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June 26, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

**Re: Advanced Television Systems and Their Impact Upon
the Existing Television Broadcast Service
MM Docket No. 87-268
ORAL EX PARTE PRESENTATION**

Dear Ms. Salas:

On June 23, 1998, representatives of Fox Broadcasting Company ("FBC") met with Chairman Kennard's Legal Assistant for Mass Media issues, Susan Fox, to discuss the Petition for Reconsideration filed by FBC in the referenced proceeding. Representatives of FBC at the meeting were: Larry Jacobson, Andy Setos, Peggy Binzel and Maureen O'Connell. The attached materials were submitted to Ms. Fox to clarify that stations should be permitted to maximize their DTV facilities above 200 kW only if their interference analyses demonstrate that only *de minimus* interference (or no interference) will result. This interference analysis would assume that all other DTV facilities are operating at their allocated power levels or 200 kW, whichever is greater.

Fox also proposed that the FCC lift the 200 kW cap to permit all UHF stations to file applications up to one megawatt. Under this plan, all maximization applications would be placed on public notice, and interested parties given 30 days to file written formal objections to the applications. No formplal application would be required to be filed with such an objection; however, the objecting party would be required to allege that it is interested in

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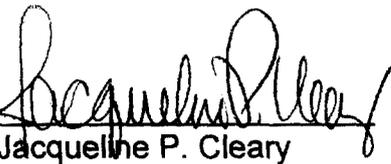
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maximizing and would be precluded from doing so by the maximization application on file. Upon the filing of an objection to a maximization application, the affected parties would be given 30 days to resolve the conflict. In the event the parties are unable to resolve the conflict, the maximized application would be withdrawn and the applicant would resubmit the application requesting no more than 200 kW of power. In summary, parties would be allowed to maximize except in situations where there are potential conflicts, and in those instances the 200 kW cap would remain in place.

Pursuant to Section 1.1206(b) of the Rules, an original and one copy of this letter is being submitted to the Secretary's office and a copy is being provided to Ms. Fox.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By 
Jacqueline P. Cleary

Attorneys for Fox Broadcasting
Company

Enclosure

cc: Susan Fox, Esq.

Maximization of UHF DTV Facilities

Background

The FCC, in its April, 1997 *Sixth Report and Order* on DTV, adopted power levels (50 kW minimum and 1000 kW maximum) for UHF stations that were designed to: (1) provide for a high degree of replication of a station's analog service area; and (2) ensure that all stations are able to provide DTV service competitively within their respective markets. To further the second of these goals, the FCC determined that it would allow television stations to "maximize," or increase their service areas by operating with additional power or higher antennas than specified in the DTV Table, provided that they cause no new interference to other stations.

In its *MO & O on Reconsideration of the Sixth Report and Order*, the FCC on February 23, 1998 modified the *Sixth Report and Order* to limit the ability of UHF stations to maximize in the early stages of the DTV rollout. The *MO & O* provides that UHF stations can increase power up to only 200 kW initially, and up to 1000 kW only within their service areas if antenna beam tilting techniques are employed. UHF stations would be able to maximize above 200 kW only after "substantial progress has been made in the rollout of DTV service." No specific timetable was established for full maximization. VHF stations are also limited in their ability to maximize; however, VHF stations are already operating at power levels that are, in some instances, 20 times higher than the power of UHF stations.

Apparently, this 200 kW cap was established to address two concerns: (1) to ensure that all applicants have an equal opportunity to pursue maximized facilities; and (2) to prevent what could be multiple situations where mutually exclusive applications or petitions to deny are filed against the first broadcaster to apply for maximized facilities.

200 kW Cap Will Hinder UHF Broadcasters Subject to Early DTV Buildout

While understanding the genesis of the 200 kW cap, Fox Broadcasting Company and Fox Television Stations are nonetheless concerned about the impact of the UHF cap on the DTV rollout.

- Limiting the ability of television stations to maximize in the critical early years of the DTV buildout will impede the ability of broadcasters to provide DTV signals to the largest number of viewers at the earliest possible date. Until viewers have access to digital television, there is no incentive to buy new digital TV sets or converters. This, in turn, will ultimately slow the transition from analog to digital and the give-back of a 6 MHz channel by broadcasters.
- Limiting early maximization will also impede the ability of UHF stations that are committed to an aggressive timetable for construction of their DTV facilities to compete with VHF stations with larger service areas -- even where the Commission's *de minimis* interference standards could be met.
- Limiting maximization will result in a significant expense for television stations that are required to undertake an early buildout, and those that are planning to buildout ahead of schedule, as a

two-phase construction will be necessary. The added cost of constructing a new antenna and other facilities needed for a fully-maximized facility down the road is expected to run as high as \$300,000-\$750,000 per station. Importantly, a "double" buildout will further strain the already limited capacities of digital equipment manufacturers and tower construction companies, causing a domino-effect delay in the digital buildout.

Fox's Petition for Reconsideration

In its April 20, 1998 "Petition for Reconsideration and Emergency Request for Clarification," Fox Broadcasting Company asked the FCC to lift the 200 kW cap and thereby allow UHF stations to file maximization applications up to one megawatt.

In order to address the concern about competing or frivolous applications, Fox proposes in its Petition that the FCC take the following steps: (1) require applicants to file extensive engineering showings; (2) require all applications to adhere to the FCC's DTV construction schedule; (3) require each applicant to certify its intention to construct and operate according to the specification in its application in the event it is granted. The Petition also proposes that mutually exclusive applicants be given 90 days to resolve their differences. If no resolution is reached, the FCC would grant the application proposing to provide new DTV service to the largest number of households.

In order to address the concern that all UHF applicants have an opportunity to pursue maximized facilities, we further propose that the FCC impose a requirement that maximization applications proposing up to one megawatt submit engineering that demonstrates that all other DTV stations are operating at their allocated power levels or at 200 kW, whichever is greater. Therefore, all UHF stations will have, at a minimum, the opportunity to increase to 200 kW. (Note that this proposal was not included in our Petition for Reconsideration, but has been made a part of the record in an *ex parte* letter filed at the FCC on June 19.)

The deadline for opposing Petitions for Reconsideration of the *MO&O of the 6th R&O* has passed and there were no oppositions to the Fox Petition. The Fox Affiliate Board of Governors and Sinclair Broadcasting filed in support.