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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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Reallocation of Television Channels 60 - 69, THE 746 - 806 MHz Band	)	ET Docket No. 97-157
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To: The Commission

Paxson Communications Corporation ("PCC"), by its attorneys, submits herewith its Comments in response to the Commission's Notice of Proposed Rulemaking ["NPRM"] in the above-captioned proceeding.[1/]

INTRODUCTION

PCC has assembled an extensive nationwide broadcast television group. Including pending acquisitions and time brokerage or affiliation arrangements, PCC owns, programs or affiliates with fifty-five full-power television stations, thus making PCC the largest owner of full-power broadcast television stations in the nation. PCC's station group serves over 56.6 million television households (58.0% of all U.S. television households) with stations in nineteen of the twenty largest television markets and twenty-four of the thirty largest television markets. The majority of these stations are UHF facilities. In addition, an integral part of PCC's

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[1/] *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, FCC 97-245 (rel. July 10, 1997) ("NPRM").

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operations is a collection of twenty LPTV stations and translator stations which are located throughout the United States (as listed in Attachment A).

PCC's strategy is to expand its nationwide broadcast television network into each of the top fifty U.S. television markets and to extend its distribution system to reach seventy percent of U.S. television households. PCC will augment its reach by upgrading the facilities at each station and increasing its carriage on cable systems by aggressively enforcing its cable must-carry rights and negotiating cable carriage agreements in situations where must-carry rights do not apply. However, PCC's distribution strategy will be hampered, to the detriment of viewers, if LPTV and translator stations do not remain available to air PCC's programming and if full-service UHF stations are placed at a competitive disadvantage due to policy changes in this proceeding and related proceedings.

I. The Commission Should Afford LPTV and Translator Stations Full Protection from DTV Interference.

In the NPRM, the Commission proposed that LPTV stations in channels 60-69 retain their secondary status during and after the reallocation of these channels to different services. As the Commission well knows, LPTV stations are heavily concentrated within channels 60-69.[2/] Given the Commission's plans to fully exploit channels 60-69 through distribution to public safety use and reassignment through competitive bidding, there will be little unallocated spectrum. By extending the secondary status of existing LPTV stations into the reallocated spectrum of channels 60-69, the Commission in effect will force existing LPTV stations that are

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[2/] Approximately 1309 low power TV and TV translator stations are assigned to channels 60-69. NPRM n. 3.

not able to succeed in competitive bidding to go off the air or to try to negotiate spectrum-sharing arrangements. At the same time, any hope of moving an existing channel 60-69 LPTV or translator operation to a lower channel is extremely questionable due to the spectrum demands of digital television. The net effect of these policies will be the most serious displacement of existing service in the history of broadcasting. In order to prevent the destruction of a whole class of broadcast service, the Commission should consider granting LPTV and translator stations with full protection from subsequent broadcasters or other non-broadcast users.

PCC is well aware of the secondary status of LPTV stations and translators under current rules. The concept of secondary status, however, originated at a time when circumstances where much different than the present. The Commission initiated this policy specifically for the analog broadcast world, without any expectation that it would be applied in circumstances where an entire group of channels is being shifted to non-broadcast use and the implementation of digital television makes alternative channels unavailable. A displacement on this scale clearly was not contemplated when the LPTV industry was created. Secondary status arose at a time prior to the LPTV business maturing, prior to the allocation of 1900 DTV allotments, and prior to the reallocation of channels 60-69. Since there are now 1309 LPTV and TV translator stations operating on channels 60-69 alone, extending the constraints of secondary status into the reallocated spectrum will not maintain the status quo, but rather displace existing service on an unprecedented scale.

The Commission should respond to the displacement problem with a creative and flexible approach that takes advantage of the spectrum that ultimately will become available once the

transition to digital television has been completed. The Commission should allow LPTV stations to continue to operate on channels 60-69 as long as full-power stations are authorized to operate on two channels. As full-power stations give up their second channel, the Commission could reallocate those frequencies to LPTV stations that occupy channels 60-69. This solution will prevent wide displacement of existing broadcast service while ultimately allowing channels 60-69 to be used for other services.

II. The Commission Should Grant Full Protection to Full-Power Stations with Pending Construction Permits and Applications.

PCC supports the Commission's proposal to fully protect all existing analog and new DTV full service broadcast stations operating on channels 60-69. Equally laudable is the Commission's proposal to provide full protection to new stations for which a construction permit has been granted. The Commission has recognized the substantial commitment these stations have made to their proposed operations. To deprive them of their reasonable expectations would be inequitable and contrary to the public interest.

Likewise, the Commission should grant full protection to all pending applicants for new broadcast stations on channels 60-69. The Commission proposes to dismiss pending applications and petitions for new allotments that would operate on channels 60-69. In the alternative, the Commission suggests dismissing only those applications and allotment petitions that seek to operate stations in major metropolitan areas where additional spectrum for public safety is most needed.

In the *Sixth Further Notice of Proposed Rulemaking* in the digital television rulemaking, the Commission reasoned that vacating available NTSC allotments was an essential part of

freeing up spectrum that would be used for DTV allotments. Without such action, the Commission believed that it would not be possible to accommodate all of the existing broadcasters with a DTV channel. It appears that the Commission has erroneously extended this rationale to channels 60-69 as support for its proposal to dismiss applications. The difference here is that the scarcity existing for the core DTV spectrum area does not exist for the channel 60-69 band. Rather, pending applications are being dismissed to make room for other services. Since these other services do not require an immediate allocation, as is the case with the DTV allocations, the Commission can adopt a more flexible approach. This approach entails the processing and granting full protection to pending applicants in conjunction with allocating spectrum to the needs of the public service community. As the Commission recognizes, it is likely that the public service use will not absorb all of the earmarked spectrum immediately.[3/] Therefore, the remaining spectrum may be allocated for use by these pending applications.

In addition, to exclude any of the applicants would be wholly inconsistent with Commission precedent. The Commission frequently has grandfathered applicants and licensees not in compliance with newly announced rules.[4/] The Commission has also long held that it

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[3/] NPRM ¶ 18.

[4/] See, e.g., Amendment of Part 76, Subpart J, of the Commission's Rules and Regulations, 53 FCC 2d 1102 (1975) [grandfathering broadcast-cable cross-ownership]; Second Report and Order, Docket No. 18110, 50 FCC 2d 1046, 1074 (1975) [grandfathering broadcast-newspaper cross-ownership]; Multiple Ownership Rules, 25 FCC 2d 318 (1970) [no divestiture required by new multiple ownership rules]; Multiple Ownership Rules, 3 RR 2d 1554 (1964) [existing combinations grandfathered notwithstanding adoption of new contour overlap standards]; Multiple Ownership Rules, First Report and Order, 40 RR 2d 23 (1977) [regional concentration of control rules include grandfathering provisions]; Multiple Ownership of Television Broadcast Stations, 5 RR 2d 1609 (1965) [Top 50 Market policy includes grandfathering provisions]. It has also grandfathered applicants and licensees not in compliance with other types of newly-announced rules. See, e.g., Amendment of Sections 73.1125 and

must treat similarly situated applicants in a similar manner.[5] Moreover, not granting full protection to all pending applications would be grossly inequitable since some of the applications, such as PCC's, had been filed up to one year prior to the adoption of the FCC's *Sixth Further Notice of Proposed Rulemaking*. It was unforeseeable that applications, which would otherwise be approved, would be rejected solely due to a proceeding that would commence far in the future. In addition, since PCC, like other applicants, relied on the Commission to promptly process its applications, it would be unfair to have these applications subject to different treatment merely due to the Commission's delay.

PCC also urges the Commission to extend full protection to stations that are allocated to the channel 60-69 range and that will eventually operate digitally in that band. These stations are already accounted for and afforded full protection under the Commission's allotment plan. Extending full protection beyond the DTV transition phase should require no revisions to the Commission's allotment and would likely alleviate any difficulties of trying to reallocate the station at a later time. The station would also benefit from the assurance that it would not need

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73.1130 of the Commission's Rules, 3 FCC Rcd 5024, 5025 (1988) [grandfathering the location of public inspection files]; Deletion of Section 97.25(c) of the Amateur Rules, 66 FCC 2d 1 (1977) [grandfathering the right of a licensee to apply for the Amateur Extra Class license without examination]; see also Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Memorandum Opinion and Order, PP Docket No. 93-253, 75 RR 2d 833 (1994) [grandfathering applications on file by using lottery rather than auction procedures]; Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, 11 FCC Rcd 7824 (1996) [spectrum cap and cross-ownership rules to be applied prospectively only].

[5] *Melody Music, Inc. v. FCC*, 3345 F.2d 730 (D.C. Cir. 1965).

to resolve confusion in its community nor endure the additional expense of undergoing another channel reassignment.

III. The Commission Should Grant DTV Stations Operating in Channels 60-69 Authority to Transmit at Greater Power.

Under the Commission's allotment policy, UHF/UHF stations will receive only a fraction of the digital power compared to their VHF/UHF counterparts. UHF/UHF stations, in turn, will suffer from lesser received field strength due to the limited transmitter power. With limited field strength, UHF/UHF stations will be less able to provide coverage to their service areas. In addition, smaller coverage area will affect a station's carriage on local cable systems. If a station's coverage decreases, cable systems on the fringe of the station's contour may argue that the weakness of the station's DTV signal no longer warrants carriage on the cable system. A loss of carriage on cable systems further erodes a UHF/UHF station's ability to attract and retain viewers.

Under these circumstances, DTV acceptance will lag due to the large number of viewers who will remain dependent on a station's NTSC signal because the station's DTV signal is too weak to be received. Moreover, if a station's signal does not adequately serve the station's local market, then the station may lose its ability to compete effectively. The station may find its viewer base deteriorating and its ability to attract new viewers limited. This in turn, will affect the station's ability to sell advertising time which will be even more critical than before due to the expense of upgrading the station's facilities to offer a digital signal. In contrast, however, VHF/UHF stations in major markets will have on average twenty times more power than UHF/UHF stations. To alleviate this disparity, the Commission should modify its standards to

allow UHF/UHF stations on channels 60-69 to increase power. The Commission should preclude interference to another station where such interference occurs inside the affected broadcaster's DTV Grade A contour. This standard will better promote the development of high-quality UHF/VHF service in stations' core business areas.

An alternative solution would be for the Commission to modify its definition of additional interference in areas outside the stations' Grade A contours. In areas outside stations' Grade A contours, the Commission should apply a F(50/50) D/U ratio as the appropriate threshold for interference in areas far removed from affected stations' core business areas.

PCC also urges the Commission to grant power increases for stations on channels 60-69 based upon a showing that an increase will ensure greater replication of a station's NTSC service area. This will help ensure replication of existing NTSC service, which is the benchmark for the digital television allotment plan.

CONCLUSION

While the Commission has taken appropriate steps to provide additional spectrum for public safety use, the Commission should ensure that these measures are accomplished with a minimum amount of disruption to existing LPTV and translator operations, which are an established and important service. LPTV stations should be afforded full protection from any subsequent broadcaster or non-broadcast use in the channel 60-69 band. PCC also supports the

Commission's proposal to protect existing stations and stations with construction permits that will operate in the channel 60-69 range; however, the Commission should include any pending applications as receiving full protection from interference. Finally, PCC urges the Commission to allow UHF/UHF stations on channels 60-69 to transmit with greater power than the power levels originally allocated.

Respectfully submitted,

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ATTACHMENT A

Paxson LPTV Stations

PAXSON LPTV STATIONS

WNYA-LP, Channel 38, Amityville, NY
W23BA, Channel 23, East Orange, NJ
WKOB-LP, Channel 53, New York, NY
W54CN, Channel 54, Boston, MA
W42AM, Channel 42, Daytona Beach, FL
W31AU, Channel 31, Orlando, FL
K40FF, Channel 40, St. Louis, MO
K17EM, Channel 17, Fort Collins, CO
K33DB, Channel 33, Houston, TX
K67FE, Channel 67, Phoenix, AZ
W55CD, Channel 55, Chattanooga, TN
W66BA, Channel 66, Dalton, GA
WSIT-LP, Channel 42, Washington, DC
W57CJ, Channel 57, Fort Myers, FL
W59DF, Channel 59, Jupiter, FL
W69CS, Channel 69, Buffalo, NY
W63BM, Channel 63, Rochester, NY
WPBI-LP, Channel 36, West Palm Beach, FL
W48AV, Channel 48, Detroit, MI
K09XA, Channel 9, Fresno, CA