, if these commenters are correct that the FCC's Title III authority to reserve spectrum in a licensed band for unlicensed use – at the direct expense of licensed users – is untrammelled and wholly distinct from the Spectrum Act, then there is no reason the Commission should not make the reservation for unlicensed use in the 600 MHz band, rather than the repacked television band.

T-Mobile, in particular, “has long been a vocal advocate for unlicensed operations.”<sup>38</sup> T-Mobile asserts that by ensuring that unlicensed devices “have nationwide access to spectrum . . . the Commission will promote investment and innovation in these technologies.”<sup>39</sup> Based on T-Mobile's support for “the public benefits of robust unlicensed operations in the 600 MHz band,”<sup>40</sup> the Commission can best accommodate its desire to preserve white spaces spectrum by reserving spectrum in the new wireless band following the auction.

Notably, T-Mobile was the only national wireless service provider to comment in this proceeding. Given this, and given that Sprint has announced it will not be bidding in the incentive auction, making new opportunities for white spaces operations available in the spectrum reserve following the auction strikes an appropriate balance. It will preserve opportunities for the innovation T-Mobile supports, while also preventing T-Mobile from benefitting unduly from a spectrum reserve insulated from some competitors in the forward auction. Accordingly, if the Commission sees a compelling public interest benefit in reserving spectrum in licensed bands for unlicensed use, we urge the Commission to reserve at least

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<sup>38</sup> Comments of T-Mobile USA, Inc. at 2.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 4.

one channel in the spectrum reserve in the 600 MHz band, rather than the television band, for exclusive use by white spaces devices.

#### **IV. THE COMMISSION'S PROPOSAL WILL STIFLE INNOVATION IN THE TELEVISION BAND**

Beyond the harm the Commission's proposal will cause to existing services that viewers rely on today, the proposal also risks freezing broadcasters in time. The Commission should not be misled into believing that this is a choice between maintaining existing services and fostering innovation. Broadcast spectrum, used by broadcasters, can also offer the potential for dynamic and innovative new service offerings.

In its initial comments, Pearl TV discussed the potential of a next-generation television standard – one that could allow 4K video, mobile broadcasting, and other innovative features.<sup>41</sup> Facilitating a transition to a new standard may, however, require some degree of flexibility, to allow stations to adjust their service contours or engage in temporary sharing arrangements.

Oddly, Google claims that the Commission should ignore this concern, because, “the argument implies that the adoption of ATSC 3.0 has something to do with the FCC's incentive auction process.”<sup>42</sup> This is both beside the point and remarkably hypocritical. Of course the transition to a new broadcast standard is not directly connected to the incentive auction – but neither is the purported urgency around preserving free unlicensed spectrum for corporations like Google. In fact, the unlicensed reserve proposal's only connection to the auction is that it is likely to depress forward auction revenue as a result of ensuring that companies like Google and Microsoft will sit on the sidelines.

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<sup>41</sup> Comments of Pearl TV at 2.

<sup>42</sup> Comments of Google Inc. at 24.

The more pertinent point is that the Commission should not take action to foreclose ATSC 3.0 at the outset. If the Commission takes seriously the policy mantra of “competition, competition, competition,” it should be embracing *intermodal* competition, not just competition among internet service providers. There are still steps to complete in the ATSC 3.0 process, but it would only serve to disadvantage consumers if the FCC enacts unnecessary rules today that prevent broadcasters from having the opportunity to provide additional competition to other increasingly dominant services. The Commission should not confine broadcasters in ways that undermine consumer welfare, especially to support a different technology that has faltered from the outset.

## V. CONCLUSION

The Commission’s claim – echoed by some initial comments in this proceeding – that its proposal will do no harm to LPTV and translator stations is unsubstantiated. In fact, adoption of the Commission’s proposal will cause widespread losses of service, particularly in communities that are reliant on translators for over-the-air coverage. Indulging in the fantasy that the FCC can give away free spectrum in a reduced, repacked television band without forcing low power and translator stations off the air does a disservice to those viewers the FCC’s actions would disenfranchise.

Meanwhile, the beneficiaries of this proposed spectrum giveaway have yet to make good on a single one of the expansive promises surrounding TV white spaces operations. While the benefits of free over-the-air television services are real, tangible and demonstrable, the benefits of reserved white spaces spectrum remain speculative and unfulfilled. Rather than doubling down to make spectrum allocation decisions based on unfulfilled promises, the Commission should, at a minimum, study the impacts its proposal will have on existing viewers. Until it does so, the Commission should not move forward with this proposal.

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 line extending to the right from the end of the signature.

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Rick Kaplan  
Patrick McFadden

Bruce Franca  
Robert Weller

October 30, 2015