

AUG 16 2000

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Service Rules for the 746-764 and 776-994)
MHz Bands, and Revisions to Part 27 of the)
Commission's Rules; Carriage of the Trans-)
missions of Digital Television Broadcast)
Stations; Review of the Commission's Rules)
Affecting the Conversion to Digital Television)

WT Docket No. 99-168 ✓
CS Docket No. 98-120
MM Docket No. 00-85 *JA*

To: The Commission

COMMENTS

Maranatha Broadcasting Company, Inc. ("MBC"), licensee of television broadcast station WFMZ-TV, Channel 69, Allentown, Pennsylvania, and permittee of digital television broadcast station WFMZ-DT, Channel 46, Allentown, through counsel, hereby responds to the FCC's *Further Notice of Proposed Rule Making*, FCC 00-224, released June 30, 2000, in the above-captioned proceeding (the "*FNPRM*").

The *FNPRM* starts from a worthy premise, i.e., the FCC should facilitate the transition to digital television broadcasting through a variety of means, including encouraging television stations on Channels 59-69 to convert to lower channels prior to the deadline for completing the transition to digital television broadcasting. This, presumably, will have the added benefit, at least from the viewpoint of the FCC and the U.S. Treasury, of increasing the total proceeds of the planned auction of licenses for so-called "third-generation" or "3G" wireless communications licenses in the bands from 746-764 and 776-994 MHz, because prospective bidders will have assurance of early access to the spectrum. However, the means proposed in the *FNPRM* for reaching the FCC's voluntary

No. of Copies rec'd *0+7*
List ABCDE

clearance objective are inadequate to satisfy the legitimate concerns of incumbent channel 60-69 licensees and, therefore, will be ineffective.

If the FCC wants to maximize the likelihood that incumbent licensees will voluntarily enter into channel-clearing agreements with 700 MHz licensees, then it should act promptly to ensure that the ability of incumbent broadcasters to serve the public will not be penalized by a decision to make an early transition to DTV broadcasting. As a first step the FCC should rule, immediately, that DTV-only broadcasters are entitled, under Section 614 of the Communications Act, to mandatory carriage for a single channel of video programming on cable television systems within its local television market, pursuant to Section 76.56(b) of the FCC's Rules.

Such a conclusion is entirely consistent with Section 614 of the Act. No provision of the Act requires the FCC to adopt a special set of rules for cable carriage of DTV signals. To the contrary, the only reference in Section 614 to DTV requires the FCC to ensure carriage of DTV signals by making "necessary" changes in the Rules. 47 U.S.C. § 534(b)(4)(B). No change in the must-carry rules is "necessary" to require carriage of a single channel of video programming. Possible technical issues can be mooted by requiring DTV-only broadcast stations to provide each cable system with a custom-cut receiving antenna and conversion equipment comparable to equipment already used by cable operators to receive signals transmitted in digital format via microwave and fiber optic delivery systems.

Without assurance that cable operators will carry DTV-only stations, the FCC will have no hope of securing agreements by NTSC licensees on Channels 59-69 to voluntarily relinquish their NTSC allotments prior to the conclusion of the transition to DTV. This issue is addressed in the *FNPRM*, but only ambiguously, where the FCC states (¶ 65):

cable systems are ultimately obligated to accord “must carry” rights to local broadcasters’ digital signals. Existing analog stations that return their analog spectrum allocation and convert to digital are entitled to mandatory carriage for their digital signals consistent with applicable statutory and regulatory provisions. . . . [T]o facilitate the continuing availability during the transition of the analog signal of a broadcaster who is party to a voluntary band clearing agreement with new 700 MHz licensees, such a broadcaster could, in this context and at its own expense, provide its broadcast digital signal in an analog format for carriage on cable systems. In these circumstances, nothing prohibits the cable system from providing such signals in analog format to subscribers, in addition to or in place of the broadcast digital signal, pursuant to an agreement with the broadcaster.

While the *FNPRM* posits the existence, “ultimately,” of a right to mandatory carriage for DTV stations that voluntarily relinquish their NTSC allotments, it then implies that such carriage is subject to an “agreement” between the broadcaster and the cable operator. “Ultimately” is not soon enough and far too equivocal. If a broadcaster’s ability to deliver its DTV programming to cable subscribers can be held hostage to the necessity of an agreement with the cable operator, then the broadcaster cannot be expected to voluntarily relinquish a frequency for which it has a guarantee of carriage, sometimes secured through years of costly litigation.

No rules that the FCC might adopt regarding voluntary agreements between broadcasters and new 700 MHz wireless licensees, and no auction system the FCC can devise to facilitate the transfer of spectrum rights, will be effective in securing the early clearance of NTSC stations on Channels 59-69 unless broadcasters can be assured of access to cable subscribers for their primary DTV programming.¹ Even a guarantee of access to cable subscribers, alone, will not be a sufficient incentive. Broadcasters asked to relinquish NTSC allotments on Channels 59-69 must be able to control the timing of the conversion of their analog signals to digital; when a broadcaster provides

¹ MBC operates in the Philadelphia local television market. In the Philadelphia market, cable reaches, typically, 75-80 percent, and in some counties more than 90 percent, of all television households.

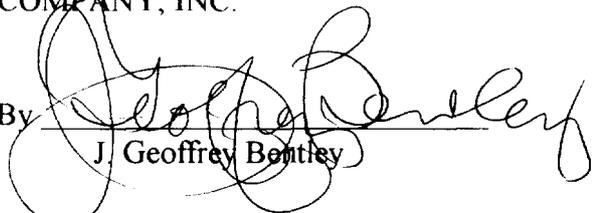
the necessary reception and conversion equipment, that event should trigger a fixed deadline for the cable operator to commence carriage of the station's DTV video programming, on the same cable channel on which the station has theretofore been carried by the cable system.

Broadcaster willingness to enter into voluntary channel-clearing agreements will also be dependent on the FCC's commitment to vigorous enforcement of its must-carry rules. If broadcasters are to voluntarily relinquish their analog spectrum, the FCC must explicitly state that prior decisions enforcing must-carry rights for their NTSC stations are *res judicata* when an incumbent broadcaster making an early transition to DTV-only broadcasting asserts a right to carriage of DTV video programming. Where must-carry rights have not previously been adjudicated, cable operators must not be permitted to avoid compliance by filing frivolous motions to stay the enforcement of carriage orders or to ignore carriage obligations pending action on petitions for reconsideration. Further, the FCC must make clear that willful violations of orders enforcing must-carry rights will result in the prompt imposition of monetary forfeitures sufficiently substantial to deter cable operators from ignoring their must-carry obligations.

To the extent the FCC is able, by assuring cable carriage for DTV-only stations, to encourage broadcasters, through voluntary agreements, to make the conversion to DTV prior to the end of the scheduled transition period, it will provide additional incentive for consumers, particularly those who rely on off-air reception of broadcast signals, to adopt DTV reception technology. Such assurances of cable carriage, therefore, will advance not only the FCC's goals in this proceeding, but also the prospects for a timely transition of all NTSC stations to DTV. At the same, to the extent that the FCC is able to encourage other NTSC stations -- those below Channel 59 -- to commence DTV broadcasts, including the broadcast of original programming for DTV -- it will also encourage

incumbent licensees on Channels 59-69 to voluntarily relinquish their existing allotments. To that end, the FCC must expedite the adoption of rules for mandatory cable carriage of DTV stations' full signal, not merely a single channel. Assured carriage of a single channel of DTV programming is a matter of survival for Channel 59-69 licensees asked to relinquish their existing channel assignments; assured carriage of the full DTV signal of all stations is necessary for the public and broadcasters to realize the benefits of the conversion to DTV. Thus, as a second step, the FCC should expeditiously complete its proceeding to adopt mandatory carriage rules for all DTV signals and attend, in the words of Commissioner Ness's Separate Statement, to all of "the crucial issues surrounding the transition of analog stations to the digital age." If the FCC acts to advance the objective of completing the transition of all television stations to DTV broadcasting, then it will also expedite the clearance of Channels 59-69 through voluntary agreements between incumbent broadcasters and new wireless licensees.

MARANATHA BROADCASTING
COMPANY, INC.

By 

J. Geoffrey Bentley

J. Geoffrey Bentley, P.C.
BENTLEY LAW OFFICE
P.O. Box 710207
Herndon, VA 20171
(703)793-5207
(703)793-4978 (facsimile)

Its Attorney

August 16, 2000