

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

ORIGINAL
FILE

MSTV OPPOSITION TO AND COMMENTS ON PETITIONS FOR
RECONSIDERATION OF POLAR BROADCASTING, ET AL. AND NCCI

The Association for Maximum Service Television, Inc. ("MSTV") hereby opposes and/or comments upon the petitions filed on June 18, 1992, by Polar Broadcasting, Inc., et al. ("Polar Petition"), and on June 22, 1992, by National Capital Communications, Inc. ("NCCI"), seeking reconsideration and/or clarification of the Second Report and Order/Further Notice of Proposed Rulemaking, issued in the above-captioned docket on May 8, 1992.

I. The Polar Petition

The Polar Petition seeks significant changes in the treatment of LPTV stations during the conversion to ATV. Polar seeks first to obtain for LPTV stations a "secondary" two-year window to apply for ATV stations following the "primary" two-year window granted to full-power stations. Polar also requests that the ATV Table of Allotments be designed to protect LPTV stations and that LPTV stations be given a higher "assignment priority" than vacant commercial or noncommercial allotments. Finally, Polar requests that LPTV

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stations be granted primary status upon their conversion to ATV.

The Polar Petition in toto amounts to yet another request that LPTV stations be given a status that, while perhaps not fully equivalent to primary status, is something more than LPTV stations' current secondary status. The Commission has given ample notice throughout this proceeding that ATV will not be an occasion for LPTV stations to "upgrade". Second Report at ¶¶ 40, 42. Polar's Petition provides no reason to deviate from that course.

In any event, virtually all of Polar's specific requests are problematic. In addition to the meritless contention that LPTV stations' secondary status warrants preferential treatment, the fundamental premise underlying Polar's "secondary" filing window is that it will "cause no harm or delay" to full-service ATV channel availability because all full-service station applications will already be on file. Polar Petition at 7.^{1/} Polar's assumption that all full-service applications will already be on file is not correct. Some stations, particularly noncommercial stations and commercial stations in small markets where there are a

^{1/} Although it is not clear from Polar's Petition, it appears that Polar is anticipating that LPTV stations will be applying for full-service ATV channels. If Polar is asking for a protected two-year window in which to apply for LPTV ATV channels, Polar's request is even more troublesome. The Commission would be holding up full-service applications to permit filings for secondary facilities which could, presumably, be forced off the air by later-filed full-service applicants.

multitude of possible ATV channels and few incumbents, may determine that they need not or cannot apply in the initial two-year protected window but may nonetheless wish to apply thereafter. Polar gives no rationale as to why these stations should be prevented from making such filings during the next two years.

Nor does Polar give any basis whatsoever for its request for a two-year protected period, other than pointing to the apparent symmetry with the two-year window given to full-service stations. But that symmetry is not, of course, real, for the two-year period given LPTV stations will follow the two-years given full-service stations. Thus LPTV stations in markets with available channels will have a full four years in which to apply. Polar's proposal would have the consequence of freezing all unapplied-for ATV spectrum for a full four years.

Polar's second request, that the Table of Allotments be designed to protect LPTV stations, is simply an attempt to upgrade LPTV stations to primary status, a position the Commission has soundly rejected. Second Report at ¶¶ 40, 42. First, to do so will substantially impair the potential ATV coverage of full-service stations in at least some of the largest markets. In certain large markets, virtually every available channel will be required; in others, LPTV stations, not surprisingly, have chosen to locate on the channels most likely to be able to at least replicate existing service areas. Second, in most rural and very small markets, where

LPTV's are most likely to be providing local or unique service, the competition for HDTV channels will not be severe and the supply of potential HDTV channels and substitute LPTV channels will be plentiful.

As to vacant allotments, commercial vacant allotments will have to be extinguished as of the date that the Commission begins issuing ATV licenses. Cf. Notice of Proposed Rule Making, MM Docket No. 87-268, ¶ 27 (released November 8, 1991). Thus Polar is requesting in essence an assignment priority over noncommercial allotments. MSTV supports the position adopted by the Commission, upon the urging of the entire broadcast industry, both commercial and noncommercial, that noncommercial vacant allotments be eliminated only as a last resort where it is necessary to provide channels to each existing licensee. Second Report at ¶ 37.

Nor is there any merit in Polar's request that each LPTV station be given "primary" status automatically upon its conversion to ATV. Because of the less demanding minimum-spacing requirements for ATV channels, it may be that some LPTV channels can in fact satisfy the technical requirements of full-service ATV stations and will be able to apply to upgrade to full-service status in the ATV environment. But without such an application and acceptance of the complete panoply of full-service responsibilities, MSTV sees no reason why the mere conversion to ATV on their existing LPTV channels would in any way alter their secondary status.

II. The NCCI Petition

NCCI has filed an application for the license for Channel 4 in Washington, D.C., challenging the license of incumbent WRC-TV, owned by NBC. NCCI requests a number of "clarifications" to the Second Report which it characterizes as necessary to implement the general "principle [that] a successful NTSC renewal challenger should be permitted to succeed to the ATV rights (and obligations) of the displaced incumbent, with a minimum of administrative delay and, if possible, without service disruption." NCCI Petition at 4.

NCCI is correct in noting that the standing of renewal challengers has not yet been either raised or addressed in this proceeding. MSTV believes that resolution of the issues underlying NCCI's request should not be resolved in the context of a petition with truncated comment periods and distribution but should instead be based upon a more complete record, as the result of a further notice.

This belief is grounded in part on the complexity of the issues underlying NCCI's request.^{2/} MSTV would, for example, note that while NCCI's statement of "principle" has an appealing equitable simplicity, it masks the fact that grant of the relief it seeks would give a higher ATV priority to construction permit applicants who are challengers than to

^{2/} MSTV has no comment on the specific application procedures proffered by NCCI except to oppose any suggestion that they can be read to give renewal challengers rights to apply for ATV channels even if their comparative NTSC applications are denied.

either NTSC construction permit holders or all other NTSC new station applicants. NCCI does not explore the public interest rationale for, or the full implications of, this reshuffling of priorities.

Even more troubling, perhaps, are the complications which may arise from the divergences between the incumbent's transmission facilities and those proposed by the challenger. There is no requirement that an NTSC renewal challenger utilize the site of the incumbent or, indeed, within the constraint of providing city-grade service to the community of license, locate its transmission facility anywhere near that of the incumbent. (NCCI, for example, has applied for a short-spaced site eleven miles away from that of the incumbent.) Yet the distribution of channels in the ATV Table of Allotments is to be developed on the basis of the transmitting sites of incumbent licensees. To attempt to accommodate sites of renewal challengers in the development of the ATV Table of Allotments could be extremely disruptive and even paralyzing. It may be that the Commission will have to exclude consideration of challenger sites or even condition the challenger's accession to ATV rights upon some degree of proximity with the incumbent's facilities.

MSTV believes that NCCI's acknowledgement of the obligations of the ATV applicant is also potentially significant, particularly such potential requirements as that the applicant is financially qualified to construct the ATV facility in the Commission's required time frame and that it

has a suitable site available. Some or all of these issues may, of course, appropriately be consigned to the comparative hearing process.

III. CONCLUSION

MSTV urges that the requests for reconsideration and clarification filed by Polar and NCCI be denied and/or resolved to the extent indicated above.

Respectfully submitted,

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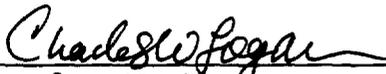
July 16, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July 1992 the foregoing MSTV Opposition to and Comments on Petitions for Reconsideration of Polar Broadcasting, et al. and NCCI was served by first-class, postage prepaid mail on the following:

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