

**DISSENTING STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *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*, MB Docket No. 15-146; *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268.

Congress, on a bipartisan basis, tasked the Commission in the Spectrum Act of 2012 with using a market-based mechanism to reallocate spectrum from broadcast television to mobile broadband. Unfortunately, the Commission, on a partisan basis, is using the incentive auction proceeding to dole out regulatory presents to favored companies and industries while leaving others worse off. Because today's *Notice of Proposed Rulemaking* is yet another step down this misguided path, I respectfully dissent.

Today, full-power television stations, Class A stations, LPTV stations, TV translators, Broadcast Auxiliary Service facilities, low power auxiliary stations, wireless microphone users, and unlicensed white space devices all share the portion of UHF band allocated for broadcast television. Following a successful incentive auction, the size of this band will shrink, and there will not be enough room for all of those currently utilizing the UHF band to continue using it. And so the Commission will have to make some tough choices.

But one of these choices shouldn't be difficult. When it comes to the repacked UHF broadcast television band, full-power television stations should receive top priority. Up until this *Notice*, I wouldn't have thought that this proposition would have been controversial. After all, the band will be primarily allocated for broadcast television. But today's *Notice* suggests a switcheroo, giving unlicensed white space devices priority over full-power television stations in some circumstances. Specifically, the item asks whether full-power television stations should be precluded from modifying their facilities in order to better serve their viewers if doing so would eliminate the last vacant channel in the band. Similarly, the item asks whether full-power television stations should have to defer to unlicensed white-space devices if a television allotment proceeding would fill the last vacant channel.

To me, the answer to these questions is obvious. Of course, the primary users of the band (full-power television stations) should be prioritized over secondary users of the band (unlicensed white space devices). But when Commissioner O'Rielly and I proposed adding tentative conclusions along these lines, our edits were rejected, which is an ominous sign in a *Notice* otherwise filled with tentative conclusions.

Speaking of those other tentative conclusions, I cannot support the Commission's proposal to prioritize the spectrum needs of unlicensed white space devices over those of translators and LPTV stations. Since the beginning of this proceeding, I have emphasized the need to take action where we can to preserve the vital services provided by these low power television stations. After the incentive auction, there will not be enough spectrum available to keep all translators and LPTV stations on the air. That is a fact. But here is another fact: The *Notice's* proposals will force more translators and LPTV stations off the air. Translators and LPTV stations that could have been placed in the last vacant channel in a market will have to make way for unlicensed white space devices.

Notwithstanding the underwhelming impact of unlicensed white-space devices in the market to date, my objection to the Commission's proposal is not rooted in a belief that the services provided by translators and LPTV stations are more important than those provided by unlicensed devices. Rather, it is based on the simple reality that translators and low-power television stations won't have anywhere else to go after the incentive auction. If they are not allowed to continue operating in the UHF band, they will go

out of business. On the other hand, there are other spectrum bands where unlicensed devices can operate, and I hope that soon there will be even more. For example, since October 2012, I have been calling for the FCC to take action to make 195 MHz of new spectrum available for unlicensed use in the 5 GHz band, an amount that dwarfs the 6 MHz of spectrum that is being fought over here.

Finally, a word about process. When I offered four proposed edits to this item, I did not expect that all four would be accepted. But I did have hope that some of my proposals, especially those involving the treatment of full-power television stations, would make their way into the item. Unfortunately, all four of my suggestions were dismissed out of hand. To be sure, I can't say that I was completely surprised. It is indicative of the partisan manner in which the incentive auction proceeding has been run. But it remains unfortunate. I continue to believe that the Commission's work product is better when all Commissioners, Democrats and Republicans, are allowed to contribute. And while the evidence to date does not provide much cause for optimism, I will continue to offer constructive suggestions in the hope we can structure the incentive auction in the same bipartisan spirit that animated Congress in 2012.