

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

In the Matter of)
Amendment of Parts 73 and 74 of the)
Commission's Rules to Establish Rules for Digital)
Low Power Television, Television Translator, and) MB Docket
No. 03-185
Television Booster Stations and to Amend Rules)
for Digital Class A Television Stations)

COMMENTS OF MARTIN GROUP, INC.

Martin Group, Inc. ("Martin Group") respectfully submits the following comments relative to MB Docket 03-185, opposing the proposal to issue new Low Power Television (LPTV) licenses in the lower 700 MHz band. The Federal Communications Commission ("Commission") should not authorize new LPTV¹ licenses in the Lower 700 MHz band, as this is inconsistent with the Commission's Report and Order² ("R&O") establishing the rules for this spectrum. Doing so would be unfair to new 700 MHz licensees, and does not further the public interest.

The Commission's proposal to issue new LPTV licenses on channels 52-59 is inconsistent with previous Commission rulings.

In 2002 and 2003, the Commission auctioned spectrum in the lower 700 MHz band for use by new licensees. These auctions were conducted after the Commission adopted rules under Part 27 to regulate services for these bands. As part of the due diligence prior to the auctions, bidders were encouraged to review the R&O implementing the Part 27 rules. In this R&O, the Commission

noted that Low Power Television (LPTV) stations would be allowed to continue operations under secondary status, and would be required to cease operations if they cause actual interference to a new licensee. The Commission stated in the R&O that no new LPTV licenses would be granted in the Lower 700 MHz band.

Specifically, the Commission noted “However, LPTV operators in the Lower 700 MHz Band must be prepared to cease service once television Channels 52-59 are reclaimed, pursuant to Section 309(j)(14) of the Communications Act, when new licensees (who will have primary status) begin using the band. Congress has recognized – and the Commission has repeatedly noted – that not all LPTV stations can be guaranteed a certain future due to the emerging DTV service, and we do not think it is advisable to defer the ultimate displacement of LPTV operations to the detriment of new primary service licensees in the band. To grant LPTV operations special considerations vis-à-vis new licensees would turn the concept of secondary status upside down and would retard the potential development of new and innovative services.”²

The Commission’s proposal to issue new LPTV licenses on Channels 52-59 would be unfair to the recent winners of Auctions 44 and 49

The Commission conducted auctions and subsequently awarded the auction winners licenses to operate systems in the lower 700 MHz band, subject to the rules of Part 27. The integrity of the spectrum auction process depends upon the continuity of rules from pre-auction to post-auction. These auctions were conducted in 2002 and 2003. Yet less than one year after the first auction, the Commission has released a proposal to permit new LPTV operations in this band.

¹ The term “LPTV” as used here refers to both Low Power Television and Television translator services

Licensees bid and have paid money for the rights to use spectrum based on a specific set of rules. The Commission is apparently proposing to award the spectrum to LPTV operators at no charge, when the same spectrum was awarded to new licensees only after significant payments were made. In addition, the new lower 700 MHz licensees entered this process with an understanding that the incumbent operator situation that would improve over time, and are now faced with a potentially unstable landscape.

The proposed rules are not in the public interest.

The new (Auction 44 and 49) licensees have “Primary” status and have the regulatory right to interfere with LPTV stations. But as a practical matter, the existence of co-channel and adjacent channel LPTV stations within a market creates deployment challenges for the new licensees. In particular, the potential users of services provided by the new licensees are the same populations served by the LPTV systems. The most viable markets for new services are typically the same markets served by LPTV systems. If the LPTV operators cannot obtain an alternate channel assignment or cannot afford to change equipment, it is likely that the deployment of advanced services by a new licensee will result in the loss of free-over-the-air LPTV broadcast. Considering their interest in the overall good of the community, Lower 700 MHz licensees will be reluctant to force the shut-down of the LPTV station. The Commission’s proposed action to authorize additional LPTV operators would exacerbate this situation and impose it on a larger number of communities. Therefore, it would not be in the public interest.

Further observations on the state of the industry

² Ibid, Report & Order, pg. 14, para 28

At the time that the lower 700 MHz spectrum was auctioned, the majority of the equipment manufactured for this band was designed for broadcast applications, and did not readily accommodate the new purposes and regulations. Subsequent to the auctions, several manufacturers have announced products intended for this market. Some products have advanced to the “field trial” stage. The availability of commercially viable products has been hampered by the cost of research & development, standards, lead time to resolve technical design issues, and uncertainty among manufacturers about the demand for 700 MHz spectrum that is either encumbered by broadcasters or not yet scheduled for auction. Any action taken by the Commission to prolong the use of this spectrum by incumbent television operators will further delay development and deployment of new and advanced systems.

Conclusion

The Commission should reject the portions of the NPRM that propose to allow new LPTV authorizations in channels 52-59.

Respectfully Submitted,

MARTIN GROUP, INC.

By: _____/s/_____

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