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
	)	
Carriage of 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

RESPONSE OF THE SPECTRUM CLEARING ALLIANCE

Paxson Communications Corporation ("Paxson"), together with other television station owners will be forming an alliance (see Broadcasters listed on Attachment 1) (hereinafter collectively the "Spectrum Clearing Alliance") and pursuant to the Commission's *Public Notice*,[1] Paxson submits herewith its response to the Petition for Reconsideration and Clarification ("Petition") of the Association for Maximum Service Television, Inc. ("MSTV") of the Commission's *Third R&O* [2] in the above-captioned

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[1] "Pleading Cycle Established for Responses for Reconsideration of the Third Report and Order in WT Docket No. 99-168, CS Docket No. 98-120, and MM Docket No. 00-39," *Public Notice*, DA 01-788 (rel. Mar. 29, 2001) ("*Public Notice*").

[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*").

proceeding regarding mechanisms to clear broadcasters from Channels 59-69 (the "700 MHz" band).[3] Paxson owns the largest number of stations in the 700 MHz band and, together with the other broadcasters supporting the Spectrum Clearing Alliance's Petition for Reconsideration of the *Third R&O* filed on March 16, 2001, represents 53% of the stations having analog allotments in the 700 MHz band. Paxson supports MSTV's request that the Commission reconsider its refusal to absolutely rule out mandatory band clearing measures. However, by this response it opposes MSTV's call for a new interference standard for processing relocations resulting from three-way band clearing agreements.

I. THE THREAT OF MANDATORY CLEARING REDUCES WIRELESS BIDDERS' INCENTIVE TO NEGOTIATE.

MSTV interprets certain language in the *Third R&O* as suggesting that the FCC may later require mandatory clearing in the 700 MHz band if voluntary methods do not achieve unspecified levels of success.[4] MSTV states that, under such a scenario, if broadcasters do not accept inadequate offers to relocate, new wireless entrants simply would wait for the FCC to force out incumbents rather than pay market value for spectrum.[5] The broadcasters supporting the Spectrum Clearing Alliance's petition agree with MSTV that the resulting delays would be "wasteful and pointless,"[6] as the Commission lacks authority in these circumstances to require mandatory clearing. The

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[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.

[4] Petition at 4.

[5] *Id.*

[6] *Id.*

Commission should explicitly clarify that it will not force broadcasters to terminate operations in the 700 MHz band prior to the time Congress requires. By doing so, the Commission will respect market determinations of the highest-value placed on the spectrum and will help ensure that private negotiations are allowed to successfully clear the band as soon as possible.[7]

II. THE COMMISSION SHOULD NOT TREAT DTV BAND CLEARING DIFFERENTLY THAN OTHER CHANNEL CHANGE REQUESTS.

MSTV states in its Petition that the Commission should clarify that analog channel changes will not be processed under the DTV *de minimis* interference standard in Section 73.623(c).[8] However, MSTV elsewhere argues extensively against the 2% standard in general, strongly suggesting that DTV channel changes for band clearing purposes be processed under a new and more stringent "no new interference" standard.[9] This will hurt the efforts of broadcasters to clear the band. The Commission determined in the *Third R&O* that for clearing purposes there was "no basis . . . to conclude that a departure from established DTV interference protection criteria is warranted."[10] Paxson supports this decision and urges the Commission to refrain from adopting any new processing standards for such DTV channel changes.

As set forth in the attached Engineering Statement, treating band clearing channel changes under the different standard suggested by MSTV would require modifications to allotment notations and processing software with only minimal

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[7] *See, e.g.*, *Third R&O* at ¶ 56.

[8] 47 C.F.R § 73.623(c). *See* Petition at 9.

[9] *Id.* at 5-9.

[10] *Third R&O* at ¶ 22.

differences in evaluation results.[11] Such could prevent band clearing agreements that are in the public interest. Furthermore, by applying a different standard, the Commission would be penalizing broadcasters for attempting to clear the 700 MHz band. The FCC already has authorized several DTV stations with non-core allotments to relocate to the core under the 2% *de minimis* standard even without inducement from wireless bidders, thereby unilaterally hastening the nation's recovery of non-core spectrum.[12] It would be clearly false to claim that these relocations offer "no offsetting, broadcast-related benefits,"[13] as MSTV presumably would assert, since the in-core spectrum generally offers such broadcasters more efficient signal propagation. Moreover, the public interest benefits of clearing the band for wireless bidders have been thoroughly documented by the Commission: accelerating the DTV transition, introducing innovative wireless services, and advancing the nation's technological competitiveness. Rather than seeking to carve out a new standard for band clearing purposes, MSTV's argument is better suited as an opposition to the *de minimis* standard in general. However, the time to wage that battle has passed.

The Congressional mandate is that 85% of households in a market must be able to receive digital broadcast stations' signal before analog spectrum is returned,[14] but the

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[11] See Attachment 2.

[12] *See, e.g.*, Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (La Crosse, Wisconsin), *Report and Order*, MM Docket No. 00-236 (rel. Feb. 26, 2001); *Chattanooga, Tennessee*, MM Docket No. 99-268 (rel. Feb. 16, 2001); *Lexington, Kentucky*, MM Docket No. 00-118 (rel. Feb. 16, 2001).

[13] Petition at 6.

[14] The DTV transition period will be extended beyond 2006 in markets where DTV market penetration is less than 85%. 47 U.S.C. § 309(j)(14)(B).

law leaves the details of this market penetration calculation to the FCC.[15] It is not entirely clear how or when the 85% level can be met. In addition, the Administration is seeking legislation to further encourage band clearing by broadcasters. Issues such as deviation from existing interference standards arising from band clearing agreements appropriately may be more for Congressional and not FCC intervention. Accordingly, for the reasons stated herein, Paxson agrees with the Commission that the same interference standard should apply to *all* DTV channel change requests.

Respectfully submitted,

PAXSON COMMUNICATIONS
CORPORATION

By:/s/ William L. Watson

Name: William L. Watson
Title: Vice President and
Assistant Secretary

Paxson Communications Corporation
601 Clearwater Park Road
West Palm Beach, FL 33401

Date: April 10, 2001

[15] The Commission is soliciting comment on this issue in Carriage Of Digital Television Broadcast Signals, Amendments to Part 76 of the Commission's Rules, Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues, and Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals, CS Docket No. 98-120, CS Docket No. 00-96, CS Docket No. 00-2, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 01-22, at ¶ 117 (rel. Jan. 23, 2001).

CERTIFICATE OF SERVICE

I, **William L. Watson**, do hereby certify that on this 10th day of April 2001, I caused a copy of the foregoing **Response** to be served to the parties below via hand-delivery:

/s/ William L. Watson
William L. Watson

Jonathan D. Blake
Covington & Burling
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Washington, DC 20004

ATTACHMENT 1

Jovon Broadcasting Corporation
18600 S. Oak Park Avenue
Tinley Park, IL 60477

Mid-State Television
2900 Park Avenue West
Mansfield, OH 44906

Whitehead Media, Inc.
832 Folsom Street, Suite 700
San Francisco, CA 94107

Spectrum Exchange Group, LLC
2920 Garfield Terrace, NW
Washington, DC 20008

WRNN-TV Associates Limited Partnership
721 Broadway
Kingston, NY 12401

Daystar Television Network
4201 Pool Road
Colleyville, TX 76034

Allen & Company Incorporated
711 Fifth Avenue, 9th Floor
New York, NY 10022

Christian Communications of Chicagoland, Inc.
38 S. Peoria Street
Chicago, IL 60607

Bryant Broadcasting Co.
200 East Spring Street
Lebanon, TN 37087

Unicorn Communications
9279 Dutch Hill Road
West Valley, NY 14171

B&C Kentucky, LLC
9279 Dutch Hill Road
West Valley, NY 14171

Pappas Telecasting Companies
500 South Chinowth Road
Visalia, CA 93277

Sanger Telecasters, Inc.
706 W. Herndon Avenue
Fresno, CA 93650

Shop At Home, Inc.
5388 Hickory Hollow Parkway
Antioch, TN 37013-3128

Trinity Christian Center of Santa Ana, Inc.
d/b/a Trinity Broadcasting Network
2442 Michelle Drive
Tustin, CA 92680

Radiant Life Ministries, Inc.
P.O. Box 1010
Marion, IL 62959

Tri-State Christian T.V., INC.
2109 Patterson Street
Greensboro, NC 27407

Entravision Holdings, LLC
2425 Olympic Boulevard
Suite 6000 West
Santa Monica, CA 90404

Sinclair Broadcast Group, Inc.
10706 Beaver Dam Road
Hunt Valley, MD 21030

Brevard College
1519 Clearlake Rd.
Cocoa, FL 32922

Christian Television Network/
Christian Television of Palm Beach
County, Inc.
28059 US Highway 19 North
Clearwater, FL 34618

High Mountain Broadcasting Corp.
112 High Ridge Avenue
Ridgefield, CT 0687

Jacksonville Educators
Broadcasting, Inc.
3101 Emerson Expressway
Jacksonville, FL 32247

Living Faith Ministries
Highway 460
Vansant, VA 24656

Connecticut Public Broadcasting, Inc.
240 New Britain Ave.
Hartford, CT 06106

Butler University
4600 Sunset
Indianapolis, IN 46208

Good Companion Broadcasting
Box 229
262 Swamp Fox Rd.
Chambersburg, PA 17201

McLaughlin Broadcasting, Inc.
950 N. Main St.
Sumter, SC 29150

ATTACHMENT 2

ENGINEERING STATEMENT

du Treil, Lundin & Rackley, Inc

ENGINEERING STATEMENT
SUPPORTING THE COMMENTS OF
THE SPECTRUM CLEARING ALLIANCE

This Engineering Statement supports the comments of the Spectrum Clearing Alliance with regard to the Petition for Reconsideration and Clarification filed by the Association for Maximum Service Television, Inc. (MSTV). The MSTV petition concerns the Federal Communications Commission (FCC) Third Report and Order (3rd R&O) in MM Docket No. 00-39. In particular, this statement addresses MSTV's request that the FCC reconsider use of the 2 percent "de minimis"[16] interference rule for digital television (DTV) assignments caused by three way band clearing agreements, and require such displaced DTV assignments to comply with the "no new" interference rule required for analog (NTSC) full service and Class A TV assignments. The FCC interprets "no new" interference to be less than 0.5% additional interference caused by rounding and calculation tolerances.

[16] The definition of the Latin word "de minimis" is small or unimportant. Also short for "de minimis non curat lex" (the law does not bother with trifles).

With regard to this proceeding it is believed the primary goals of the FCC are to accomplish timely transition to DTV and clearing of the portion of the TV band reallocated to other services. This can best be accomplished by minimizing impact to FCC processing. There does not appear to be compelling reasons for treating perhaps 10% of the TV/DTV assignments differently from the rest and complicating FCC processing. Maintaining ease of FCC processing and speed of implementation is essential.

It is recognized that analog TV and DTV stations are not allocated on a “no interference” basis. Interference is recognized and anticipated. The desire is to control the interference caused to an acceptable level while permitting latitude in providing service. The FCC accomplishes this for DTV assignments through the 2% “de minimis” interference rule, and for analog (NTSC) assignments through separation requirements and the “no new” (0.5%) interference rule. Requests to change existing DTV allotment channels (petitions for rule making) are processed using the 2% “de minimis” interference rule, similar to DTV applications.

In the DTV allotment proceeding we were dealing with replication of existing analog service with a transitional DTV channel. In this particular case we are dealing with an analog or DTV service transitioning from an out-of-band channel to an in-band channel.

If a proposal for a DTV operation is made on an analog (NTSC) or DTV allotment channel, the DTV proposal should be processed using the FCC's 2% "de minimis" interference rule. The ease of providing a DTV service to the public enhances the DTV transition process and should be encouraged. The proponent of a DTV service should benefit from the latitude provided by the FCC's 2%/10% interference standard in determining the proposed transmitting facilities. Treating these proposed DTV assignments differently than the others may require special notation in the FCC's CDBS system and modifications to its processing software. The possible 1.5% difference in interference evaluation is considered too small to warrant different treatment for the small number of potential cases.

If a proposal for an analog (NTSC) operation is made on an analog or DTV allotment channel, the analog proposal should be processed using separation requirements to other analog assignments and the "no new" (0.5%) interference rule to DTV assignments and allotments. If there are "short-spacings", waivers can be sought with suitable justification. This is consistent with the FCC's current processing of analog assignments.

In summary, the Spectrum Clearing Alliance opposes MSTV's request to treat displaced DTV proposals differently than other DTV proposals, and supports the FCC's decision in the 3rd R&O in MM Docket No. 00-39 as discussed above.

If there are questions concerning this Engineering Statement, please communicate with the office of the undersigned.

/s/ John A. Lundin
John A. Lundin, P.E.

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April 6, 2001