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See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FCC PROPOSES INITIAL STEPS TO OPEN TV SPECTRUM TO NEW WIRELESS BROADBAND SERVICES

Washington, D.C. -- The Federal Communications Commission today took important steps to meet the nation's demand for innovative wireless broadband services and preserve the benefits that free over-the-air TV provides for consumers.

In adopting proposals to make more efficient use of the nation's airwaves, the FCC set the stage for voluntary broadcast spectrum auctions that could provide consumers with the robust mobile broadband services they demand while preserving over-the-air TV that many rely upon. The resulting efficient use of airwaves will help ensure that America leads the global wireless revolution and enjoys the resulting jobs and economic growth.

Specifically, a Notice of Proposed Rulemaking adopted by the FCC today proposes that wireless broadband providers have equal access to television broadcast frequencies that could become available in spectrum auctions. The Notice seeks comment on establishing new allocations for both fixed and mobile wireless services in the TV broadcast bands.

The Notice also explores enabling TV stations to voluntarily combine their operations and distinct programming lineups on a single TV channel. The Notice requests comment on the proposed rules that would enable TV broadcasters to opt to share channels by further tapping the technical capabilities that became available following the nation's historic transition to digital television in 2009.

Finally, the Notice of Proposed Rulemaking seeks comment on steps that would improve TV reception on the VHF channels (2-13), such as by increasing transmitting power and establishing minimum performance standards for indoor antennas. These improvements could provide better VHF reception for consumers and encourage broadcasters to use valuable VHF channels in the future.

The proposals in today's rulemaking will pave the way for future actions that will propose service, licensing and auction rules for new broadband service operators to utilize voluntarily vacated TV spectrum.

Action by the Commission November 30, 2010, by Notice of Proposed Rule Making (FCC 10-196). Chairman Genachowski, Commissioners Copps, McDowell, Clyburn, and Baker. Separate statements issued by Chairman Genachowski, Commissioners Copps, McDowell, Clyburn, and Baker.

ET Docket No. 10-235.

For further information, contact Alan Stillwell (202-418-2470; Alan.Stillwell@fcc.gov).

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking.

This item is the first of three the Commission is considering today that will help meet our nation's need for cutting-edge wireless services and technologies for the 21st Century – helping spur our economy and create jobs. One way to think of spectrum is as “invisible infrastructure.” Though you can't see it, spectrum is the backbone of our mobile communications infrastructure – and so is essential to one of the most robust and promising sectors of our economy.

We are at an inflection point with our invisible infrastructure. The explosive growth in mobile communications threatens to outpace the infrastructure on which it relies. I've said this before, but it bears repeating and emphasis: If we don't act to update our spectrum policies for the 21st century, we're going to run into a wall – a spectrum crunch – that will stifle American innovation and economic growth and cost us the opportunity to lead the world in mobile communications.

The spectrum crunch threatens to create millions of dissatisfied consumers, who – if we don't tackle this challenge – will be forced to choose between poor service and higher prices.

As we outlined in the National Broadband Plan and more recently at the FCC's Spectrum Summit, we have a two-pronged plan for bridging the gap between spectrum supply and demand. First, we'll pursue policies to drive the most efficient and flexible use of spectrum. Second, we'll seek to bring market forces to bands of spectrum where markets currently aren't given the opportunity to work.

This item advances both goals. It starts what I hope will become a landmark rulemaking to bring efficiency to the use of our TV broadcast spectrum, and lays essential groundwork for market-based policies in the form of voluntary incentive auctions, which I strongly hope Congress authorizes in the near future.

The roughly 300 MHz of spectrum in the TV bands is among the most robust available. Beachfront property. The transition to digital made it possible to transmit over-the-air broadcast programming using less spectrum than before. While some stations are seizing the opportunity to offer multicast streams or mobile TV that serve the public interest, others are not.

We might think of the steady stream of broadcast DTV transmissions as trains with a fixed number of boxcars delivering digital content – but many of the boxcars are empty. This spectrum is too valuable – and our spectrum needs too great – for it to be used inefficiently. Especially given that less than 10% of Americans receive broadcast television only through over-the-air spectrum signals.

Yet our rules currently don't permit certain types of efficient use, such as channel sharing. To stick with the metaphor, channel sharing would allow two or more TV stations to fill the boxcars on a train of spectrum. Today's rulemaking proposes rules for voluntary channel sharing, increased flexibility of allocations, and seeks comment on improving VHF reception. In so doing we lay important groundwork for incentive auctions in the broadcast TV band. Our goal is to be ready to move quickly in the event that Congress authorizes incentive auctions.

I believe that moving forward with incentive auctions is vital to our economy and to American consumers. By bringing market forces to broadcast spectrum, it would free up airwaves for mobile

broadband, drive private investment, enhance our global competitiveness, and lead to improved service to consumers. It would also yield significant revenue for the Treasury.

It is fair to broadcasters, providing additional optionality, while recognizing broadcasters' important ongoing obligation to serve the public interest and the needs of viewers who continue to rely only on over-the-air broadcasting.

The action we take today is our first formal step to set the stage for incentive auctions. It's perhaps reminiscent of an action taken more than 20 years ago at the Commission, when the FCC started a process to provide for digital television. While it wasn't headline news at the time, it ultimately led to the emergence of a new generation of TV technology and freed more than 100 megahertz of spectrum that is about to usher in Fourth Generation or 4G wireless services and technologies and new broadband services for public safety.

We know it will not be easy to free up spectrum for mobile broadband from the existing broadcast TV band. Neither was the process that led to the DTV transition and the resulting freeing of spectrum. Yet it is at least as necessary as the process that began more than 20 years ago. And, because of how fast our global competitors are moving, it's essential that we move rapidly. We don't have anywhere close to 20 years.

We can't afford to fall behind, and that is why today, we take this important step to begin the process of freeing up a significant amount of broadcast TV spectrum for mobile broadband.

I thank the staff of the Office of Engineering and Technology, the Wireless Bureau, and the Media Bureau, and the Office of the General Counsel for their hard work on this item. This item is a great example of how we can achieve a great product through close collaboration among Bureaus and Offices.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking.

I approach today's Notice with cautious optimism as we begin to contemplate spectrum innovation and how to make the best use of the spectrum we have. I agree that we need to act in a forward-looking manner to realize the tremendous promise of wireless broadband. There are a number of ways to help accomplish this, but we are going to be called upon to think really creatively—and outside the proverbial box—in order to make it a success. I think of this item as contingency planning for the better allocation of spectrum, and that applies to the concept of channel sharing. We don't yet know whether legislative action or economic conditions will allow for implementation of the full range of spectrum recommendations put forth in the National Broadband Plan, but we do know that we need to be smarter about spectrum utilization and that we need to maximize spectrum performance so that it may better serve the many communications needs of the American people.

I am, of course, mightily interested in the future of broadcasting. At the outset, I commend the Notice's recognition of the public value that free-to-all, over-the-air television can bring to American citizens. Many broadcasters have worked hard to turn this value into reality. I believe in the power of broadcasting and the potential for broadcasters to not only survive, but to thrive, if they will but recognize their strengths and the advantages that localism and the public-spirited administration of the airwaves bring to them. It's an advantage that not all—in fact, not nearly enough—broadcasters have pursued. It is no secret that I have been disappointed that so much of the spectrum dividend that accrued to broadcasters as a result of the DTV transition goes dramatically under-utilized. I am not interested in pushing broadcasters somewhere else or in discouraging their enhanced public interest stewardship of the airwaves. But public interest multi-casting remains, all too often, a concept—not a reality. I speak only for myself in saying that had this spectrum been put to such positive use, I would have little interest in contemplating other uses of it. But here we are, trying to divine how scarce and sometimes under-utilized spectrum can best serve consumers and citizens. Between now and such time as channel sharing and incentive auctions and all the rest come our way, maybe more broadcasters will come to see the wisdom of harvesting greater public benefits from the spectrum they are licensed to use.

One of the greatest challenges facing us, as we work to identify spectrum for wireless broadband and other uses, is to make sure that we have a comprehensive understanding of the current spectrum landscape. Surely our future success will depend not only on an understanding of our current spectrum allocations and assignments, but also on its actual use. That's why I am so glad that we continue to make progress on our Spectrum Dashboard—which will require ongoing commitment and resources to achieve its full potential. I know from my experience during the Digital TV transition that major changes in spectrum use can raise many issues, some unforeseen, and require concerted outreach to, and work with, consumers and industry. Consumers generally don't concern themselves much about the arcane details of spectrum allocation, nor should they have to, but they do rightly care that when they turn on a TV or make a call on a smart-phone, it works. And so we must begin a balancing act, weighing the needs and requirements of today and tomorrow.

I am pleased that we ask some difficult questions in this Notice. We need to understand the regulatory framework under which channel sharing would be allowed, the technical implications for broadcasters and viewers, and how any changes would affect over-the-air broadcasting. We also examine ways to improve TV reception in the VHF spectrum. This latter won't be easy, believe me—we looked everywhere we could during the DTV transition, and real remedies were few and far between. Let's hope the months ahead lead us to some genuine innovation.

We do seem to have a consensus that some considerable new amount of spectrum will be required in the wireless world. Without additional spectrum, wireless consumers could face degraded service and/or higher prices. This concerns me. But it also concerns me that—without other safeguards— auctioning off massive amounts of spectrum to incumbent wireless providers may not necessarily result in more consumer-friendly pricing and service. Additional spectrum is, to be sure, an important part of the wireless solution. The whole solution it isn't. I suppose that's the difference between physical spectrum and spectrum policy.

So, this is a good and necessary item. We are teeing up questions that need to be answered, and if there are questions we don't ask, I hope commenters will answer them anyhow. We'll all pay attention! Thank you to Julie Knapp and the team at the Office of Engineering and Technology for the thorough job they did on a very complicated item. Their work continues to amaze me.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking

I strongly support efforts to encourage more efficient use of all spectrum including broadcast spectrum. So if certain broadcasters are under-utilizing the spectrum we have licensed to them, and for those who are willing to do so on a voluntary basis, I am supportive of any recovery mechanism that would best benefit the public interest. Additionally, I endorse actions that give all of our licensees more flexibility, which will allow for more innovation and competition that will ultimately benefit consumers.

We also have, however, a significant obligation to protect the important public benefits that over-the-air broadcast TV provides for our Nation. As we progress through this, and other proceedings related to the National Broadband Plan's recommendation for reallocating 120 MHz of broadcast spectrum for broadband services, we should carefully study the possible impact that removing broadcast spectrum could have on *all* consumers in local communities.

But I cannot stress enough that we must pay careful attention to those who are most vulnerable to the loss of broadcast television. We learned during the DTV transition that a large number of Americans, such as seniors and the very poor continue to rely on broadcast TV to stay informed. Those communities that heavily depend on broadcast programming should not have to sacrifice those benefits in order for our Nation to attain wireless broadband services. I encourage our staff to work closely with broadcasters and consumer advocates, so that we arrive at a long-term solution that properly balances both of these important interests.

**STATEMENT OF
COMMISSIONER MEREDITH ATTWELL BAKER**

Re: Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, Notice of Proposed Rulemaking.

This proceeding is the beginning of a process to evaluate the best means to modernize our spectrum rules for the TV bands. This should be a collaborative process, and we should not begin with preconceived end states or assumptions about particular future uses. Over-the-air broadcasters, mobile broadband providers, and other innovators need the opportunity to help craft rules that will serve the public interest and provide for a robust future for broadcasting and broadband. I believe strongly that we cannot lock in today's technology or business plan for any spectrum user whether it be broadcast or broadband. Central to that principle, we should always aim to provide a future path for innovation and investment, and I am hopeful we can achieve that proper balance in this proceeding. A path focused on future opportunity necessarily requires all stakeholders to demonstrate a willingness to question the status quo and work cooperatively.

We should start every discussion of the TV bands with the recognition that it has only been a year and five months since the full power broadcasters completed their transition to digital. Any successful transition of an additional portion of the TV bands to mobile broadband use should be a consensus-driven process. To facilitate it, we should encourage new technology and innovation in—and more broadly new thinking about—how broadcasters and broadband providers can co-exist.

This Notice takes a number of steps to optimize spectrum usage in the TV bands and provide broadcasters with greater flexibility in how spectrum is used, a hallmark of our modern spectrum policy across bands. To that end, I support the Commission's efforts to add allocations for fixed and mobile services in the UHF and VHF bands. Our overall flexible approach is also evident in the fact that the item does not specify a future band plan for recovered spectrum. I also support proposals to improve operating conditions in the VHF band. As we all know, there were real consequences for reception of VHF signals as a result of the DTV transition.

I accept that this item represents an initial step in updating our TV band rules. Significant and fundamental issues are deferred. In the future, there needs to be a fulsome discussion on additional innovative proposals to address sharing of broadband and broadcast in the TV bands, including the possibility of a broadcast transition from MPEG-2 to MPEG-4, the adoption of a more cellularized broadcast system, or a transition from ATSC to OFDM technologies. These are by no means the only potential approaches and may have their own weaknesses and strengths. And in all fairness, we also should ask additional questions about the future applicability of public interest obligations on broadcast licensees. If the TV bands are to shift towards a more flexible spectrum model, it is only right to ask whether those use restrictions should also be revisited.

We should also acknowledge we need to partner with—and have a good working relationship with—Congress to give us the tools potentially necessary to effectuate our policy decisions. In particular, I am hopeful Congress will soon provide the Commission with authority to conduct incentive auctions as well as other tools to manage spectrum more effectively. These tools can help the Commission offer win-win situations to incumbent and new users of spectrum. Importantly, these are not tools—nor an approach—that should be limited to the TV bands. Indeed, it is critical that we stress that this proceeding is part of a much broader overarching cross-government spectrum reform effort to ensure our nation's long-term competitiveness and a bright future for spectrum-hungry mobile broadband services.

As we fully consider the future of the TV bands, we should also work to avoid the mistakes of the past where the practical impact of allocations in one band had a ripple effect across other users or inhibited future efforts. In the TV bands, the challenges caused by wireless microphones are the most widely discussed, but the issues surrounding TV channel 51 warrant greater focus. Channel 51 is adjacent to the lower A block in 700 MHz. The presence of high-power broadcast operations in many communities may foreclose the opportunity to build out a broadband offering in 700 MHz. I appreciate that we seek comment on how best to avoid such situations, particularly as it relates to channel 37 and the uppermost channel dedicated to over-the-air broadcasting. If we view the TV bands and our spectrum policy more comprehensively, we can avoid some of these pitfalls going forward. We also cannot ignore the unintended consequences of our prior actions; we need to address existing impediments to investment like the channel 51 issue in an equitable and expedited manner.

I look forward to addressing all of these challenges with my fellow Commissioners. Many thanks to all the Staff who worked on this item.