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

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

JOINT RESPONSE TO *EX PARTE* SUBMISSIONS OF MSTV AND ALTV

On December 2, 1997, the Chief, Office of Engineering and Technology, released a Public Notice in the above-captioned proceeding requesting comment on the November 20, 1997 *ex parte* submission of the Association for Maximum Service Television, Inc. ("MSTV") and the November 25, 1997 *ex parte* submission of the Association of Local Television Stations, Inc. ("ALTV"). By this Joint Response, numerous UHF broadcast television licensees ("UHF Broadcasters") collectively and respectfully respond to the MSTV and ALTV submissions.[1] The UHF Broadcasters include: Clear Channel Television Licenses.; Communications Corporation of America; DP Media, Inc.; Glencairn Ltd.; Grant Broadcasting Group; HSN Inc.; Jasas Broadcasting 27, L.P.; Jasas Corporation; Max Media Properties, L.L.C.; Pappas Telecasting Companies; Paxson Communications Corporation; Pegasus Communications Corporation;

[1] The Board of Governors of the United Paramount Network (UPN) Affiliate Association will in separate comments advocate an increase in the minimum DTV power level. In addition, the UHF members of the Fox Affiliate Association have, in previous submissions to the Commission, expressed their serious concerns regarding the power disparity between VHF and UHF stations and have supported increased power levels as a means of addressing this disparity. In their filing in support of the ALTV beam tilt proposal the Fox affiliates again raise the power issue as a major concern and recognize that the power increase proposal is complementary to the beam tilt proposal. See Comments of The Fox Affiliates Association in Support of ALTV Proposal. (filed December 16, 1997)

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Sinclair Broadcast Group; Straightline Communications; Sullivan Broadcasting Group; Telemundo Group, Inc.; Univision Communications Inc.; and Viacom Inc.

I. Introduction

The MSTV submission contains a revised set of DTV allotments as a proposed solution to what it describes as "two systemic problems" in the DTV Table of Allotments adopted by the Commission in the *Sixth Report and Order* in MM Docket No. 87-268 (released April 21, 1997) (the "DTV Table"). Those two problems, according to MSTV, are DTV-to-DTV adjacent channel assignments and channel assignments that result in interference in congested "Acute Problem Areas." The UHF Broadcasters are filing this Joint Response to highlight to the Commission a third systemic problem that MSTV does not address: the enormous power disadvantage suffered under the DTV Table by many current UHF stations that are assigned to DTV channels in the UHF band. Collectively, the UHF Broadcasters view the power issue as the single greatest threat to their continued viability and, ultimately, to the public interest since many viewers will actually lose service they currently enjoy and rely upon. As a result, they will be reluctant to switch to DTV service, thereby impairing and delaying the switch to digital television and the return of analog channels. Further, while the UHF Broadcasters may or may not individually agree that these systemic problems cited in the MSTV submission do in fact exist, to the extent that MSTV ignores the power issue, the UHF Broadcasters cannot support the MSTV submission.

The ALTV submission,[2] on the other hand, discusses the power issue and proposes beam-tilt technology as a means of resolving that issue. Under the beam-tilt proposal, as set forth by

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[2] ALTV will be filing separate comments on its proposal and supports this proposal by the UHF Broadcasters.

ALTV, all DTV stations would be permitted to increase power to one megawatt using beam-tilt antennas so long as they do not create "incremental visible interference" —both inside and outside of their protected contours— in excess of that allowed under any DTV table adopted by the Commission. Beam-tilt technology, according to the ALTV submission, can be used in tandem with the Commission's maximization process or with power increases. The UHF Broadcasters support ALTV's beam-tilt proposal, and urge the FCC to adopt that as one solution to alleviate the power level problem. By this filing, however, the UHF broadcasters ask the FCC to recognize that because the full use of such technology may not be feasible for every UHF station in every market, a more predictable means of mitigating the tremendous UHF DTV power disadvantage is needed immediately. Thus, the UHF Broadcasters view ALTV's beam-tilt technology as only one component of a two-part solution to the power problem.

The second component of the solution, as discussed in greater detail below, is a revised version of a power maximization plan proposed by Viacom in earlier filings.[3] Indeed the framework of this proposal has previously been submitted to the Commission and is already on the record in this proceeding. Under this plan, as envisioned by the UHF Broadcasters, the Commission would release on reconsideration a DTV table that has been modified so as to increase the power of every UHF station to at least 200 kW, provided that such increase does not create more than 2% *additional* interference to the population of any NTSC station. This slight

[3] *See* Viacom's "Opposition to Petitions for Reconsideration of the *Fifth Report and Order* and of *the Sixth Report and Order*," dated July 18, 1997, at 7-10, and Viacom's "Supplement to Petition for Partial Reconsideration of the *Sixth Report and Order*," dated August 22, 1997. In its "Opposition to Petitions for Reconsideration," at 8-9, Viacom proposed that "immediate intermediate maximization" be implemented pursuant to a "window" and only if achievable within the confines of the DTV Table "using accepted engineering remedies." Subsequently, in its "Supplement," Viacom described the plan as "effectively" raising the DTV power floor from 50 kW to 250 kW and provided the results of an engineering study it had commissioned and which increased the floor across-the-board with certain levels of additional interference to NTSC stations. The UHF Broadcasters hereby support the "immediate intermediate maximization" proposal, but with a modest change providing an increase across-the-board in the power level to 200 kW, but only if such increase results in a *de minimis* amount of interference to the population of any one NTSC station, *i.e.*, no more than 2% additional and 3% total interference to population.

increase in interference is de minimis and will only affect the analog operations of UHF stations at the outer edges of their Grade B contours where typically service is already degraded and cable has higher penetration[4]. The UHF analog community will readily accept this slight potential interference in order to continue to reach existing viewers in their core service area. This across-the-board increase of the current 50 kW DTV power floor —in tandem with the beam-tilt technology— would provide UHF broadcasters with the predictability and confidence needed to enter the digital world.

II. Background

The UHF Broadcasters provide to the American public the programming of new networks (such as UPN,WB, and Fox), of specialty networks (such as Silver King), of non-English language networks (such as Telemundo and Univision), of independent local programming[5], and a large percentage of Major League Baseball, NBA Basketball, and NHL Hockey programming. Due to the technological difference of radiowave propagation between VHF and UHF channels, UHF television stations typically have smaller Grade B service areas than do VHF television stations but are able in many cases to operate at near parity in providing service in the all important DMA, Grade A, and city grade contours where population density is maximized. In the digital world, under the DTV Table, any existing parity in the Grade A is lost and replication of current coverage contours is not achieved. That is because the principle of "replication", in combination with unrealistic assumptions concerning receiver sensitivity and antenna type, resulted in UHF stations assigned to DTV channels in the UHF band being granted extremely low

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[4] See Notice of Proposed Rulemaking in this proceeding (11 Rcd 10982 at paragraph 33 (1996).

[5] For example, WYHS-TV in Hollywood, Florida is converting from the home shopping format early next year to an independent CityVision station built around local original programming.

power levels as compared to their VHF competitors also assigned DTV channels in the UHF band. The unintended result, therefore, is a tremendous power disparity between UHF and VHF stations operating DTV facilities in the UHF band. Thus, not only will UHF stations continue to have smaller overall service areas than VHF stations, but due to the low DTV power assignments, UHF signals may not even be receivable by viewers within their core service areas. In short, the range of service disadvantage suffered by UHF broadcasters in the analog world will be aggravated in the digital world. As a result, UHF broadcasters confront the economic disaster of losing their core audiences, the advertising that those audiences bring, and the revenues that that advertising generates. Moreover, large segments of the American public will suffer the loss of access to the diverse programming delivered to it by UHF broadcasters. Thus, the current DTV Table —if not amended to increase UHF power levels— threatens the very existence of UHF stations and, consequently, the current free, over-the-air services provided by those stations. Moreover, the current DTV table will impede the acceptance of DTV in the marketplace by those who can no longer receive certain UHF channels.

III. Solution: Increase in the Power Floor

In adopting the DTV Table last April, the Commission listened to the concerns of UHF broadcasters and attempted to ameliorate the exacerbated UHF disadvantage by establishing a DTV power "floor" of 50 kW for UHF stations and a "ceiling" of 1000 kW for VHF stations. The UHF Broadcasters appreciate the Commission's attempts in addressing their concerns, but note that even with the floor and ceiling in place, the DTV Table leaves UHF stations in many markets at a 10, 15 or 20-to-1 power disadvantage as compared to their VHF competitors. Additionally, given the reality of antenna and DTV television receiver performance[6], 50 kW is a

[6] The DTV table assumes a 7dB noise figure for UHF receivers and a less sensitive 10dB noise figure for VHF receivers, as well as a 30 foot high outdoor antenna. Conversations with the consumer electronics industry and other major manufacturers indicate that the 7dB noise figure is not likely to be achieved.

level of power that places in question the ability of UHF stations to reach viewers over-the-air even in their core areas while the higher-powered VHF stations operating DTV facilities in the UHF band will undoubtedly have enough power to reach these same viewers.

The UHF Broadcasters offer a simple solution to the power problem. And one that can be implemented without delay to the rollout of DTV or changes to the table. The proposed solution works with a negligible, or *de minimis*, amount of *increased*[7] interference to NTSC stations. The proposal, as mentioned above, would retain the cap of 1000 kW on all VHF broadcasters. But to insure the competitive survival of UHF broadcasters, the proposal's objective is to increase across-the-board the UHF power floor to 200 kW, provided, with two exceptions, that the power increase of any one DTV station does not create *additional* interference greater than 2% of any one NTSC station. One exception covers NTSC stations experiencing existing population interference of 15% or greater. In these cases, no additional interference would be permitted. The second exception covers a handful of NTSC stations experiencing no existing population interference. In these cases, 3% additional interference would be permitted.

Preliminary studies[8] conducted by Viacom and MSTV —based upon the revised table MSTV submitted to the Commission on November 20, 1997[9]— reveal that all but a small percentage of the 848 stations assigned less than 200 kW of power could increase to 200 kW and subject no one NTSC station's population to more than 2% additional interference[10]. This small group of stations could be assigned power levels ranging from their currently assigned power levels to 200 kW. To put this in perspective, of the 848 stations in the DTV Table with less than

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[7] "Increased" interference refers to the interference exceeding that contained in the revised MSTV DTV table.

[8] The UHF Broadcasters emphasize that while the data is fairly reliable, the Viacom-MSTV studies are preliminary and that any percentages and raw numbers are approximations only.

[9] While the studies were conducted using the revised MSTV table of allotments, the UHF Broadcasters believe that studies based upon the FCC's DTV Table would yield similar results on an aggregate basis, but with respect to any individual station the results may be different.

[10] However, with respect to a handful of NTSC stations that experience no existing interference the interference levels may go to 3%.

200 kW of assigned power, about 686 could each increase to 200 kW and create 1% or less additional interference to the population of any one NTSC station. While some will argue that no additional interference be allowed, both the FCC and MSTV tables recognize that we cannot exist in an interference free world. In order to balance the playing field and insure UHF broadcasters can provide replication, this 1% (representing the majority of cases) or 2% incremental interference is a small price to pay.

The UHF Broadcasters emphasize that although these preliminary studies were conducted using the MSTV revised table, it is not the objective of the UHF Broadcasters that the Commission adopt either the MSTV table or this proposal using the MSTV table. Rather, it is the overriding goal of the UHF Broadcasters that whatever DTV table is ultimately adopted on reconsideration contain across-the-board power level increases for UHF stations to 200 kW or as close to that intermediate maximization level as possible using the *de minimis* interference levels discussed above and in greater detail in Appendix A.

V. CONCLUSION

The UHF Broadcasters believe that an across-the-board DTV power floor-raising is a solution that does not merely offer hope of increased power but actually *guarantees* such increases. It does so by re-assigning to almost all UHF stations with less than 200 kW an increased level of DTV power. By assigning these higher power levels in the context of a new DTV Table, the Commission would, therefore, be codifying the increases. Moreover, resolving the power issue by implementing power level increases will not delay the rollout of DTV. In fact, it will hasten public acceptance of it. Nor will it involve any DTV channel changes or any increased use of channels 60 through 69. The only side effect will be a *de minimis* level of new interference, amounting to no more than 2% additional interference[11] to the population of any one

[11]See footnote 10 above.

NTSC station. But any such *de minimis* interference will be absorbed by UHF stations, and UHF Broadcasters are willing to sacrifice a minimal portion of the population in their analog service areas during the NTSC-to-DTV transition in order to avoid the unnecessary disenfranchisement of exiting viewers and to achieve a more viable position in the DTV world.

Accordingly, the UHF Broadcasters respectfully request that on reconsideration the Commission revise whatever DTV table it ultimately adopts —pursuant to the immediate intermediate maximization plan discussed above— so as to increase across-the-board the DTV power levels of UHF stations to 200 kW or such lesser power levels for those stations that would produce no more than 2% (or 3% where there is no existing interference) additional interference to any one NTSC station.

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APPENDIX A

Methodology used to determine the revised power floor for DTV stations

A benchmark NTSC population loss (Existing Population Loss) was determined by combining 1) the population loss due to existing NTSC interference with 2) the population loss due to DTV station interference as indicated in the MSTV Table of Allotments.

Then the following rules were applied:

1. Any NTSC station experiencing an "Existing Population Loss" of 15% or greater was not allowed to experience any incremental population loss due to DTV stations increasing their power over the MSTV Table value. DTV stations interfering with this category of NTSC station were required to operate at the power levels specified in the MSTV Table.

2. Any NTSC station experiencing an "Existing Population Loss" of 0% was allowed to experience up to but not including 3% incremental population loss due to interfering DTV stations raising their power over the MSTV Table value up to 200kW.

3. Any NTSC station experiencing an "Existing Population Loss" equal to or greater than 3% but less than 15% was allowed to experience up to but not including 2% incremental population loss due to the interfering DTV stations raising their power over the MSTV Table value up to 200 kW.