

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Advanced Television Systems)
and Their Impact upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

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To: The Commission

COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.

Maranatha Broadcasting Company, Inc. ("MBC"), licensee of independent television broadcast station WFMZ-TV, Channel 69, Allentown, Pennsylvania, through counsel, hereby responds to the FCC's Sixth Further Notice of Proposed Rulemaking, FCC 96-207, released August 14, 1996 (the "Notice"), in the Advanced Television Systems proceeding.

1. This proceeding is every bit as important as the proceedings which resulted in the adoption of the current system of television allotments, in the 1952 Sixth Report and Order, which has governed the allocation of broadcast television service for nearly forty-five years. Although the transmission of digital television signals is vastly different from, and more complex and technologically superior to, the NTSC system, the goal of this rulemaking should be the same as the FCC's original allotment plan, to develop a stable framework and procedure that will meet the needs of the television broadcast industry and broadcast viewing audiences for at least a half century.

2. It follows, then, that the FCC should take particular care not to repeat some of the inadvertent mistakes made in the 1952 channel allotment plan. Specifically, the FCC should be certain that the plan it adopts -- and the plan set out in the Notice is a significant step in the right

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direction -- (1) is sufficiently flexible to accommodate shifts and growth in population centers and the resulting changes in the demand for off-air broadcast television service and (2) does not perpetuate a caste system that has discriminated against viewers in small and medium-size cities, especially in more densely populated areas such as the Northeastern United States.

3. The FCC can move toward these objectives by adopting three measures. One of these -- adoption of a minimum level of effective radiated power of 50 kW for DTV stations -- is proposed in the Notice (§ 94). A second -- emphasis on replication of existing service -- is proposed in principle (e.g., Notice, § 82) but the FCC should strike a balance between objective and subjective criteria for arriving at the power levels necessary to preserve existing service. Third, in the interim table of allotments, the FCC should recognize and protect uncontested modification applications which were pending at the time the Notice was adopted (July 25, 1996) and are ultimately granted by the FCC. This is a matter on which the FCC has, rightly, sought comments. (Notice, § 63.)

A. Adoption of Minimum Power Levels.

4. In the Sixth Report and Order, the FCC assigned VHF channels first to large urban centers and to cities surrounded by large rural areas where wide-area coverage was deemed necessary. Then, in smaller to medium-size cities, the FCC relied on UHF channels to provide a full complement of local services. In densely populated areas, particularly the Northeastern United States, the television service requirements of the largest cities (New York, Philadelphia, Pittsburgh, Boston, Washington, D.C., etc.) were such as to require the assignment to Allentown and similar communities -- communities on the edge of but economically and otherwise distinguishable from

cities such as New York and Philadelphia -- of channels that were not only in the UHF band but in the very highest portion of the UHF spectrum, Channels 60-69. ¹

5. The FCC has a long record of attempting to achieve, e.g., through regulation of television receivers and its 1972 cable television rules, not parity but simply comparability between VHF and UHF stations. The defect in the Channel 60-69 assignments was not simply the disparity between UHF and VHF but also substantial disparities between the transmission characteristics of stations at the lower-to-middle and high ends of the UHF band. Stations at the high end of the UHF band are handicapped (and the areas and populations they are licensed to service are correspondingly discriminated against) by a combination of factors unique to those stations -- including the so-called "dipole factor" and relatively higher operating costs. In addition, because of their proximity to the Private Land Mobile SMR band and the potential for interference to land mobile radio operations, many Channel 69 television stations, including WFMZ-TV, have been deterred or prevented from seeking to increase power, let alone maximize their facilities.

6. The consequence has been that many stations on Channels 60-69 have, for reasons peculiar to that portion of the UHF band, much smaller authorized service areas than the VHF *and* UHF stations licensed to the central cities with which the Channel 60-69 stations must compete for viewers.

7. An allocation scheme that focuses solely or even predominantly on replicating existing service areas will, necessarily, perpetuate the disadvantageous circumstances that have delayed or

¹ In addition to Channel 69 at Allentown, the FCC has assigned, for example, Channel 60 at Bethlehem, Pennsylvania, Channel 67 at Smithtown, New York; Channels 63 and 65 at Newton and Vineland, New Jersey, respectively; and so forth.

limited the growth of local television service in the Lehigh Valley and other similar areas.² For that reason, the FCC should adopt a minimum power level that assures licensees that they will be permitted to operate with *at least* sufficient power to adequately serve their communities of license and the surrounding area. The 50 kW minimum power level proposed for UHF DTV stations in the Notice is the rough equivalent of 800 kW under the NTSC system (using a commonly referred-to 1:16 ratio for DTV-NTSC equivalency). This is *less* power than currently authorized for WFMZ-TV (1,070 kW), and *less* than MBC believes is necessary to assure that WFMZ-TV will be able to provide a DTV service to an area equivalent to its present service area.³ For a number of existing lower-power UHF stations, however, a 50 kW minimum power level will at least assure some degree of comparability with competitors that have been more favored under the NTSC allotment plan.⁴

8. Requiring new stations (on allotments created after the initial table is finalized) to operate with at least 50 kW for DTV will also help to assure that the spectrum for DTV, once the

² The Allentown-Bethlehem-Easton Metropolitan Statistical Area is Pennsylvania's third largest metropolitan statistical area. With nearly 700,000 persons (1990 Census), it is larger than Harrisburg, Lancaster, York, Erie, Wilkes-Barre or Scranton, each of which has VHF, a mix of VHF and UHF, or low-to-middle UHF-band NTSC assignments.

³ The Table of Allotments appended to the Notice proposes an interim DTV assignment for WFMZ-TV on Channel 67 at 50 kW. MBC believes the assignment of the minimum power to WFMZ-TV reflects a mistake in the FCC's NTSC data base, as 1/16th of WFMZ-TV's currently-authorized operating power is 66.8 kW.

⁴ The Notice (§ 94) suggests that existing stations will have the option to operate at less than 50 kW. For economic reasons, it may be desirable to provide smaller stations with this flexibility, at least at the outset. As discussed below, however, low power operations may be inconsistent with the most efficient use of the spectrum. These concerns might be reconciled by allocating DTV channels to existing licensees based on the 50 kW minimum power requirement, for planning purposes but providing that if, at the end of the transition period, the licensee has not increased effective radiated power to at least 50 kW at a specified antenna height (for example, 150 feet AAT), the sub-minimum power station may be required to accept additional interference to accommodate new DTV allotments and increased or modified facilities for other DTV stations.

transition is complete and the available spectrum has been “repacked,” will be used efficiently. Under the protected-contour assignment method proposed in the Notice, every new DTV channel allotment will have a preclusive effect rippling, at least potentially, over a vast area. With a minimum power requirement, there is less likelihood that a new DTV channel allotment, with low authorized power, will have the effect of precluding other new DTV allotments or improvements in DTV service with potential benefits far outweighing those of the low-power allotment.

9. The FCC has tentatively proposed (Notice, ¶ 36) that a licensee operating in the “core spectrum” will be allowed to choose, at the conclusion of the transition period, to locate its permanent DTV operation on either its NTSC channel *or* its temporary DTV channel. If that proposal is adopted, it will be impossible to forecast what the “repacked” Table of Allotments will look like, or where new DTV allotments will be possible or licensees will have the opportunity to relocate or improve their DTV facilities. This is critical for licensees such as MBC, who, under the core spectrum plan, will *not* have the option to continue to operate on either their NTSC *or* interim DTV channels. Potential “re-packing” assignments for WFMZ-TV and other licensees compelled to relocate to the core spectrum will *not* all be equal. If, as proposed, DTV allotments are based on “service replication and interference considerations, rather than minimum spacing standards,” Notice, ¶ 82, some channels available for “repacked” assignments will have more potential for maximization of facilities than others. This is especially so in the densely populated Northeastern portion of the country. MBC, and others similarly situated, simply must have assurance, by virtue of a minimum power requirement, that they will be able to adequately serve their communities of license and surrounding service areas and that their opportunities to increase facilities and improve service will not be hamstrung by one or more inefficient, low-power DTV allotments.

B. Genuine Replication of Existing Service Areas.

10. The FCC's proposal (Notice, ¶ 28) to pair NTSC channels with DTV allotments that replicate, to the extent possible, existing service areas is well taken. In determining what area is to be replicated, however, the FCC should take a conservative approach that does not define existing service so narrowly that viewers are denied DTV service from licensees on whose NTSC program services they have come to rely.

11. First, as noted above (Footnote 3), there appears to be an error in the FCC's data base and a resulting understatement of the area and population that must be reached in order to replicate WFMZ-TV's present service area with its paired DTV channel.

12. Second, predictions of both interference-limited and terrain-limited service areas may not accurately reflect the populations that actually view the signal of a particular television station or how they receive that signal. The FCC has long recognized that viewing may occur even where some interference is present, or where some terrain features obstruct the line of sight between the television station transmitter location and the home receiving antenna. In addition, WFMZ-TV, for example, reaches many viewers by retransmission by cable television systems; cable headend receiving antennas are less likely than home antennas to be subject to either terrain barriers or interference.⁵

13. Third, any methodology for defining service areas that does not take into account the "dipole" factor, i.e., the additional signal attenuation characteristic of the upper UHF band, will short-change Channel 60-69 licensees, who will be allowed less power than is required to reach the

⁵ Similarly, the Philadelphia VHF stations do not reach viewers in the Lehigh Valley by off-air reception at the outer limits of their Grade B contours but by cable retransmission of their signals.

areas and populations they now serve. If, for example, WFMZ-TV requires an effective radiated power 1,070 kW to reach its present audience as an NTSC station on Channel 69, there is no compelling reason to believe that it can reach the same audience with anything less than the approximate equivalent effective radiated power when operating as a DTV station on Channel 67.

14. Accordingly, to assure that licensees can reach all of their existing service areas with their DTV programming, the FCC should provide DTV allotments for existing stations at effective operating powers that are not less than the approximate equivalent effective radiated power specified in the paired channel's NTSC license (i.e., 1/16th the authorized ERP).

C. *Recognition and Protection of Pending Modification Applications.*

15. Underlying the present Table of Allotments is the right of each licensee to increase its facilities, consistent with the minimum mileage separation requirements, up to the maximum permitted power (5,000 kW in the case of UHF stations). The public interest is served when a licensee increases power to serve an increasing population or to respond to additional competition in the form of new stations or more programming services delivered via cable television systems. Indeed, one goal of the allotment policies proposed in the Notice (§ 94) is to "ensure that smaller stations, if they desire, are able to expand their existing coverage as they transition to DTV."

16. The proposal in the Notice, however, to focus on replicating *existing* service and repacking the available spectrum at the end of the transition period, will, if adopted, conflict with the goal of encouraging expansion of existing coverage. In some cases, the focus on replication of service to the exclusion of other factors will impose a penalty on UHF licensees who, for reasons noted above, have been delayed or deterred from increasing power to or near the maximum allowed

under the Rules or who only recently have moved to meet emerging demographic and/or industry trends by seeking authority to enlarge their service areas.

17. WFMZ-TV, for example, filed an application on May 15, 1996, to increase its authorized effective radiated power to 1,700 kW. The application is unopposed and, so far MBC is aware, should be granted in the ordinary course. The Notice, rather than recognizing and protecting the service to be provided under that modification application in the proposed table of NTSC and temporary DTV allotments, currently proposes (§ 63) only that a grant of the application would be “conditioned” on the adoption of a final DTV Table of Allotments.

18. MBC’s modification application represents the final stage of a long-planned two-phase improvement in WFMZ-TV’s facilities. An earlier phase, completed in November 1993, increased WFMZ-TV’s effective radiated power from 220.8 kW to 1,070 kW. The successful completion of that power increase demonstrated that WFMZ-TV’s new antenna and transmission system would not cause interference to adjacent channel Private Land Mobile SMR operations. Although MBC could have then sought authority for a further increase in power, the additional tube required to increase power with the new WFMZ-TV transmitter was not unveiled to the broadcast industry and orders taken by the manufacturer until the National Association of Broadcasters annual convention in April of 1996.

19. Once the additional tube became available, MBC moved promptly to file its modification application. The various proposals in this proceeding did not signal that the FCC might adopt a Table of Allotments that foreclosed improvements in WFMZ-TV’s facilities; to the contrary, the Second Further Notice of Rule Making, §§ 11-16, proposed an assignment plan to *maximize* all DTV coverage areas.

20. The proposal to condition the grant of any pending modification application on the adoption of a final DTV Table of Allotments portends the possibility that MBC may be denied the opportunity to further improve WFMZ-TV's NTSC signal. Even if it were to develop that there was no impediment to improvement of MBC's NTSC signal on Channel 69, the proposed table would not assure that MBC could replicate that expanded service area on its assigned DTV channel, Channel 67.

21. In fact, the possibility of any expansion of WFMZ-TV's NTSC or DTV service area would be rendered problematic by the FCC's proposed early reallocation of Channels 60-69 for nonbroadcast uses.⁶

22. The failure of the new table of allotments to recognize pending modification applications, and to protect both the NTSC and DTV service represented by those applications, will cause a hardship to lower power stations. It is obvious that, at some point, changes in facilities must be "cut off" so that a table of allotments may be finalized. However, the FCC should not simply ignore all pending modification applications in its allotment decisions when (1) it had not previously clearly signaled its intention to do so and (2) "freezing" licensees at their currently authorized facilities for the purpose of deriving a table of allotments could effectively foreclose the possibility of improvements in both NTSC and DTV service.

⁶ This, in addition to the much-diminished value of auctioning off fragments of the spectrum, is a further reason for rejecting the early reallocation proposal.

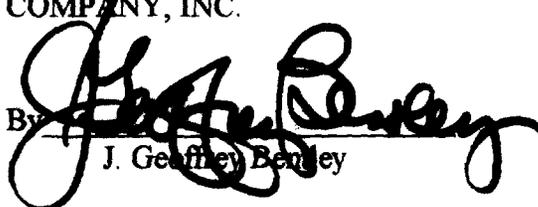
CONCLUSION

23. Many other proposals in the Notice are well-taken and should be adopted, for example, the suggestion (¶¶ 100-102), that broadcast industry frequency coordinating committees be assigned the task -- subject to the FCC's supervision -- of evaluating and accommodating post-adoption changes to the Table of Allotments and changes to the facilities of NTSC and DTV stations potentially affecting other stations and allotments. Such committees will be able to evaluate potential changes quickly, without burdening the FCC's limited administrative and financial resources.

24. The most important concern is that the FCC act promptly. Digital television is a reality for competing industries such as DBS and cable. Unless broadcasting is given the opportunity to convert to digital soon, it may become a second-class citizen in the video industry. Accordingly, the FCC should move expeditiously to adopt the proposals in the Notice with the modifications described in these Comments.

Respectfully submitted,

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