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Via ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: ***Notice of Ex Parte Presentation - Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; 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; Authorizing Permissive Use of the "NextGeneration" Broadcast Television Standard; GN Docket No. 12-268, MB Docket No. 15-146, GN Docket No. 16-142***

Dear Ms. Dortch,

On July 6, 2017 the undersigned along with Robert Folliard, Chairman of the Advanced Television Broadcasting Alliance ("ATBA") Board, Lee Miller, ATBA Communications Director, Vern Fotheringham, ATBA Advisory Board Member, and ATBA Executive Board members Irwin Podhajser, Byron W. St. Clair, Ph.D., Michael Couzens, Doug Thompson, and Randy Weiss, met with FCC Chairman Ajit Pai and Alison Nemeth, his legal adviser, to discuss the impact of the incentive auction on low power television ("LPTV") and translator stations and to propose steps the Commission can take to facilitate ongoing LPTV and translator service in the public interest.

ATBA representatives explained that low power television and translator television stations are entering the repacking process already reeling from years of nearly ceaseless regulatory uncertainty and disruption. The past tumultuous decade has wreaked havoc on LPTV and translator stations. Many LPTVs displaced in the digital transition had to pay costs of new channels when channels could be found. Just as the dust settled following the digital transition, Congress passed the 2012 Spectrum Act, forcing existing and prospective LPTV operators to suspend plans for hundreds of new stations after substantial expenditures for channel studies and

construction permit applications. Those permittees could not justify the cost of (and in many cases, could not obtain needed financing for) building new stations that might well be eliminated without recourse or compensation in the repacking process. The Commission compounded the pre-auction damage to low power broadcasters by attempting to coerce many to forfeit Class A stations under the threat of enforcement action – essentially forcing them to choose among forfeiting Class A status, paying large forfeitures, or spending money to challenge allegations of rule violations that were trivial in many cases and questionable in many others.

Having survived the gauntlet of the last decade, these same licensees are now on the verge of facing the biggest challenge yet: massive disruption as repacking of the 600 MHz band commences. Many stations will be displaced from the channels on which they have been operating, and many of those displaced stations will not be able to identify new channels on which to operate and will be forced to go dark. A large number of these stations have already received “120 day” letters from forward auction winners that will force them off of their channels in the near future, long before they will be able to file permanent displacement applications. Many LPTV and translator stations that ultimately find displacement channels may be forced to go dark for long periods or to incur the substantial costs of building interim facilities if interim channels are available.

For those stations that survive repacking the costs of temporary facilities, new transmitters and antennas, professional services and perhaps new towers will be great. It is difficult for low power broadcasters to justify the high costs of temporary facilities when it is uncertain whether they will be able to obtain permanent facilities. Some licensees may be forced to compete at auction in order to simply continue operating, as the demand for displacement channels in many, if not most, cases will exceed the available supply.

Few LPTV and translator licensees can pay the cost of temporary and permanent replacement facilities out of operating revenues. They have to seek outside financing. Those sources of financing may be reluctant to undertake the risk of supporting a station through a multi-year transition that it may not survive. And even those that survive will be unable to give lenders assurance that they can continue to operate going forward.

ATBA members understand that some of the conditions of repacking are beyond the FCC’s control. But there are a number of targeted steps the Commission can take that would materially improve the prospects for low power broadcasters through the repacking process.

First, the Commission should terminate MB Docket 15-146 in which it has proposed to reserve one “vacant channel” in the post-auction UHF television band for white space devices. The co-called “vacant channel” proceeding hangs over LPTV and translator licensees like the Sword of Damocles. Like all businesses, LPTV operators have to make decisions on an ongoing basis that will commit them to future costs – decisions like renewing contracts and hiring staff. They are now on the verge of deciding whether to make the very substantial investments necessary to attempt to survive repacking. The vacant channel proceeding enormously compounds the difficulty of those decisions. To LPTV and translator operators, the vacant channel proceeding means far fewer displacement channels (because one vacant channel in a television market can often support multiple LPTV stations) and far greater likelihood of competing demands for available displacement channels, resulting in financially disastrous auctions. The FCC should terminate the vacant channel proceeding immediately and reiterate that LPTV and translators are secondary only to primary licensees and have absolute priority over unlicensed/opportunistic uses.

Second, the Commission should provide a path to permanent status for LPTV stations that survive repacking. Licensees that manage to navigate through the double jeopardy of the digital transition and repacking should have an opportunity to earn protection from future changes. ATBA supports opening another window in which eligible LPTV stations could seek Class A status as the most sensible path to permanence, but ATBA is open to other similar regulatory classifications that would provide comparable security.

Third, ATBA attendees proposed that the Commission should open a second displacement window for unbuilt LPTV and translator construction permits (“CPs”) that have not been pursued because of the uncertainty of the incentive auction. The Commission has taken the position that only built and operating LPTV and translator stations are entitled to participate in the first LPTV and translator displacement window. ATBA attendees urged that the Commission not forget about opening a second window for the unbuilt and displaced CPs. In fact, the Commission should open this second displacement window as soon as reasonably possible after the conclusion of the first LPTV and translator displacement window. Inordinately delaying the opening of a second LPTV displacement window for displaced CPs would be inequitable, as no permittee could reasonably have been expected to build a new station before or during the incentive auction because the CP had a very high probability of being eliminated in repacking. Existing CP holders should be able to apply for displacement CP facilities without competing with newly filed applications *after* the LPTV displacement window closes and all applications filed in that window have been processed.

Fourth, the Commission should announce a policy of liberally waiving the automatic forfeiture of LPTV and translator licenses if the facility is dark for more than one year. Licensees – and the public they serve – should not be forced off the air permanently simply because they were unable to operate through no fault of their own for an extended period during repacking. This risk is an enormous impediment to stations’ efforts to obtaining financing needed to survive the repacking process.

Fifth, we urged the Commission to quickly approve use of ATSC 3.0 by all licensed television broadcasters. Even in the best case scenario, the effects of repacking on low power and TV translator facilities will be widespread and negative. ATSC 3.0 will help mitigate these effects in two ways. First, ATSC 3.0 will allow all broadcasters, including LPTV, to “shape” their service areas more precisely via single frequency networks. This could allow LPTVs to “squeeze” in displacement channels that otherwise could not accommodate an LPTV station. Second, ATSC 3.0 will also provide much higher useable bitrates than 1.0, making channel sharing more feasible. Channel sharing could reduce contention for displacement channels. LPTV stations may be among the earliest adopters of ATSC 3.0 and can help drive adoption of ATSC 3.0 devices by consumers.

In response to a question, we stated that the Commission should not mandate the use of ATSC A/322 for ATSC 3.0 stations. A Commission mandate is not needed and would only serve to delay or even thwart future innovation.

Please contact the undersigned should you have any questions regarding this notice.

Sincerely,

/s/

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*Counsel to ATBA*

cc (via email):  
Chairman Ajit Pai  
Alison Nemeth