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

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In the Matter of	)	
	)	
Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service	)	MM Docket No. 87-268

TO: The Commission

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JOINT COMMENTS ON THE SIXTH
NOTICE OF PROPOSED RULEMAKING

Pappas Stations Partnership

Pappas Telecasting Companies

Pappas Telecasting of the Carolinas, a California Limited Partnership

Pappas Telecasting of Lexington, a California Limited Partnership

Pappas Telecasting of Opelika, a California Limited Partnership

Pappas Telecasting of Central Nebraska, a California Limited Partnership

Pappas Telecasting of the Midlands, a California Limited Partnership

Pappas Telecasting of Concord, a California Limited Partnership

Mr. Harry J. Pappas and Ms. Stella Pappas

November 27, 1996

WDC-83549.1

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SUMMARY

Pappas Telecasting Companies and its affiliates have reviewed the Commission's proposals in the Sixth Further Notice of Proposed Rulemaking in the DTV proceeding to allot digital television channels and have also reviewed a draft of the Broadcasters' Comments to the Sixth Further Notice which propose certain refinements of the Commission's plan. While there is much in both the Commission's and the Broadcasters' proposals that Pappas supports, there are a number of important elements which Pappas believes have not been correctly or adequately addressed in one or both proposals.

Pappas strongly supports the Broadcasters in calling for the use of all channels during the transition period from NTSC to DTV service. Pappas believes that use of the entire spectrum is necessary to assure maximum service to the public during the transition period.

Pappas believes, however, that the Broadcasters' approach of determining the DTV coverage to which a licensee is entitled by strictly replicating that licensee's current NTSC coverage unfairly discriminates against licensees that have acquired stations currently at low power but with the intention

of maximizing such stations' coverage as soon as practicable, and deprives the public of the opportunity to have access to a greater number of media voices. Pappas also believes that such a strict replication approach will negatively impact emerging networks and will delay the implementation of DTV.

Pappas proposes a plan that, during the transition period from NTSC to DTV, will provide each NTSC licensee with an allowable power level of at least 50 kilowatts (average ERP), but not more than 1 megawatt (average ERP), for its DTV facilities. Under Pappas' approach, licensees would also have the greatest flexibility possible to modify existing NTSC facilities so as to expand coverage, and to replicate such expanded coverage with their paired DTV channels.

Following the transition period, Pappas proposes that each DTV station should have the right to increase its power up to 1 megawatt, if it is not already operating at that level. Finally, Pappas proposes that the Commission adopt procedures that will prevent competing broadcasters from discriminating against DTV licensees in the placement of their facilities.

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JOINT COMMENTS ON THE SIXTH
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I. INTRODUCTION.

On August 14, 1996, the Commission released its Sixth Further Notice of Proposed Rule Making (FCC 96-317) (the "Sixth Further Notice") in the Commission's proceedings regarding digital television ("DTV"), 11 FCC Rcd 10968. The Sixth Further Notice sets forth the Commission tentative plan (the "FCC Plan") for developing initial DTV allotments and assigning DTV frequencies. Following release of the Sixth Further Notice, Pappas [1/] worked with a group of broadcasters (the

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1/ As used herein, "Pappas" refers to the following entities:

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"Broadcasters")[2/] in developing a response to the Sixth Further Notice.

Pappas understands that the Broadcasters will be submitting comments in response to the Sixth Further Notice and has reviewed an early draft of those comments. The Broadcasters' comments propose a plan (the "Broadcasters Plan") for DTV allocation which attempts to refine the FCC Plan. As discussed

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1/(...continued)
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Collectively, the foregoing entities own and operate, or hold options to purchase, or have contracted to purchase, or are parties to agreements that authorize such entities to provide the majority of the programming of, or are applicants for construction permits to build, a total of 17 television broadcast stations throughout the United States.

2/ As used herein, the term "Broadcasters" refers to the Broadcasters Caucus, an ad hoc group of television broadcasters which includes, among others, the ABC, CBS, Fox and NBC networks and the National Association of Broadcasters, and certain other broadcasters, that will be submitting comments as a group.

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below, Pappas supports many elements of the FCC Plan and of the Broadcasters Plan. In certain respects, however, Pappas differs from the approach taken in the Broadcasters and in the FCC Plans.

II. THE BROADCASTERS PLAN.

Pappas generally believes that the Broadcasters have made significant progress in refining the FCC Plan. There is much in the Broadcasters Plan that Pappas supports. In some areas, however, the Broadcasters have failed to fully appreciate the special challenges faced by UHF television broadcasters.

1. Elements of the Broadcasters Plan that Pappas Supports.

(a) Use of All Channels During Transition.

Pappas supports the Broadcasters' proposal that the entire current television broadcast band (Channels 2 through 69) be available for assignment in the DTV transition process. The number of allocated television channels will be effectively doubled during this transition period. Allocating spectrum for these additional channels is a monumental task in and of itself,

but would be made all the more difficult if the amount of available spectrum were to be diminished.

In addition, the benefits that might accrue from auctioning spectrum in the Channels 60-69 band prior to completion of transition -- as opposed to following the transition -- are at best speculative. First, it is becoming clear that spectrum auctions are not the budget-balancing panacea that many once believed them to be. [3/] Second, as the Broadcasters point out, [4/] this spectrum could be worth significantly more if it were to be auctioned as a cleared block. The transition process to DTV, one of the most important developments in the history of the television industry, simply should not be jeopardized by a fixation on short-term fiscal goals.

3/ As of late November, 1996, after more than 100 rounds of bidding, the Commission's auction of spectrum to provide personal communications services in the D, E and F blocks had raised approximately $2.2 billion, far below the $10.1 billion raised in the C block auction completed earlier this year. See PCS Week, November 20, 1996, D/E/F Block Auction goes to Four Rounds per Day.

4/ See Broadcasters' Comments on the Sixth Further Notice, at Section III.B.3.

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Finally, as discussed in Part III below, in order to assure that UHF television broadcasters are able to serve the public interest and to compete effectively in their markets, Pappas believes that they will need to be assured of the opportunity to construct facilities having no less than a minimum power level. Pappas believes that that goal will be far easier to achieve if the entire television band were to be available during the transition period.

(b) Technical Refinements made in Broadcasters Plan to Eliminate Problems Inherent in the FCC Plan.

Pappas also applauds the Broadcasters' efforts in remedying a number of technical defects in the FCC Plan. With the assistance of the television broadcast industry, the Broadcasters have identified a significant number of instances in which the FCC Plan simply did not work from a technical perspective. In retrospect, at least some of those errors were probably inevitable given that the FCC was working with a limited palette, i.e., one that did not utilize a large portion of the spectrum available for the transition process. In any event, the Broadcasters have done an admirable job in working with the industry to devise different channel allocations and propose other measures to address these technical problems.

To illustrate the types of solutions formulated by the Broadcasters, set forth below are examples of technical problems with the FCC Plan that impact some of the stations in which Pappas has an ownership or other interest, and the ways in which the Broadcasters Plan remedies such problems:

(A) Station KPWB-TV, Sacramento, California: KPWB-TV operates on NTSC Channel 31. The FCC Plan assigns DTV Channel 31 to KCVU (TV) in Paradise, California, in violation of the co-channel separations requirement. The Broadcasters Plan assigns DTV Channel 22 to KCVU (TV), thus eliminating the problem.

(B) Station KMPH (TV), Visalia, California: KMPH (TV) operates on NTSC Channel 26. The FCC Plan assigned DTV Channel 27 to KMPH (TV) and DTV Channel 28 to KVPT (TV) in nearby Fresno, California, in violation of the adjacent-channel separations requirement. The Broadcasters Plan assigns DTV Channel 2 to KVPT (TV), thus eliminating the problem.

In addition, Pappas has requested that the Broadcasters revise the Broadcasters Plan to change the following DTV assignments:

(C) Station KXVO (TV), Omaha, Nebraska (NTSC Channel 15) -- Change paired DTV channel allotment from 18 to 30 or 49;

(D) Station KHGI (TV), Kearney, Nebraska (NTSC Channel 13) -- Change paired DTV channel allotment from 23 to 32 or 35;

(E) Station KTVG (TV), Grand Island, Nebraska (NTSC Channel 17) -- Change paired DTV channel allotment from 19 to 26 or 46;

(F) Station WSWS (TV), Opelika, Alabama (NTSC Channel 66) -- Change paired DTV channel allotment from 59 to the next best available channel 7 and 51.

(G) The licensee of Station KLKN (TV), Lincoln, Nebraska (NTSC Channel 8), has requested that the Broadcasters change its paired DTV channel allotment from 21 to 2 or 8. That change would eliminate an adjacent-channel problem with television translator station K22CX in Lincoln, to which Pappas provides programming pursuant to a local marketing agreement.

With respect to the channel allotments for Stations KTNC (TV), Concord, California; KREN (TV), Reno, Nevada; KFWU (TV), Fort Bragg, California; KPTM (TV), Omaha, Nebraska; KSNB (TV), Superior, Nebraska; KWNB (TV), Hayes Center, Nebraska; WBFX (TV), Lexington, North Carolina; WASV (TV), Asheville, North Carolina; and WMMF-TV, Fond du Lac, Wisconsin (an unconstructed station for which Pappas holds a construction permit granted prior to October, 1991), Pappas identified no technical problems with the FCC Plan or with the Broadcasters Plan.

Pappas supports the channel allotments proposed in the Broadcasters Plan, with the changes described above, and recommends that the Commission adopt them. [5/]

5/ With respect to certain of the stations listed above, Pappas does not have an ownership interest, but does have an interest of a non-ownership nature:

The licensee of KTNC (TV), Concord, California, is Mitts Telecasting Company ("Mitts"). Pappas provides programming to KTNC (TV) under a local marketing agreement ("LMA") and holds an option to buy KTNC (TV) from Mitts.

The licensee of KFWU (TV), Fort Bragg, California, is Sainte, Limited ("Sainte"). Pappas provides programming to KFWU (TV) under an LMA and has entered into an agreement with Sainte to purchase KFWU (TV) from Sainte.

The licensee of KXVO (TV), Omaha, Nebraska, is Gary Cocola ("Cocola"). Pappas provides programming to KXVO (TV) under an LMA and holds an option to buy KXVO (TV) from Cocola.

The licensee of KHGI (TV), KSNB (TV), and KWNB (TV) is Fant Broadcasting Company of Nebraska, Inc. ("Fant"). Pappas provides programming to those stations under an LMA and has entered into an agreement with Fant to purchase stations KHGI (TV) and KWNB (TV) from Fant.

The licensee of KTVG (TV) is Hill Broadcasting Company ("Hill"). Pappas provides programming to KTVG (TV) under an LMA and has an option from Hill to purchase KTVG (TV) from Hill.

Pappas has consulted with each of Mitts, Sainte, Cocola, Fant, and Hill, or with their respective counsel, and has been authorized by each of them to state that each such licensee concurs with Pappas in supporting the channel allotment(s) for its station(s) proposed in the Caucus Plan, with the changes described above, but that each such licensee has not otherwise reviewed, and does not

(continued...)

(c) Need for Flexibility Regarding Modification of NTSC and DTV Facilities During Transition Period.

Pappas also supports the Broadcasters' position that any allocation plan will need to be responsive to the changes in both NTSC and DTV facilities that will be inevitable during the transition period. In this regard, Pappas particularly supports the Broadcasters in calling for treatment of newly-filed and pending applications for construction permits to modify such facilities on a first-come-first-served basis. As discussed in further detail in Section IV.3 below, it is essential to the viability of many UHF broadcasters, as well as to the goal of maximizing service to the public, that broadcasters be able to modify their existing facilities to expand both NTSC and DTV coverage.

5/(...continued)
necessarily endorse, any of the positions taken by Pappas on any other matter in these comments. Pappas has also been authorized by Mr. Cocola's counsel to state that Mr. Cocola plans to file separate comments in this proceeding.

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2. Elements of the Broadcasters Plan With Which Pappas Differs.

While Pappas supports much of the Broadcasters Plan, there are several areas in both the Broadcasters and FCC Plans with which Pappas differs.

(a) Allocation of Less than 50 Kilowatts to the DTV Facilities of Some UHF Licensees.

The FCC Plan provides for a minimum of 50 kilowatts of power (average effective radiated power, or "ERP") to the DTV operations of each UHF station, regardless of the power at which such station is currently authorized to operate on its NTSC channel. Pappas supports the FCC Plan in this regard. The Broadcasters Plan, on the other hand, assigns to each station only that amount of power necessary to replicate the station's current coverage, even where the station is currently operating at extremely low power. For the reasons set forth in Part III below, Pappas believes that a floor of 50 kilowatts should be established for each UHF station operating on a DTV channel.

(b) Allocation of More than 1 Megawatt to the DTV Facilities of Some VHF Licensees.

Both the Broadcasters and FCC Plans over-allocate power for the DTV operations of some VHF licensees. In some cases, stations are allocated as much as 5 megawatts of power, an amount far greater than can practicably be used with current technology. Given the scarcity of available spectrum during the transition period, Pappas believes that it is appropriate that any allocation table adopted for the transition period realistically reflect allotments of power that are likely to be used. Consequently, as elaborated upon in Section IV.2 below, Pappas proposes that during the transition period, power allocated for DTV operations be capped at 1 megawatt (average ERP).

(c) Continuing to Base Allocations on Replication Principle After Transition.

Pappas disagrees with the Broadcasters' approach in maintaining the replication principle after the transition period will have been completed. Replication, as opposed to maximization, is a means to address the problem of accommodating all television broadcasters during the transition period, when available spectrum will be at a premium. Once the transition

period shall have passed, there should be ample spectrum available to enable broadcasters to maximize their coverage and hence to maximize their service to the public. In Part V below, Pappas proposes a plan that will enable broadcasters to accomplish the goal of service maximization.

III. DTV PLAN DURING TRANSITION SHOULD BE GUIDED BY PRINCIPLE OF MAXIMIZATION OF SERVICE TO THE PUBLIC.

The FCC Plan provides that each UHF station will be assigned a minimum of 50 kilowatts (average ERP) for its DTV operations, regardless of the power level at which it is currently operating on its NTSC channel. The Broadcasters Plan rejects that approach in favor of a strict replication method, which would assign to each DTV station no more power than is required to replicate its existing NTSC coverage. Pappas strongly believes that the approach recommended by the Broadcasters would severely impede the ability of a large number of UHF stations to serve the public adequately. For the reasons set forth below, Pappas urges the Commission to retain its approach of assigning each UHF station a minimum of 50 kilowatts (average ERP).

1. Strict Replication will Decrease the Number of Channels Received by Viewers and Will Make it Impossible for Some Stations to Compete in DTV.

The FCC approach of assigning each UHF DTV allotment a minimum of 50 kilowatts assures that each licensee will be able to construct facilities capable of providing at least passable levels of service. The Broadcasters Plan, on the other hand, assigns to certain stations unrealistically low power levels for their DTV operations.

(a) Low Power Levels Proposed by Broadcasters Plan Will Result in Some Stations Being Unable to Serve the Public Adequately.

The Broadcasters apparently justify their strict replication approach on the basis that it assures to each licensee DTV facilities that are equivalent to that licensee's existing NTSC facilities. In theory, this appears to be a fair and equitable approach. In actuality, however, it ignores the realities of the UHF television industry and assures that large numbers of viewers will be unable to receive programming that would otherwise be available to them.

The current UHF allocation table is based upon the principle that UHF broadcasters should be able to construct

maximum facilities that will enable them to compete in the marketplace and to maximize service to the public. Many UHF stations, however, have failed to construct maximum facilities. There are a number of reasons for that failure, but one of the most important is that until very recently, high-power UHF broadcast equipment capable of operating with sufficient efficiency to justify its installation from an economic perspective in many small and medium size markets was simply not available. In just the last few years, technological advances have made such equipment available and economical. As a result, broadcasters with the vision to realize the opportunities inherent in smaller markets have purchased UHF stations operating at low power in those markets, with the intention of constructing maximum facilities. By potentially freezing the paired DTV channel allotments for such stations into low-power and limited-coverage operations, the Broadcasters Plan thwarts the goals of those entrepreneurial broadcasters to bring programming to a greater number of viewers.

An example of the impact of the Broadcasters Plan on a station's ability to serve the public is presented by the circumstances surrounding Pappas's Station WASV (TV) in Asheville, North Carolina. Pappas acquired WASV (TV) in August, 1995. In January, 1996, Pappas filed an application with the

Commission for a construction permit that would authorize Pappas to modify the facilities of WASV (TV) so as to greatly expand the station's coverage. Although the permit was granted in May, 1996, a newly-enacted local ordinance prevented Pappas from constructing its proposed new facilities for WASV (TV), and Pappas was forced to secure another site and to apply to the Commission for another construction permit. Pappas has continued aggressively to pursue obtaining a construction permit to improve WASV (TV)'s facilities, with the intent of building WASV (TV) into a full-power station capable of serving a population of approximately 1,600,000, as opposed to the 290,000 it is now capable of reaching.

Under the Broadcasters Plan, WASV (TV) has been assigned a power level of 100 watts (average ERP) at an antenna radiation center height above average terrain ("HAAT") of 337 meters. While, according to the Broadcasters, that amount of power would enable WASV (TV)'s signal to achieve coverage of 99.8% of the population the station currently reaches, it in no way would enable WASV (TV) to serve adequately Asheville and its surrounding communities, and would deprive a large number of

people of the opportunity to receive the programming broadcast by WASV (TV).[6/]

Nor does WASV (TV) represent a unique situation. In July, 1996, Pappas purchased station WSWS (TV) in Opelika, Alabama, and later that month filed an application with the Commission for a construction permit to modify the facilities of WSWS (TV) so as to expand its coverage significantly. The application remains pending before the Commission. Under the Broadcasters Plan, WSWS (TV)'s paired DTV channel allotment is assigned only 10.1 kilowatts (average ERP) at an HAAT of 203 meters. As is the case with WASV (TV), such a very low level of

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6/ Attached as Appendix A hereto, is a map showing the predicted Grade B Service Contours of WASV (TV) as licensed and as proposed to be modified pursuant to an application currently pending before the Commission. (Pappas has been granted a construction permit that would enable WASV (TV) to cover substantially the same area as the construction permit currently applied for, but has been unable to build the facilities authorized by the granted construction permit due to a recently-enacted local moratorium on tower construction. The pending application is for a construction permit to replace the construction permit rendered unusable by that moratorium.)

Because the DTV facilities proposed under the Broadcasters Plan would purportedly replicate the coverage of current NTSC facilities, the coverage of WASV (TV) as licensed should be substantially the same as that proposed by the Broadcasters Plan for WASV (TV)'s DTV facilities. It is obvious that this coverage is far less than that to which Pappas is prepared to expand WASV (TV).

power would severely impede WSWS (TV) in its efforts to serve its community of license and the surrounding environs.

(b) Low Power Levels Proposed by Broadcasters Plan will Deny Some Licensees the Opportunity to Construct and Successfully Operate their DTV Stations.

Under the Broadcasters Plan, some UHF stations could be frozen into a permanent reduced "caste" of low-power/limited-coverage operation. That would adversely affect these stations in a number of ways. First, and most obviously, stations unable to reach a significant number of viewers would suffer an immense disadvantage in competing for advertising revenues with stations able to reach a much larger audience. Pappas believes that, as a practical matter, a DTV station operating at the low power levels recommended by the Broadcasters, such as those established for WASV (TV) and WSWS (TV), would simply not be able to compete in its market.

Second, broadcasters are unlikely to be able to obtain financing to construct and fund start-up operations of such low-power, marginally-competitive DTV stations. Lenders will undoubtedly be reluctant to finance a station which would operate at such a severe competitive disadvantage. The

unavailability of financing would impede and delay the roll-out of DTV service.

In addition, broadcasters (such as Pappas) that have demonstrated their willingness to improve their NTSC facilities and to enhance service to the public will have a disincentive to do so, if DTV coverage were to be limited in the manner proposed by the Broadcasters. Such broadcasters simply will not be willing to invest the resources necessary to construct competitive NTSC stations capable of serving large audiences, if they know that their corresponding DTV facilities will limited to a much smaller audience reach.

2. Broadcasters Plan will Negatively Impact Emerging Networks.

Most of the stations affiliated with the Fox Broadcasting Company, United Paramount Network, and Warner Brothers Television Network are UHF stations. By failing to provide UHF stations with at least minimally-adequate levels of power, the Broadcasters Plan would harm the viability and development of those networks. The Broadcasters' proposal also would render it more difficult for new networks to emerge. Both currently existing emerging networks, and those which may emerge

in the future, do and will establish themselves by affiliating with developing UHF stations, i.e., the types of stations -- such as WASV (TV) and WSWS (TV) -- that Pappas intends to develop into full-fledged players in their markets and the type of stations that the Broadcasters Plan would handicap with unrealistically-low levels of power.

The Commission has made clear its policy of encouraging the development of new networks. [7/] The effect of the Broadcasters Plan would be to contradict that policy and to inhibit the development of new and emerging networks.

3. Strict Replication Proposed by Broadcasters Plan will Delay Implementation of DTV.

Ultimately, the effect of assigning unrealistically-low power levels to some DTV stations will be to delay the implementation of DTV service. To convince hundreds of millions of television viewers in the United States to spend billions of dollars to purchase digital television receivers will be a monumental goal, but it is a goal which can be reached more

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7/ See, e.g., Fox Broadcasting Co., 5 FCC Rcd 3211, text at n. 9. (1990); Amendment of Part 73 of the Commissions Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting, 25 FCC 2d 318, 333 (1970).

quickly and more easily if the viewers can receive the maximum number of television channels possible. By imposing the 50-kilowatt minimum power level that it proposed in the Sixth Further Notice, the Commission will help assure that more viewers have access to more channels and thus have an incentive to move into the DTV era.

IV. PROPOSED PLAN FOR TRANSITION

Pappas generally supports the concept of replication as set forth in the FCC and Broadcasters Plans, except as noted above. However, Pappas believes that a number of refinements are necessary in order for replication to work.

1. Minimum Allowable Power Level of 50 Kilowatts for DTV Operations.

Pappas supports the Commission's proposal to assign each UHF station a minimum of 50 kilowatts for its DTV operations. The reasons that this minimum amount of power is necessary are set forth in Part III above. Pappas believes that the establishment of such a 50-kilowatt floor during the transition period is attainable, if the Commission abandons the