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FEDERAL COMMUNICATIONS COMMISSION
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altv
ASSOCIATION OF LOCAL TELEVISION STATIONS

October 2, 2000

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

ORIGINAL

RE: *Ex parte* Communications
WT Docket No. 99-168
CS Docket No. 98-120
MM Docket No. 00-83

Dear Ms. Salas:

ALTV herewith submits an original and nine copies of the Reply Comments of the Association of Local Television Stations, Inc., in the above captioned matter. These Reply Comments were due on September 15, 2000. We hare submitting them today as an *ex parte* communications.

If the Commission has any questions about this matter, please do not hesitate to contact us.

Sincerely,

David L. Donovan
V.P. Legal and
Legislative Affairs

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 Commissions Rules	WT Docket No. 99-168
Carriage of the Transmissions of Digital Television Broadcast Stations	CS Docket No. 98-120
Review of the Commissions Rules and Policies Affection the Conversion to Digital Television	MM Docket No. 00-83

Reply Comments to Further Notice of Proposed Rulemaking by the Association of Local Television Stations, Inc.

The Association of Local Television Stations, Inc. (ALTV) hereby files the following Reply Comments in the above captioned proceeding. ALTV represents local broadcast television stations across this country. Many of its members currently provide analog service on channels 60 through 69. In addition, some of our member stations have

been assigned "out-of- core" digital channel assignments (*i.e.*, outside channels 2-51) on these frequencies. As a non-profit trade association representing these stations, we have a direct interest in the FCC's proposals to "clear the band."

At the outset, we continue to be concerned that the FCC undervalues the importance of free, over-the-air television in American society. Free, local television has been an important component in the fabric of American life for half a century. It has provided news, information, entertainment and sports to all Americans, rich and poor, urban and rural. It has been the information lifeline of our society. Accordingly, the FCC's desire to "clear spectrum" should not take precedence over insuring that free, over-the-air television remains as a viable video option. Those stations located on channels 60-69 that wish to continue free, over-the-air television service should be permitted to do so -- through the transition to digital television.

While the Commission has the general authority to make spectrum management decisions consistent with the public interest, it cannot ignore specific statutory requirements regarding the DTV transition. Local television stations have a *statutory right* to retain their analog channels until 2006 or until DTV penetration reaches 85% in their local market.[1] The auction authority given to the FCC by Congress in no way abrogates these basic rights.

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[1]47 U.S.C. 309(j)(14)(B)(iii).

1. BAND-CLEARING ARRANGEMENTS MUST BE VOLUNTARY.

ALTV agrees with the overwhelming majority of commenters in this proceeding that any band -clearing proposal must be guided by one overarching principle -- *any* arrangement to move a broadcaster out of channels 60-69 must be ***voluntary***. Broadcasters should not be forced to participate in any auction or enter into any arrangement that would result in a station being coerced into moving its channel or suspending its service involuntarily.

ALTV opposes any proposal that would force local stations to vacate their channels against their will. We specifically object to Verizon's suggestion that the FCC adopt a "lone holdout rule." Contrary to Verizon's assertions, §303 does not authorize the FCC to compel stations to vacate channels 60-69. Section 303(f) authorizes the FCC to:

> Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: Provided, however, *that changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station* unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of the Act will be more fully complied with.[2]

The express statutory language makes it clear that the FCC cannot force a broadcaster to vacate its channel without its consent. Contrary to Verizon's assertion, the last sentence in §303(f) does not authorize the FCC to force local stations off their

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[2] 47 U.S.C.§303(f)

channels. In the instant situation, the term "public interest" is defined by statute. It is explicitly clear in §309(j)(14)(B)(iii) that broadcasters have the right to retain their analog channels until the end of the digital transition. Congress has already decided that the "public interest" is best served by permitting a local television station to occupy its current analog channel until December 31, 2006, or until digital television sets penetrate 85 percent of the station's local market. There is nothing in the more general provisions of §303 that gives the FCC the right to override this specific statutory mandate. Section 303(f) does not give the FCC unbridled discretion to redefine the public interest. Moreover, the FCC's desire to meet federal budget concerns does not outweigh the public interest concerns associated with the provision of free, over-the-air television.[3] Section 309(j)(7)(A) explains that in identifying licenses to be auctioned and in prescribing auction rules, the Commission "may not base a finding of public interest, convenience and necessity on the expectation of Federal revenues from the use of a system of competitive bidding."

The FCC must remember that each television station is unique. Television channels are not fungible, and forcing a station to relocate to another channel would impose incredible hardship on the station. For example, some local stations on channels 60-69 have spent millions (indeed billions) of dollars over the years making technical,

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[3]This is not to say that the 700 MHz auction should be postponed. To the contrary, ALTV believes the auction should proceed without further delays.

programming and other improvements to their facilities. Stations have worked hard to develop and promote their channel numbers as a unique identity in their respective local markets.[4] The coverage pattern of a station's signal is unique. No two coverage patterns or interference parameters are exactly the same.[5] Changing channels is similar to plucking a retail outlet from its time-honored location and moving it to a new location on the other side of town. There is no question that such a move will have a direct impact on a station's audience. Given today's multichannel environment, it is possible that audience loss associated with a channel move will be permanent. The decision to vacate a channel must be left in the hands of the station, not the government. There is no statutory or public interest justification for forcing local stations to vacate their channels. Accordingly, any arrangement to vacate a channel must be ***voluntary***.

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[4]For example, WUPA, Channel 69 in Atlanta airs local sports programs including the NHL's Thrashers hockey, local public affair programs such as "Focus Atlanta" and "Teen Files." Such programming requires a significant investment and is important to the community.

[5]This problem is exacerbated because there is little or no room on the core channels. Indeed, if there were sufficient room, especially in large markets, the FCC would not have had to assign any digital stations to channels 60-69. Thus, there is simply no room to squeeze another channel in between existing analog television stations located in core spectrum. Also, even if a core channel does become available, it probably will have a very limited coverage area.

2. BAND -CLEARING PROPOSALS MUST NOT UNDERVALUE FREE, OVER-THE-AIR-TELEVISION SERVICE

Regardless of the method employed, any arrangement to relocate local television stations must reflect the true economic value of that station. ALTV opposes any proposals, such as the Spectrum Exchange's descending bid auction, that are designed to undervalue broadcast channels.[6] Under the "descending bid" auction, prices would start at a high level and then broadcasters would bid to see who would be willing to clear the spectrum at the lowest price. The auction would end when the number of comparable UHF stations remaining in the auction was equal to the number of UHF channels that needed to be cleared in the 700 MHZ band, thus identifying the lowest price at which the required number of incumbents would be willing to clear the band.[7]

This proposal completely undervalues local broadcast stations. Broadcasters that invested heavily in their stations, by producing local news and providing top quality programming would likely demand a high price to sell their facilities. The "clearing price" however, would be set by those who may not have made such an investment, and therefore would be willing to sell at a much lower price. This auction proposal systematically ignores the value of a station's business and "good will" that it has built up in the community. As a result, ALTV does not support any attempt by the FCC to create a

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[6] Comments Spectrum Exchange, Inc at 7.

[7] *Further Notice* at 41.

government-based "selling price" for broadcast channels located in the channel 60 to 69 band. Moreover, a broadcast station should not be forced to move their facilities to another channel simply because the owner of another channel decided to sell its frequency.

Similarly, ALTV opposes Verizon's proposal to impose a "cap" on costs. Given the multitude of elements that contribute to the value of a broadcast license, it would be impossible for the government to assign specific prices. Such value-based decisions can only be made by the marketplace itself, and not by government fiat.

3. THE FCC MUST TAKE ADDITIONAL STEPS TO INSURE A RAPID DIGITAL CONVERSION.

The best way to help "clear" channels 60-69 is to adopt policies that accelerate the transition to digital television. Given the faltering state of the transition, the FCC must step up and assume a position of leadership. The FCC must resolve the cable compatibility issues. While the FCC has taken initial steps, standards must be enacted that insure all television receivers are able to access over-the-air digital signals. In this regard, the FCC has both the general authority under the public interest standard and specific authority under the All Channel Receiver Act to enact such rules.[8] Also, there is

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[8]In relevant part, 47 USC §303(s) states that the Commission shall:

"Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all

significant uncertainty about the reception capabilities of 8VSB and COFDM. The FCC, together with the industry, must examine and resolve issues pertaining to the efficacy of the current modulation standard. Finally, as almost every commenter in this proceeding has recognized, the FCC must move forward and adopt digital must-carry rules.[9]

4. THE FCC SHOULD WAIT BEFORE ESTABLISHING BAND CLEARING POLICIES FOR CHANNELS 52-59.

Clearing the existing television band raises a number of complex issues. Given the problems that have arisen in clearing channels 60-69, ALTV believes the FCC should wait until after the 700 Mhz auction before making reallocation decisions for channels 52-59. Decisions regarding these channels will be extremely complex. For example, there are more than 260 stations occupying channels 52-59 today.[10] Relocating these channels will create significant interference issues. Policies enacted to resolve issues for channels 60-69 may be wholly inapplicable to channels 52-59. The best policy is to wait and learn from our experiences in the instant proceeding.

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frequencies allocated by the Commission to television broadcasting ....."

[9]*See e.g.,* Comments of the Association of Maximum Service Television, Inc. at 18, Comments of Paxson Communications Corporation at 25, Comments of Sinclair Broadcasting Group Inc. at 5, Comments of Maranatha Broadcasting Company, Inc. at 2, Comments of USA Broadcasting, Inc. at 11, Comments of Sonshine Family Television, Inc. at 6.

[10]Comments of Maximum Service Television Inc. at 25.

6. CONCLUSION

ALTV understands the FCC's desire to clear channels 60-69. Nonetheless, as a matter of law and policy the FCC should not compel any analog or DTV station assigned to these channels to vacate the band. Any arrangement to vacate the band must be ***voluntary***. Moreover, the FCC has the ability to help itself by adopting policies that help local stations to convert to digital transmission. The FCC must take a leadership role on the remaining digital issues to ensure the timely return of analog spectrum.

Respectfully Submitted
ASSOCIATION OF LOCAL
TELEVISION STATIONS, INC.

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September 23, 2000