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Federal Communications Commission
Washington, D.C. 20554

JUL 31 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

TO: The Commission

**REPLY TO OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION OF
THE FIFTH AND SIXTH REPORTS AND ORDERS
SUBMITTED BY
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.
AND THE NATIONAL ASSOCIATION OF BROADCASTERS**

Yards of paper have now been filed in this proceeding touching on virtually every detail of the Commission's allotment/assignment of DTV channels and DTV service rules. The most recent set of filings, the oppositions to petitions for reconsideration, cover much of this ground again. In the main, they respond to specific proposals to alter individual DTV channel assignments, but leave intact the basic structure of the Fifth Report and Order and the Sixth Report and Order.^{1/} Even those few petitions that do suggest significant changes to the R&Os, and some do so by raising proposals for the first time at this late stage, narrowly focus on one or two issues. The Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB") urge the Commission to recognize the

^{1/} Fifth Report and Order, MM Docket No. 87-268, FCC 97-116 (adopted April 3, 1997, released April 21, 1997) ("Fifth R&O"); Sixth Report and Order, MM Docket No. 87-268, FCC 97-115 (adopted April 3, 1997, released April 21, 1997) ("Sixth R&O") (collectively, "R&Os").

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large areas of consensus in this proceeding and move forward quickly in finalizing the DTV channel assignments and service rules, while adjusting them as necessary to replicate service areas, maximize DTV service to the public, minimize interference and generally provide for clarity and flexibility in the introduction of DTV.^{2/}

I. SUBSTANTIAL CONSENSUS PROVIDES BASIS FOR SWIFT ACTION

Although oppositions by nature highlight the differences between parties, the oppositions filed in this proceeding evidence a striking degree of agreement among broadcasters and others regarding the DTV transition. This substantial industry consensus is fortunate given the fast pace for the DTV transition Congress has mandated^{3/} and should assist the Commission in expeditiously resolving the outstanding policy issues.

The oppositions continue to reflect wide support among broadcasters for additional DTV assignments in the channel 60-69 range where absolutely necessary to reduce interference and spectrum congestion and facilitate an effective and efficient DTV transition.^{4/}

^{2/} Although some replies were filed on July 28, we submit this reply as timely filed under 47 C.F.R. § 1.429(g) which allots 10 days for the filing of a reply to an opposition to a petition for reconsideration and 47 C.F.R. § 1.4(h) which provides for an additional 3 days when responding to pleadings that have been served by mail. Because all the oppositions to which we respond were served by mail, we read the Commission's rules to allot 13 days for filing this reply.

^{3/} H.R. 2015, 105th Cong., 1st Sess. Title III (1997) (Communications and Spectrum Allocation Provisions).

^{4/} See Comment On And Opposition To Petitions For Reconsideration Of The Fifth And Sixth Reports And Orders Submitted By The Association For Maximum Service Television, Inc. And The Broadcasters Caucus, MM Docket No. 87-268 (July 18, 1997) at 31 ("Broadcasters Opposition"); Viacom Inc., Opposition To Petitions For Reconsideration Of The Fifth Report And Order And Of The Sixth Report And Order, MM Docket No. 87-268 (July 18, 1997) at 10 ("Viacom Opposition"); Sinclair Broadcast Group, Inc., Consolidated Oppositions To and Comments On Petitions For Reconsideration, MM Docket No. 87-268 (July 18, 1997) at 8 ("Sinclair Opposition"). All other citations are to oppositions filed on July 18, 1997, unless otherwise noted. On the contrary, APCO and Motorola oppose additional flexibility in the use of 60-69. See Comments of Motorola at 1-4 and Opposition of APCO To Petitions For Reconsideration. We reject this position.

Additional assignments of this kind can mitigate the worst cases of interference, provide more flexibility for smaller stations to maximize their facilities, and reduce the pressure on low power stations and translators.

The oppositions by and large support a requirement that digital television receivers meet minimum technical standards, consistent with the planning factors used by the Commission in the DTV Allotments/Assignments.^{5/} In addition, both the broadcasting and electronics industries recognize the importance of cable compatibility to the DTV transition,^{6/} although they may differ as to the means for reaching this goal.

The oppositions reflect a substantial consensus regarding a number of other issues as well, including the establishment of neutral coordinating committees,^{7/} retention of Channels 2-6 in the core band,^{8/} amendment of the rules to remove technical and procedural barriers to consensual intra-market and inter-market channel swaps,^{9/} and compensation for stations assigned DTV channels outside of the core.^{10/} Although there are some dissenters, a considerable proportion of the broadcast industry has urged the Commission not to degrade the

^{5/} See, e.g., Viacom Opposition at 14, *citing* petitions for reconsideration of Fox, Paxson, Univision, and the Broadcasters.

^{6/} See Opposition And Reply Comments Of The Electronic Industries Association And The EIA Advanced Television Committee at 4-5 (stating that "[c]ompatibility is critical to the success of digital television.") ("EIA Opposition").

^{7/} See, e.g., Viacom Opposition at 17-18; Reply Comments [sic] of du Treil, Lundin & Rackley, Inc. To the Petitions for Reconsideration of the 5th & 6th Reports and Orders (July 17, 1997) at 3 ("du Treil Opposition").

^{8/} du Treil Opposition at 1-4.

^{9/} Response of AK Media Group, Inc. to Petitions for Reconsideration filed by Granite Broadcasting Corporation, the Association of Local Television Stations, Inc., and Viacom, Inc. at 3 ("AK Media Opposition").

^{10/} Viacom Opposition at 16-17.

interference protection currently afforded to stations' NTSC Grade B coverage contours^{11/} and supported the Commission's decision to maintain the secondary status of low power television stations and translators.^{12/} Given the complexity of this proceeding and the myriad of parties and issues involved, this level of consensus is truly remarkable.

II. THE FEW REMAINING CONTROVERSIES SHOULD NOT DELAY THE DTV ROLL OUT

Notwithstanding the great degree of commonality reflected in the oppositions, a few points of difference deserve response.

Requiring return to the NTSC channel. du Treil, Lundin & Rackley, Inc. has raised a number of substantive proposals, some of which were contained in its earlier filings and some of which pertain to the Office of Engineering Technology Bulletin No. 69 which is scheduled to be addressed in August 22 supplements to petitions for reconsideration. The only du Treil proposal we address here is the recommendation that the Commission *require* all licensees assigned to DTV channels below channel 60 to return to their NTSC channels at the end of the transition to DTV.^{13/} MSTV and other broadcasters have argued that stations should *be permitted* to return to NTSC channels after the transition, subject to the requirements

^{11/} Broadcasters Opposition at 14-17; AK Media Opposition at 4-5; Fox Television Stations Inc., Comments on and Opposition to Petitions for Reconsideration at 2 ("Fox Opposition"); Consolidated Opposition of Pulitzer Broadcasting Company to Petitions for Reconsideration at 3-4 ("Pulitzer Opposition"); Opposition to the Petitions for Reconsideration in the Fifth Report and Order and Sixth Report and Order of the Association of American's Public Television Stations and the Public Broadcasting Service at 2-4 ("APTS/PBS Opposition").

^{12/} See Broadcasters Opposition at 17-26; Fox Opposition at 3; Pulitzer Opposition at 2; APTS/PBS Opposition at 4-6.

^{13/} See du Treil Opposition at 3.

of spectrum repacking.^{14/} Requiring stations to return to their NTSC channels is impractical given the loss of at least 14 channels below channel 60 after the transition. Moreover, such a requirement at this stage unnecessarily inhibits stations from investing in their DTV channels and prematurely deprives licensees of the choice of the most technically appropriate DTV channel. Finally, such a requirement would be inconsistent with the repacking principle which underlies the Sixth R&O and the new budget package agreed to in Congress this week.

Interference protection. The Association of Local Television Stations, Inc. ("ALTV") asserts in its filing that the Broadcasters Petition is somewhat unfriendly to smaller stations.^{15/} The Broadcasters Petition sought discrete and targeted corrections to the Commission's methodology to ensure that *all* stations achieve the most interference-free service possible and requested that interference protection be extended to the DTV contour or the NTSC Grade B contour, *whichever is larger*.^{16/} The highlighted language, far from an attempt to favor larger stations that are subject to the 1000 kW power cap, is meant to ensure consistent and fair treatment for *smaller stations* subject to the power minimum. As Exhibits 2 and 3 to the Broadcasters Petition show, the DTV coverage contours of stations subject to the power cap will generally be smaller than the NTSC Grade B contour. Thus, protection out to the Grade B would be sufficient to ensure replication. However, protection out to the Grade B

^{14/} See, e.g., Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking, MM Docket No. 87-268 (Nov. 22, 1996) at 36-38.

^{15/} See Association of Local Television Stations, Inc., Opposition to Petition for Clarification and Partial Reconsideration at 3-4 ("ALTV Opposition").

^{16/} See Petition for Clarification and Partial Reconsideration of the Fifth and Sixth Reports and Orders Submitted by the Association for Maximum Service Television, Inc., the Broadcasters Caucus and Other Broadcasters, MM Docket No. 87-268 (June 13, 1997) at 9-12, 29-30 ("Broadcasters Petition").

alone would deprive stations subject to the power minimum of the additional territory they achieve by virtue of the 50 kW minimum and whatever more territory they may gain through maximization. Therefore, in urging that protection be extended to the larger of the NTSC Grade B or DTV contours, the Broadcasters Petition sought full protection for *smaller stations*.^{17/}

ALTV's argument in support of diminished interference protection implicitly posits that there can be interference at the Grade B contour without degradation closer to the transmitter.^{18/} The laws of physics do not erect walls at the Grade A when undesired signals penetrate the Grade B contour. Thus, relaxing the interference criteria used at a station's Grade B contour will affect the entire service area of the interfered-with station.

Power levels. The substantive proposal forwarded for the first time in Viacom's opposition is almost identical to the maximization principle that Broadcasters and the Commission already espouse. Viacom seeks "immediate 'intermediate maximization'" for smaller stations so that these stations might increase power from the 50 kW minimum to 250 kW provided that such an increase created no new interference,^{19/} could be accomplished with

^{17/} Id. At the same time, the Commission should protect the DTV service areas of all stations from interference at least as far as the paired NTSC Grade B contour. This is the least that is required by the principle of replication which was enunciated in the Sixth Further Notice of Proposed Rulemaking and the Sixth R&O and has been supported by broadcasters of all stripes.

^{18/} See, e.g., ALTV, Reply To Oppositions To Petition For Reconsideration, MM Docket No. 87-268 (July 28, 1997) at 3 (*citing* ALTV's Petition For Reconsideration).

^{19/} Viacom's proposal is based on a similar proposal advanced by Media General, Inc. in its Petition For Reconsideration, MM Docket No. 87-268 (June 13, 1997) ("Media General Petition"). Media General makes explicit what is only implicit in Viacom's proposal: this is that the maximizing station would be permitted to cause new interference to another station's service area (presumably NTSC or DTV) "upon a showing by a station that the interference can be avoided through certain engineering mechanisms such as directional antennas, moving transmitter sites or using terrain shielding." Media General Petition at 3.

existing engineering technologies and did not result in an assignment of more than 25% of the power of the largest station in the market.^{20/} For more than six years, MSTV, NAB and other broadcasters have advocated something strikingly similar. We have urged the Commission to permit a station, especially a smaller station, to expand its DTV service area up to that of the largest station in the market so long as it causes no new interference.^{21/} Smaller stations that maximize might do so by using 250 kW or *more power* or by using other means. The Commission has endorsed this principle^{22/} and should implement it in processing DTV applications.

Viacom contends that certain examples of coverage area losses contained in the Broadcasters Petition are misleading -- a contention that is based on a misreading of the Broadcasters methodology.^{23/} The Broadcasters Petition showed that percentage replication

^{20/} See Viacom Opposition at 8-10.

^{21/} Broadcasters' Proposed ATV Allotment/Assignment Approach, MM Docket No. 87-268 (January 13, 1995) at 10 defined the maximization principle as follows:

[A] given licensee, particularly one with a smaller NTSC service area, should be able to expand its ATV coverage beyond the bounds of its current NTSC service area up to an area that is comparable to the largest service area in the same market, provided that the expansion causes no new interference to NTSC or ATV service. Thus, licensees would be allowed to increase power or height or both consistent with these maximization principles. It is expected that maximization will serve to lessen the current disparity between VHF and UHF channels and enable the smaller UHF stations in particular to compete more effectively with other ATV stations in their markets.

See also, in this docket, Joint Broadcaster Comments (Dec. 20, 1991) at 4-6; Joint Broadcaster Comments (July 17, 1992) at 4-10; Joint Broadcasters Comments (Nov. 16, 1992) at 14; Broadcasters' Comments On The Sixth Further Notice Of Proposed Rulemaking (Nov. 22, 1996) at 5, 13, 40; Broadcasters Caucus Reply To Comments On The Sixth Further Notice Of Proposed Rulemaking (Jan. 24, 1997) at 12; Petition For Clarification And Partial Reconsideration Of The Fifth And Sixth Reports And Orders Submitted By The Association For Maximum Service Television, Inc., The Broadcasters Caucus And Other Broadcasters (June 13, 1997) at 6, 18.

^{22/} See Sixth R&O at ¶31.

^{23/} See Viacom Opposition at 4-5.

figures in Appendix B to the Sixth R&O overstated replication for stations subject to the 1000 kW power cap and understated replication for stations subject to the 50 kW power minimum. To illustrate this point, the Broadcasters Petition attached a map of a Seattle station subject to the power cap and a Roseburg, Oregon station subject to the power minimum.^{24/} In addition, the Broadcasters Petition listed in Exhibit 3A more than 300 stations that are akin to the Seattle station and more than 450 stations that are akin to the Roseburg station.

The criticism of the Roseburg and Seattle maps is rooted in a misunderstanding of the methodology used to create them.^{25/} It is asserted that the maps misstate the effects of the service losses and service gains because they do not take terrain losses into account. In fact, the maps were generated using the same Longley Rice terrain modeling that the Commission used and reflect service loss due to terrain.

Cable compatibility and receiver standards. The National Cable Television Association, Inc. ("NCTA") asserts that Commission encouragement of cable and DTV technical compatibility is unnecessary because "the public's access to [digital cable] services should be determined by market forces".^{26/} EIA makes a similar argument in opposing minimum receiver standards that would ensure that DTV sets actually receive DTV signals throughout a station's service area.^{27/} Although market forces might well be sufficient in an unregulated environment, the DTV transition will be far from unregulated and market forces alone are insufficient to ensure the rapid and successful date-certain transition to DTV service

^{24/} See Broadcasters Petition at 9 and Exhibit 2.

^{25/} This methodology is set forth in Broadcasters Petition, Exhibit 1.

^{26/} See Opposition of NCTA To Petitions For Reconsideration at 5.

^{27/} EIA Opposition at 4-5.

that both the FCC and Congress demand.^{28/} The 68.3% of American homes that receive their free over-the-air broadcast signals via cable systems^{29/} will move to DTV more quickly if DTV sets are "cable ready," capable of easy reception of broadcast DTV channels, and "consumer friendly" with regard to other consumer video equipment, such as VCRs.

Widespread availability of cable-compatible DTV receivers also will minimize receiver costs and consumer confusion. By the same token, it will be important to ensure that digital sets are capable of adequately receiving DTV signals over the air as soon as transmission of those signals begins; assurance on this point is important in meeting Congress' transition deadline.

As stated in our previous filings, we again urge the Commission to open a digital cable compatibility proceeding forthwith and to require that DTV tuners perform at least to a 10 dB noise figure for the VHF band and a 7 dB noise figure for the UHF band, as is assumed in the Commission's DTV allotment/assignment plan.^{30/} Such reasonable action will smooth the way for DTV reception; the Commission should reject unreasonable proposals that aim to reduce noise such as that of Venture Technologies Group to replace the Grand Alliance's 8 VSB modulation scheme (adopted by the Commission) with a 6 VSB modulation system.^{31/}

^{28/} See Fifth R&O at ¶99; H.R. 2015, 105th Cong., 1st Sess. Title III (1997). There is precedent for government action in this area even absent the pressure of Congressional deadlines. In 1994, the Commission improved compatibility between cable systems and consumer electronic equipment -- to the great advantage of American consumers. See First Report and Order, ET Docket No. 93-7, 9 FCC Rcd 1981 (1994).

^{29/} See Nielsen Media Research, as reported in *Broadcasting & Cable*, July 21, 1997, p. 111.

^{30/} See Broadcasters Petition at 43-45 and 46-47.

^{31/} See Venture Technologies Group's Petition For Clarification And Partial Reconsideration Of The Fifth And Sixth Reports And Orders, MM Docket No. 87-268 (June 13, 1997) at 4-5.

III. ESTABLISHMENT OF DTV COORDINATING COMMITTEES WILL HASTEN THE TRANSITION

A number of oppositions supported the Broadcasters' proposal that the Commission authorize and help to create DTV coordinating committees along the lines that exist for the land mobile service.^{32/} We envision that these coordinating committees will be composed of representative broadcaster engineering personnel, will consult with others interested in the broadcast band, and will base their evaluations exclusively on objective engineering criteria established by the Commission. To ensure that the committees are representative, Broadcasters petitioned the Commission to initiate a further rulemaking seeking nominations for the committees.^{33/} In that petition, we outlined more fully the work and constitution of these committees and tried to make two things perfectly clear: (1) the committees would have no authority to make decisions with respect to any licensee's request for a DTV channel or facility change, but would be authorized only to make recommendations to the Commission; and (2) the committees would simply apply the Commission-approved methodology in assessing the effects of proposed channel and facility changes; the committees' methodology and analysis would be open and transparent.

We re-emphasize here that the creation of DTV coordinating committees is neutral as to all controversies and proposals pending before the Commission. All broadcasters, the public, and the cause of administrative efficiency would benefit by the use of committees

^{32/} See, e.g., Viacom Opposition at 17-18. See also Consolidated Opposition of the Association of Federal Communications Consulting Engineers to Petitions For Reconsideration - Sixth Report & Order at 7 (proposing an alternative structure).

^{33/} See Broadcasters Caucus Petition for Further Rule Making, MM Docket No. 87-268 (Jan. 10, 1997). See also, Broadcasters Comments to the Sixth Further Notice at 47-53 and Broadcasters Caucus Reply Comments at 18-20 (Jan. 24, 1997).

that could effectively coordinate station requests to increase power, change transmitter sites, and make other DTV facility and channel changes. Such coordination would be particularly useful to ensure that smaller stations have the opportunity to maximize their facilities at the outset.

* * *

For the reasons stated herein and in our previous filings, we urge the Commission to proceed swiftly in finalizing DTV channel assignments and service rules while providing for maximum flexibility in optimizing those assignments as DTV rolls out.

Respectfully submitted,

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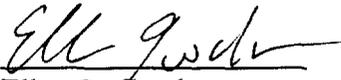
July 31, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Oppositions to Petitions for Reconsideration of the Fifth and Sixth Reports and Orders Submitted by the Association for Maximum Service Television, Inc. and the National Association of Broadcasters has been served by first-class mail, postage prepaid, this 31st day of July, 1997 on:

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