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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules	)	WT Docket No. 99-168

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COMMENTS OF
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SUMMARY

The service and auction rules for the 746-764 MHz and 776-794 MHz bands must be developed to accommodate not only two-way mobile services but broadcast and other broadband applications as well. These spectrum bands are the new frontier for cellular telephony, wireless local loop, video and multimedia applications including broadcast services, wireless cable, and industrial communications services. The Commission must take care in its service and auction rules to avoid pre-determining which services operate in this band. Rather, it should adopt rules that allow all potential service providers full and fair access to this valuable spectrum.

The Association for Maximum Service Television, Inc., believes the best way to accommodate flexible use in these bands is to auction the spectrum in a single block. Channelization decisions can then be left to the licensee, which can disaggregate or sublicense the spectrum to other users. Furthermore, while the Commission would impose interference criteria to protect adjacent services, such as public safety users, the Commission would not necessarily have to adopt interference protection criteria for commercial services within the 36 MHz band. Instead, the entity awarded the initial license would be responsible for disaggregating the spectrum in a particular market so that potentially incompatible users do not interfere with each other. In this way, interference protections can be tailored to the service providers who actually use the spectrum rather than applied generally (either over-protectively or under-protectively) to all users. If the Commission decides not to adopt this single-license proposal and instead channelize the spectrum in a more traditional manner, it should assign licenses of at least 6 MHz. Channels of this size, whether paired or unpaired, will ensure that broadcasters and other broadband service providers can operate without impairing the ability of

licensees that need less spectrum to provide service as well. In addition, the Commission should adopt interference protection criteria that assume the most incompatible uses on adjacent channels. If this assumption is too conservative, licensees can agree to relax the interference protection.

Finally, to avoid discriminating against broadcast and broadband uses, and because some of the spectrum in these bands will be used by incumbent broadcasters through the year 2006, the Commission should license this spectrum based on the 52 Major Economic Areas so long as no Designated Market Area is divided between two or more licensees. This licensing scheme will balance competing interests and promote the provision of either nationwide or local services by future service providers.

TABLE OF CONTENTS

Page

I. The Spectrum in the 746-764 MHz and 776-794 MHz Bands Provides Unique Opportunities for Innovative and Traditional Broadband Applications 2

II. The Best Solution to the Channelization and Interference Problems Created by a Flexible Use Allocation in these Frequency Bands Is to Award All Available Spectrum as a Single License. 4

A. The Scheme that Will Best Promote Flexible Use of the 746-764 MHz and 776-794 MHz Bands and Prevent Harmful Interference Is to License the Spectrum as a 36 MHz Block in Each Market. 4

B. If the Commission Decides to Adopt a Channelization Plan, that Plan Must Accommodate Broadband as Well as Narrowband Services. 8

C. The Commission Must Adopt Interference Criteria that Protect All Potential Services. 10

III. A License Area Should Be Adopted That is Suitable for Both Nationwide and Local Service. 11

IV. For Flexible Use to Succeed, No Service Offered in the 746-764 MHz and 776-794 MHz Bands Should Be Subject to Inconsistent or Discriminatory Regulatory Treatment. 13

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To: The Commission

COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

The Association for Maximum Service Television, Inc. ("MSTV")[1] urges the Commission to adopt service and auction rules that facilitate flexible use of the 746-764 MHz and 776-794 MHz bands for the growth and development of innovative broadband services, including services to be provided by broadcasters, as well as for two-way mobile and other narrowband services. Some of the proposals in the *Notice of Proposed Rulemaking* could handicap the development of broadband services to the extent that they would effectively zone the spectrum for narrowband or two-way mobile use. We urge that the auction and service rules be carefully crafted to ensure that new broadband interactive video and audio services and new digital broadcast services have equal access to and can co-exist with narrowband fixed and mobile services in this spectrum. MSTV therefore urges the Commission to consider the technical requirements of *all* potential users of these bands in adopting final service and auction rules.

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[1] MSTV represents more than 360 local television stations on technical issues relating to the analog and digital broadcasting services.

I. THE SPECTRUM IN THE 746-764 MHZ AND 776-794 MHZ BANDS PROVIDES UNIQUE OPPORTUNITIES FOR INNOVATIVE AND TRADITIONAL BROADBAND APPLICATIONS.

The Commission, in reallocating the 746-764 MHz and 776-794 MHz frequency bands from traditional broadcast television service, emphasized the need to "make new technologies and services available to the public."[2] The Commission also emphasized its intent "to make the broadest allocation possible, consistent with international allocations, and to allow market forces to determine the best use for the spectrum."[3] In this context, the Commission specifically stated its intent to allow multiple possible uses of this spectrum, including cellular telephony, wireless local loop, video and multimedia applications including broadcast services, wireless cable services, and industrial communications services.[4]

Given the goal of flexible and market-driven spectrum use, it is particularly critical that the Commission ensure that the service and auction rules for the 746-764 MHz and 776-794 MHz bands are designed to accommodate broadcast and other broadband applications. *First*, the radio spectrum is becoming increasingly crowded, despite new technology and equipment designed to use the spectrum more efficiently. As a result, there are few locations in the radio spectrum with sufficient vacant bandwidth available to accommodate terrestrial broadband services. For that reason, unless the potential of these frequency bands for broadcast use is accommodated in appropriate service rules, potential applicants will be hard-pressed to find

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[2] *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd. 22,953, 22,953 (1998) (the "*Reallocation Order*").

[3] *Id.* at 22,960. The international allocation for this band allows fixed, mobile, and broadcast operations in these frequency bands on a co-primary basis in Region 2, including the United States.

[4] *See id.* at 22,961-62.

alternative spectrum for future broadband services.[5] In particular, there are few if any other bands in which to operate a hybrid broadband and mobile service.

Second, existing broadcasters might like to take advantage of opportunities to expand their service in their existing markets or new markets in ways that would enhance the public interest benefits they currently provide. Existing broadcast licensees could use additional spectrum to provide enhanced multimedia services, or to experiment with new technologies including mobile applications, the provision of a back channel for interactive video programming, or datacasting services.[6] As more and more DTV licensees apply to maximize their facilities, it is becoming clear that the DTV allotments/assignments are not optimal for many stations; some licensees might opt to bid for licenses in the 746-764 MHz and 776-794 MHz bands if those licenses allowed them to increase service or otherwise modify their facilities.

Third, there continues to be a high demand for traditional broadcast frequencies, particularly with the rise of new national television networks and an increased interest in establishing new digital network affiliates across the country. There are hundreds of analog station permitees and licensees and new, interested applicants that did not receive a digital allotment. While these entities might theoretically be eligible to apply for digital allotments once the "analog" spectrum is returned, this spectrum will not be available for many years.

Because of the need for additional capacity and the ever-growing demand for a host of new spectrum-based technologies, MSTV urges the Commission to facilitate the provision of broadband as well as narrowband technologies and services in the 746-764 MHz and 776-794

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[5] Although the television "give back" frequencies are scheduled to be auctioned by the Commission in 2002, it is highly unlikely that any of the give back television spectrum will be available for new operators' use before 2006, and even the 2006 target is optimistic.

[6] *See Notice* at ¶¶ 5-7.

MHz bands, consistent with the Commission's original intent to allow for flexible use of these frequencies.

II. THE BEST SOLUTION TO THE CHANNELIZATION AND INTERFERENCE PROBLEMS CREATED BY A FLEXIBLE USE ALLOCATION IN THESE FREQUENCY BANDS IS TO AWARD ALL AVAILABLE SPECTRUM AS A SINGLE LICENSE.

Because of the need to accommodate both broadband and narrowband services in the 746-764 MHz and 776-794 MHz bands, MSTV urges the Commission to ensure that the opportunities to use these licenses are truly flexible and fair. The best way to accomplish this difficult task is to focus on the overall goal of this proceeding – effective flexible use – and determine what service rules will best promote that goal. To this end, the Commission should adopt licensing rules that encourage robust competition in commercial wireless services as well as growth, innovation, and development of new video services.

A. The Scheme that Will Best Promote Flexible Use of the 746-764 MHz and 776-794 MHz Bands and Prevent Harmful Interference Is to License the Spectrum As a 36 MHz Block in Each Market.

The *Notice* rightly notes that an allocation as flexible as this one is problematic in that the services offered in the 746-764 MHz and 776-794 MHz bands could require different channelization and interference plans for effective operations. For example, broadband video generally requires at least 6 MHz of contiguous, unpaired spectrum, particularly because the installed base of receivers (both digital and analog) are designed for 6 MHz signals. On the other hand, two-way mobile and data services can operate over 15 kHz or less of paired spectrum. With respect to interference, land-mobile receivers are generally more immune to interference from adjacent channel broadcast signals than television receivers are from adjacent channel land mobile signals. Mobile signals operating on adjacent channels can easily degrade the video and audio

quality of television.[7] Among the many difficult issues the Commission needs to decide, the most important are: (1) how to channelize the available frequencies to accommodate multiple services with diverse needs, and (2) how to prevent unacceptable interference among competing uses operating within these frequency bands.

MSTV believes the simplest and best solution to the channelization and interference problems is to auction the spectrum in a single block in each defined geographic market area. The winning bidder for each license could use all 36 MHz itself to provide one or multiple services in an area or market, or disaggregate the spectrum to other sublicensees.[8] Although the ability to disaggregate the spectrum should be unlimited, the initial auction winner would bear the burden of preventing multiple uses from causing harmful interference to each other within an area or market. Each licensee or sub-licensee would be responsible for ensuring that it complied with the interference protection criteria for adjacent broadcast television and public safety operations.[9] Based on the needs and business plan of the winning bidder, the spectrum could be divided or not, paired or not, channelized to any bandwidth, and put to any use that the

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[7] *See Allocation of the 219-220 MHz Band for Use by the Amateur Radio Service*, ET Docket No. 93-40, *Notice of Proposed Rulemaking*, 8 FCC Rcd. 2352 (1993).

[8] In most markets, the spectrum awarded to each licensee will be less than 36 MHz, especially in the major metropolitan areas, where new licensees will be required to accommodate and protect existing operations by incumbent television stations broadcasting on the existing channels 60 through 69. According to statute, these incumbents may continue broadcast operations through 2006, and that deadline may be extended in certain circumstances. *See* 47 U.S.C. § 309(j)(14). Although the Notice does not make clear that all 36 MHz in each market will be subject to this auction, MSTV presumes this is the case based on the statutory treatment of other broadcast spectrum recaptured for auction following completion of the transition to digital television. *See id.* In this case, then, the auction winner would be awarded the present use to operate on any available spectrum in the 746-764 MHz and 776-794 MHz bands, coupled with the "future interest" to operate on the spectrum currently occupied by broadcasters in 2006 or later. This issue is also discussed in section III of these comments, *infra*.

[9] See *Notice* at ¶ 68.

licensee wanted. By using this single block licensing scheme, the Commission could ensure that market forces will determine objectively the best use for the available spectrum.[10]

By awarding all 36 MHz of the available spectrum to a single licensee, the Commission can leave the decision as to whether paired or unpaired channels best promote flexible and equitable use opportunities to the individual auction winner and the commercial marketplace. Furthermore, a single license would give each bidder the benefit of clearly defined expectations regarding the use of that spectrum; each applicant could bid on the spectrum knowing that its use would be unfettered by potential interference from incompatible uses on adjacent spectrum.[11] By defining the expectations and reducing the uncertainties for auction participants, the Commission would increase the value of the spectrum to the potential auction participants, ensure the winning bids more accurately reflect the true value of the spectrum, and increase total auction revenues.

Awarding this spectrum as a single 36 MHz license effectively eliminates the most difficult regulatory issue the Commission faces in this proceeding – establishing effective interference criteria that promote fully flexible use without favoring one type of service over another. Of course, any and all uses of the 746-764 MHz and 776-794 MHz bands would be subject to interference protection of adjacent spectrum licensees, including public safety users. However, developing adequate interference rules to protect adjacent allocations is a far simpler task than developing, implementing, and monitoring adequate interference criteria to govern intra-band operations, especially where these operations are inherently diverse, currently unpredictable,

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[10] *See Reallocation Order* at 22,960 ("It was our intention to provide the broadest allocation possible, consistent with international allocations, and to allow market forces to determine the best use for the spectrum.").

[11] *See Notice* at ¶ 58.

and potentially incompatible with each other. Placing the risk of interference on the licensee would reduce regulatory oversight and remove the need for a third party interference coordinator.[12] Similarly, leaving the channelization of the spectrum bands to the licensee avoids any risk that the Commission's service rules favor one type of service over another. This proposal would eliminate the need for any channelization plan or complex interference protection criteria and promote a market-based, competitive solution to the problems presented by flexible use.

The auction and service rules for a 36 MHz license could easily be adapted to promote multiple and shared uses. At a minimum, each winning licensee should have the option to disaggregate or sublease portions of its license to other users if it chooses to operate on only a portion of the license to recoup its initial investment.[13] Thus, each licensee could have the option to provide multiple services itself to recoup its initial investment. In addition, multiple potential users of the spectrum could be allowed to bid as a consortium on a single license with the expectation that, if the consortium is the winning bidder, the spectrum license could be divided among the members according to a predetermined plan to accommodate the compatible needs of each individual member.

Not only would a single 36 MHz license plan resolve the most difficult regulatory issues raised in the *Notice*, but it would also further the policy goals of innovation and flexibility in this band. Indeed, licensing the available spectrum as a single block would allow one entity to provide multiple services – broadband interactive video services and narrowband data services, for example – and offer them to customers on an integrated basis. These options will encourage

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[12] *See Notice* at ¶ 64.

[13] In conjunction with any disaggregation rules, the Commission should adopt a minimum requirement that the initial auction winner operate on some portion of the spectrum to discourage trafficking and pure resale of spectrum.

innovation and increase competition for advanced wireless services nationwide. By adapting its auction rules to accommodate multiple uses, the Commission could leave complex decisions as to duplex operation and bandwidths to the marketplace.

B. If the Commission Decides to Adopt a Channelization Plan, that Plan Must Accommodate Broadband As Well As Narrowband Services.

For the reasons explained above, MSTV urges the Commission to consider awarding the available 746-764 MHz and 776-794 MHz spectrum as a single license, and to design auction and service rules that will promote multiple flexible uses within those bands. Alternatively, we endorse a band plan that would similarly, although perhaps not as effectively, promote both broadband and narrowband uses of the spectrum on a flexible basis.

If a channelization plan is necessary, MSTV believes the best way to promote flexible use is to ensure that such a plan is designed to accommodate the most spectrum-intensive of the potential uses – broadband services. Therefore, the Commission should channelize the available spectrum into 6 MHz blocks and license up to six such licenses in each area or market. A 6 MHz block of spectrum would give potential broadband users sufficient bandwidth to provide a variety of innovative services. Furthermore, 6 MHz of spectrum would enable broadband service licensees to provide service to the existing and widespread base of television receivers – both analog and digital. This is especially critical in light of the introduction of new digital television services and digital receivers; customers who already have invested or anticipate investing in expensive digital television equipment will be less likely to purchase additional equipment to obtain new broadband services. As a result, there will be less incentive to innovate and provide potentially valuable services to the public. By dividing the available spectrum into 6 MHz licenses, the Commission would encourage use of the spectrum by a variety of broadband and video distribution service providers and promote the public interest by increasing choice and competition for these services.

MSTV disagrees with the Commission's tentative conclusion that it is necessary to license the spectrum in the 746-764 MHz and 776-794 MHz bands on a paired basis.[14] While paired licensing might be desirable for two-way services like land mobile operations, it is not necessary for many mobile applications, particularly if they are asynchronous in nature (*e.g.,* third generation wireless services). Where a licensee requires two channels of equal size, it can channelize a single 6 MHz license to provide two-way services on adjacent 3 MHz channels. Indeed, such services are currently operating in the lower portion of the UHF television band (470-512 MHz band). A paired channelization plan, however, might undermine the development of broadband services that require a single larger channel or multiple contiguous channels in each market. Proponents of a paired licensing scheme themselves identified this problem in the allocation stage of this proceeding.[15]

The Commission can both accommodate two-way services and avoid the "orphaning" problem through, for example, combinatorial bidding rules. Specifically, the Commission could adopt rules to allow an applicant that intends to provide two-way commercial services to bid on combinations or groups of licenses in a single bid, consistent with the *Notice*. Combinatorial bidding would allow two-way providers to acquire paired spectrum without running the risk that they will win only half of the necessary spectrum. Similarly, combinatorial bidding would protect other users from having to acquire paired spectrum blocks for which they have no use, leaving half of their allocation unused. In addition, the Commission could allow a consortium of potential service providers to participate in the auction together, with the

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[14] *See Notice* at ¶ 19.

[15] As some potential two-way users noted, a paired allocation might result in wasted spectrum because if a broadcaster obtained a paired channel for which it had no immediate use or future plans, half of the license in a paired, two-way allocation would be "orphaned." *See Reallocation Order* at 22,961.

expectation that, if the consortium won, the spectrum could be divided among the members according to a predetermined plan to accommodate the needs of each individual member.

C. The Commission Must Adopt Interference Criteria that Protect All Potential Services.

The biggest uncertainty that a potential bidder for a license in the 746-764 MHz and 776-794 MHz bands faces is whether adjacent channel licensees will be operating compatible services. In the face of this uncertainty, the best and only solution to the interference problem is to establish interference criteria that will protect the two *most* incompatible services – broadband video and two-way land mobile – from interfering if they are licensed to operate on adjacent spectrum or in neighboring markets. Although the compatibility of adjacent broadband and land mobile operations has plagued the Commission for years, there are some successful sharing situations from which the Commission can draw in developing adequate interference protections.[16]

To the extent that any interference criteria will be overprotective, based as they must be on the assumption that a broadband user and a two-way mobile user will be operating on adjacent licenses, MSTV also supports allowing adjacent channel licensees to modify the general interference criteria to the extent such changes are mutually acceptable to each adjacent licensee. Thus, in circumstances where two broadband service providers are licensed to adjacent 6 MHz channels, the licensees could cooperate to increase power or other technical parameters and thereby reduce any inefficient use of spectrum that would otherwise result from the compliance by two compatible services with overly stringent interference criteria.

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[16] *See, e.g., Amendment of Parts 2, 89, 91, and 93; Geographic Reallocation of UHF-TV Channels 14 through 20 to the Land Mobile Radio Services for Use within the 25 Largest Urbanized Areas of the United States; Petition Filed by the Telecommunications Committee of the national Association of Manufacturers to Permit Use of TV Channels 14 and 15 by Land Mobile Stations in the Los Angeles Area*, Docket No. 18,261, *First Report and Order*, 23 F.C.C.2d 325 (1970) (continued...)

III. A LICENSE AREA SHOULD BE ADOPTED THAT IS SUITABLE FOR BOTH NATIONWIDE AND LOCAL SERVICE.

Regardless of the channelization plan the Commission finally adopts, it must determine the size of geographic area licensing that is appropriate for all potential services. MSTV generally supports licensing these frequency bands based on the concept of Major Economic Areas ("MEAs") as proposed in the *Notice*, modified to accommodate existing television markets; each MEA should be modified to ensure that no Designated Market Area ("DMA") is divided between two or more MEAs.

MSTV agrees with past Commission decisions that licensing wireless services on a MEA basis effectively balances a variety of competing concerns. As the *Notice* states, the potential use of this spectrum for broadcast and other broadband services may support licensing systems in smaller areas.[17] On the other hand, potential providers of two-way services may well hope to provide services over large regions or even nationwide. MSTV believes that a broadband provider will be able to meet the needs and serve the interests of multiple communities located within the same MEA, because the people who reside in these communities may well have similar regional interests and concerns.[18] On the other hand, a MEA license would be sufficiently large to

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(adopting "conservative" sharing plan for land mobile and television broadcast uses in the 470 – 512 MHz spectrum band).

[17] *See Notice* at ¶ 21.

[18] In addition to facilitating the provision of broadcast and broadband services, smaller license areas help to provide greater opportunities for participation by small businesses, to increase participation in the provision of service by a larger number of entities and thereby increase competition, encourage a more diverse group of service providers, and encourage flexibility of service. *See Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Gen. Docket No. 96-228, *Report and Order*, 12 FCC Rcd. 10,785, 10,815 (1997). MSTV also supports auction rules that will encourage small applicants to participate in the auction for this spectrum, such as the use of bidding credits for qualified small and very small applicants.

encourage the provision of two-way services across a wider area.[19] Therefore, in the context of this flexible use spectrum, MSTV believes a MEA licensing scheme will facilitate the development of regional and national services while giving some licensees the option of providing service on a more local basis.

MSTV believes, however, that the boundaries of the MEAs may need to be modified in some circumstances to avoid any unintended discrimination against the use of these frequencies for traditional broadcast services and innovative broadband services. Specifically, MSTV is concerned that no potential broadband user be forced to acquire two neighboring licensees in order to provide consistent service throughout a television market. Thus, to the extent any MEA divides a DMA, the boundaries of the MEA should be modified to encompass each existing DMA in its entirety.

A separate difficulty that impacts the geographic licensing issue is the fact that there are existing users – broadcast licensees providing traditional or digital broadcast service on channels 60 through 69 – operating on different channels in various parts of the country.[20] These incumbent users can continue to operate through 2006, and longer in some circumstances. Therefore, most auction winners will have to include mechanisms to protect existing television

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[19] The Commission should also allow combinatorial bidding and give licensees the opportunity to aggregate spectrum across geographic areas to encourage the development of these types of services. *See id.* at 10,814 (noting that "aggregation of both spectrum and service areas through the auction process has proven to be an effective method of allowing bidders to acquire the right amount of spectrum for their business needs").

[20] For example, channel 60 is assigned in San Antonio, Texas, and Roanoke, Virginia, channel 61 is assigned in Phoenix, Arizona, and Wilmington, Delaware, channel 62 is assigned in Detroit, Michigan, and Kansas City, Missouri, channel 65 is assigned in Bakersfield, California, and New Haven, Connecticut, channel 66 is assigned in Flint, Michigan and Erie, Pennsylvania, and channel 67 is assigned in Canton, Ohio, and Baltimore, Maryland.

operations across the country in their long-term plans to operate in the 746-764 MHz and 776-794 MHz frequency bands.

Because of these incumbent users, all 36 MHz of spectrum in the 746-764 MHz and 776-794 MHz bands will not necessarily be available in each market for many years. As a result, the auction winner of each MEA license will have to "cut out" various pieces of spectrum to accommodate the incumbents, and these cut outs will be inconsistent across the license but consistent within each DMA. In major markets especially, a significant portion of the spectrum in the 746-764 MHz and 776-794 MHz bands will remain encumbered for many years after completion of the auction of that spectrum.

This situation also supports MSTV's proposal to license the spectrum in these bands as a single block. Because it will be several years until the entire spectrum band is available for new uses, the technologies that will operate in these bands may be those that have not yet been developed. Furthermore, customers' needs may have evolved such that different services will be in far greater or lesser demand than they are today. Because this future use remains uncertain, it is especially difficult for the Commission to adopt service rules that will accommodate technologies that do not even exist. By licensing the spectrum as a single block, the Commission will preserve this spectrum for truly flexible use as wireless technology continues to develop and grow.

IV. FOR FLEXIBLE USE TO SUCCEED, NO SERVICE OFFERED IN THE 746-764 MHZ AND 776-794 MHZ BANDS SHOULD BE SUBJECT TO INCONSISTENT OR DISCRIMINATORY REGULATORY TREATMENT.

To encourage flexible use of the spectrum, the Commission should ensure that the construction rules and other regulatory treatment of the services provided in the 746-764 MHz and 776-794 MHz bands do not favor particular types of service. Instead, the Commission should adopt licensing rules that encourage robust competition in both narrowband and broadband, mobile and fixed services that serve the needs of local communities and the public interest. To

that end, the regulatory treatment of the services provided in these bands should be as neutral as possible, and as independent as possible of the type of service the licensee chooses to provide. Consistency in regulatory treatment will promote flexible use by freeing a licensee to experiment with different types of services, depending on marketplace demands.

Thus, for example, the Commission should establish a minimum "substantial use" requirement for each licensee, based on the existing Part 27 rules, to ensure that the auction winner, by a certain deadline, uses a substantial portion of its license. It may be that the ten-year substantial use build-out requirement in Part 27 is too long for flexible use spectrum and a shorter deadline would be appropriate. It would be unnecessarily complicated, however, to administer construction requirements that depend on the type or types of services the winning bidder chooses to provide. Furthermore, a shorter construction deadline for broadband or video services might artificially encourage a licensee to change from broadband to two-way land mobile services if it is in danger of missing the shorter deadline, or might artificially discourage a land mobile provide who determines that market demand for broadband services has increased from changing operations to provide such services if the broadband construction deadline has already expired for the license.

Similarly, MSTV believes the spectrum in the 746-764 MHz and 776-794 MHz frequency bands should not count toward either the spectrum cap limits for commercial mobile services or the broadcast multiple ownership limits. Again, exempting this service from the ownership limits for all services will encourage the provision of new services based on market demand, not regulatory barriers.

* * *

For the reasons stated herein, MSTV urges the Commission to promote the truly flexible and fair use of the 746-764 MHz and 776-794 MHz bands by licensing the available spectrum in a single, 36 MHz block in each television market to the highest individual or consortium bidder and giving the licensee responsibility to protect operations within the frequency bands from unwanted interference.

Respectfully Submitted,

THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

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July 19, 1999