August 4, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Wheeler:

I am writing to express my concern about the impact of the Commission’s current plans for the broadcast incentive auctions on Low Power Television stations and translators. As you well know, LPTV stations offer local content valued by their communities. These small stations continue to cater to unique interests and respond to their communities. Similarly, translators allow broadcast signals to reach across challenging terrain to serve some of the most rural Americans. Without translators, much of the western half of the United States would not be served by broadcasting.

While the Commission was granted significant flexibility to repack broadcast stations to optimize the recovered spectrum in the 600 MHz band, the Commission itself recognized that it had the responsibility to “help preserve the important services” provided by LPTV and translators. I am concerned that the current focus on white spaces and unlicensed services outside of the duplex gap and guard bands may unnecessarily harm the communities served by LPTV and translators. The spectrum provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (MCTR) do not charge the Commission with the “central goal” of “maximiz[ing] the amount of spectrum made available for not only licensed use, but also unlicensed use.” Rather, the Commission was charged with implementing an incentive auction that maximizes the amount of high-quality spectrum licenses for wireless broadband while ensuring that the agency made “all reasonable efforts to preserve... the coverage area and population served of each broadcast television licensee” during the repacking process. While we have all agreed that LPTV and translators are not explicitly protected under the Act, Congress has repeatedly urged

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the Commission to ensure that LPTV and translators are preserved to the extent possible. The Commission’s proposals for unlicensed operation in the broadcast band to supersede use by licensed operations are inconsistent with both the statute and repeated calls from lawmakers to preserve LPTV and translators where possible.

I support the FCC’s efforts to increase the availability of unlicensed spectrum for innovative new spectrum technologies to compete in the open market. This concept of innovation without permission has animated the unlicensed bands since their creation and continues today to provide fertile ground for new spectrum access technologies to be deployed and compete. But plans for the purchase of full-power and broadcast licensees in order to make way for unlicensed services within the broadcast band are inappropriate and not permitted by any statute.

Section 6402 of the MCTR (codified at 47 U.S.C. 309(j)(8)(G)), from which the FCC derives the underlying authority for the broadcast incentive auction, authorizes the Commission to “encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order to permit the assignment of new initial licenses subject to flexible-use service rules.”

Creating a band plan based on frequency division technologies necessitates a duplex gap and the presence of adjacent services often necessitates guard bands. Both of these are suitable candidates for additional unlicensed use and consistent with the MCTR. Additionally, while the MCTR gives the FCC the flexibility to continue to implement the TV White Spaces rules in the newly truncated broadcast band post-auction, it does not contemplate Part 15 operation in the broadcast band other than under the Commission’s existing white spaces rules.

Finally, the flexibility written into the MCTR that permits the Commission to repack broadcast stations to maximize the recovered spectrum is not carte blanche to upend the maxim that colors all FCC licensing: licensed services take precedence over unlicensed services. While the MCTR doesn’t give LPTV or translator licensees rights to participate in the auction, they are still licensed services, and are secondary only to full power stations in the television band, not unlicensed. By providing important local programming to their communities these licensees have an established constituency. The MCTR does not allow the FCC to elevate unlicensed operations over translators and low power stations in the television band and to unnecessarily deprive this constituency of their local programing.

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5 For example, Chairman Emeritus Joe Barton drafted legislation that would enhance the ability of LPTV stations to appeal to the Commission. The Subcommittee on Communications & Technology held a legislative hearing on the draft bill on July 24, 2014. Representative Barton and Rep. Eshoo also requested that the Government Accountability Office review the impact of the incentive auctions on LPTV stations and translators and their respective communities. See Letter from Chairman Emeritus Joe Barton and Ranking Member Anna Eshoo, Subcommittee on Communications and Technology to Mr. Gene Dodaro, Comptroller, Government Accountability Office, dated Oct. 1, 2014.

6 MCTR § 6402 (emphasis added).
Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

Joe Barton
Chairman Emeritus
House Committee on Energy and Commerce
The Honorable Greg Walden  
U.S. House of Representatives  
2182 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Walden:

Thank you for your letter concerning the impact of the upcoming incentive auction on low power TV (LPTV) stations and translators.

I agree that LPTV stations and TV translators provide important services upon which many consumers and businesses in rural communities rely. Although, as you note, the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") does not explicitly protect LPTV and translators in the repacking process, the Commission is taking an array of steps to help ensure that as many of these stations as possible remain on the air so that the important programming content they provide continues to reach viewers.

As an initial matter, the Commission last year announced that it will open a special filing window for operating LPTV and TV translator stations that are displaced by the repacking and reallocation of the television bands.\(^1\) We also modified our rules to allow stations with mutually exclusive displacement applications to reach a settlement or an engineering solution, rather than require competing stations to resolve all mutual exclusivity through an auction as the Communications Act generally requires.\(^2\) In cases where a settlement is not possible, in order to ensure the continued availability of full power television service, we afforded priority to displacement applications filed by digital replacement translators used to fill in the service areas of full power stations that could not otherwise be replicated when those stations transitioned from analog to digital facilities.

Additionally, to help accommodate some of the needs of LPTV and translator stations following the auction, the Commission adopted rules that will permit these stations to remain on their existing channels during the post-auction transition period until they are notified that a forward auction winner is within 120 days of commencing operations on the repurposed 600 MHz spectrum. For many LPTV and translator stations that are located in the new 600 MHz Band, this could mean continued operations for many years until wireless licensees commence operations.

Recognizing the importance of LPTV and translator stations, the Commission also opened a dedicated proceeding to consider additional means to mitigate the potential impact of

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\(^2\) Id., para. 661.
the incentive auction and the repacking process on LPTV and TV translator stations to help preserve the important services they provide.\(^3\) I expect that the Commission will act on the proposals put forward in this proceeding later this fall. Those proposals include a range of options to help enable LPTV and TV translator stations remain on the air. First, we have proposed allowing LPTV stations to share channels. Channel sharing arrangements will facilitate the continued viability of LPTV through new programming and business arrangements and promote spectral efficiency.\(^4\) Second, in response to concerns that finding a new channel for displaced LPTV and TV translator stations will be challenging, we also proposed making our auction repacking software available to LPTV and translators stations to identify available channels and potentially maximize the number of such stations in the TV band post-auction.\(^5\) Of course, a station’s decision to seek channel assignments recommended by the optimization software would be completely voluntary, but I believe that the availability of our software will expedite and ease the post-auction transition process for many low power stations.

While the auction will by definition result in a smaller TV band and therefore fewer channels for all television stations – full power as well as LPTV and translators – the steps I have described above will help ensure the continued availability of LPTV and translator services post-auction.

Just as we are seeking to preserve and facilitate the transition for LPTV and TV translator stations, we are seeking to do the same for white space devices and wireless microphones that will also be displaced by the reorganization of the 600 MHz Band. That is the genesis of our proposal to preserve a vacant channel in every area for use by white space devices and wireless microphones.\(^6\) This proposal is aimed at ensuring that the public continues to have access across the nation to the significant benefits of these services, consistent with our intent to strike “a balance between the interests of all users of the television bands, including secondary broadcast stations as well as [white space] devices and wireless microphones, for access to the UHF TV spectrum.”\(^7\)

The Commission believes that the proposal to preserve a vacant channel will not significantly burden LPTV and TV translator stations in terms of either the continued availability of channels in all areas or the administrative burdens of compliance. The impact on LPTV and


\(^{4}\) *LPTV NPRM*, para. 14.

\(^{5}\) *Id.*, para. 44 et seq.


\(^{7}\) See *Incentive Auction Report & Order*, 29 FCC Rcd at 6683-84, para. 269 and 6701, para. 309.
TV translator stations in terms of the availability of channels for future use will be limited because multiple vacant channels will still exist in all or most markets as a consequence of the need to avoid interference between primary broadcast stations in the incentive auction final channel assignment process. The effect of our proposal would be to reduce by one (or two in the handful of markets where a TV station may be assigned to the duplex gap) the total number of vacant channels that would otherwise be available in an area.

Finally, I believe our proposal to preserve vacant channels for use by white space devices and wireless microphones in all areas is fully authorized by law. The Commission has broad authority to manage spectrum in the public interest, which was not affected by the Spectrum Act. Our proposal is within that existing authority, and ensures that the public does not lose access to the significant benefits of wireless microphones and white space devices. Importantly, our vacant channel proposal addresses use of the TV band; it does not involve the spectrum reclaimed through the auction. Unlicensed use of the reclaimed spectrum will be limited to the guard bands, as permitted by the Spectrum Act. It is through this mix of frequencies that we appropriately seek, as I noted in my recent blog post, to “maximize the amount of spectrum made available for not only licensed use, but also unlicensed use.” I would note that this proposal remains open for comment, and I expect a robust record on both sides of the issue. The Commission will, of course, consider the record carefully before making a final decision.

Thank you for the opportunity to address these important issues. I share your goal of preserving a healthy LPTV and translator industry, and we are committed to policies to achieve that goal while also meeting the public’s growing demand for unlicensed spectrum. I believe the Commission’s course strikes the appropriate balance between providing the necessary flexibility for a successful auction and preserving spectrum for all services.

Sincerely,

Tom Wheeler

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8 Title III of the Communications Act of 1934, as amended, “endow[s] the Commission with expansive powers,” including “broad authority to manage spectrum . . . in the public interest.” 47 U.S.C. §§ 301, et seq.; Cellco P’ship v. FCC, 700 F.3d 534, 541, 542 (D.C. Cir. 2012) (internal quotes and citations omitted); Spectrum Act at § 6403(i)(1) (stating that nothing in section 6403(b) “shall be construed to . . . expand or contract the authority of the Commission, except as expressly provided”).

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U.S. House of Representatives  
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As an initial matter, the Commission last year announced that it will open a special filing window for operating LPTV and TV translator stations that are displaced by the repacking and reallocation of the television bands.\(^1\) We also modified our rules to allow stations with mutually exclusive displacement applications to reach a settlement or an engineering solution, rather than require competing stations to resolve all mutual exclusivity through an auction as the Communications Act generally requires.\(^2\) In cases where a settlement is not possible, in order to ensure the continued availability of full power television service, we afforded priority to displacement applications filed by digital replacement translators used to fill in the service areas of full power stations that could not otherwise be replicated when those stations transitioned from analog to digital facilities.

Additionally, to help accommodate some of the needs of LPTV and translator stations following the auction, the Commission adopted rules that will permit these stations to remain on their existing channels during the post-auction transition period until they are notified that a forward auction winner is within 120 days of commencing operations on the repurposed 600 MHz spectrum. For many LPTV and translator stations that are located in the new 600 MHz Band, this could mean continued operations for many years until wireless licensees commence operations.

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[Signature]
Tom Wheeler

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