

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Innovation in the Broadcast Television Bands:) ET Docket No. 10-235
Allocations, Channel Sharing and)
Improvements to VHF)

REPLY COMMENTS

Media Alliance, National Organization for Women Foundation, Benton Foundation, the National Hispanic Media Coalition, and Campaign Legal Center (collectively, “*Media Alliance et al.*”), by their attorneys, the Institute for Public Representation, respectfully submit this reply comment to comments filed in the Federal Communications Commission’s (“FCC” or “Commission”) notice of proposed rulemaking in *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF* (the “Notice”).¹ *Media Alliance et al.*’s reply emphasizes the need for the Commission to collect data to assess the impact of broadcast service loss. Additionally, the FCC should consider the impact channel sharing will have on its ownership rules and not foreclose opportunities for ownership by new entrants, including minorities and women.

I. The Commission Should Collect Additional Information to Eliminate Uncertainty Regarding Whether Repurposing Broadcast Spectrum Would Harm the Public.

The FCC’s proposals to repurpose television spectrum are premised on the supposition that broadcasters are not efficiently using their designated spectrum. Commenters are deeply divided on this question. Commenters who support repurposing broadcast spectrum for

¹ *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, 25 FCC Rcd 16498 (2010) (“Notice”).

broadband all seem to agree that broadcasters are not using spectrum efficiently.² The Consumer Electronics Association heavily relies on a report from the National Telecommunications and Information Administration that exposed spectrum inefficiencies by both non-Federal sector licensees and government users.³

However, comments filed by multiple broadcasters disagree with the FCC and wireless industry's characterization that broadcasters are underutilizing their spectrum by not multicasting or offering mobile DTV.⁴ Broadcasters are adamant that they are using their spectrum and providing an important service to their local communities⁵ as many claim they are serving the public interest by providing a unique public service, local news, for free that virtually exhausts all their available spectrum.⁶ This incongruence of opinions, supported by little evidence on

² See CEA Comments at 6; *see also* CTIA Comments at 7 (“While the FCC’s proposals contemplate the continued availability of over-the-air broadcast television, it remains true that the benefits of over-the-air broadcast services can be enjoyed by virtually every American citizen without the use of over-the-air broadcast spectrum.”)(emphasis in original).

³ CEA Comments at 6 (citing Nat’l Telecomm. & Info. Admin., *Plan and Timetable to Make Available 500 Megahertz of Spectrum for Wireless Broadband* (October 2010)).

⁴ See Comments of Pearl Mobile DTV Co., ET Dkt. No. 10-235, filed Mar. 18, 2011, at 6 (“Pearl Comments”); *see also* Comments of Open Mobile Video Coalition., ET Dkt. No. 10-235, filed Mar. 18, 2011, at 3 (“Open Mobile Comments”) (“Broadcasters have used their scarce 19.4 Mbps digital bitstream efficiently to provide, for example, high-definition programming, numerous multicast channels, and Mobile DTV service.”).

⁵ Compare Comments of CTIA – The Wireless Association, ET Dkt. No. 10-235, filed Mar. 18, 2011 (“CTIA Comments”) (favoring repurposing broadcast spectrum) *and* Comments of the Consumer Elecs. Ass’n, ET Dkt. No. 10-235, filed Mar. 18, 2011 (“CEA Comments”) (same) *with* Comments of Nat’l Ass’n of Broads., et al., ET Dkt. No. 10-235, filed Mar. 18, 2011, at 12 (“NAB Comments”) (opposing repurposing broadcast spectrum if involuntary).

⁶ See NAB Comments at 3 (“99% of the public relies on local television stations for diverse programming services, including local and national news, public affairs, sports, entertainment, foreign language and ethnic-oriented, children’s, special events, weather and vital emergency information and alerts”); “As an initial matter, any valuation of broadcasting must recognize that the public relies on television stations for local journalism and other locally-oriented services to an increasing degree as local newspapers cease operations or cut back on their services in order to survive.”. *Id.* at 12. *See also* Comments of Local Television Broads., ET Dkt. No. 10-235, filed Mar. 18, 2011, at 14 (“By providing local news and advertising, television stations drive both local political discourse and local businesses.”); Comments of Univision Commc’n Inc., ET Dkt. No. 10-235, filed Mar. 18, 2011, at 1, 3 (“A large portion of [the Hispanic] community relies upon over the air, digital broadcast services like those provided by Univision stations as their principal source of local and national news, entertainment and sports programming . . . [T]he most rapidly growing segment of the U.S. population relies heavily on over the air television.”);

either side, underscores the need for the Commission to collect and analyze data on how broadcasters are serving their communities.

These conflicting opinions require that the FCC resolve whether or not the public's airwaves are being used efficiently. The Commission's already approved, but yet to implement, Form 355. This form is intended to replace television stations' quarterly issues/programs list and requires stations to periodically submit the type and number of hours of programming it broadcasts on its primary and secondary streams.⁷ Armed with this information, the Commission will be able to determine whether or not broadcasters are using their digital channels and if they are airing programming responsive to the public. If broadcasters are not using their spectrum, then the FCC should continue recovering spectrum for more efficient services. However, if television broadcasters are using their spectrum and serving the public, then a diminution of spectrum could threaten the viability of these services. Before the Commission moves forward with its proposals, which could negatively affect the viability of broadcast public services, it should substantiate these differing claims of spectrum efficiency by implementing Form 355.

II. The Commission Should Consider the Impact of Channel Sharing on its Ownership Rules and Clarify Boundaries of Sharing Arrangements.

Channel sharing should not create an easy path to circumvent the FCC's ownership rules, which are intended to promote diversity, localism, and competition. Channel sharing would

Comments of ION Media Networks Inc., ET Dkt. No. 10-235, filed Mar. 18, 2011, at 3 ("ION Television serves U.S. households nationally with high-quality entertainment programming, including popular series, theatrical and made-for-television movies, and specials - all aired in high definition.").

⁷ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report*, Report and Order, 23 FCC Rcd 1274, 1287, 1300 (2007) (Form 355 was designed "to provide the public [and FCC] with easily accessible information in a standardized format on each television station's efforts to serve its community") (petitions for reconsideration pending and *appeal pending sub nom.*, Nat'l Ass'n of Broads. v. FCC, No. 08-1135 (D.C. Cir. filed March 27, 2008)).

require joint decision-making between broadcasters. Indeed, CEA has characterized “channel sharing as a natural extension of prior sharing by broadcasters in areas such as news gathering, traffic sources, and others.”⁸ This is the precise problem *Media Alliance et al.* mentioned in its comments: many stations in smaller markets are already involved in sharing arrangements.⁹ Thus channel sharing would further encourage collaboration between former competitors. If the Commission does allow channel sharing, it must clarify its policies in regard to de facto control and attribution, so that the television ownership rules are not eviscerated.

Some commenters suggest that because of the intricacies of channel sharing arrangements, the Commission should not set limits on sharing agreements and should permit “stations” to negotiate privately without government involvement.¹⁰ For example, NAB is concerned about the “complexities surrounding alienability of licenses once stations have entered into a channel-sharing arrangement.”¹¹ Nevertheless, a hands-off approach will not solve the problem. For instance, in the event that channel sharing partners disagree on their private arrangement, would the Commission step in to resolve the dispute over this spectrum? If one party left the business because of the dispute, would the remaining party get to buyout the station and use the entire six megahertz channel allotment? Would a new entrant be allowed to take the

⁸ CEA Comments at 13; *see* Comments of Office of Comm’n of the United Church of Christ, Inc., Media Alliance, Nat’l Org. for Women Found., Benton Found., and Campaign Legal Ctr., ET Dkt. No. 10-235, filed Mar. 18, 2011, at 7-8 (“*UCC et al.* Comments,” reply comments *sub nom.*, “*Media Alliance et al.*”).

⁹ UCC et al. Comments at 7.

¹⁰ *See* NAB Comments at 17-19; Pearl Comments at 10. As a threshold matter, the FCC should define what “channel” and “station” mean under new channel sharing arrangements. Ownership rules place limits on the number of “stations” a single entity may own. *See* 47 C.F.R. § 73.3555(b) (2010). For instance, will a “station” now be a 6 MHz block or a stream? If a “station” will be a piece of the 6 MHz block, would existing broadcasters who choose not to channel share now own two “stations”? The FCC should clarify these questions to harmonize channel sharing with the ownership rules.

¹¹ NAB Comments at 18.

place of an absent licensee and then be permitted to channel share?¹² The FCC must clarify these and many other questions now and not leave the public's spectrum at the mercy of broadcasters' private negotiations. Since spectrum ultimately belongs to the public and not the broadcasters, the Commission has a responsibility to ensure stations do not create arrangements that undermine the FCC's ability to serve the public interest.

III. The Commission Should Not Foreclose Opportunities for Minorities, Women, and New Entrants in Future Auctions of Repurposed Broadcast Spectrum.

Media Alliance et al. agree with other commenters that the FCC's current auction scheme forecloses opportunities for minorities and women by effectively limiting meaningful participation in future auctions to only a few incumbent providers.¹³ Capital Broadcasting Company stresses that since "[Verizon, AT&T, Sprint, and T-Mobile] are [the] likely purchasers of any auctions of relocated television broadcast spectrum . . . [s]hifting even more spectrum resources into the hands of these four companies would further reduce competition."¹⁴ There is little evidence that new entrants, including minorities and women, would have greater opportunities to obtain portions of new wireless spectrum that would be available from repurposed broadcast spectrum. *Media Alliance et al.* submitted statistics that suggest the FCC's auction scheme and bidding credits have not been effective.¹⁵ As Minority Media and Telecommunications Council points out, "to truly spur innovation, we cannot continue to have [these] barriers to entry," resulting in only certain players continuing to succeed.¹⁶ Congress mandated the FCC review and eliminate these barriers and provide meaningful opportunities to

¹² *Cf.* NPRM, 25 FCC Rcd at 16506 (proposing to "limit channel sharing to television stations with existing applications, construction permits or licenses as of the date of adoption of [the] Notice").

¹³ Comments of Minority Media and Telecomm. Council, ET Dkt. No. 10-235, filed Mar. 18, 2011, at 5 ("MMTC Comments").

¹⁴ Comments of Capital Broadcasting Company, ET Dkt. No. 10-235, filed Mar. 18, 2011, at 14.

¹⁵ UCC et al. Comments at 6.

¹⁶ MMTC Comments at 9.

minorities and women to gain spectrum.¹⁷ Therefore, *Media Alliance et al.* agree with MMTC that, “new spectrum allocations should be expressly designed to foster greater participation in the wireless industry.”¹⁸ The Commission should be resolute in its commitment to minority and female ownership by ensuring its auction scheme and bidding credits increase participation by these underrepresented groups in auctions for broadband spectrum.

IV. Conclusion

Media Alliance et al. applaud the Commission’s effort to find the best use of the public’s spectrum, but ask that the public interest be given thorough consideration. Thus, *Media Alliance et al.* request that the FCC collect data to resolve the disparities regarding efficient use of the spectrum, consider the impact of channel sharing on its ownership rules, and include opportunities for new entrants in all its proposals.

¹⁷47 U.S.C. § 309(j)(3)(B) (2007); 47 U.S.C. § 257 (2006); *see also* MMTC Comments at 9; *see* UCC et. al. Comments at 4.

¹⁸ MMTC Comments at 5.

Respectfully Submitted,

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