Before the

Federal Communications Commission

Washington, DC

| In the Matter of |) | |
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| |) | |
| Expanding the Economic and |) | GN Docket No. 12-268 |
| Innovation Opportunities of Spectrun |) | |
| Through Incentive Auctions |) | |

REPLY COMMENTS OF THE NATIONAL TRANSLATOR ASSOCIATION

The National Translator Association (NTA) here presents brief reply comments. We note, in summary, that the public comments are generally supportive of our own key contentions in comments: (a) That Middle Class Tax Relief and Job Creation Act does not sanction Commission disregard of TV translators and Low Power Television (LPTV) stations; (b) That translators should not be subject to an arbitrary service cutoff but, instead, should be able to continue to operate on their original channels until new, incompatible services are actually constructed and ready for operation; (c) That more generally, the Commission has failed to justify a planning goal to recover the "maximum" possible spectrum for auctioning, instead of carefully establishing the minimum necessary, combined with other spectrum re-allotments, to meet demonstrated needs.

A. Preservation of service to existing areas and populations served.

The "Middle Class Tax Relief and Job Creation Act at Sec 6403(b)(2) requires that the FCC "preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast station licensee...." The Comments of Association of Pubic Television Stations, Corporation for Public Broadcasting and Public Broadcasting Service (Public TV Parties) provide direct support for the idea that translator coverage must be taken into consideration under this mandate. At pp. 10-11, these parties provide concrete examples of five primary station services, each of which relies on dozens of TV translators as part of their coverage.

Nor in every instance are these translators merely filling in a "protected contour." A viewer at a location outside the protected contour that enjoys a usable signal has a right to continue to have a usable signal. The coverage area and population is properly taken to be the actual area and population that has the noise-limited signal strength or better, not the artificially defined protected contour. NTA believes, and elsewhere this record supports, the idea that coverage requirements should be interpreted broadly. As we said initially, coverage area and population served by a station through a translator is just as much a part of the coverage and population as what is provided by the direct primary signal. A correct reading of the statute would hold that it requires that all primary TV service provided by existing TV translators, as of the date of the law, be preserved.

The Comments of ABC Television Affiliates Association and of affiliates to three other national networks ("Affiliates"), at pp. 38 – 41, focus specifically on the role of

"replacement digital television translators (RDT)." They note that this category was created for the specific purpose of assuring against losses of service within a Station's protected contour as the result of the DTV transition. The extinguishment of any of these stations cannot be reconciled with the statutory goals of preserving area and population served.

To this we would add, many ordinary category TV translators were installed before the RDT category was established¹. These translators, regardless of category, are an integral part of the primary station's coverage and they too must be preserved if the replication requirement is met.

B. No premature termination of service by an arbitrary deadline.

Affiliates note (p. 13, fn. 28) the long-standing policy disfavoring the practice of allowing spectrum to lie fallow for indefinite periods. They urge the Commission to "wait to displace translators until a winning forward auction bidder is in a position to build out and make use of the spectrum that is reallocated through the incentive auction process." (Id., p. 14) NTA's experience confirms the Affiliates' observation (Id., p. 13) that, when the Commission in July, 2011, directed all translators to cease operations on Channels 52-69, the result was to clear many frequencies that lie fallow to this day, while important translator services were impaired or lost. It is striking that, in the present

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Examples of translators filling in coverage deficiencies are K24HQ-D licensed to KRMA and K48MN-D licensed to KBDI, both servicing the City of Boulder on the edge of Denver but terrain shielded from the primary stations.

comments by nation-wide Title II providers and other prospective bidders, there is an almost complete silence on the point of band clearing by a fixed deadline. This may reflect a tactical, if cynical, judgment that such demands can wait until after the auction purchaser has forwarded its payment by wire transfer. But NTA likes to believe, also, that such lack of demand for a deadline reflects the hard lessons of the last band clearing which had not been justified, and which now may be seen to have imposed unnecessary costs on TV translator licensees and the public they serve.

C. Planning before leaping into wholesale spectrum re-allotment.

The Commission must keep in mind that Congress, while authorizing the forward and backward auctions, did not require either, and delegated a broad discretion to the Federal Communications Commission. A few commenting parties have questioned whether the reallocation is truly necessary at all (Comments of Advanced Television Broadcast Alliance). NTA does not doubt the need for additional spectrum to further the development of advanced telecommunications services. But our comments did question the seemingly arbitrary goal of removing 120 MHz from television broadcasting. The record has not presented compelling, adequate, or even basic reasons to think this is exactly the right balance.

NTA notes the passionate appeal of School Board of Miami-Dade County, Florida (Comments), contending that the case simply has not been made for a serious degradation of television broadcasting. We do not entirely agree with that party's comments (pp. 9-11) to the extent that they view the DTV transition and the current repacking plan as

double burdens on licensees and the public. NTA supported the DTV transition, was actively involved in educating and assisting our membership in bringing it about, and strongly believes that the benefits of DTV are only beginning to be fully realized. We do agree that, at this early stage of DTV, it is premature at best to claim that exciting uses for TV broadcast purposes are "inefficient." New and better uses are quickly evolving.

Miami-Dade does eloquently set forth the scale of public and private investment in television broadcasting since 1952. Public TV Parties' Comments also do a good job in documenting these investments. What appears to be lacking, and as this record comes to a close still appears absent, would be a proper appraisal of the trade-offs in what is being lost, against a merely assumed and as yet unproved gain from placing TV spectrum in the hands of a small number of bidders – ones who historically have flourished in protected markets, not competitive ones. We agree strongly with Miami-Dade and others that until a fair and adequate needs assessment is completed, the gold rush can wait a while.

D. Procedural issue.

The Commission should formulate actual proposed rules and put them out for comment in a new Notice of Proposed Rulemaking. NTA believes that the process being used by the Commission to implement Congress's mandate in the Spectrum Act (Public L. No. 112-90 Section 6402, 6403, 125 Stat.156) violates both the spirit and the letter of the Administrative Procedures Act (5 USC 551 et seq. (1946)("APA"). In adopting the APA, Congress envisioned that agencies would adopt proposed rules and then put those

rules out for public comment. Comments could be tailored to specific rules and specific language. Words matter in rulemakings. Although the APA allows the Commission to issue a Notice of Proposed Rulemaking without rules proposed, it requires the Commission to delineate the rules(s) under consideration with sufficient specificity to allow fair comment. When an agency is looking for ideas to implement rules without specific rules proposed, it should issue a Notice of Inquiry setting forth its ideas and see what the public thinks. Then, after it has received the public's ideas, the agency can formulate specific rules and put them out for public comment in a Notice of Proposed Rulemaking.

The process proposed by the Commission seems to be deliberately designed to limit public comment because no rules at all were delineated. Various proposals were discussed in the NPRM, but it is clear from the number and wildly disparate content of comments received that the parties were not afforded the opportunity to focus on any specific proposal. More than 380 parties submitted wide-ranging suggestions, comments, and ideas. For instance, the specific mechanism for deciding how much spectrum to take in a given market and how to choose between competing options for reducing the use of spectrum is of critical importance to translator stations. It is not sufficient to say that the Commission proposes to adopt a mechanism at some future date.

Translator stations are characterized as providing a secondary service. The commission has focused too much on "secondary" and not enough on "service."

Translators constitute an integral part of the broadcast television delivery system. In fact,

Congress just spent over 20 million dollars to help translator stations and low power

television stations convert to the digital format. However the Commission proposes to

implement the Spectrum Act, it should include protections for translators sufficient to

ensure that if a choice of actions is available, the action that causes the least harm to

translators is adopted.

Respectfully submitted,

NATIONAL TRANSLATOR ASSOCIATION

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