In the Matter of )

Amendment of Parts 15, 73 and 74 of the ) MB Docket No. 15-146
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 )

COMMENTS OF VENTURE TECHNOLOGIES GROUP, LLC

I. INTRODUCTION

Venture Technologies Group, LLC (“VTG”) respectfully submits comments in the above captioned proceeding regarding preserving a vacant channel in the UHF television band for unlicensed uses and also in response to the proposal made by the Commission in the August 11, 2015 Public Notice to preserve an additional vacant channel in certain circumstances. VTG is the licensee of, and its principals have ownership interests in, numerous Class A and low power


television ("LPTV") stations. The licensed services provided by these stations must retain priority over the unlicensed services of white space devices and wireless microphones.

The Federal Communications Commission ("FCC" or "Commission"), proposes to "preserv[e] a vacant channel in every area for use by white space devices and wireless microphones," by requiring licensed broadcasters "make a demonstration that their proposed new, displacement, or modified facility will not eliminate the last available vacant UHF channel in an area for use by [unlicensed devices]." And, in those instances where the Commission repacks a full power or Class A station in the duplex band, it proposes to require licensed broadcasters to protect two vacant channels in the high-demand broadcast portion of the UHF band.

VTG objects to the Commission’s proposals as they elevate unlicensed services over licensed services. The Commission does not have this authority. The proposals set forth in the Vacant Channel NPRM and Procedures PN proceedings will severely inhibit the ability of LPTV and TV Translator stations to find new channels if they are displaced by the Incentive Auction and subsequent repack.

The bottom line is simple: the Commission’s must place the highest priority on licensed services, not sacrifice these services to preserve a vacant channel for unlicensed uses.

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3 Id. ¶ 10.
4 Id. ¶ 12.
5 Procedures PN ¶ 32.
II. VTG URGES THE COMMISSION NOT TO PRIORITIZE UNLICENSED SERVICES OVER LICENSED SERVICES BY REQUIRING LPTV STATIONS AND TV TRANSLATOR STATIONS TO MAKE THE VACANT CHANNEL SHOWING

The Commission made a decision in the context of the Incentive Auction not to extend discretionary protection to LPTV and TV translator stations.6 This decision was isolated to the Incentive Auction and did not eliminate all protection rights of LPTV and TV translator stations. LPTV and TV translator stations are still afforded secondary status as licensed services, and cannot be relegated to a lower position than unlicensed services.

The Commission, in the vacant channel proposal, departs from long established Commission policy that licensed services are to be prioritized above unlicensed services. The Commission itself recognizes its departure from precedent, acknowledging that “future use of the TV bands by primary and secondary broadcast users has priority over wireless microphones and white space devices.”7 The FCC, in first considering the place of unlicensed services, adopted a regime where primary and secondary licensed incumbent services are protected from unlicensed services.8 The proposal to require licensed LPTV and TV translator stations to now get in line behind unlicensed services to vie for the few remaining vacant channels available after the repack impermissibly alters that regime. The Commission is wrong that its proposal is only a “limited departure” from previous decisions.9 Rather, these proposals represent a completely new policy that compromises the viability of a class of licensed services. VTG strongly opposes

6 See Incentive Auction Order ¶ 237 (“Although we recognize the valuable services that many LPTV and TV translator stations provide, we decline to extend repacking protection to these stations.”).
7 Vacant Channel NPRM ¶ 19 (emphasis added).
8 See, e.g., Unlicensed Operation in the TV Broadcast Bands, 23 FCC Rcd. 16807 ¶ 48 (Nov. 14, 2008).
9 Vacant Channel NPRM ¶ 19.
the Commission’s change of policy and strongly encourages the Commission not to adopt its proposal requiring LPTV and TV translator stations to demonstrate that “their proposed new, displacement, or modification facility will not eliminate the last available vacant channel in an area.”

Should the Commission disregard all comments to the contrary and require such a showing by LPTV and TV translator stations, this showing cannot be required during the displacement window following the conclusion of the Incentive Auction. Requiring this showing for LPTV and TV translator stations during the displacement window will frustrate the Commission’s commitment to “facilitate the final conversion of LPTV and TV translator stations to digital service and . . . mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations.” Recognizing that “some viewers [will] los[e] the services of these stations,” the Commission launched the LPTV proceeding “to help preserve the important services [these stations] provide.” However, if the Commission fails to prioritize these important licensed services over unlicensed services, its actions in the LPTV proceeding are simply a farce. VTG urges the Commission to consider the interaction between these two proceedings, and to recognize that relegating LPTV and TV translator stations to a position below unlicensed services will necessarily increase—not mitigate—the impact of the incentive auction and repacking on these stations.

10 Vacant Channel NPRM ¶ 9.
11 LPTV NPRM ¶ 1.
12 Incentive Auction NPRM ¶ 237.
13 LPTV NPRM ¶ 1; See also Comments of VTG dated January 11, 2015.
III. VTG SUPPORTS THE COMMISSION’S PROPOSAL NOT TO REQUIRE THE VACANT CHANNEL SHOWING FOR CLASS A STATIONS.

VTG disputes the Commission’s authority to require a Class A station to protect one or more vacant channels in a market and make such a showing if displaced or seeking a facility modification. However, to the extent the Commission adopts such a requirement in complete disregard of the record, then VTG agrees that it should not, during the initial 39-Month Post-Auction Transition Period, impose the vacant channel showing requirement on Class A television stations for applications for modification, regardless of whether the station is reassigned a new channel during repacking.\(^\text{14}\)

The Commission’s tentative conclusion to shield Class A stations from the vacant channel showing during the 39-Month Post-Auction Transition Period must extend to all Class A stations. The Commission makes an unwarranted distinction between Class A stations that are granted discretionary protection during the Incentive Auction and repacking process and those that are not. Class A stations (whether previously out-of-core or not) are entitled to the certain rights and protections. In implementing the Community Broadcasters Protection Act of 1999 (“CBPA”), the FCC established the Class A service for a deserving group of LPTV stations to “have ‘primary’ status as television broadcasters.”\(^\text{15}\) As directed by the CBPA, “Class A licensees [should] be accorded primary status as television broadcasters as long as they continue meet the requirements set forth in the statute for a qualifying low-power station.”\(^\text{16}\) For auction-related reasons, the Commission opted not to extend discretionary protection to certain out-of-

\(^{14}\) Vacant Channel NPRM ¶¶ 20–21.

\(^{15}\) Establishment of a Class A Television Service, MM Docket No. 00-10, FCC 01-123 ¶ 1 (Apr. 5, 2001) (“Class A Order”)

\(^{16}\) Id. ¶ 6.
core Class A stations in the repacking process; however, this isolated decision cannot and should not affect these stations’ other rights and protections as Class A stations.

When seeking a displacement channel following the Incentive Auction, previously out-of-core Class A stations should not have to defend their primary status against unlicensed white space devices and wireless microphones. Instead, they should be able to file displacement and modification applications without having to make the vacant channel showing.

Similarly, VTG urges the Commission to prioritize displaced, but unprotected, Class A stations during the post auction filing window for displaced stations. Indeed, in the Incentive Auction Order, the Commission stated that it would “provide th[ese stations] with an advanced opportunity to locate a new channel. If a displaced Class A is competing with an LPTV station or a TV translator station for a new channel after the auction and repacking, the Class A station should take priority. This is the only logical hierarchy for such a situation, as the Commission, as instructed by the CBPA, gives primary status to Class A stations, and secondary status to LPTV stations and TV translator stations.

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17 Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, 29 FCC Rcd. 6567 ¶ 233 (May 15, 2014) (“Incentive Auction Order”) (“These stations are not entitled to mandatory preservation because their Class A facilities were not licensed or the subject of a pending Class A license application as of February 22, 2012. The fact that such a station may obtain a Class A license after that date does not alter this conclusion because section 6403(b)(2) mandates preservation of only the full power and Class A facilities that were actually in operation as of February 22, 2012.”)

18 Id. ¶ 234 (specifying that “if such station obtains a Class A license but is displaced in the repacking process, it may file a displacement application during one of the filing opportunities for alternate channels”)

19 Id.

20 See Class A Order ¶ 4.
IV. VTG ASKS THE COMMISSION TO CONSIDER THE TECHNICAL BURDEN THE VACANT CHANNEL SHOWING WILL IMPOSE ON LICENSED BROADCASTERS

Although VTG adamantly opposes the Commission’s proposal to require broadcasters to protect a vacant channel, to the extent the Commission adopts this requirement, VTG provides the following comments on the Commission’s technical proposals. The Commission proposes that—should it adopt a revision to its rules to allow unlicensed devices to operate on channels below 21—“preservation of the last remaining channel” would “apply to Channels 14 and above.” VTG supports this proposal and encourages the Commission to assign unlicensed services to the extent possible to those channels where broadcasters cannot operate, such as adjacent to Land Mobile channels.

The white space showing procedures proposed by the Commission sets broadcasters up for failure. The Commission proposes to not designate a set channel for unlicensed use, allowing broadcasters to select which channel they will protect. However, if each Class A, LPTV, or TV Translator station filing for a displacement or modification must make a showing that they have preserved the last remaining vacant channel (or two), and applicants propose to protect different channels, it will be a fluke if any broadcaster files an application that can be granted. The Commission’s solution is to designate these conflicting applications as mutually exclusive, a system that is guaranteed to mire these applications in a bureaucratic morass for years.

VTG strongly recommends that the Commission allow an applicant to demonstrate compliance using a smaller grid size than two kilometers. Using a smaller grid size produces

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21 Vacant Channel NPRM ¶34.
22 Id. ¶ 33.
23 Id. ¶ 44
24 Id. ¶ 48.
more accurate results. Given the high demand for this spectrum, it will greatly benefit broadcasters to have the flexibility to demonstrate compliance with the vacant channel showing using the most accurate results possible.

Finally, VTG urges the Commission to allow the same de minimus standards of interference from LPTV stations to other LPTV stations as a standard for interference from LPTV stations to white spaces, i.e., LPTV stations should be allowed to interfere with vacant channels to cells with a population of up to 2.0% within their protected contours.

V. CONCLUSION

VTG urges the Commission to protect licensed services first. To the extent the Commission strays from its obligation to protect licensees’ broadcasting rights from unlicensed uses, VTG strongly disagrees with the current proposals. We urge the Commission to reconsider its tentative conclusion regarding the vacant channel showing for LPTV and TV translator stations. And, we urge the Commission to refrain from imposing a vacant channel showing requirement on all Class A stations.

Respectfully submitted,

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September 30, 2015