

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

In the Matter of)	
)	
Spectrum for Broadband)	GN Docket Nos. 09-47, 09-137
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51

**REPLY COMMENTS — NBP PUBLIC NOTICE #6
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

In these reply comments to the Commission’s *National Broadband Plan Public Notice #6*, the Association for Maximum Service Television, Inc. (“MSTV”)¹ and the National Association of Broadcasters (“NAB”)² encourage the Commission to embrace a consumer-focused approach to spectrum management that takes into account the public policy goals served by a given allocation. As has been well documented in the record for the *National Broadband Plan*, sound spectrum management requires such a holistic understanding so that consumers can continue to use the important services on which they rely as well as gain access to new service offerings. In contrast, an estimation of the revenues that a licensee may derive from a given use is a poor predictor of whether a spectrum allocation will serve the interest of consumers.

Consistent with a consumer-focused approach to spectrum management, MSTV and NAB herein reject the notion put forth by a select few commenters affiliated with the commercial wireless industry — namely, that to achieve a world-class broadband ecosystem, one

¹ 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.

² NAB is a 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.

must curtail (or even eliminate) consumers' access to a free and robust over-the-air digital television service. In fact, in today's blended digital-rich media environment, broadcasting and broadband are complementary services. Perhaps most notably, the success of each service is necessary to address the digital divide that led Congress to commission the National Broadband Plan earlier this year. Accordingly, when that Plan is submitted in less than 100 days, it should reject partial arguments and instead articulate workable, consumer-focused solutions to improve broadband access and adoption.

I. MAINTAINING THE NATION'S LOCAL BROADCAST TELEVISION SERVICE AND IMPROVING BROADBAND ACCESS ARE COMPLEMENTARY GOALS FOR THE ADVANCEMENT OF THE NATION'S COMMUNICATIONS POLICY.

Congress and the President emphasized the importance of both broadcasting and broadband to the future of the Nation's communications infrastructure when, during a one-week span in February of this year, the President signed into law the DTV Delay Act and the American Recovery and Reinvestment Act of 2009. The DTV Delay Act moved the deadline for ceasing analog broadcasts from February 18 to June 12, 2009 in order to provide additional time for millions of households to prepare for receiving digital broadcasts, so that they would "not lose access to news, information and emergency alerts" provided by over-the-air television,³ and the American Recovery and Reinvestment Act established funding for broadband deployment and directed the Commission to create a National Broadband Plan within one year to "seek to ensure that all people of the United States have access to broadband capability."⁴

³ Press Release, Senator Jay Rockefeller, *Rockefeller Announces Compromise on DTV Delay Bill* (Jan. 23, 2009), <http://rockefeller.senate.gov/press/record.cfm?id=307265>; *see also* DTV Delay Act, Pub. L. No. 111-4, 123 Stat 112 (Feb. 11, 2009).

⁴ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k), 123 Stat. 115 (Feb. 17, 2009).

Consistent with these legislative directives, the Commission should pursue two public policy goals — the maintenance of a free, over-the-air digital television service and the creation of a national strategy for improving broadband access and adoption — in tandem as critical components of the Nation’s communications policy. Chairman Genachowski has spoken with eloquence about both goals, noting that broadband is “the platform for growth and opportunity for us, our children, and our children’s children”⁵ and that “[b]roadcast television remains an essential medium, uniquely accessible to all Americans.”⁶

A small number of commenters, including CTIA, T-Mobile, and Coleman Bazelon, suggest that the two goals embraced by Congress cannot or should not be pursued in parallel, and that one (local broadcasting) must be diminished to serve the other (broadband).⁷ Specifically, these commenters request that the Commission reallocate (in whole or in part) the spectrum that broadcasters already use efficiently to serve the public so that wireless carriers may provide ambiguously-defined services at some point in the future.

Such a tradeoff between two essential and complementary communications policy goals would not only be contrary to legislative intent, but it would be contrary to the public interest as well. Broadcasting is “the exclusive source of video programming relied upon by

⁵ Statement of Chairman Julius Genachowski at Seneca High School, Erie, Pennsylvania (July 1, 2009), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291860A1.pdf.

⁶ Statement of Julius Genachowski, Chairman, Federal Communications Commission, Before the United States Senate Committee on Commerce, Science and Transportation, Hearing on “Rethinking the Children’s Television Act for a Digital Media Age” (July 22, 2009).

⁷ See Comments of CTIA – The Wireless Association NBP Public Notice #6, at 30 (Oct. 23, 2009); Comments – NBP Public Notice #6 of T-Mobile USA, Inc., at 4, 17–19 (Oct. 23, 2009); Coleman Bazelon, *The Need for Additional Spectrum for Wireless Broadband: The Economic Benefits and Costs of Reallocations*, at 1 (Oct. 23, 2009) (attached to the Comments of the Consumer Electronics Association) (Oct. 23, 2009) (hereinafter “Bazelon Analysis”).

millions of households in the country,”⁸ and consumers, whether they receive their local television signals over the air or through a pay-TV service, rely on broadcasting for local news, weather, sports, and public affairs programming and for emergency alerts. Consumers spent billions of dollars investing in digital and high definition (“HD”) television receivers and digital-to-analog converter boxes so that they could experience the benefits of digital broadcasting, including HD and multicast programming, and other ancillary and supplementary services.⁹ In addition, the growth of mobile DTV will provide consumers, wherever they may be, with innovative and diverse services and programming delivered to a variety of portable and mobile wireless devices. The spectrum reallocation proposals recommended by CTIA, T-Mobile, and Bazon would impede or end consumers’ access to these important broadcasting services.

The Commission should reject the plan presented by the commercial wireless interests and develop instead a National Broadband Plan that both preserves the public’s digital broadcast service *and* creates a world-class broadband network. As explained in the initial comments of MSTV and NAB, in order to attain this objective, the Commission should:

- Prioritize the efficient use of spectrum already allocated for wireless broadband, over 500 MHz of which has only begun to be put into productive use;¹⁰
- Consider all frequencies that may be suitable for wireless broadband, not just those bands below 3.7 GHz;¹¹
- Rely on wireless broadband services to connect rural areas where wireline services are unavailable and, in all other areas, to complement wireline methods of delivering

⁸ Statement of Julius Genachowski, Chairman, *supra* note 6.

⁹ See Comments – NBP Public Notice #6 The Association for Maximum Service Television, Inc. and the National Association of Broadcasters, at 9 (Oct. 23, 2009) (hereinafter “MSTV/NAB Comments”); David Goetzl, *Big Picture: HDTV Sales on Upswing*, MEDIAPOST NEWS (Sept. 29, 2009) (citing estimates of SNL Kagan).

¹⁰ See MSTV/NAB Comments, at 3–6.

¹¹ See *id.* at 6–7.

broadband access, which are not subject to throughput limitations that naturally affect wireless broadband; and

- Use the “white spaces” spectrum between television channels for licensed fixed rural broadband access.¹²

II. FINANCIAL MODELS ALONE ARE INADEQUATE TO MEASURE THE PUBLIC INTEREST.

The majority of commenters agree with MSTV and NAB that the Commission should look beyond purely economic factors and instead put a premium on the public policy benefits of an existing spectrum use when determining the efficiency and value of that use.¹³ Broadcasting, for example, is a public trust and a public service. In assessing the value of the nation’s free, over-the-air local broadcasting service, the Commission should not only measure the value of local broadcasting in terms of economic factors — such as the multi-billion dollar investment by consumers, local television stations, equipment manufacturers, and the government to transition the nation’s broadcast system from analog to digital — but also should consider the core public interest goals that broadcasting serves. These public interest goals include the advancement of local journalism, universal service, diversity, local economic activity, the widespread availability of children’s and other educational programming, the timely

¹² *See id.* at 13.

¹³ *See* Comments of Verizon Wireless on Spectrum for Broadband, at 20 (Oct. 23, 2009) (stating that some services “represent significant value to the public,” so that “making reallocation decisions based on spectrum efficiency alone is probably not appropriate”); Comments of the Telecommunications Industry Association, at 3, 8 (Oct. 23, 2009) (stating that the Commission’s “spectrum plan for the 21st century must factor in spectrum uses that best promote societal benefits, while balancing the needs and value of new services with those of existing spectrum users.”); Comments of the Utilities Telecom Council -- NBP Public Notice #6, at 20 (Oct. 23, 2009) (encouraging the Commission to “consider qualitative as well as quantitative factors,” such as public safety, in determining the value of different spectrum uses); Comments of the Critical Infrastructure Communications Coalition – NBP Public Notice #6, at 8 (Oct. 23, 2009) (urging the Commission to consider public interest benefits, such as public safety); Comments of Shure Incorporated on Public Notice #6 Spectrum for Broadband, at 3, 7–8 (Oct. 23, 2009); MSTV/NAB Comments, at 7–9.

and reliable provision of emergency information, and competition in the areas of pay-TV and mobile video services. These are important public goods and positive externalities which cannot be easily measured or factored in to a purely economic analysis.

Ignoring these public interest considerations, the reallocation proposals of the commercial wireless representatives rely upon cold financial calculations as to market valuations of spectrum. Bazelon, for example, claims that by shutting off over-the-air television, wireless carriers would realize “gains from trade” of up to \$51 billion.¹⁴ Under this Wall Street-centric approach to spectrum management, an existing service is reallocated unless “the added [market] value of making [that] spectrum available equals the cost of freeing up that spectrum.”¹⁵ To be clear, these financial models — which likely underestimate the market value of broadcast services and have historically over estimated the auction value of spectrum — will not help the Commission manage the spectrum resource in the public interest, convenience, and necessity.¹⁶ When spectrum management is determined through financial modeling alone, the impact of a reallocation on consumers is immaterial.

To the limited extent that the commercial wireless interests attempt to include public interest benefits in determining the value of broadcasting, they make several miscalculations. To provide just one example here,¹⁷ CTIA and Bazelon suggest that because consumers are able to receive broadcast television programming by paying monthly subscription fees to cable or satellite providers, the public interest benefits “in providing over-the-air

¹⁴ Bazelon Analysis at 19.

¹⁵ *Id.*

¹⁶ *See* 47 U.S.C. §309 (requiring the Commission to base licensing decisions on whether the public interest, convenience, and necessity will be served by granting the application).

¹⁷ The broadcast industry looks forward to working with the Commission to gather additional data and information on the value of the public’s broadcasting service.

television to the fraction of U.S. households without cable or satellite television [have been] overtaken by technological changes.”¹⁸ In addition to ignoring the needs of the tens of millions of households that rely on over-the-air broadcasts and the competitive pressure that free, over-the-air television service places on pay-TV subscription fees, Bazelon and CTIA make the untested and risky assumption that pay television subscribers would not be harmed by the shutdown of over-the-air broadcasts. Yet in virtually all markets, local television stations are the *only* source of local video news. Without these local television stations, the locally-produced news, weather, sports, and public affairs programming enjoyed by over-the-air and pay-TV viewers alike would not be available.

Moreover, the Bazelon/CTIA approach ignores the number of pay-TV households that rely on over-the-air broadcasting for the second and third television sets in the home that are not hooked up to a pay-TV service. These pay-TV viewers depend on broadcast television service not only for day-to-day viewing, but also to access potentially life-saving information during times of emergency. That the Bazelon/CTIA approach does not even acknowledge the existence, let alone the significance, of the assumptions underlying their requests to the Commission speaks to the capricious nature of their reallocation proposals.

III. DIGITAL BROADCASTING IS AN EFFICIENT USE OF SPECTRUM.

As MSTV, NAB, the Association of Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting Service explained in their respective comments, broadcasters have made substantial advances in spectrum efficiency over the past several decades, all while continuing to provide a free, ubiquitous broadcasting service that uniquely serves consumers’ local interests. For example, commercial and non-commercial

¹⁸ See Comments of CTIA – The Wireless Association NBP Public Notice #6, at 30–31 (Oct. 23, 2009); Bazelon Analysis, at 1.

broadcasters are intensely using each station's 6 MHz channel to deliver a variety of HD and multicast programming, mobile DTV, advanced public safety services, datacasting and other ancillary and supplemental services.¹⁹ There is accordingly no truth to the claims of CTIA and T-Mobile that question the efficiency of digital broadcasting.

Indeed, in addition to the direct efficiencies inherent in digital broadcast transmissions, broadcasting complements broadband and serves an increasingly important role in the delivery of IP-based content. The growth of mobile video accounts for much of the commercial wireless carriers' increased spectrum demands and the costs associated with increased network congestion. According to CTIA, watching an online video using a wireless broadband connection "consumes almost one hundred times the data bandwidth of a voice conversation," and by 2013 "nearly 64 percent of the world's mobile traffic will be video."²⁰ However, for mass audience programming, that same video can be distributed more efficiently via digital broadcast. The transmission standard for digital television, known as ATSC A/53, provides wide-area coverage at a data rate of almost 20 Mbps within a 6 MHz channel, making it one of the most efficient transmission systems available for disseminating high bit-rate content to a mass audience. In addition, the growth of mobile DTV will allow video programming to be delivered efficiently to a mass audience through a variety of portable and mobile wireless devices. Therefore, broadcasting in coming years will serve as an important means to offload traffic from broadband networks and to ease network congestion.

¹⁹ See MSTV/NAB Comments, at 9–11; Comments of the Association of Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting Service in Response to NBP Public Notice #6 (Oct. 23, 2009).

²⁰ Comments of CTIA – The Wireless Association NBP Public Notice #6, at 30 (Oct. 23, 2009); see also Comments -- NBP Public Notice #6 of T-Mobile USA, Inc., at 7 ("With even higher-bandwidth applications such as over-the-top Internet video (e.g., YouTube, Hulu) increasing in demand, bandwidth demands will continue to skyrocket.").

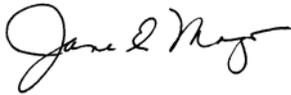
In determining the efficiency of existing commercial wireless services, MSTV and NAB also encourage the Commission to look carefully at whether the spectrum already allocated and assigned to the commercial wireless licensees is being put to efficient and productive use. CTIA, Verizon, and Motorola argue that tower and cell citing issues, including modifications to existing radio sites, adding new sites, renegotiating leases with tower owners, the need for tower authorizations, and environmental and zoning requirements, present economic and practical problems to improving efficiency from existing spectrum bands.²¹ However, these same barriers would also hamper the commercial wireless carriers' build-out of reallocated spectrum, which would require the nationwide installation of new towers, transmitters, and receivers for the new spectrum frequencies. Consequently, there is no reason to reallocate hundreds of MHz of spectrum to commercial wireless carriers while significant swaths of the spectrum already available for wireless use remains underutilized.

²¹ Comments of CTIA – The Wireless Association NBP Public Notice #6, at 15 (Oct. 23, 2009); Comments of Verizon Wireless on Spectrum for Broadband, at 7 (Oct. 23, 2009); Comments of Motorola, Inc., at 7 (Oct. 23, 2009).

CONCLUSION

MSTV and NAB encourage the Commission to develop a comprehensive National Broadband Plan that takes into account all components of the country's communications infrastructure and the different public policy goals that these components serve. The Commission should reject proposals that would result in one important public policy goal, local broadcasting, being subordinated to another, broadband. The Commission can, and should, pursue these two complementary goals in tandem to help ensure that the Nation's spectrum resource is being used efficiently and effectively in the public interest.

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