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Received & Inspected

AUG 14 2015

FCC Mail Room

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Spectrum
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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.¹ 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.² 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."³ 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"⁴ during the repacking process. While we have all agreed that LPTV and translators are not explicitly protected under the Act, Congress has repeatedly urged

¹ Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) at ¶ 1. See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Notice of Proposed Rulemaking, 27 FCC Rcd 12637 (2012) at ¶ 358, et seq.

² See Amendment of Parts 15, 73 and 74 of the 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, Notice of Proposed Rulemaking, 30 FCC Rcd 6711 (2015).

³ Tom Wheeler, "Seizing the Opportunities of Unlicensed Spectrum and Wireless Microphones," FCC Blog (Jul. 16, 2015) at <https://www.fcc.gov/blog/seizing-opportunities-unlicensed-spectrum-and-wireless-microphones>.

⁴ Middle Class Tax Relief and Job Creation Act of 2012 § 6403(b)(2), Pub. L. 112-96, 126 Stat. 156 (enacted Feb. 22, 2012) ("MCTR").

the Commission to ensure that LPTV and translators are preserved to the extent possible.⁵ 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.

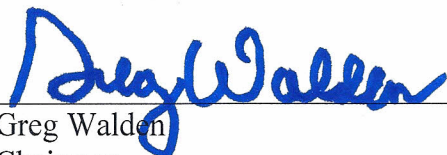
Section 6402 of the MCTR (codified at 47 U.S.C. 309(j)(8)(G)), from which the FCC derives the underlying authority for the broadcast incentive auction, authorizes the Commission to "encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order *to permit the assignment of new initial licenses* subject to flexible-use service rules[.]"⁶ 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 programming.

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,

A handwritten signature in blue ink that reads "Greg Walden". The signature is written in a cursive style with a large, prominent "G".

Greg Walden
Chairman
Subcommittee on Communications
and Technology

A handwritten signature in blue ink that reads "Joe Barton". The signature is written in a cursive style with a large, prominent "J".

Joe Barton
Chairman Emeritus
House Committee on Energy and
Commerce