

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)	
)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act)	GN Docket No. 09-47
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act)	GN Docket No. 09-137
)	

REPLY COMMENTS – NBP PUBLIC NOTICE # 6
THE NAMED STATE BROADCASTERS ASSOCIATIONS

On behalf of Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey

Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, Wisconsin Broadcasters Association, Wyoming Association of Broadcasters (collectively, the “*State Associations*”), these reply comments constitute the *State Associations*’ response to the FCC’s Public Notice released on September 23, 2009 in the above-referenced proceedings.¹ In connection with the Commission’s development of a National Broadband Plan pursuant to the American Recovery and Reinvestment Act of 2009,² the *Public Notice* asks a variety of questions regarding the sufficiency of current spectrum allocations for broadband purposes.

These reply comments respond to arguments that broadcast spectrum would be better used if it were allocated to other services and auctioned to new licensees. Free digital television services (and free mobile services in particular) pose a competitive threat to subscription plans offered by fee-based service providers, but competition is good for consumers. Wireless services are important, and the FCC should give careful consideration to assertions that a shortage of spectrum may arise. Debate about possible reallocation should be thoughtful, deliberate and informed by clear and comprehensive data about demand, supply and utilization.

¹ *Public Notice, Comment Sought on Spectrum for Broadband, NBP Public Notice # 6*, GN Docket Nos. 09-47, 51 and 137, DA 09-2100 (rel. Sept. 23, 2009) (“*Public Notice*”).

² Pub. L. No. 111-5, 123 Stat. 115 (2009).

Moreover, because spectrum reallocations take many years to implement, policy choices must also account for the services consumers will use and the devices that will be available to support those services many years from now. Whatever the state of the communications marketplace ten years from now, it will look very different than it does today. It is shortsighted to assume that the service mix and device choices people make today are reliable predictors of future trends. History shows just the opposite. The Commission can and should plan ahead, but it should recognize that devices, services, and consumer preferences change rapidly. No single architecture is optimal for all services today and there is no reason to believe that will change.

If more spectrum must be allocated to wireless to avert a national crisis the facts will be vetted and the Commission will respond. In the meantime, the Commission should quickly and firmly dispel speculation that it might disenfranchise consumers who have just spent billions of dollars for new DTV products in response to the government's last spectrum reallocation while making them permanently dependent on pay television services.

I. Background

CTIA, the wireless industry trade association, responded to the *Public Notice* by arguing that some or all of the television broadcast band should be reallocated for wireless broadband services. CTIA insists that “a spectrum crisis is looming” and that U.S. consumers and businesses will soon “find themselves without the tools to compete in a global marketplace.”³ CTIA asserts that broadcasters are “highly inefficient” and asks the FCC to consider reallocating broadcast spectrum “to services better able to serve the needs of U.S. consumers.”⁴ The Consumer Electronics Association (“CEA”) asks the Commission to conduct “a rigorous

³ Comments of CTIA – The Wireless Association® (“CTIA”), submitted October 23, 2009, at 3.

⁴ CTIA Comments, at 30.

inventory of the nation's spectrum and assess where it is being utilized inefficiently.”⁵ A paper submitted by CEA hypothesizes that the net direct benefits of reallocating broadcast spectrum to commercial wireless service range between \$42 billion and \$51 billion.⁶ The Commission should be cautious of proposals to eliminate important services that are available to the public for free, only to replace them with services that are bandwidth intensive and costly to consumers.

II. Discussion

CTIA contends that vast benefits that would accrue to consumers if wireless carriers were given access to the television spectrum, but it ignores the societal and economic value that would be destroyed in the process. The Bazelon Paper projects that the U.S. Treasury would collect tens of billions if it auctioned off most or all of the television spectrum. Bazelon concedes that value would be destroyed, but argues that reallocation would result in net benefits that could make all parties whole. As explained below, reallocation would be far more costly than Bazelon suggests and would lead to a profoundly inefficient use of the nation's spectrum.

A. The Public Interest Value of Broadcast Television Service Cannot Be Indexed by Auction Proceeds

Commenting in this proceeding, NAB and MSTV observed, “[s]pectrum management decisions that turn solely on the financial value of a reallocation — either in terms of the revenue that may be obtained at auction or the revenue that a new licensee may earn through sale of services over that spectrum — will fail to uphold the Commission's obligation to base allocation decisions on the public interest.”⁷ The private interests of for-profit companies are not a proxy for the public interest. In theory, all federal highways could be sold to private operators and

⁵ Comments of the CEA, submitted October 23, 2009, at 3.

⁶ See *The Need for Additional Spectrum for Wireless Broadband: The Economic Benefits and Costs of Reallocations*, prepared by Coleman Bazelon, October 23, 2009, attached to *CEA Comments* (the “Bazelon Paper”). CEA's comments state that CEA “does not necessarily endorse” the Bazelon Paper.

⁷ Comments of the Association for Maximum Service Television, Inc. (“MSTV”) and National Association of Broadcasters (“NAB”), submitted October 23, 2009, at 7-8.

operated on a toll basis. Doubtless toll operators would pay the U.S. Treasury a considerable sum for the assets. They could also show staggering revenue projections and argue that this value is additive to the country's economic output.

Television broadcasting provides far more than a bare digital pipeline, and arguments about how many bits can be carried on a given unit of spectrum or how revenue can be collected from it miss the point. Spectrum is an essential input to wireless broadband, but it is also an essential input to free broadcasting services. The *State Associations* disagree with the premise that the value of broadcasting should be counted by spectrum auction proceeds. Local broadcast stations provide free, ubiquitous and unlimited service to consumers. No other source can substitute for the unique mix of local news, sports, weather, traffic, public service announcements, election coverage, local civic participation and local advertising that broadcast stations provide in every community they serve. As the leading sources of local news for the majority of Americans and with a decades-long track record of providing dependable and accurate public safety and emergency information, including Amber Alerts, local television stations' contributions to the public interest cannot be measured by any purely financial calculation.

However, some of television broadcasting's benefits can be counted in dollars, and the sums are far greater than the Bazelon Paper suggests. Bazelon asserts that 10 million households rely exclusively on over-the-air television.⁸ Assuming *arguendo* this figure is correct, the broadcast spectrum delivers over \$200 million to consumers every month – more than \$1.2 billion per year – in the avoided cost of the most basic cable service alone.⁹ In addition, tens of

⁸ See Bazelon Paper, at 15.

⁹ Although the Bazelon Paper asserts that a \$10 “introductory” rate for basic cable service is available from Comcast in Washington, DC, that offer apparently has lapsed. Based on a call to Comcast on 12 November 2009

millions more households that subscribe to a multichannel service also use over-the-air television for second, third and fourth sets, each avoiding several dollars per month in set top box rental fees, saving consumers tens of millions more each month. Bazelon does not explain who would pay for wiring these millions of homes with additional cable or satellite outlets or who would pay millions in monthly converter box leasing fees.¹⁰

These consumer savings from free television services are perpetual, and as more and better broadcast services and both mobile and in-home reception devices are introduced, both the real financial savings and the net public interest benefits will grow. Bazelon in effect suggests assigning an arbitrary “terminal year” and computing a discounted present value to the television broadcast service based on the cost of basic cable service, but the consumer expectation of having free, over-the-air television available is not like a debt obligation that can be traded in a financial market.

B. Mobile and Multicast Service and New Consumer Devices Will Bring More Use of Broadcast Spectrum and More Value to Consumers

The broadcast spectrum is heavily and efficiently utilized today, and, unlike wireless services, the broadcast architecture offers infinite capacity for growth. Over the past several years broadcasters have invested billions to upgrade their infrastructure to the benefit of consumers. Now, CTIA argues that the newly upgraded broadcast infrastructure is obsolete and that the broadcast spectrum wasted. The Bazelon Paper contends that the broadcast spectrum could be auctioned and a portion of the proceeds could be used to provide lifetime vouchers for

at 1-877-870-4310, specifying ZIP code 20814, in Bethesda, Maryland the lowest cost tier available from Comcast was \$17.75 per month plus “about” \$3 in taxes and fees, for a total of \$20-\$21.

¹⁰ The Bazelon Paper also assumes, without explanation, that local television broadcasting stations could continue operating essentially as local cable channels on pay network platforms. This reflects an uninformed appreciation for the complex dynamics of the television marketplace. Among many other real world factors that the Bazelon Paper does not consider is the fact that local broadcast stations command a majority of viewing, even on cable systems, and those cable systems compete with local television stations for advertising sales. Reallocation of television spectrum would destroy the local broadcast business, and with it, vital civic and economic elements of communities nationwide.

basic cable service to households that do not already subscribe to a multichannel service. As an alternative, Bazelon suggests that most of the broadcast spectrum could be auctioned, with broadcast stations consolidating operations on shared infrastructure and dramatically scaling back the programming and services they provide.

The Bazelon paper does not address the economic and other public interest costs of eliminating consumer access to free high definition, multicast and mobile video services. Bazelon's proposal would bring a quick end to what CEA has aptly described as "a breathtaking new era in TV."¹¹ According to the CEA, the DTV transition provides "enormous benefits to consumers" including "vast improvements in television viewing with the introduction of digital and high definition (HD) broadcasting services."¹² CEA research "shows a remarkable level of satisfaction" with DTV products, including both integrated sets and set top receivers.¹³

The DTV transition is the beginning, not the end, of innovation in broadcast television. On the transmission side, broadcasters are just now launching mobile services using the new ATSC A/153 Mobile DTV standard.¹⁴ Mobile service will greatly extend the utilization of broadcast spectrum (and put broadcasters into direct competition with services provided by wireless carriers). Proponents of reallocation argue that our society is increasingly mobile, and that consumers want their services on-the-go. The *State Associations* agree; that is why government policy should encourage business models that provide unlimited free services to a mobile population. Given the choice and equivalent ease of use, most consumers chose free

¹¹ <http://bit.ly/OMdi0> (last visited 11 November 2009).

¹² <http://bit.ly/3aEfBc> (last visited 11 November 2009).

¹³ *Id.*

¹⁴ Device-side innovation is also greatly enhancing the value of in-home broadcasting for consumers. For example, Sezmi offers a "comprehensive next-generation TV service" by combining ATSC broadcasts received through an advanced antenna with Internet content. See <http://www.sezmi.com>.

mobile broadcast services to subscription services. Almost a decade after the introduction of SDARS, the overwhelming majority of consumers still choose free broadcast radio.

Broadcasters are launching robust mobile services that can reach everyone in a market with no additional spectrum allocations, and manufacturers are developing new devices to enable consumers to receive free mobile television. Just a few months after the digital transition and at the dawn of mobile broadcasting service, it is nonsensical to assume that the use of broadcast television is static or declining – or that cable or DBS services provided to households can substitute for mobile broadcast service. Under the logic of the Bazelon Paper, wireless carriers should relinquish their spectrum immediately because virtually all households have access to landline voice and data services.

Those who argue that broadcasting uses spectrum inefficiently urge a preposterous definition of efficiency. People consume services, not bits, and not all bits have the same value. A single television stream sent over a wireless network to one viewer requires about the same number of bits as an identical stream sent over a broadcast signal, although the broadcast stream can be viewed by hundreds, thousands or millions of people. Reuse patterns of cellular architecture simply do not permit this magnitude of efficiency. For video services viewed by a large audience, broadcast delivery is vastly more efficient than any wireless service. Unsurprisingly, alarmist claims of a devastating spectrum crisis are based on largely on increased usage of mobile video.

C. Free Broadcast Services Benefit All Consumers and Can Stimulate Broadband Adoption

The Bazelon paper is an impressive exercise in abstract mathematical “what-ifs,” but it has no grounding in reality. As noted above, its assumptions about the price of basic cable service are off by half. Even more importantly, it ignores the critical economic benefits that free

television brings multichannel subscribers. Today, cable subscribers who decide that the service is not worth the price can simply buy an inexpensive antenna and stop paying for television. This serves as a powerful force to moderate multichannel service prices. CEA assumes that proceeds from an auction of broadcast spectrum would be sufficient to purchase basic cable service for over-the-air only households, but it makes no provision for consumers who move, establish new households, or simply want to drop pay television service after the proposed spectrum reclamation. Broadcast television service is not a zero growth business and the population is not static. Consumers will not accept the proposition that only those who receive free television today are entitled to do so in the future, and only as long as they do not move.

Government action that would make the American public permanently and irrevocably dependent on subscription multichannel services would be immensely counterproductive, especially when the government is trying to extend broadband penetration. Consumers spend billions of dollars each month for subscription video services, far more than they spend on broadband. It would be a sad irony if, in response to false warnings of a looming broadband spectrum crisis, the Commission were to abort free, over the air, digital television service, which provides the most obvious savings of disposable income that consumers might use to adopt broadband.

III. Conclusion

Having just spent billions on the DTV transition, broadcasters now are investing heavily to bring new mobile services and new channels of programming to consumers, who have also spent billions upgrading to DTV. Both broadcast investment and consumer adoption will slow or stop if broadcasters and the financial markets worry that the FCC may make mobile broadcasting and multicasting services impossible to provide. As CTIA's comments observe, "companies will not invest billions of dollars in infrastructure . . . if they have little certainty that

they can operate it at a planned level of quality and modify it to meet the demands of a dynamic, evolving marketplace.”¹⁵ The same principle applies to consumer behavior – they will not invest in new devices to take advantage of the wide range of free broadcast television services if they believe the FCC will make those devices obsolete. The *State Associations* urge the FCC to quickly and decisively reject calls for reallocation of television broadcast spectrum.

Respectfully submitted,

**THE NAMED STATE BROADCASTERS
ASSOCIATIONS**

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¹⁵ CTIA Comments, at 23.