

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
Amendment of Parts 15, 73, and 74 of the	)	MB-Docket No. 15-146
Commission's Rules to Provide for the	)	
Preservation of One Vacant Channel in the UHF	)	
Television Band For Use By White Space Devices	)	GN-Docket No. 12-268
and Wireless Microphones	)	

**COMMENTS OF THE  
LPTV SPECTRUM RIGHTS COALITION, LLC**

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## I. INTRODUCTION

Our Coalition is large and diverse<sup>1</sup>, and not all will agree with these statements. There is a visceral reaction, by those not based in DC, at what the FCC is attempting to do within this proposed rulemaking. For those of us that are involved in the process day to day, it might seem like a normal type of proposal from the FCC. But it just does not "smell right" to the LPTV and TV translator industry.

During the 1300+ days so far rulemaking process for the Incentive Auction, not once, not once at all, has the FCC produced any original research to back up anything that it is proposing to do with LPTV and TV translators! The Video Division has refused to produce any data at all to back up its proposals. However, this writer agrees that the FCC has both the authority to repurpose the band within the context of the Incentive Auction repacking process, and within its' ultimate authority within the Communications Act to manage the nation's spectrum for the public interest.

I also believe that providing at least one channel in the ultra high frequency ("UHF") band in all areas in the United States that is not assigned to a "television station" in the repacking process could be of great value to white space devices and wireless microphones, and to broadcasters. Local broadcasters, including many LPTV, will also need these channels for their own unlicensed services, and in a future ATSC 3.0 operating environment we will all want more than one 6-MHz channel for shared and opportunistic unlicensed uses.

The bottom line is that the FCC has not produced any research at all about the impacts to LPTV and TV translators, simply because they assert that they are not obligated to under the Incentive Auction legislation. But the FCC is forgetting about all of the other obligations they have related to us as "licensed" entities.

## II. THE FCC IS OBLIGATED TO RESOLVE A CONFLICT OF ITS OWN INTERESTS

The FCC is obligated to first resolve a conflict of its own interests. It has stated that it has a mandate under the Incentive Auction authority to provide for unlicensed in all markets, even if that means giving a priority in the repack over licensed users (LPTV and TV translator, and others). But the FCC also has a mandate by Congress to not change the rights of LPTV and TV translators. If the FCC does one without the other, then it is violating the Act, and could easily jeopardize the Incentive Auction implementation and schedule.

To resolve this internal conflict, the FCC is obligated to go back to Congress and ask for guidance. And that is just what happened on July 28th, when FCC Chairman Wheeler testified to the House Energy and Commerce Committee.

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<sup>1</sup> The LPTV Spectrum Rights Coalition, LLC represents more than Class-A, LPTV, and TV translator licensees, who collectively have more than 1500 licensed stations, and new construction permits in most states and TV DMA.

### III. CHAIRMAN WHEELER STATEMENTS IN CONGRESS



LPTV INDUSTRY NEWS - WED. - JULY 29, 2015

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#### HEARING RANT

This House FCC Oversight Hearing on the FCC was probably the most revealing for LPTV and TV translators than any other session in Congress we have seen in a long time. Below are the LPTV/translator excerpts from the almost 3 hr session. We think FCC Chairman Wheeler believes he and the FCC have a mandate to create a national unlicensed band at the expense of LPTV. He also thinks that the FCC Band Plan is "balanced" even though unlicensed users get 18-24 MHz in the various plans, while LPTV and translators get no set asides, and that is somehow balanced. We also heard today directly from Subcommittee Chairman Walden that he does not think the "intent of Congress" was to give unlicensed a priority over LPTV, although FCC Chairman Wheeler is acting as if it did.

What we all learned today is that the FCC does not have an impact analysis for LPTV and TV translators, and that the auction process is a great unknown based on which broadcasters and buyers participate.

The key issue though was about when would the FCC use the vacant channel order and put unlicensed ahead of licensed LPTV. Chairman Wheeler said only in those six to eight markets (out of 210) where broadcasters would be put in the duplex gap...but his staff was backtracking on the statement after the meeting.

What the Chairman did not mention, is that there are over 900 cities of license where there is only one LPTV or TV translator license, meaning unlicensed would get that last remaining channel. My question is, will the vacant channel order be used nationwide in all markets, or just restricted to those which have a duplex gap problem?



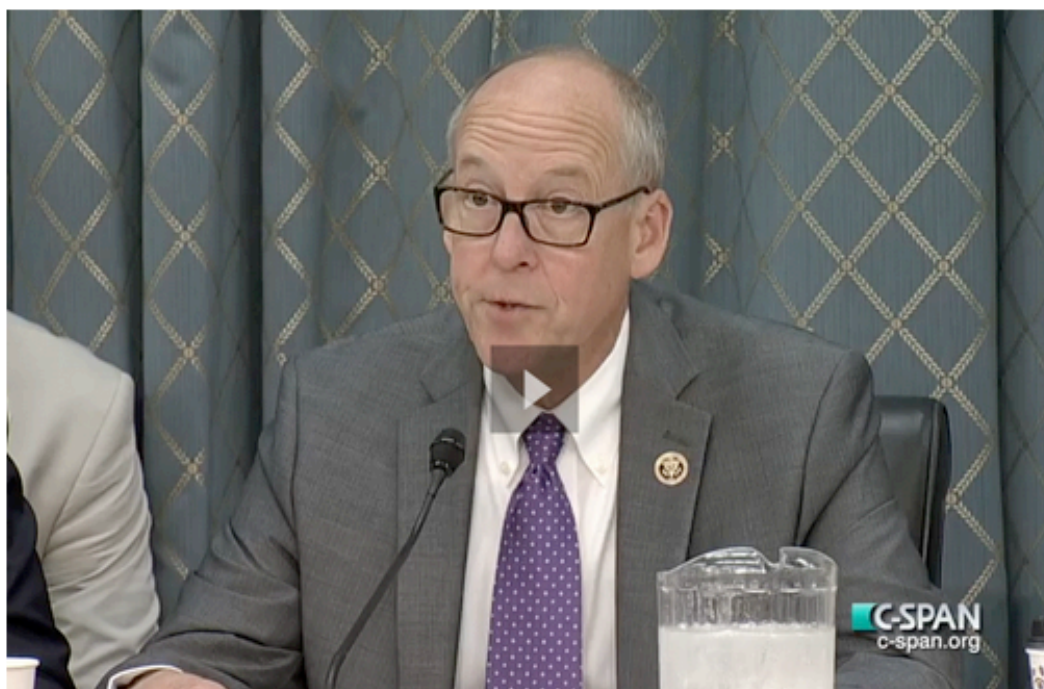
## ENERGY & COMMERCE COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES  
CHAIRMAN FRED UPTON

**Continued Oversight of the Federal Communications Commission**

Tue. July 28, 2015

**"It was never our intent that these  
diverse voices in the marketplace  
would get fully silenced"**



**OPENING STATEMENT BY HOUSE E&C SUBCOMMITTEE  
CHAIRMAN GREG WALDEN (R-OREGON)**

**"...For a successful auction, we all know that the sellers and buyers need to fully understand and support the rules. Yet when it comes to the band plan, questions and uncertainty abound. Layered on top is growing concern regarding how the repack will work, including as it relates to the future of low power television stations and translators. It was never our intent that these diverse voices in the marketplace would get fully silenced..."**

**[WATCH THE VIDEO](#)**

**[OFFICIAL COMMITTEE BACKGROUND MEMO](#)**



**"What can be done to make sure we still have low power television, once this repackaging is complete?"**



**QUESTION BY HOUSE E&C SUBCOMMITTEE MEMBER  
MR. BARTON (R-TEXAS)**  
starts at 0:49:51

**"I am one of the advocates for low power television. And as we know that they do not have any real standing in this repackaging of the spectrum if the main line broadcasters give it back. But they have a product, they provide a valuable service to the country, and I would like to see them helped in some way if at all possible...what can be done to insure that after this repackaging is complete, that we still have low power television?"**

**"Low power is an important voice  
i n the community, and translators as well."**



**ANSWER BY FCC CHAIRMAN WHEELER**  
starts at 51:00

**"I set up a meeting with low power operators last year at the NAB to make sure we were talking with them. I think there are multiple things we can do for them within the statutory framework...we will help them find new channels after the moving of channels...we don't don't know which low powers are going to be affected because we don't know what is going to happen in the auction...we don't know what going to be available to move, we we don't know about the auction. We kind of have to stay in limbo and watch for that. But even beyond that, we are going to begin a rulemaking which we will allow low powers and translators to share a channel. Just like we are allowing, licensees, broadcast licensees, to share a channel. That will create and take advantage of digital and create another path..."**

*Congressman Barton then asks...*

**"You do see a that there will still be a wealth of low power television?"**

*Chairman Wheeler replies...*

**"Yes sir."**



**"I am concerned that certain policy cuts we are making will impair LPTV. And the Vacant Channel proceeding is one of those."**



**QUESTIONS DIRECTED TO COMMISSIONER PAI**  
starts at 52:00

**"I share your assessment and the Chairman's assessment that low power television provide valuable services in Texas Utah and all across the country. That is why three years ago I flagged, that within the statutory constraints, the FCC do what it can within the context of the incentive spectrum auction, especially in the markets where we can, and there is not a need for the spectrum, that we help them stay in business. My concern is that some of the policy cuts we are on the brink of making, might end up impairing LPTV. And the Vacant Channel proceeding is one example. Where the FCC has said that if there is a vacant channel, or two vacant channels available, after the Incentive Auction, we will reserve those for unlicensed uses. Not to denigrate the importance of unlicensed, nevertheless, this is the TV band we are talking about. And if LPTV stations do not have a place to go, it would seem to me that we should do whatever we can to prioritize their staying in business."**

**"Won't setting aside an entire channel for unlicensed contribute to the (LPTV) problem?"**



**A SERIES OF QUESTIONS FROM  
CHAIRMAN GREG WALDEN (R-OREGON)**  
[starts at 2:26:55](#)

**"There is all this talk now about the Commission setting aside an entire channel for unlicensed. I support unlicensed, we have made a lot of spectrum available for unlicensed, and there is more to be done. But won't setting aside a whole channel for unlicensed contribute to the problems we are hearing from with translators and the LPTV community?"**



**"Do you commit to LPTV and translators having a priority over unlicensed?"**



*Chairman Walden asks a key question.  
Then Chairman Wheeler goes on to say...*

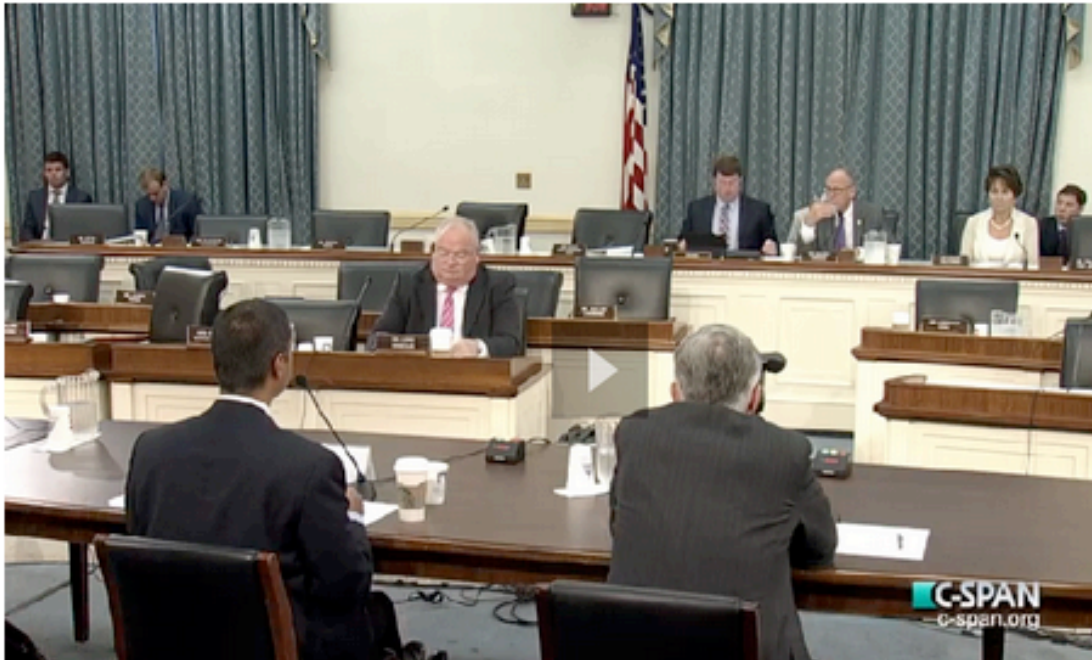
**"No, the mandate from this Committee is clear, that there is no priority given to LPTV."**



**"And the Committee also said that we need to be encouraging unlicensed. I do not think it comes down to that kind of solution. We are breaking our tails to be able to accomplish both of these, and I think we will be successful."**

*Chairman Walden then tells FCC Chairman Wheeler...*

**"My recollection of the statute is, and we helped write it here, is that unlicensed was never set aside as a priority to create a nationwide band plan."**



**"We had a lot of discussion, about that very fact, that you don't go clear all this (spectrum) and then give it away, to effect, pretty major operators...my concern is, and I am hearing a lot from my colleagues, who are concerned about the translators in the west, that if they get squished out, and go dark, and you create an entire band for unlicensed, that only adds to the problem."**

**"There is a public interest obligation underpinning all of this at the Commission."**



*Chairman Walden goes on to say...*

**"I realize they (LPTV and translators) don't have all of the rights, like Class-A. I was in radio and had translators, I understood I could be pushed out. But through this you have some flexibility here to manage, and I guess that is what we are calling for you to use."**

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So, it would seem that key members of Congress with oversight of the FCC disagree with the FCC Chairman about the intent of the Incentive Auction and how LPTV and TV translators should be treated. Later in the summer, in his home district, Chairman Walden went on to say to a group of LPTV licensees, that the LPTV industry will probably have to sue the FCC about this vacant channel order.



IV. ANALYSIS OF THE INCENTIVE AUCTION BAND PLANS  
NATIONAL UNLICENSED SPECTRUM AMOUNTS

10. The 600 MHz Band Plan we adopted in the *Incentive Auction R&O* consists of an uplink band that will begin at channel 51 (698 MHz), followed by a duplex gap, and then a downlink band.<sup>27</sup> Because the incentive auction may be conducted in several stages, each for a different “spectrum clearing target,” we adopted a set of band plan scenarios based on the number of television channels cleared.<sup>28</sup> Figure 1 shows the band plan scenario associated with each potential spectrum clearing target.



Figure 1: Band Plan Scenarios

In the above 11 FCC Incentive Auction band plans there is a "guaranteed" amount of spectrum for unlicensed use, including wireless microphones. It is "only" within the 84-MHz plan where the FCC has identified a real problem.

BAND PLAN	GUARD BANDS	DUPLEX GAP	TOTAL
144-MHz	10-MHz	11-MHz	21-MHz
138-MHz	17-MHz	11-MHz	28-MHz
126-MHz	15-MHz	11-MHz	26-MHz
114-MHz	13-MHz	11-MHz	24-MHz
108-MHz	17-MHz	11-MHz	28-MHz
84-MHz	3-MHz	11-MHz	14-MHz
78-MHz	7-MHz	11-MHz	18-MHz
60-MHz	9-MHz	11-MHz	20-MHz
48-MHz	7-MHz	11-MHz	18-MHz
42-MHz	11-MHz	11-MHz	22-MHz

So, in one of eleven plans does this problem exist, and only within a few markets. Let's look next at some real data about LPTV and TV translators.

V. CITY OF LICENSE VS. TV DMA

**THE FCC SHOULD ANALYZE THE IMPACT OF THE VACANT CHANNEL ORDER AT THE "CITY OF LICENSE" LEVEL, AND NOT AT THE DMA LEVEL**

What this new research shows is that these licensees currently are in operation in 2267 cities of license. They range from 1 to 20+ stations per city of license.

# CITIES OF LICENSE	MHZ	STATIONS IN CITY
943	06	1
377	12	2
197	18	3
226	24	4
102	30	5
102	36	6
69	42	7
58	48	8
41	54	9
152	60+	10+
<b>2267 TOTAL</b>		

If the FCC creates a vacant channel for unlicensed across the country then it will be eliminating ALL LPTV and TV translators from as many as 943 cities with one 6-MHz station, and another 377 with two, for a potential displacement impact of 1320 licenses. Notice we said "displacement", since all LPTV and TV translator licensees (and permittees) have the "right of displacement", and will be able to go find a new channel within the TV DMA they are located within.

## VI. IMPACT TO CIVIC BROADCASTERS

Among those licensees and permittees to be displaced from their local community of license could be 100's of "civic broadcasters", local government entities that utilize LPTV and TV translators.



### **LPTV & TV TRANSLATOR CIVIC BROADCASTING RESEARCH RELATED TO THE INCENTIVE AUCTION**

**More than 200 local government entities  
are licensees of more than  
2400 LPTV and TV translator stations....**

**800 are VHF 2-13  
600 are UHF 14-27  
1000 are UHF 28-51**

**At an average displacement cost of \$150k  
for displacement relocation hard and soft costs**

**The impact of the incentive auction  
on the "civic broadcasting" sector  
is as much as \$360 million!**



## VII. WHAT IS THE FINANCIAL COST OF THE VACANT CHANNEL ORDER?

What we know from the CBO scoring of the Incentive Auction legislation is that it anticipates, in its conservative fashion, that a single 1-MHz of TV spectrum sold in the auction is projected to be \$2.5 million. Using that estimate we can value a 6-MHz channel at \$15 million. If as many as 1200 LPTV and TV translators could be displaced in the vacant channel repacking process, then the FCC will be denying the Treasury as much as \$18 billion in lost value from this strategy. This is a direct threat to the integrity of the auction, and was not the intent of Congress.

# INCENTIVE AUCTION CBO BASELINE ANALYSIS

TOTAL SPECTRUM RECOVERED & PRICE PER MHZ

NATIONAL SPECTRUM RECOVERED	20 MHz	60 MHz	100 MHz
NUMBER OF TV MARKETS	210	210	210
TOTAL MHZ RECOVERED	4,200	12,600	21,000
AUCTION GROSS PROCEEDS	\$12.5B	\$31.5B	\$50B
\$ COST PER SINGLE 1-MHZ RECOVERED	\$2.98M	\$2.50M	\$2.38M