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

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FEDERAL COMMUNICATIONS COMMISSION  
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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 )

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WT Docket No. 99-168

Carriage of the Transmissions of )  
Digital Television Broadcast Stations )

CS Docket No. 98-120

Review of the Commission's Rules )  
and Policies Affecting the Conversion )  
to Digital Television )

MM Docket No. 00-39

TO: The Commission

**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters ("NAB")<sup>1</sup> submits this reply in response to certain comments on the Commission's *Further Notice of Proposed Rulemaking* in this proceeding.<sup>2</sup> In the *Further Notice*, the Commission sought comment on steps it could take to facilitate clearing of incumbent broadcasters from the 700 MHz band, which was previously reallocated from its exclusive use for television broadcasting on channels 60-69. In particular, the Commission requested comment on additional voluntary band-clearing mechanisms – such as “three-way” agreements and “secondary auctions” – that would provide alternatives to individually negotiated band-clearing arrangements between new licensees and incumbent

<sup>1</sup> NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

<sup>2</sup> *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in WT Docket No. 99-168, CS Docket No. 98-120 and MM Docket No. 00-83, FCC 00-224 (rel. June 30, 2000) (“*Memorandum Opinion*” and “*Further Notice*”).

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broadcasters in the 700 MHz band.<sup>3</sup> In its comments, NAB emphasized that (1) any mandatory clearing of broadcasters from the 700 MHz band would be contrary to Congressional intent and the public interest; and (2) implementation of even voluntary three-way relocation agreements would raise numerous technical and practical difficulties because television stations and allocations (especially between analog and digital) simply are not fungible. NAB now responds to certain comments supporting mandatory relocation of incumbent broadcasters in the 700 MHz band and mandatory cost sharing among the new 700 MHz licensees.

### **I. The Mandatory Clearing of Broadcasters from the 700 MHz Band Is Contrary to Statute and Impracticable.**

As discussed in detail in NAB's comments, Section 309(j)(14)(B) of the Communications Act requires the Commission to allow broadcasters, under certain statutorily-defined conditions, to continue their analog television service on all channels (including 59-69) even beyond the 2006 target date for the conclusion of the digital television ("DTV") transition.<sup>4</sup> Indeed, the Commission has expressly recognized that Section 309(j)(14) "entitles a broadcaster to request and receive an extension of the 2006 transition deadline" if it is operating in a market with low DTV penetration. *Memorandum Opinion* at ¶ 46 (emphasis added). The terms of Sections

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<sup>3</sup> "Three-way" agreements would involve new 700 MHz licensees, incumbent television broadcasters on channels 59-69, and broadcasters with operations on lower channels, particularly those in the "core" spectrum (channels 2-51). Under these agreements, a broadcaster with an allotment on a lower channel would voluntarily free up one of its channels for relocation by a broadcaster operating on channels 59-69. In a "secondary auction," competitive bidding would be used to determine the price that would be paid by new 700 MHz licensees to television incumbents who agree to clear their channels in the 700 MHz band.

<sup>4</sup> This section specifies that broadcasters will be permitted to keep their channels for analog television service beyond 2006 if: (i) one or more of the largest television stations in a market do not begin DTV transmission by the 2006 target through no fault of their own; (ii) digital-to-analog converter technology is not generally available in a market; or (iii) fewer than 85% of the television households in a market are able to receive digital television signals (either off the air or through a cable-type service that includes DTV stations). 47 U.S.C. § 309(j)(14)(B).

309(j)(14) and 337(d)(2)<sup>5</sup> therefore make clear Congress' intent to "ensure that a significant number of consumers in any given market are not left without broadcast television service" during the DTV transition. H.R. Rep. No. 217, 105th Cong., 1st Sess. 576 (1997).

Despite these clear statutory provisions, Verizon Wireless ("Verizon") contended in its comments that the Commission has the authority to forcibly relocate incumbent broadcasters in the 700 MHz band. *See* Comments of Verizon at 4-6. Such mandatory relocation would be contrary to both the terms of Section 309(j)(14) and to Congress' intent to prevent premature loss of analog television service. Indeed, even other potential 700 MHz auction participants have recognized that, under the existing statutory framework, the Commission cannot mandate a premature relocation of incumbent broadcasters.<sup>6</sup>

Verizon also incorrectly assumed that an incumbent broadcaster in the 700 MHz band can be "ordered to change its channel of operation" and that such a "relocating station would not be required to cease analog transmissions prior to the end of the statutory transition period" because there will be other channels available for the relocation of broadcasters on channels 60-69. *See* Comments of Verizon at 5. As explained in detail by other commenters, this is an erroneous assumption.<sup>7</sup> Television broadcasters have their digital allotments in the channels 60-

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<sup>5</sup> This section requires the Commission to establish additional technical restrictions needed "to protect full-service analog television service and digital television service during a transition to digital television service." 47 U.S.C. § 337(d)(2). Given the terms of Section 337(d)(2), NAB agrees with the Association for Maximum Service Television's comments (at 14) that no increased interference or loss of television service should result from any voluntary relocation agreement, except that which is accepted by the contracting broadcast licensee(s).

<sup>6</sup> *See* Comments of Nextel Communications, Inc. ("Nextel") at 6 ("broadcast licensees will not be subjected to mandatory relocation in the short run" because the "Commission cannot ignore the statutory framework that governs broadcaster relocations").

<sup>7</sup> *See, e.g.,* Comments of Association for Maximum Television Service at 12.

69 band because *no* other channels were available.<sup>8</sup> Even most analog stations on channels 60-69 received those assignments because no vacant lower channels were available. Thus, incumbent broadcasters in the 700 MHz band cannot simply “be ordered to change” their “channel[s] of operation,” as Verizon assumes. In fact, to clear incumbent broadcasters from the 700 MHz band prior to the end of the DTV transition, these stations would have to cease prematurely their analog operations, or, in the alternative, broadcasters with operations on lower channels would need to vacate their channels for relocation by incumbents on channels 59-69.<sup>9</sup> Either scenario would result in viewers losing free, over-the-air television service, in direct contravention to Congressional intent and the public interest.

NAB emphasizes that losses of free, over-the-air analog service prior to the end of the DTV transition would most severely impact those viewers least able to afford a subscription television service. Despite the growth of subscription services (primarily cable and satellite), millions of viewers remain dependent on free, over-the-air television service, including that service offered by stations operating on channels 60-69.<sup>10</sup> A premature cessation of analog television service (whether on channels 60-69 or on lower channels) would consequently cause millions of viewers to lose access to highly valued programming, including network

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<sup>8</sup> See *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, 6891-92 (1998) (had channels other than between 60 and 69 been available, such channels would have been allotted to broadcasters).

<sup>9</sup> As NAB explained in its comments on the *Further Notice*, these “three-way” relocations are likely to prove technically challenging and quite expensive because television stations and allocations cannot be regarded as fungible.

<sup>10</sup> As USA Broadcasting, Inc. (“USAB”) stated in its comments (at 6), about 30% of the population served by USAB’s channel 60-69 stations relies exclusively on over-the-air analog service to receive broadcast signals. In some of USAB’s markets such as Houston, up to 43% of the population relies on over-the-air signals to receive broadcast stations.

programming. For example, WWJ-TV, the CBS owned and operated station in Detroit (the ninth largest television market), operates on channel 62. This station of course offers all of the popular CBS entertainment and news network programming, and also produces a local public affairs program entitled “In Depth Detroit.”<sup>11</sup> The mandatory removal of broadcasters from channels 60-69 prior to the conclusion of the DTV transition would therefore disserve the public interest and contravene Congressional intent by depriving viewers of their access to valued network and non-network television programming.

## **II. Commenters Generally Agreed that the Commission Should Not Mandate Cost Sharing.**

A number of commenters including NAB agreed with the Commission’s tentative conclusion in the *Further Notice* not to adopt detailed, mandatory cost-sharing rules in connection with the 700 MHz auction.<sup>12</sup> Commenters generally agreed that, especially given the small number of incumbent broadcasters and new 700 MHz licensees, cost-sharing arrangements should be left to negotiations among affected parties. As one likely auction participant opposing Commission-mandated cost-sharing arrangements pointed out, “there appears to be little or no public interest benefit in expending Commission resources to implement band-clearing or cost sharing rules that might have the effect of requiring some new 700 MHz licensees to pay for other 700 MHz licensees’ mistakes or poor bargaining.” Comments of Nextel at 3.

NAB agrees that there is no reason for the Commission to override the commercial judgment of 700 MHz auction winners by imposing mandatory rules regarding the “overall

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<sup>11</sup> Similarly, Paxson Communications Corporation’s 18 analog stations on channels 59-69 broadcast family-oriented PAXTV programming, and, in conjunction with NBC stations in certain markets, local news. *See* Comments of Paxson Communications Corporation at 5, 15.

<sup>12</sup> *See, e.g.*, Comments of Personal Communications Industry Association at 4; Entravision Holdings, LLC at 6; USAB at 13-14; Nextel at 3-6.

costs” 700 MHz licensees should be required to share, which licensees “should be required to pay,” or whether a “cap” should be placed on “the amount of shared costs.” *Further Notice* at ¶ 84. Contrary to the opinion of Verizon, which supported a cap on the relocation costs paid to broadcasters and mandatory cost-sharing rules, the commercially sophisticated participants in the 700 MHz auction are unlikely to need Commission rules to “protect cost-sharers from contributing to exorbitant relocation expenses” or to resolve “disputes over the appropriate amount of relocation costs.” Comments of Verizon at 7-8.<sup>13</sup> The imposition of any cap on relocation expenses is, moreover, inconsistent with the Commission’s stated intention in this *Further Notice* to consider mechanisms to facilitate the *voluntary* clearing of channels 59-69. See *Further Notice* at ¶¶ 81, 86. If the Commission were to restrict the relocation expenses that new 700 MHz licensees could agree to pay to incumbent broadcasters, then agreements negotiated between such broadcasters and the 700 MHz licensees could no be regarded as truly voluntary. The Commission should therefore summarily reject calls to interfere in the negotiations between and among incumbent broadcasters and 700 MHz auction participants by formulating unnecessary and inappropriate relocation expense caps and cost-sharing rules.

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<sup>13</sup> Indeed, Verizon appears as though it is requesting the Commission, in the words of Nextel, to protect the new 700 MHz licensees from their own “mistakes or poor bargaining.”

### III. Conclusion

For the reasons stated above, efforts by the Commission to mandate the clearing of incumbent broadcasters from the 700 MHz band would be contrary to statute, Congressional intent, and the public interest. Moreover, any assumptions that broadcasters on channels 59-69 may easily be relocated to different channels are unwarranted, given the lack of vacant available channels and the technical and practical difficulties with "three-way" relocation agreements. Thus, as NAB has consistently explained, the most effective way for the Commission to encourage the clearing of incumbent broadcasters from the 700 MHz band would be to facilitate an expeditious conclusion to the DTV transition by acting promptly on significant DTV matters, particularly must carry regulations for DTV signals.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

1771 N Street, NW  
Washington, DC 20036  
(202) 429-5430



Henry L. Baumann  
Jack N. Goodman  
Jerianne Timmerman

September 15, 2000

## CERTIFICATE OF SERVICE

I, Angela Barber, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Reply Comments of the National Association of Broadcasters was sent this 15th day of September, 2000, by first class mail, postage prepaid to the following:

John T. Scott, III  
Verizon Wireless  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004-2595

William L. Watson  
Paxson Communications Corporation  
601 Clearwater Park Road  
West Palm Beach, FL 33401

Robert S. Foosaner  
Lawrence R. Krevor  
James B. Goldstein  
Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

Barry A. Friedman  
Thompson Hine & Flory  
Suite 800  
1920 N Street, NW  
Washington, DC 20036

Jonathan D. Blake  
Ellen P. Goodman  
Amy L. Levine  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
Washington, DC 20044

Robert L. Hoggarth  
Personal Communications  
Industry Association  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561

Rick Feldman  
USA Broadcasting, Inc.  
1230 Avenue of the Americas  
New York, NY 10020



Angela Barber