

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

MM Docket No. 87-268

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION
OF PAXSON COMMUNICATIONS CORPORATION**

Paxson Communications Corporation ("PCC"), licensee of station WPXM-TV, Miami, FL, by its attorneys, hereby petitions the Commission to reconsider an element of its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, FCC 98-24 (rel. Feb. 23, 1998) ("*DTV Allotment MO&O*"). PCC has assembled an extensive nationwide broadcast television group in anticipation of the launch of the seventh television broadcasting network. With pending acquisitions, PCC, the largest owner of full-power broadcast television stations in the U.S., owns, operates or affiliates with 77 television stations in markets containing over 72 million television households. An expeditious roll-out of DTV is essential to the creation and success of this new television network. Accordingly, PCC applauds the Commission's continued emphasis — by both word and deed — in addressing and rectifying allotment problems identified by broadcasters. Tackling difficult problems now will ensure a smoother transition to digital broadcasting and increase the likelihood of success for the new service. Obviously, responsible broadcasters must refrain from

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straining the capacities of the Commission and creating unnecessary delay by forcing it to confront every single problem DTV faced by licensees, no matter how insignificant. Only the most serious requests should be raised on reconsideration at this stage. In accordance with this spirit, PCC is respectfully seeking the reconsideration of the allotment of one of its many stations and the substitution of modified facilities for WPXM-DT.

I. THE ONLY TIMELY RECOURSE AVAILABLE TO WPXM-DT IS TO SEEK A CONJUNCTIVE REALLOTMENT AND RELOCATION.

PCC wishes to relocate its DTV facilities to the Hollywood, FL antenna farm — the transmission site for many stations in the Miami, FL area — but such a move, given WPXM-DT's current allotment, would create unacceptable interference and thus would not be permitted.^{1/} PCC could relocate to the Hollywood antenna farm if the Commission would conjunctively reassign its paired DTV allotment to Channel 3. As shown in the attached Technical Exhibit, operation on Channel 3 at the antenna farm site would not create unacceptable interference to other stations. Thus, PCC requests the reassignment of the paired DTV allotment for WPXM from Channel 26 to Channel 3.

A naked request for this DTV reallocation, however, is also problematic. If PCC were to transmit on Channel 3 from the existing authorized coordinates as listed in the *DTV Allotment MO&O*, that, too, would result in unacceptable interference. Accordingly, to comply with the

^{1/} See attached technical statement of John Lundin of du Treil, Lundin & Rackley, Inc. ("Technical Exhibit"). The relocation requires the approval of the Commission because it is in excess of 5 km. See Section 73.622(d) of the Commission's rules, 47 C.F.R. § 73.622(d). Relocations in excess of 5 km cannot create new unacceptable interference. *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd 14588, 14634-35 (1997) ("*Sixth Report and Order*").

Commission's standards and regulations, PCC hereby makes two interdependent requests: reallocate Channel 3 to WPXM-DT and relocate the site coordinates to the Hollywood antenna farm (25-57-59, 80-12-33).

Taken individually, the requests would appear to be ungrantable on reconsideration. The Commission generally stated that it would not entertain on reconsideration requests for site relocation; a reallocation of Channel 3 at the existing site would create unacceptable interference. Coupled together, however, the requests could be granted by the Commission because they would result in no new unacceptable interference. PCC was unsuccessful in attempts to identify available allotments that would allow it to make separate, sequential requests for allotment substitution and site relocation, and thus — in a regulatory two-step — straight-forwardly comport with the Commission's stated policies. PCC also scoured the revised Table in the *DTV Allotment MO&O*, but no new opportunities for PCC to modify its assigned facilities for WPXM-DT were presented. As such, PCC believes it has little recourse but to seek the grant of these interdependent requests here on reconsideration — short of suffering the delay of a protracted allotment rule making that would only serve to hinder the rapid roll-out of DTV service.^{2/}

PCC seeks to relocate its authorized DTV facilities for WPXM for two primary reasons. PCC has learned that the support structure for WPXM's existing NTSC tower in Miami cannot support additional DTV equipment. Relocation is thus required, and with receiver antenna

^{2/} PCC presumably cannot avail itself of other approaches as its request does not squarely fit under the Commission's proscribed standards for voluntary community agreements. Those rules contemplate only the exchange of *existing* allotments. 47 C.F.R. § 73.622(c). PCC is seeking a *new* allotment for substitution purposes.

orientation problems anticipated at any site *other* than the Hollywood antenna farm, PCC seeks to relocate to that site. The Commission recognized that broadcasters would face tower issues in transitioning to DTV, and has said it would afford licensees flexibility in addressing such matters.^{3/} Combined with the other inevitable problems associated with the roll-out of any new technology — exemplified by the adjacent channel problems identified late last year^{4/} and the lingering VHF/UHF power disparity issue — PCC is concerned that WPXM could be facing a “death by a thousand cuts” if it were to remain at the currently authorized allotment and location. PCC would resign itself to accepting these circumstances if no viable solution existed, but this is not the case.

II. THE INTERDEPENDENT REALLOTMENT AND RELOCATION REQUESTS COMPORT WITH COMMISSION PRINCIPLES.

PCC’s interdependent requests are consistent with the Commission’s general rules and policies applied throughout the DTV proceeding and would not unacceptably harm any other station. The Commission has repeatedly stated that broadcasters would be afforded flexibility in seeking solutions to allotment problems. This is no less the case with relocations, about which the Commission said:

...we should provide as much flexibility as possible with regard to changes in transmitter locations. To provide broadcasters’ flexibility, we will allow stations to relocate to other locations or co-locate their facilities

^{3/} “[W]e also recognize that existing transmitter sites may not always be available and that use of alternative sites must be accommodated to permit DTV operations.” *Sixth Report & Order*, 12 FCC Rcd 14635.

^{4/} *DTV Allotment MO&O* at ¶¶87-95.

with other broadcasters where such relocations and co-locations would not increase interference.^{5/}

The Commission reaffirmed its support of this approach in the *DTV Allotment MO&O*.^{6/} By reassigning WPXM's paired DTV allotment (which the Commission has already done in response to at least 29 other specific requests),^{7/} WPXM's request to relocate its transmitter to the Miami antenna farm should then be granted because the relocation would not increase interference except for an incredibly small number of people (326) within the Grade B service area of non-commercial station WEDU(TV), Tampa, FL.^{8/} This represents only 0.01% of WEDU(TV)'s service population.^{9/} PCC believes that this minuscule level of interference is acceptable and consistent with the circumstances of at least some of those 29 allotment modifications the Commission previously granted.

PCC's request satisfies other Commission requirements. Proposed operation would be at the minimum 1 kW ERP. Total replication would be achieved and the community of license would remain in WPXM's service area.^{10/} By operating from the Hollywood antenna farm, the added benefit of simplifying the allotment scheme in the Miami area would be gained. The

^{5/} *Sixth Report and Order* at 12 FCC Rcd 14635.

^{6/} *DTV Allotment MO&O* at ¶190.

^{7/} *Id.* at ¶27.

^{8/} See attached Technical Exhibit. This result is calculated for the construction permit operation of WEDU(TV). Interference to WEDU(TV)'s licensed facilities would have even less of an effect: 170 persons (or 0.005% of Grade B service area population).

^{9/} As indicated in the *DTV Allotment MO&O*, Appendix B.

^{10/} See attached Technical Exhibit. A non-directional antenna would be deployed.

Commission should honor its commitment to flexibility for broadcaster relocations and grant PCC's interdependent requests.

III. PCC'S NECESSITATED INTERDEPENDENT REQUESTS ARE SUFFICIENTLY UNIQUE TO JUSTIFY FORBEARANCE OF SIMPLE APPLICATION OF THE COMMISSION'S RELOCATION PRACTICES.

PCC urges the Commission not to apply blindly its general policy of refusing to consider requests for relocation at the reconsideration stage. In the *DTV Allotment MO&O*, the Commission repeatedly declined to grant relocation requests, determining that such were best entertained through the DTV allotment modification procedures provided for in the rules and not as a matter for reconsideration.^{11/} PCC agrees that simple relocation requests are more properly treated through familiar notice and review procedures. No matter how understandable, however, it would be arbitrary and capricious for the Commission to bar *every* relocation request and exclude the reconsideration of equitable and reasonable interdependent requests such as the one proposed by PCC. The entertainment of waivers of its policy of rejecting reconsideration requests for relocation would be required.^{12/} In this respect, PCC's interdependent requests are sufficiently unique and in the public interest: there is no timely recourse, it would expedite DTV roll-out, and the coupled requests would result in no unacceptable interference.^{13/}

^{11/} *DTV Allotment MO&O* at ¶190.

^{12/} *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

^{13/} PCC's reading of the *DTV Allotment MO&O* identified only one other similar pair of interdependent requests. Fayetteville-Cumberland Telecasters, Inc. sought the relocation and reallocation of WFAY-DT, but unlike the circumstances surrounding WPXM-DT, a grant of the dual requests would have resulted in unacceptable interference. *DTV Allotment MO&O* at ¶¶503-505.

CONCLUSION

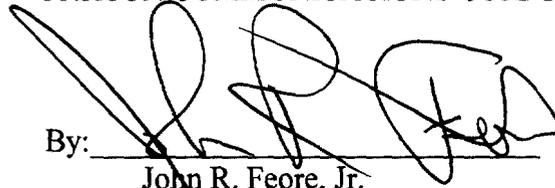
“Throughout this proceeding,” the Commission said, “we have stated that we intend to provide broadcasters with the flexibility to develop alternative allotment approaches.”^{14/} In accordance with the flexibility promised to broadcasters, PCC hereby conjunctively requests the reallocation and relocation of the DTV facilities for WPXM-DT. PCC’s proposal would rectify one of the DTV problems faced by WPXM, would result in no new unacceptable interference for other stations, and would have enormous benefits for the roll-out of DTV service in the Miami area. The grant of the proposal would result in a simplified allotment scheme and would be consistent with the Commission’s rules and policies. While the Commission’s rules appear to preclude the separate pursuit of the underlying individual requests, the Commission has the opportunity to solve a discrete problem here on reconsideration by granting PCC’s interdependent requests.

^{14/} *Id.* at ¶187.

For the reasons stated in the foregoing, and as demonstrated in the attached Technical Exhibit, PCC requests that the Commission act on this request.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION



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ATTACHMENT A

Technical Exhibit

TECHNICAL STATEMENT
STATION WPXM(TV)
MIAMI, FLORIDA

This Technical Statement supports a petition for reconsideration from station WPXM(TV) at Miami, Florida. Station WPXM operates on analog (NTSC) channel 35 with a directional antenna (DA) system. The maximum visual effective radiated power (ERP) is 3240 kilowatts (kW). The antenna height above average terrain (HAAT) is 102 meters. In the Federal Communications Commission (FCC) Memorandum Opinion and Order (MO&O) dealing with reconsideration of the FCC's 6th Report and Order (R&O) in Mass Media (MM) Docket No. 87-268, station WPXM was allotted DTV channel 26. The WPXM channel 26 DTV allotment was assigned a maximum directional antenna ERP of 66.2 kW at an antenna HAAT of 102 meters. The channel 26 DTV allotment reference point is at the WPXM license site (25-41-05, 80-18-52).

Station WPXM requests the FCC reconsider its DTV allotment to WPXM. In particular, station WPXM requests DTV channel 3 with an ERP of 1 kW and antenna HAAT of 250 meters. A non-directional antenna system is assumed for the channel 3 DTV allotment. In addition, station WPXM requests the DTV allotment reference point be changed to the Hollywood antenna farm at coordinates 25-57-59, 80-12-33).

Miami, Florida

Page 2 of 5

During the DTV allotment proceeding, station WPXM requested that its DTV assignment be made at the Hollywood antenna farm where the vast majority of the full service TV stations serving the market are located. Although there are other separation and interference concerns, the major problem with use of DTV channel 26 at the Hollywood antenna farm is the adjacent channel DTV allotment of channel 27 to station WXEL-TV at West Palm Beach, Florida. The separation would be 67.7 kilometers, where as, the FCC rules require the separation to be less than 24 kilometers or greater than 110 kilometers. Station WPXM therefore searched for an alternative DTV channel for its allotment at the Hollywood antenna farm.

Interference studies have been conducted using the procedures described in the FCC's 6th R&O, the MO&O and OET-69. The studies include use of the Longley-Rice propagation model and a 3 second digitized terrain database. The method was used by the FCC to calculate service and interference in its development of the DTV allotment table.

The interference studies indicate the proposed WPXM channel 3 DTV allotment will only cause calculated interference to station WEDU on analog channel 3 at Tampa, Florida. No interference is calculated to other full service analog or DTV allotments, including no interference to the nearly co-located operations of station WPBT on

analog channel *2 and station WFOR-TV on analog channel 4, both licensed to Miami.

The calculated interference from the proposed WPXM channel 3 DTV allotment to the license operation of WEDU (BLET-900703KE) is to an estimated population of 170 people. This represents only 0.005% of the population within the WEDU Grade B service area as indicated in the FCC's MO&O (3,244,000 people).

The calculated interference to the construction permit (CP) operation of WEDU (BPET-970212KE) is to an estimated population of 326 people. This represents only 0.01% of the estimated population within the WEDU CP Grade B service area (3,230,000 people).

The proposed WPXM channel 3 DTV allotment does not receive calculated interference from other analog assignments or DTV allotments. The estimated population within the 28 dBu, f(50,90) noise limited contour is 3,778,000 people.

Figure 1 is a map showing the predicted Grade B (64 dBu) contour for the WPXM analog operation on channel 35. The map also shows the 41 dBu, f(50,90) noise limited contour for the FCC's DTV allotment on channel 26 for WPXM. The 28 dBu, f(50,90) noise limited contour for the proposed WPXM channel 3 DTV allotment is identified. The noise

limited contour for the proposed channel 3 DTV allotment encompasses the Grade B contour for the WPXM analog operation. Hence, total replication will be achieved.

The following is a summary of the estimated population (1990 Census) within the WPXM analog Grade B service area, 41 dBu noise limited contour for the FCC's DTV allotment on channel 26, and the 28 dBu noise limited contour for WPXM's proposed DTV allotment on channel 3.

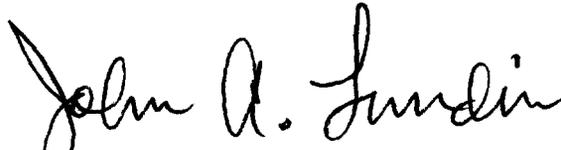
<u>WPXM Operation</u>	<u>Population</u>
Analog Ch.35	2,300,000
FCC DTV Ch.26	2,890,000
Proposed DTV Ch.3	3,778,000

In summary, DTV channel 3 can be assigned to WPXM as its DTV allotment with an ERP of 1 kW and antenna HAAT of 250 meters, at a reference point in the Hollywood antenna farm (25-57-59, 80-12-33). The interference calculated to be caused to station WEDU is considered insignificant (ie, 0.01%). No calculated interference will be received by the proposed channel 3 DTV allotment. The proposed channel 3 DTV allotment at the Hollywood antenna farm will enable station WPXM's DTV operation to be located where the majority of the Miami market TV stations are, and

Miami, Florida
Page 5 of 5

eliminate the site disadvantage WPXM's analog operation experiences.

If there are questions concerning this Technical Statement, please contact the office of the undersigned.



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Figure 1

