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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 16 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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)
)
Carriage of the Transmissions of Digital)
Television Broadcast Stations)
)
Review of the Commission's Rules and)
Policies Affecting the Conversion to Digital)
Television)
)

WT Docket No. 99-168

CS Docket No. 98-120

MM Docket No. 00-39

To: The Commission

**THE SPECTRUM CLEARING ALLIANCE
PETITION FOR CLARIFICATION AND RECONSIDERATION**

PAXSON COMMUNICATIONS CORPORATION
JOVON BROADCASTING CORPORATION
MID-STATE TELEVISION
WHITEHEAD MEDIA, INC.
SPECTRUM EXCHANGE GROUP, LLC
WRNN-TV ASSOCIATES LIMITED PARTNERSHIP
DAYSTAR TELEVISION NETWORK
ALLEN & COMPANY INCORPORATED
CHRISTIAN COMMUNICATIONS
OF CHICAGOLAND, INC.
BRYANT BROADCASTING CO.
UNICORN COMMUNICATIONS
B&C KENTUCKY, LLC
PAPPAS TELECASTING COMPANIES
SANGER TELECASTERS, INC.
SHOP AT HOME, INC.
TRINITY CHRISTIAN CENTER OF
SANTA ANA, INC. D/B/A TRINITY
BROADCASTING NETWORK
RADIANT LIFE MINISTRIES, INC.
TRI-STATE CHRISTIAN T.V., INC.
ENTRAVISION HOLDINGS, LLC
SINCLAIR BROADCAST GROUP, INC.

MARCH 16, 2001

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SUMMARY

The parties to this Petition, currently comprised of 42% of the existing analog stations in the Channels 59-69 band, are creating a comprehensive, detailed plan to accelerate clearing the 700 MHz band of television stations and allow new wireless licensees to provide the public with innovative services prior to the end of the DTV transition. The Spectrum Clearing Alliance proposes that, after the plan is filed with the Commission, the FCC place it on informal "public notice" whereby incumbent broadcasters and otherwise impacted licensees could publicly respond and elect to participate, allowing prospective wireless bidders sufficient time prior to the auction to analyze the frequencies that would be cleared. To accommodate this approach, the Spectrum Clearing Alliance proposes that the Commission postpone the 700 MHz auction until January 2002.

To ensure that broadcasters have sufficient incentive to clear the band, the Spectrum Clearing Alliance asks that stations with single allotments resulting from two-way or three-way agreements be permitted to convert to digital at their discretion. Permitting these broadcasters to defer their digital transition will be essential to band clearing and would not meaningfully extend the digital transition period. The Spectrum Clearing Alliance also asks that the Commission take special steps to clear the band if Class A stations are impacted by relocations and continue to grant DTV licenses in the Channels 59-69 band under certain conditions.

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To: The Commission

**THE SPECTRUM CLEARING ALLIANCE
PETITION FOR CLARIFICATION AND RECONSIDERATION**

Paxson Communications Corporation ("Paxson"), together with other television station owners, will form an alliance (hereinafter collectively "Spectrum Clearing Alliance") and, pursuant to Section 1.429 of the Commission's Rules,¹ hereby submits this petition for clarification and reconsideration of certain aspects of the Commission's *Third R&O*.² The parties who currently comprise the Spectrum Clearing Alliance represent 42% of the stations having analog allotments in the Channels 59-69 band

¹ 47 C.F.R. § 1.429 (1999).

² 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, CS Docket No. 98-120, MM Docket No. 00-39, *Third Report and Order*, FCC 01-25 (rel. Jan. 23, 2001) ("*Third R&O*").

("700 MHz"). The parties expect that other broadcasters that own and operate other stations in the band and those stations participating in any three-way agreements will join the Spectrum Clearing Alliance prior to the auction.

Paxson is currently working with other broadcasters to create the Spectrum Clearing Alliance and to finalize an agreement encompassing the terms of the band clearing plan for Channels 59-69.³ This plan will be submitted to the FCC so that other broadcasters and other stakeholders, including telecommunications companies with interests in the 700 MHz auction, will have the opportunity to participate in this band clearing plan.

The plan being developed by the Spectrum Clearing Alliance will set the framework for a band clearing effort that may, in fact, be the only reasonable method of clearing the band. The Spectrum Clearing Alliance's plan will give the 700 MHz auction winner(s) an effective means to ensure the usability of this valuable spectrum in the near term. Prompt adoption of the Spectrum Clearing Alliance's proposals will set the stage for a successful 700 MHz auction.

I. THE SPECTRUM CLEARING ALLIANCE PLAN.

The Spectrum Clearing Alliance is creating a comprehensive, detailed plan to accelerate clearing the 700 MHz band of television allotments using an agreement linked to the 700 MHz auction. The Spectrum Clearing Alliance plan will allow new wireless licensees to provide the public with innovative 3G services prior to the end of

³ Although the FCC will be auctioning the spectrum used by Channels 60-69, it has indicated that clearing Channel 59 is necessary because of adjacent channel protection and will apply band clearing procedures for the entire 59-69 band.

the DTV transition period, assure increased proceeds for the U.S. Treasury, and set the stage for the auction of spectrum in Channels 52-58 in 2002. The Spectrum Clearing Alliance fully anticipates that, as the Commission already has noted, the final plan will not require “any changes in the [FCC’s] spectrum auction procedures”⁴ and that the Commission will not be required to take any general measures prior to the 700 MHz auction to implement the plan.

However, the Spectrum Clearing Alliance believes it is in the public interest for the final plan to be widely known and available for review. Thus, the Spectrum Clearing Alliance will submit the agreement that creates the band clearing plan to the Commission well in advance of the commencement of the 700 MHz auction. It is expected that many broadcasters with allotments in the 700 MHz band may not have made a final decision to participate in the Spectrum Clearing Alliance at the time of filing the final plan with the Commission. Accordingly, the Spectrum Clearing Alliance proposes that, after the agreement is filed with the Commission, the FCC place the agreement on informal “public notice” and incumbent broadcasters and otherwise impacted licensees could file a petition accepting and agreeing to the Spectrum Clearing Alliance plan and electing to participate by entering into an agreement with the Spectrum Clearing Alliance. The petitions and agreements also would be placed on public notice, and all such petitions would be filed no later than 45 days prior to the 700 MHz auction. This deadline will allow prospective wireless bidders sufficient time prior to the auction to analyze the frequencies that have been cleared. The Commission would take no action on the petitions other than to place them on public notice. In this

⁴ *Third R&O* at ¶44.

fashion, the Commission would serve the important role of ensuring public review of the participants' actions. No other entity is better suited for this role than the Commission.

It is anticipated that, after the 700 MHz auction, the FCC will be asked to agree to the terms of the Spectrum Clearing Alliance's plan to the extent of accepting the dates by which the broadcasters have agreed to clear the band. This will provide to the 700 MHz auction winners a guarantee that the band will be cleared by a certain date. This can be accomplished by FCC modifications of licenses.

The plan will require that modifications necessary to clear the 700 MHz spectrum, including any proposed three-way modifications, must be filed prior to the government 700 MHz auction. The Spectrum Clearing Alliance appreciates the Commission's recognition that expedited processing of the underlying construction permit applications will be needed to effectuate proposed modifications.⁵ In the *Third R&O*, however, the FCC stated that it would not establish a 60-day processing timeline for processing such applications but that it "fully expect[ed] that routine regulatory requests will be acted on within 90 days."⁶ The Spectrum Clearing Alliance is concerned that this approach creates too much uncertainty for the band clearing process, especially for the non-routine cases such as those pursuant to three-way agreements. Such uncertainty may be troublesome for prospective wireless bidders unfamiliar with the boundaries of acceptable and unacceptable broadcast modifications, and this uncertainty may tend to disrupt the 700 MHz auction and the secondary auction to be established by the Spectrum Clearing Alliance. Accordingly the Spectrum

⁵ *Id.* at ¶30.

Clearing Alliance requests that the Commission reconsider its decision not to adopt an explicit timeline. Given the Commission's expectation that routine requests will be processed within 90 days, the Spectrum Clearing Alliance reasonably proposes that the Commission agree to process all technical modifications filed in connection with the final plan within 90 days of the submission of an application.

The Spectrum Clearing Alliance also proposes that the Commission postpone the 700 MHz auction until January 2002. This will provide broadcasters with sufficient time to identify the best modifications for clearing the band, prepare the appropriate modification applications, and receive FCC approval of those modifications, thus demonstrating clarity of clearance to the bidders in the FCC's 700 MHz auction.

It is now apparent that a brief postponement of the 700 MHz auction is necessary. With only 6 months remaining before the currently scheduled September 12th auction, the Spectrum Clearing Alliance's efforts to clear the band are only now beginning to gain momentum. More time is needed to move this process along and, without band clearing, the auction will not be successful. The required delay until January, 2002, will provide a much needed period to fully engage the broadcast industry in the band clearing and to expand the Spectrum Clearing Alliance.

However, the auction must take place prior to the May 1, 2002, DTV construction deadline or the band clearing efforts will likely fail. Once the DTV deadline is reached, it will make clearing the band nearly impossible as licensees will then be operating and maintaining two stations, one analog and one digital. An essential aspect of the

⁶ *Id.*

Spectrum Clearing Alliance's band clearing is to remove digital stations from the band and to permit other stations to delay their digital construction.

In addition, this postponement will allow the Commission to grant the modification applications prior to the start of the government auction. Likewise, to meet this proposed timeline, the Spectrum Clearing Alliance also respectfully proposes that the Commission issue an order on reconsideration in response to this and any other petitions within 60 days, *i.e.*, by May 16, 2001. These actions will increase certainty and predictability for the governmental and private band-clearing actions for both incumbent broadcasters and wireless bidders.

II. STATIONS WITH SINGLE ALLOTMENTS RESULTING FROM THREE-WAY AGREEMENTS SHOULD BE PERMITTED TO CONVERT TO DIGITAL AT THEIR DISCRETION.

In the *700 MHz MO&O and FNRPM*, the Commission established a conditional rebuttable presumption that an analog or digital incumbent licensee on Channels 59-69 that clears the 700 MHz band may rely upon single-allotment operation during and after the DTV transition.⁷ In the *Third R&O*, the Commission generally extended the rebuttable presumption to three-way agreements, whereby a lower band broadcaster would give up one of its two channel allotments (either analog or digital) to a relocating Channel 59-69 incumbent.⁸ The Commission stated, however, that if as a result of a

⁷ 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, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00-224 (rel. Jun. 30, 2000) at ¶¶ 60-65 ("*700 MHz MO&O and FNRPM*").

⁸ *Third R&O* at ¶13.

three-way agreement a broadcaster is left with only one analog channel, then it must commence digital service at the same time as those stations with paired allotments.⁹

As an initial matter, the Spectrum Clearing Alliance requests that the Commission change its rules so that an incumbent broadcaster that clears its digital allotment in the Channels 59-69 band can convert to digital on its remaining in-band channel at any time until the end of the DTV transition.¹⁰ Likewise, the Commission should clarify that an incumbent broadcaster clearing its analog allotment in the Channels 59-69 band can operate in analog on its digital assignment and convert to digital at any time until the end of the DTV transition.¹¹ In this manner, the FCC would treat a cleared incumbent having a single channel in the same manner as those stations that were not allotted a paired channel.¹² Additionally, the Commission should clarify that a licensee of an analog or digital station in the 700 MHz band can enter into a three-way agreement under which such licensee would abandon its channel 59-69 allotment, find a station with an in-band allotment, and use that channel for its digital or

⁹ *I.e.*, May 1, 2002 for commercial stations and May 1, 2003 for non-commercial stations. *Id.* at ¶33. Commercial stations affiliated with the top four networks and broadcasting in the top thirty markets presumably would be required to commence digital service upon clearing.

¹⁰ So long as otherwise permitted under the Commission's interference requirements.

¹¹ Again, so long as otherwise permitted under the Commission's interference requirements.

¹² Stations without a paired allotment may convert to digital at any time during the transition. *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, MM Docket No. 87-268, 14 FCC Rcd 1348 at ¶ 41 (1998).

analog operations. These changes would be approved, if permitted under the Commission's *de minimis* DTV interference standards.¹³

The Commission has made it clear that modifications pursuant to two- or three-way agreements must comply with its *de minimis* interference standards.¹⁴ The Commission should make equally clear that, to permit full compliance with the *de minimis* standard, applicants can reduce facilities even though replication may not be maintained. Moreover, for those stations keeping paired digital and analog operation pursuant to three-way agreements, the Commission should refrain from removing interference protection from unreplicated service areas at the end of 2004.¹⁵ The Commission should specify that such stations would not be treated differently from any other broadcast station without a paired allotment.

Permitting these broadcasters (probably less than 100 in number) to delay their digital transition until the end will be essential to band clearing. There are already 100 such stations without digital allotments that will not have to convert to digital until the end of the transition. This means that no more than 200 out of 1,600 television stations will be impacted. Without this procedure, it will be impossible to clear the band so as to make the 700 MHz usable by the auction bidders in the near term.

Permitting these single-channel stations to convert to digital at their discretion would facilitate the spectrum return. First, such a station already would have returned

¹³ 47 C.F.R. § 73.623(c)(2).

¹⁴ *Third R&O* at ¶23.

¹⁵ See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order and Further Notice of Proposed Rule Making*, MM Docket No. 00-39, FCC 01-24, at ¶ 22 (rel. Jan. 19, 2001).

its paired spectrum – and in a manner that would permit an earlier introduction of new 3G services.¹⁶ Second, due to the limited number of affected stations, delaying the conversion to digital would not have an impact on the 85% market penetration trigger.¹⁷ Third, by allowing such stations this discretion, single-channel broadcasters would minimize service losses – understandably cited as a Commission concern in this proceeding¹⁸ – by converting to digital when market forces dictate. Accordingly, to accelerate the return of analog spectrum, the Commission should adopt a procedure to permit broadcasters who return their paired channel pursuant to a three-way agreement to convert to digital at the end of the DTV transition.

III. IN CLEARING ARRANGEMENTS, THE COMMISSION SHOULD APPLY A RELAXED WAIVER STANDARD IF CLASS A STATIONS OR OTHER RULES ARE IMPACTED.

In the *Third R&O*, the Commission declined to modify existing interference rules in processing modification applications that clear the 700 MHz band, stating that the record offered no basis for departing from established criteria.¹⁹ The Spectrum Clearing Alliance is concerned, nonetheless, that a total clearing of the 700 MHz band may not be possible given the spectrum congestion in certain markets. Accordingly, the

¹⁶ The Commission determined that the combination of the Congressional reallocation plan (47 U.S.C. §§ 336-337) and the Congressional directive to auction the 700 MHz spectrum well before the close of the DTV transition (Pub. Law 106-113 Stat. 1501, Appendix E, § 213) required the agency to promote the early introduction of new wireless services in the band. Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, 15 FCC Rcd 476, at ¶ 145 (2000).

¹⁷ The DTV transition period will be extended in markets where DTV market penetration is less than 85%. 47 U.S.C. § 309(j)(14)(B).

¹⁸ *Third R&O* at ¶16.

¹⁹ *Id.* at ¶22.

Spectrum Clearing Alliance asks that the Commission grant meritorious waiver requests of its interference rules on a case-by-case basis where a Class A station would receive otherwise impermissible interference or where the operation of the station on the channel would not comply with all applicable requirements (e.g., the FCC's city grade coverage requirements). Such waivers could help clear the 700 MHz band of those last few television stations that might be precluded from relocating. The Spectrum Clearing Alliance suggests that the Commission could apply a public interest standard similar to the procedures it employs for consideration of short-spacing waiver requests.²⁰

IV. THE FCC CAN CONTINUE TO GRANT DTV LICENSES TO THOSE WITH ALLOTMENTS IN THE CHANNELS 59-69 BAND, UNDER SPECIAL CONDITIONS.

To reduce the difficulty of clearing the band, the Commission can continue to grant DTV licenses to stations with allotments in the Channels 60-69 band, and even stations with DTV allotments on Channel 59, on the conditions that the stations would (a) have the right to participate in the Spectrum Clearing Alliance if neither of the options in clauses (b) or (c) of this sentence would be obtained and such stations would not have to convert to digital until the end of the transition period; or (b) not have to convert to digital on their in-band channel until the end of the DTV transition; or (c) be provided the opportunity to obtain another digital channel by means of a three-party agreement or by filing an application with the FCC that would be expeditiously processed for an available channel, consistent with the interference standards set forth

²⁰ See, e.g., *Sarkes Tarzian, Inc.*, 6 FCC Rcd 2465, 2466-2467 (1991).

above, which application would not be subject to the filing of any competing applications.

These DTV allotments represent the easiest of allotments to clear from the 700 MHz band. The Spectrum Clearing Alliance proposes that the Commission only grant licenses to these stations, on the conditions specified above, and allow them to delay DTV construction or obtain a substitute DTV channel as noted above with appropriate tolling of the construction period, pending the conclusion of the spectrum auction and the process herein described. The paired analog stations can convert to digital on their traditional channel at the end of the transition. This constructive clearing by the methods outlined above will reduce the difficulty of a total clearing of the 700 MHz band and, importantly, reduce the time needed to identify and develop clearing arrangements for these allotments. By this simplification broadcasters and prospective wireless bidders can clear the band, complete the auction in the timeframe contemplated, and avoid additional delay.

CONCLUSION

The parties to this Petition who will be forming the Spectrum Clearing Alliance to date represent 42% of the existing analog television stations operating in the Channels 59-69 band. It is anticipated that the membership in the Spectrum Clearing Alliance will continue to grow.²¹ The Spectrum Clearing Alliance will be filing with the FCC an agreement whereby the initial group of broadcasters in the Spectrum Clearing Alliance, and those subsequently joining, will present a definitive framework for clearing the 700

²¹ There are 136 Channel 59-69 allotments, not including Puerto Rico, composed of 99 analog and 37 digital allotments.

MHz band. The agreement will provide for two- and three-party agreements that will remove analog stations and digital allotments from the 59-69 band. The prospective wireless bidders will be guaranteed that the band will be cleared by a certain date so they will know when they will be able to use this spectrum.

The FCC must act on license modification applications and channel change requests promptly so that the band clearing can commence. Some stations will give up their analog channels, some will give up their digital allotments, and some stations will operate as analog stations until the end of the DTV transition. The FCC can make this process work by acting quickly on such requests.

The FCC must also postpone 700 MHz auction until January, 2002, to provide the Spectrum Clearing Alliance with sufficient time to arrange the two- and three-party agreements and to negotiate with the 700 MHz bidders. If the FCC will act quickly on this request, it can set the stage for the Spectrum Clearing Alliance to put in place its band clearing plan with the following elements:

- A television station in the 59-69 band abandons its analog operation and operates as a digital-only station on its digital allotment.
- A television station in the 59-69 band abandons its analog operation and operates as an analog-only station on its digital allotment.
- A television station in the 59-69 band abandons its analog operation and operates as a digital-only or an analog-only station on another station's analog or digital allocation.
- An in-band broadcaster gives up either its analog or digital channel and operates as an analog or digital channel on its remaining channel allotment.
- Any television station with a single channel, as a result of a band clearing agreement, can operate in an analog format and could convert to a digital facility at the end of the DTV transition.
- Television stations relinquishing their analog channels will have their license modification requests processed within 90 days.

- Applications to relocate stations to different channels, for analog or digital operation, will be processed within 90 days.

However, if the 700 MHz auction slips beyond the DTV construction deadline of May, 2002, the Spectrum Clearing Alliance does not believe that the band clearing process will be successful. The FCC must act, and it must act quickly.

[SIGNATURE PAGES TO FOLLOW]

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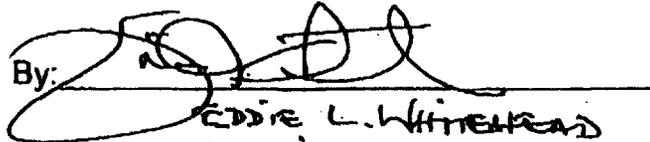
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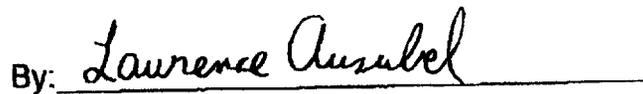
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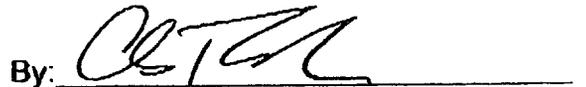
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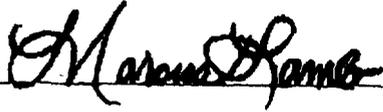
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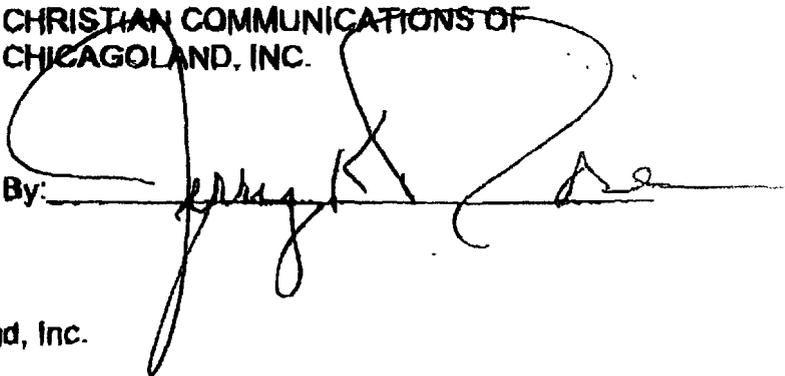
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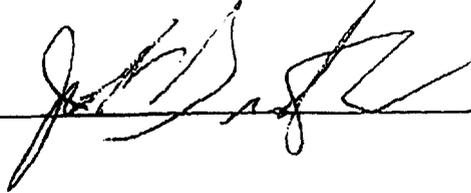
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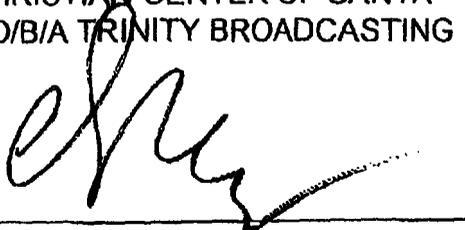
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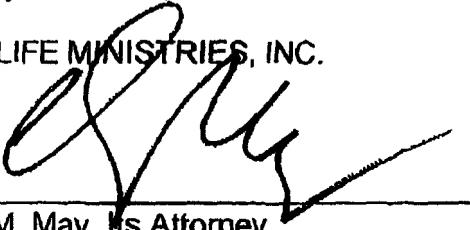
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