



LPTV SPECTRUM CLEARING TAX CREDIT - CONCEPT PAPER - REVISED APRIL 21, 2015

## **LPTV SPECTRUM CLEARING TAX CREDIT**

### **CONTACT**

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This is a concept paper for the proposed "LPTV Spectrum Clearing Tax Credit", which our Coalition strongly supports. Feedback is invited and welcome. This tax credit should be designed to serve the policy objectives of the FCC's National Broadband Plan, the financial objectives of investors, investment objectives of LPTV entrepreneurs, and the Federal budget analysis goals of the Joint Committee on Taxation.

### **SUMMARY**

The LPTV Spectrum Rights Coalition is a national research, advocacy, and lobbying effort to protect the spectrum usage rights of all 8000+ low power television and TV translator service licenses and permits. The Coalition is comprised of over 175 LPTV (low power television) broadcasters with more than 1000 built stations and new construction permits, existing in most every state.

The 2012 Incentive Spectrum Auction legislation threatens Coalition members with economic harm because they are not included in the auction, nor are receiving funding from it to relocate to new channels. Therefore, the Coalition is prepared to exercise its rights in ways that could delay or otherwise greatly affect the Incentive Auction. One consequence might be to require reopening the Incentive Auction enabling legislation, which would be a "can of worms".

As a means to avert conflict and resolve the matter in a way acceptable to all, the Coalition proposes the LPTV Spectrum Clearing Tax Credit. Nothing in this proposal will in any way at all affect the Incentive Auction process, and could actually assist it in achieving its goals. This tax credit would only work if supported now, before the final LPTV rule making by the FCC, and while there is still time to get it considered and enacted with the 2017 budget. This will literally be the last chance to avert actions no one wants to take, especially LPTV licensees.

### **HOW IT WOULD WORK**

For tax calendar year 2016, the Federal government can authorize "Non-refundable Investment Tax Credits" to spur the purchase of LPTV and TV translator low-band spectrum. To obtain the tax-credits, purchasing investors would be required to surrender the license and permits to the FCC for them to be held for unlicensed use, and/or a potential eventual auction if and when needed. The tax credits could be used as ordinary offsets to taxes, or possibly if reinvested into projects in support of the National Broadband Plan, which then could receive an additional tax credit benefit.

For the LPTV and TV translator licensee and permittees, this would be a completely voluntary program. They should not be forced into selling their rights, and should be able to price and fair market sell their licenses and permits, the same as they do now. Almost all are small businesses, and many are diverse multicultural owners. The tax credits could be the only way to unlock value from their spectrum investments in most situations. And if they reinvest into new National Broadband Plan related spectrum projects there will be a multiplier effect.

If the tax credit is priced high enough, then the Federal government could impose a 50% windfall profits tax on the LPTV spectrum seller, and hard revenues could come back to the Treasury, the seller is compensated, and the tax credits are then applied over a ten year period. With this approach, 50% of the cost to the government will already have back to the Treasury before any tax credits are used.



## **EXAMPLES**

- **Established Long Time LPTV Licensee**

A long time LPTV licensee, who did not have any Incentive Auction eligible stations, has been struggling to stay in business due to the uncertainty of what will be happening to LPTV. Over the years he has invested considerable capital into the business, has weathered the various changes in the competitive TV business, converted to digital operations, and is now faced with potentially having to move to a new channel after the auction, an expense the government will not pay for, as it will for the auction eligible stations. He wants to extract whatever values he can from his investment, save most, and then reinvest into another spectrum-related business, which he knows well. An investor offers to pay him for his licenses and new construction permits. The total population for these is one million people. The investor, a hedge fund, wants the maximum amount of tax credits available, and offers the licensee \$3.00 per person in the combined coverage areas, in order to qualify for the maximum tax credits of \$3 million. The investor intends on using the tax credits for an investment into a National Broadband Plan related manufacturing business, so that it can also qualify for one of the additional incentives. Once the transaction is completed, and the investor surrenders the licenses and permits to the FCC, they can book the tax credits. They schedule the use of the tax credits over the ten year allowed period, and reinvest the rest into qualified projects. The spectrum, which was formally used by the LPTV licensee, is now available for Wi-Fi off-loading, multiple new TV white space projects including the local community college, high school, local government, and many others. The multiplier effect is substantial. A long time small business owner has now successfully extracted profits from a negative situation, which the government created, and has now fixed. The investor was able to utilize capital, which was sitting on the sidelines, and has now reinvested into a surging sector of the economy. The FCC now has significant low-band spectrum in reserve, which can be deployed in a wide variety of ways post-Incentive Auction, and as it determines and Congress authorizes.

- **Rural Translator Tax District**

Unlike the primary station affiliated translators, this rural tax district taxes its local residents to provide broadcast television service. Since the DTV transition it now carries multiple channels on its assigned frequencies, pays for the regional major networks since it gets them via a satellite feed, and actually originates local programming now that it has extra channel capacity. It decides to three of the four LPTV licenses assigned to it. With the revenues from the sale it constructs a high-capacity rural wireless broadband system for the tax district, and offers that as an additional service to its DTV service. With the surplus they are able to pay for an additional 5 years of operating costs, and now the residents, the schools, the government offices, and local businesses have access to services, which met the new national high-speed broadband standard.

- **Small Independent Religious Broadcaster**

This single station local religious broadcaster, which is part of a local church ministry, decides not to participate in the tax credit sale program. They consider their local LPTV station an essential element of their ministry. As a result of the Incentive Auction repacking they are displaced and incur the cost to move to a new UHF channel. As they are doing this they get an offer from a national religious broadcasting network, which chose to sell in the Incentive Auction, and now flush with those windfall proceeds wants to lease a digital sub-channel from the local ministry. A deal is worked out which helps pay the monthly operating costs and equipment purchase load the local ministry had made, and both religious broadcasters continue to serve the local community. (Religious broadcasters have as much as \$25 billion in opening offers for the Incentive Auction, and could settle for as much as \$2.5 billion in final bids).

- **2009 Flexible Use Broadcasting Entrepreneur**

When the national LPTV rural filing window was opened in 2009, this entrepreneur filed for over 50 new digital construction permits to build out a flexible use broadband system. But due to the uncertainty Incentive Auction process was never able to finance the proposed system. His 50 construction permits still have the LPTV Right of Displacement for a 6-MHz channel. By entering the tax credit sale program he is able to cash out of his investment, and help to free up 300-MHz of spectrum for unlicensed use. He now has the funding to invest into a new national TV white space rollout, and helps to serve more than 100 communities with mobile broadband.



## **THE RELATED PROBLEMS**

### **1. Anticipated LPTV Legal Actions Against The Incentive Auction**

In the 2012 Incentive Spectrum Auction legislation the 112th Congress chose to not include in the auction the more than 8000 LPTV and TV translator licenses and new construction permits, nor to provide them access to the \$1.75 billion repacking fund for displacement channel moves. Now, after three years of FCC rule making, and still another year until the auction, the LPTV industry is in a very economically weakened position, and will begin to suffer dramatic declines in its' programming and services. These small business owners are facing an existential fight for their very business survival and family legacy businesses. Since the FCC chose to not use its discretionary powers to either study the impacts on LPTV (which the industry estimates to be well over \$1 billion), nor ask Congress to assist LPTV with relocation funding, the industry is prepared to defend itself and ask for the courts to intervene, and to possibly revisit the enabling legislation.

A recent *Brattle Group* report cited studies which show that a delay of a year in the courts could cost the economy the full face value of the auction itself, which in many estimates now could be as high as \$84-\$100 billion. Therefore, the cost of LPTV legal actions, even if unsuccessful in their final judgments, could cost the economy \$40-\$50 billion for a six-month delay, and more if longer. However, if successful in court, the entire structure of the auction could be compromised. With the LPTV FCC rule making, and the auction Petitions for Reconsideration, both projected to be released later this summer, LPTV is planning to go to the courts, is well funded to do so, and will have no other choice than to collectively defend itself with all available resources.

### **2. The Unintended Consequences of the LPTV "Right Of Displacement"**

An unintended consequence of the 2012 Incentive Spectrum Auction legislation is that LPTV and translators, using their inherent "right of displacement" to find new channels after the auction and subsequent primary station repacking, and will fill-in whatever low-band spectrum is available. There will not be many channels left for unlicensed use, and certainly not enough to spur on the much anticipated \$100 billion annual unlicensed economy which most all experts and Congress agree on and want to see develop.

400+ Class-A stations, which are about 5% of all LPTV licenses, are authorized to participate in the Incentive Auction. They have estimated opening bids of \$65 billion, and settling prices of over \$6 billion if they are sold. These exiting LPTV broadcasters will have substantial financial resources to use to build-out and legally protect the more than 3,000 LPTV licenses and new construction permits they also control, and the more than 5,000 others, which could be available from distressed owners. With this huge potential infusion of capital into LPTV, there will not be any available low-band spectrum left for any unlicensed use. If at some later date Congress decides the US needs more low band spectrum for unlicensed use, such spectrum will have to be obtained from these recapitalized and reinvigorated LPTV licenses – at a premium price far in excess of what this proposal offers to clear the LPTV spectrum for.

The problem with both of the examples cited above is that for more than three years now, LPTV licensees have been operating under a huge cloud of uncertainty because of the long drawn out process of the FCC rule making. And with at least another year until the auction, and possibly much longer due to litigation, the industry is being stalled in any new initiatives, growth, and even access to basic capital formation, and working capital. Add in the total uncertainty of the post-auction channel repacking, and the fact that Congress has been unwilling to consider providing relocation funding, LPTV licensees have their backs against the wall.



## THE SOLUTION

### 1. **Overview**

For tax calendar year 2016, the Federal government can authorize “Non-refundable Investment Tax Credits” to spur the purchase of LPTV and TV translator low-band spectrum with the provision that the investors surrender the license and permits to the FCC for later unlicensed use, and potential eventual auction.

### 2. **Eligible Entities**

Both licensed facilities and new construction permits will be able to be purchased and receive the same valuation for the tax-credits, since both have the “right of displacement”, and both have the right to occupy the same 6-MHz of spectrum. Both must have the right to be purchased and surrendered in order to achieve the national clearing goals of this solution.

#### Included As Eligible Entities For The Tax Credits

- a) Non-auction eligible Class-A analog or digital licenses
- b) All LPTV analog or digital built facilities
- c) All LPTV new digital construction permits
- d) All TV translator analog or digital built facilities
- e) All TV translator new digital construction permits

### 3. **National & TV DMA Clearing Goals**

The latest research and field experiences from the unlicensed spectrum user community recommends that contiguous blocks for a minimum 24-MHz is needed to achieve maximum throughput and a large number of simultaneous users, which can now reach close 100 Mbit throughput capabilities. With additional contiguous spectrum even higher numbers can be reached. It is recommended that a minimum 24-MHz attempted to be cleared from LPTV in each market. This comes to 4 channels of 6-MHz each. This should be achievable nationwide and there may even be more in many markets including the top-20 TV DMA.

### 4. **Tax Credit Ceiling Price & Fair Market Spectrum Price**

LPTV sellers will be free to sell at whatever fair market price they choose, for which there are willing buyers, in a free open marketplace. Since many licensees have more than one license or permit, and in very different TV markets, they may choose any type of valuations they want, and the market will bear. However, the tax-credit will be capped at \$3.00 per coverage-pop, and the total population covered calculated by standard Longley Rice noise-limited contours. Our Coalition estimates that the \$3.00 per pop price is what it will take for an industry-wide clearing of 12,000-30,000 MHz of spectrum (2,000-5,000) license and permits of 6-MHz each. If a buyer and seller agree on a price above the \$3.00 tax credit limit, that is their private negotiation and would reflect any competition for that sale/purchase. The total aggregate cost of the tax-credits is currently being researched. The \$3.00/pop cap on the tax credits is based on 25% the post AWS auction pricing of \$12.00 for unimpaired spectrum with a national footprint.

#### APRIL 24TH UPDATE:

Why not price our spectrum, and the corresponding tax credits at \$6.00 per pop, instead of \$3.00? A key objection with our tax credit proposal is that even if we can somehow get the Joint Committee on Taxation to score it neutral, we can never get it to score positive, and if we did, meaning the FCC would auction the spectrum instead, we would lose the support of the unlicensed advocates.

If we ceiling the tax credit at \$6.00, and phase it over 10 years, and use the example of 1 billion LPTV and TX coverage pops sold, that is \$600 million a year added to the national debt, not good at all. Even if the unlicensed advocates are claiming this huge potential unlicensed economy, we need real revenues the Joint Committee can score.

But, if we then impose a 50% windfall profits tax on LPTV, \$3/coverage pop comes back to the government. LPTV pays the tax and keeps the other \$3.00. Do you see what has now happened? LPTV has



eliminated the tax which in the original plan would have left them with no more than \$2.00, and now they get the full \$3.00.

And the Treasury gets \$3.00, and it is all booked in year one as revenue to the government! Now, the 430 Class-A's in the Incentive Auction have as many as 525 million coverage pops. So how many coverage pops will 3000 to 5000 LPTV have? Our initial research shows a total of about 1.6 billion coverage pops. We will need to see how many we think of these would be sold in varying clearing scenario's. But let's just say for example that 50% of these are sold, or 800,000 coverage pops. At \$6 per coverage pop the amount of the tax credits authorized would be \$4.8 billion. And with the 50% windfall tax, this would yield the Treasury \$2.4 billion in year one. Since there is a domestic shortfall this budget cycle of \$5.8 billion, our plan could help significantly lower what needs to be found or generated elsewhere.

And then there is the 7+ out year kicker of the FCC being able to auction the spectrum if the unlicensed economy does not deliver.

**5. Timing of Tax Credit**

The tax credits should be made available for tax calendar year 2016 in order to:

- > Eliminate the likelihood of legal actions against the Incentive Auction in the fall of 2015
- > Complete the clearing of the LPTV spectrum PRIOR TO the auction repacking so that the FCC can take into consideration what a much less populated UHF TV band looks like.
- > Have time to coordinate the concept of "spectrum neighborhoods" which could then be applied to the Incentive Auction channel repacking, which could result in large contiguous blocks in key TV DMAs for unlicensed use.

**6. Length of Tax Credit**

The useful life of the tax credit should be ten years, with the use of the credits staggered, or escalated over that time period.

**7. Amount of the Tax Credit**

Normally tax credits are issued at a 1:1 ratio, and spread out over a specific period of time. Since the value to the country is so great, it may be possible to issue a 2:1 credit to provide the highest possible incentive to clear the most amount of LPTV licenses and permits as possible. The value to the economy and the Treasury is possibly so high that this would be acceptable. Alternatively, a 2:1 ratio could be conditioned to apply if the value of the tax-credit were applied toward another business which is in direct support of the National Broadband Plan objectives, i.e., unlicensed device manufacturing, deployment of towers and equipment, etc.

**8. CBO Scoring of Unlicensed Spectrum Valuations**

There are many ways the CBO could score the surrendered LPTV licenses and the subsequent tax credits issued. The scoring of unlicensed spectrum has in the past been a problem for the CBO, in that it has been hard to quantify. However, we think there are ways to have this done over the ten-year term of the credits, and could include the use of "economic triggers" which are based on the amount of tax-yielding economic activity, or market deployment goals.

Here are three basic ones:

- a) 100% unlicensed use for the full ten years (negative scoring)
- b) 100% unlicensed use until such time that the FCC auctions it (neutral scoring)
- c) 100% unlicensed use, but planned to be auctioned after the 39-month repacking (positive scoring)



## **ADVANTAGES OF THIS CONCEPT**

This plan has the potential to receive broad support. Substantial unlicensed spectrum is desired by all parties in the communications industry as a necessary component of a vibrant and efficient wireless broadband ecosystem. Most members of Congress want a positive Incentive Auction. But all of that is in jeopardy without a resolution to the LPTV and TV translator problems.

### **A. Incentive Auction Continues With All Anticipated Benefits**

Most members of Congress want a positive Incentive Auction, with substantial revenues returned to the government, the spectrum sold put into its most productive use by the winning bidders, the primary broadcasters to be affected as little as possible, an honorable resolution to LPTV and TV translator issue, and for as much unlicensed spectrum made available as possible. Without a resolution to the LPTV and TV translator problems all of this is in jeopardy.

### **B. Auction Happens Without Problematic Reopening Of The Enabling Legislation**

By using the tax credits to purchase and repurpose the LPTV spectrum, Congress can achieve all of its goals of the Incentive Auction without revisiting the enabling legislation and opening a "can of worms".

### **C. Innovation And Investment Are Unleashed Into Unlicensed Economy**

This plan can fulfill the aspirations of the unlicensed economy advocates for the rapid and massive unleashing of innovation and investment into it. Over the ten-year period of the tax credits as much as \$500 billion in economic activity could be directly related to them.

### **D. LPTV And TV Translator Issues Resolved Honorably**

This plan will also allow for an honorable exit for the majority of LPTV licensees. Local TV translator groups would be able to transition into providers and users of spectrum in support of the National Broadband Plan in their communities.

## **KEY PRINCIPLE**

### **VOLUNTARY MARKET-BASED TRANSACTIONS ENCOURAGED WITH GOVERNMENT TAX-CREDIT INCENTIVES IN SUPPORT OF THE NATIONAL BROADBAND PLAN GOALS**

LPTV and TV translator license and permit holders should not be forced into selling their spectrum usage rights. This should be a completely voluntary program. Those that want a profitable exit should be allowed that with favorable conditions, unlike the current uncertain Incentive Spectrum Auction process.

Those that want to remain in broadcasting should be allowed to do so and be able to qualify for Class-A status. With substantially less LPTV stations, those remaining broadcasters should be much stronger. Moreover, with the eventual implementation of ATSC 3.0, and its' greater throughput and more channel capacity, the viewing public, and the on-going public interest will continue to be served for years to come. Even ATSC 3.0 implementing stations can benefit greatly from the increased availability of low-band unlicensed spectrum for video off-loading.

The 8,000 LPTV and TV translator licenses and permits are a key source of vital national spectrum. They should be managed for the highest and best uses possible, in an integrated eco-system of licensed and unlicensed uses and users. Unleashing the inherent value of LPTV spectrum for unlicensed use benefits all parties, and would serve the public interest far better than the current model which was developed more than 30 years ago, and has never been allowed to qualify for must-carry MVPD status, additional Class-A qualifying windows, or be able to deploy innovative new flexible use transmission systems. It is time for those LPTV and TV translator licensees which want to leave the TV broadcasting business in a profitable way, free of government restrictions, and to reinvest into the future uses of low-band spectrum. This proposal may be the only way to accommodate all affected parties and prevent legal actions related to the effects of the Incentive Spectrum Auction.



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8000 LPTV AND TV TRANSLATOR LICENSED STATIONS AND NEW CONSTRUCTION PERMITS