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FEDERAL COMMUNICATIONS COMMISSION
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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. ~~98-168~~ 99-168
Carriage of the Transmissions of Digital Television Broadcast Stations	CS Docket No. 98-120
Review of the Commission's Rule and Policies Affecting the Conversion to Digital Television	MM Docket No. 00-39

Petition for Reconsideration
by the
Association for Maximum Service Television, Inc.

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Petition for Reconsideration by the Association for Maximum Service Television, Inc.

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Executive Summary

MSTV urges the FCC to modify its *Reconsideration Order* to: 1) elevate consideration of interference and service loss issues when evaluating band clearing proposals by adopting a "no new interference" standard, 2) rule out the possibility of mandatory clearing from channels 60-69, and 3) ensure that these band clearing policies are not extended to channels 51-59.

MSTV is concerned that the importance of this service has been undervalued in the context of this proceeding. Many of the stations operating on channels 60-69 want to continue to serve their communities with free, over-the-air television broadcast service. Local stations realize the importance of a transition period during which consumers will migrate their viewing habits from an analog to a digital service. It is absolutely imperative that they continue to operate both their analog and digital facilities during the transition.

The allocation of digital channels to incumbent broadcasters did not result in an economic windfall to local television stations. On the contrary, the costs involved in operating a digital facility in an environment with relatively few over-the-air digital sets has been an economic burden, not a blessing.

As local televison stations focus on the future, it is imperative that they continue their analog service during the transition. It would be incorrect for the government to believe that stations in this portion of the broadcast band seek to hold out in an effort to "cash-in" on spectrum. On the contrary, stations operating these channels seek to continue to serve their communities with free, over-the-air television broadcasting and to develop the economic base to shift to digital transmission. Analog service is the economic engine that drives the transition to digital.

There are a number of DTV facilities that are or will be operating on channels 60-69 in large, congested markets. Early band clearing of these channels can have a significant, negative impact on the DTV transition in these markets. The absence of DTV channels in these top markets may have a negative impact on the national distribution of DTV programming and the sales of DTV receivers. Given the current problems with the transition, the government should take no actions which increase uncertainty regarding the transitions.

Stations that are not involved in band clearing agreements have a significant interest in *early* band clearing as well. All stations, both analog and digital, have a direct and substantial interest in the levels of interference that will exist throughout the television band that result from various band clearing plans. Interference issues are particularly acute in the "core" portion of the band (channels 2-51), which are extremely congested.

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Petition for Reconsideration by the Association for Maximum Service Television, Inc.

The Association for Maximum Service Television, Inc., ("MSTV")[1], pursuant to Section 1.429 of the Commission's rules, requests reconsideration and clarification of the FCC's *Order on Reconsideration of the Third Report and Order* in the above captioned proceeding.[2] MSTV seeks reconsideration and clarification of portions of the *Reconsideration Order* as they concern interference to and provision of the broadcast television service. MSTV has been an active

[1]MSTV represents nearly 440 local television stations on technical isuses relating to analog and digital television services. It played a central role in developing the methodology for allotting and assigning digital television channels and has worked intensively and consistently for a rational reallocation of channels 60-69.

[2]Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commisison's Rules, WT Docket No. 99-168, *Order on Reconsideration of the Third Report and Order, FCC 01-258* (rel. September 17, 2001) (*Reconsideration Order)*

participant throughout this proceeding, We remain concerned with the significant increase in the overall levels of interference resulting from possible band clearing proposals. Also, we remain troubled by the Commission's continued failure to rule out "mandatory" band clearing plans.

I. INTRODUCTION

As a representative of local free, over-the-air television stations, MSTV is concerned that the importance of this service has been undervalued in the context of this proceeding. Many of the stations operating on channels 60-69 want to continue to serve their communities with free, over-the-air television broadcast service. Local stations realize the importance of a transition period during which consumers will migrate their viewing habits from an analog to a digital service. It is absolutely imperative that they continue to operate both their analog and digital facilities during the transition.

The allocation of digital channels to incumbent broadcasters did not result in an economic windfall to local television stations. On the contrary, the costs involved in operating a digital facility in an environment with relatively few over-the-air digital sets has been an economic burden, not a blessing. As local televison stations focus on the future, it is imperative that they continue their analog service during the transition. It would be incorrect for the government to believe that stations in this portion of the broadcast band seek to hold out in an effort to "cash-in" on spectrum. On the contrary, stations operating these channels seek to continue to serve their communities with free, over-the-air television broadcasting and to develop the economic base to shift to digital transmission. Analog service is the economic engine that drives the transition to digital.

There are a number of DTV facilities that are or will be operating on channels 60-69 in large, congested markets. Indeed, the only reason for assigning a DTV facility on these channels was because there was no room on the "in core channels."[3] Early band clearing of these channels can have a significant, negative impact on the DTV transition in these markets. The absence of DTV channels in these top markets may have a negative impact on the national distribution of DTV programming and the sales of DTV receivers. Given the current problems with the transition, the government should take no actions which increase uncertainty regarding the transitions.

Stations that are not involved in band clearing agreements have a significant interest in *early* band clearing as well. All stations, both analog and digital, have a direct and substantial interest in the levels of interference that will exist throughout the television band that result from various band clearing plans. Interference issues are particularly acute in the "core" portion of the band (channels 2-51), which are extremely congested.

MSTV urges the FCC to modify its *Reconsideration Order* to: 1) elevate consideration of interference and service loss issues when evaluating band clearing proposals, 2) rule out the possibility of mandatory clearing, and 3) ensure that these band clearing policies are not extended to channels 51-59.

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[3]*See Fifth Report and Order*, 13 FCC Rcd. 6860, 6891-91 (1998)

II. FCC BAND CLEARING POLICIES MUST AVOID INCREASED INTERFERENCE TO BOTH ANALOG AND DIGITAL SERVICES.

A. FCC Must Accord Greater Weight to Interference Protection

Throughout this proceeding, the FCC has been focused on the "public interest" benefits of *early* band clearing arrangements.[4] While we recognize that band clearing is an important objective, the FCC must not ignore countervailing policy concerns regarding interference and continued broadcast service to the public.

1) Competition in the Digital Age Requires Secure Interference Protections

In his recent address entitled "Digital Broadband Migration," FCC Chairman Michael Powell articulated the need for facilities based competition. This important principle applies with equal force to television broadcasting. Facilities based competition from local over-the-air video platforms should be an important component in the digital age. Interference protection is a critical element to facilities based competition.

> In moving toward a market-oriented allocation policy, it is vital that we carefully consider technological boundaries and that we clearly define spectrum interference limits and usage rights. It is imperative to carefully consider where best to set limits: transmitters, receivers or both.[5]

Local over-the-air television stations exist in a highly competitive video marketplace. We compete against each other, cable, satellite and other media services. Competition will increase in the digital world with ever expanding markets. If the FCC expects the over-the-air component

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[4]*Reconsideration Order* at 3

[5]Statement of the Honorable Michael Powell, Chairman, Federal Communications Commission, "Digital Broadband Migration" Part II, October 23, 2001 at 5.

of the video marketplace to compete, indeed to transition from an analog to digital service, local stations must have clearly defined interference rights.

For the past 50 years, the FCC has defined these interference protections in the context of a Table of Television Allotments. The Table of Allotments established an interference protection model based on distance separations between stations, and assumed that stations will operate at their maximum allowed height and power. *See e.g.*, 47 C.F.R. sec. 73.606(b), 73.698. It has provided a stable base for video competition and defined the very nature of television markets. These markets have defined the essence of competition and served as the basis for numerous FCC regulations and policies. The new DTV Table of Allotments is based on replicating, as closely as possible, the existing analog service interference parameters.

We believe this fundamental approach to interference protection should be preserved. Given the spectrum congestion during the digital transition, MSTV believes the FCC should resist the temptation to simply "shoehorn" stations into the core television band. Such an approach runs counter to the FCC's desire to have definable interference protections which in turn will undermine future facilities based competition.

2) The 1997 Budget Act Requires the FCC to Protect Local Stations From Interference

The issue presented in this proceeding is not band clearing *per se.* Rather our interference concerns arise out of the "*early*" band clearing proposals. It is the early band clearing agreements and proposals that give rise to our most significant interference concerns, because they increase interference at a time when the core television band (channels 2-51) are the most congested with analog and digital facilities.

The policies that underpin *early* band clearing and auctions are not inviolate. Congress recognized that under certain circumstances there may be sound reasons for delaying this process.[6] More importantly, Section 337(d)(2) requires that the FCC " *shall establish any additional technical restrictions necessary to protect full-service analog television service and digital television service during the transition to digital television service*." (emphasis supplied)

Apart from the plain language of the provision, the legislative history explains that full service local television stations should not receive additional interference as a result of the reallocation of channels 60-69. The *House Report* states:

> This subsection imposes technical restrictions on public safety and commercial licensees operating in channels 60 through 69 in order to prevent interference with television broadcaster's analog and digital service. The Committee recognizes the inherent difficulty of inter-service sharing of spectrum between different spectrum users, and thus the FCC must adopt rules to ensure that current users of the spectrum suffer no new interference from the new spectrum uses that will be introduced into this band.[7]

The Conference Agreement contains similar language. According to the Agreement, "The conferees expect that, for the period during the transition, the Commission will ensure that full power analog and digital television licensees will operate *free of interference* from public safety service licensees."[8]

The legislative history illustrates two important facts. It is evident that Congress anticipated that local, over-the-air full powered television stations would continue to operate

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[6]*See* H. Rep. No. 149, 105th Cong., 1st Sess. at 542 (1997).

[7]*Id.* at 572.

[8]H. Rep. No. 217, 105th Cong., 1st Sess. at 580 (1997), reprinted in 1997 U.S.C. & Admin. News. 176, 200.(1997)

channels 60-69 during the transition. The interference prohibition between new users of the spectrum and free, over-the-air television stations demonstrates that Congress did not anticipate a complete *early* clearing of the band prior to the digital transition date.[9]

Moreover, the plain language of the statute indicates that local television stations should incur no new additional interference as a result of the reallocation of channels 60-69. This "no new interference" proscription is not limited to cross-service interference. Rather, the mandate applies equally to any interference impact resulting from new services in this band. This includes the interference impact associated with relocation of existing stations in order to make room for these new services. It would be flatly inconsistent with these dictates for the Commission to permit increased interference to existing analog or digital stations that are the direct result of band clearing agreements.

B. The Commission's Reconsideration Order Will Result in Significant Levels of Interference.

The Commission's *Reconsideration Order* declined to adopt MSTV's request for a "no new interference" standard.[10] Pursuant to the Commission's decision, the interference standards that currently apply to band clearing arrangements will be the same as those applicable to station modifications.

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[9]In this regard, it may be possible for public safety interests to move forward in many local markets, provided they do not interfere with local stations. Given the localized nature of public safety utilization, it may be possible for public safety to commence operations in markets with no conflicting television assignments on channels 63, 64, 68 and 69.

[10]*Reconsideration Order* at 9-10.

- Interference from a relocated analog NTSC station to an existing NTSC station will be evaluated under the traditional interference spacing rules.

- Interference from a relocated analog NTSC station to an existing DTV station will be permitted, provided the interference does not exceed 0.5% of the DTV station's population.

- Interference from a relocated DTV station to another existing DTV station will be permitted, provided the interference does not exceed 2% of the existing DTV station's population area, and in no case will require any DTV station to accept interference to more than 10% of its population from all sources.

- Interference from a relocated DTV station to another existing NTSC station will be permitted, provided the interference does not exceed 2% of the existing NTSC station's population area, and in no case will require any NTSC station to accept interference to more than 10% of its population from all sources.

Under these standards, however, there is no question that the absolute level of interference will increase in the television band, because the absolute number of stations that are eligible to use the *de minimis* interference standards has increased. In other words, there are an additional 122 analog and 14 digital stations in the 60-69 band that may make use of these standards in their relocation plans.

Depending on the market, the potential loss of service from the application of these standards could be significant. For example, the Philadelphia market has approximately 2.7 million TV households. Applying the 2% *de minimis* interference standard means that an existing NTSC analog or DTV station in Philadelphia could lose access to roughly 54,000 viewers due to increased interference from a new relocated DTV facility. This can result in a significant loss of service for DTV stations in major television markets across the country.

The critical issue, however, is the likelihood that the FCC will create even more interference by granting waivers of these existing standards. As the *Reconsideration Order*

reaffirmed, there is a rebuttable presumption that certain regulatory requests associated with band clearing arrangements will serve the public interest.[11] While the FCC decided not to create presumptive waivers, it signaled its clear intent "to entertain any requests for waivers on a case-by-case basis."[12] We believe there are several critical "interference-based" issues that need to be resolved on reconsideration, and urge the Commission to make an affirmative commitment not to grant waivers of its current interference rules.

1) Operating Relocated NTSC Analog Stations on "In Core" DTV Channels Will Interfere with Existing "In-core" Analog and Digital Stations.

One of the cornerstones of the *Reconsideration Order* is the ability of a station to vacate its analog channel on channels 60-69 and move its analog operations on to an "in-core" DTV channel assignment. Moreover, the *Reconsideration Order* permits a station involved in a band clearing arrangement to continue its analog operations until December 31, 2005.[13]

Operating an analog facility on an "in-core" DTV assigned channel will have significant interference ramifications for existing stations already operating on "in core" channels.

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[11] *Reconsideration Order* at 16.

[12] *Reconsideration Order* at 17.

[13] *Reconsideration Order at 7.* The Commission's decision in this regard appears inconsistent with its overall DTV policy. Consistent with government build-out requirements, many local stations have built their digital facilities and must bear the economic costs of operating two facilities even though there are relatively few digital receivers. Compare this policy to those stations with analog facilities involved in band clearing agreements. These stations are rewarded for not constructing digital facilities consistent with FCC construction deadlines, and may continue to operate in analog well past the May 2002 construction deadline. Such a policy creates an incentive not to convert to digital transmission, and insures that interference from operating analog facilities on digital channels will continue throughout the transition. The policy also reduces the number of operating DTV stations and thus provides less incentives for consumers to purchase off-air digital receivers.

Interference to existing NTSC analog stations: There are 122 NTSC (analog) assignments on channels 60-69. Ninety one of these stations are either operating stations or at the construction permit phase. (There are approximately 31 pending analog NTSC applications.) Eighty-two of these channels have a paired DTV assignment located within the core (channels 2-51).

Using the FCC's existing interference spacing rules for analog stations, we found that only two of the 82 channels would be able to operate an analog facility on an assigned "in core" DTV channel without causing interference to surrounding analog stations.[14] The remaining 80 stations would have significant analog to analog interference problems.[15]

Interference, especially in the UHF band, involves a number of elements. Apart from co-channel and first adjacent channel interference, UHF operations result in five other kinds of interference known collectively as the UHF taboos. The Commission's approach to analog interference has been to establish strict distance requirements between NTSC stations.[16] Thus, to

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[14]The FCC interference spacing rules assume that a station will be operating at full power. Accordingly, the short spaced interference violations discussed herein assume these stations will attempt to operate at full power. As will be discussed, *infra*, attempts to lower power levels to reduce interference may not provide a solution. Moreover, such an approach will result in a significant loss in over-the-air service.

[15]*See* Appendix A. This appendix lists all the analog stations currently operating on channels 60-69 and their assigned "in-core DTV channel. It also lists all of the surrounding stations which would have a short space interference problem, if the relocated station attempted to operate an analog facility on a DTV assignment.

[16]The planning factors that underpin these spacing requirements, such as the taboo spacing rules, have a direct impact on existing television sets. These sets have been built to the interference tolerances that are based on the Commission's analog spacing rules. Waiving these rules, or changing the way in which interference is enforced, may have a negative impact on all analog television sets currently in the hands of consumers.

avoid interference from a single television station, the FCC may have to examine distance separations of up to 18 stations in the surrounding area.

Historically, the FCC has been loath to grant waivers of the interference-based distance separations. An examination of the current FCC data base reveals, however, that since the inception of the NTSC analog Table of Allotments, the FCC has granted only 132 waivers of the distance separation rules. Most of these waivers (97%) involved short spacing with just a single station. Only 3% involved short spacing with two or three surrounding stations. Moreover, the overwhelming majority of the short space waivers granted (77%) involved minimum distance short spacing (0-10%). Indeed, only 6% of the waivers granted involved a short space distance of 21-30%.[17]

In the instant situation, the waivers that would be necessary to operate an analog facility on an "in-core" DTV assignment go well beyond the waiver parameters established by the FCC. The 80 analog facilities operating on an "in-core" DTV assigned channel would give rise to 206 separate short spaced interference violations. Of these stations, approximately 80% would have more than one short space violation, and more than 50% of the stations involved would have three or more short spaced violations. Looking at the actual distances involved, approximately 60% of the waivers that would be needed to operate an analog facility on an "in-core" DTV assignment, involve geographic shortfalls that are greater than 30 percent.

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[17]For example, if the spacing rule requires a 100 km separation, the largest waiver ever granted involved a 29 km short space.

Based on the analog to analog interference standards employed by the Commission, there is little doubt that permitting stations to operate analog facilities on "in core" DTV assignments would give rise to significant interference to analog stations already operating in this band.

Interference to existing DTV stations operating on "in-core" channels. The interference problems associated with operating analog facilities on DTV assigned channels is not limited to interference with surrounding analog stations. Indeed, 25 of the stations would fail the 0.5% *de minimis* interference standards that govern analog to DTV interference.[18] Permitting stations to operate analog facilities on an "in-core" DTV assignment will have a direct and negative consequence on the provision of DTV service by the existing stations in the market. The interference caused by this policy will result in many digital television receivers going dark within a stations replicated service area, due to the cliff effect of digital transmission. Such a result runs counter to the FCC's underlying objective – the successful deployment of over-the-air digital television.

2) The Commission Should Not Attempt to "Shoe Horn" Analog Facilities on to "In-core" DTV Assignments.

Those seeking to operate analog facilities on "in-core" DTV assignments will argue that they may be able to conduct such operations without causing additional interference by employing a number of engineering techniques to "squeeze in" analog operations. Chief among these techniques is the ability of a station to lower its power so as to "avoid" interference to surrounding stations. The solution is illusory, and we urge the Commission to make a

[18]A list of the stations that would violate the *de minimis* interference standards is attached as Appendix B.

commitment in this proceeding that it will not accept case-by-case waivers based on this approach.

First, such a policy eviscerates the long standing approach regarding interference waivers for analog stations. It moves the FCC from a stable distance-based table approach to an uncertain interference protection standard. This latter standard has been employed in the AM band for years, and has not been successful in preventing unwanted interference in the AM band. Indeed, such an approach is reminiscent of the VHF drop in proposals, which were ultimately rejected by the Commission.

Second, reducing a stations power to avoid interference results in a net loss of off-air service to the community. This is not the traditional short spaced interference waiver where the FCC balances the increase in service from one station against the loss of service from another station due to increased interference. With respect to these band clearing agreements, there is a *per se* net loss of over-the-air service. The analog service provided to the community on channel 60-69 will be terminated and replaced with a facility which, in order to avoid interfering with its neighbors, will have to reduce its power significantly. Alternatively, it could attempt to operate at full power and interference with surrounding analog and digital facilities, which also would result in less off-air service to the community.

Third, lowering a station's power does not necessarily prevent unwanted interference. For example, even if these stations reduced their power and effectively became LPTV stations (operating at 10 kw) they would still cause interference. Indeed, 61 out of the 82 stations would not meet the low power television interference rules. Thirty eight of these stations would still cause interference to surrounding NTSC stations, although the area of interference would not be

very large. Lowering power to these levels, however, would result in a significant service loss. For example, approximately 59% of the stations lowering power to 10 kw would experience between a 51%-99% reduction in service.[19]

Fourth, MSTV would caution the Commission about employing the Longley- Rice model in these situations. Longly-Rice was designed to analyze existing analog service areas for the purpose of replicating these areas in the DTV table of allotments. It was never designed as a standard for measuring interference. For example, the model does not take into account the effect of cross modulation and intermodulation (taboo channels $\pm$ 2,3,4) on TV reception when two NTSC transmitters are in close proximity.

Finally, attempts to "shoehorn" in stations are patently unfair to existing stations operating in the band. These stations are innocent bystanders and not part of any band clearing arrangements. Their only desire is to continue to serve their communities with over the air television service. Nonetheless, these stations will be forced to defend their service area from the interference caused by these agreements. They will be forced to bear the legal and engineering costs associated with the Commission's waiver process. To the extent these waivers are granted, they will be forced to ensure a reduced service area that results from increased interference.

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[19]The analysis of the reduction in service area is based on a Longley-Rice service analysis. Note however, that while this standard is appropriate for measuring the service area of a station at a given power, it is not an appropriate measure for evaluating interference. Thus, even at low power, the service reductions may be greater due to taboo interference.

C. Relocating DTV stations from Channels 60-69 is Problematic

There are 14 DTV assignments located on channels 60-69. These DTV assignments are found in the most congested markets. For example, there are five DTV assignments in Los Angeles, including DTV outlets for Fox, CBS and UPN. In Philadelphia, ABC and NBC have DTV assignments in this band. In New York, one of the flagships of the public television system, WNET was assigned a DTV channel in the 60-69 band. In these congested markets, there is simply no room to relocate these DTV channels on to "in-core" assignments.

III. THE COMMISSION MUST NEVER PERMIT MANDATORY RELOCATION FROM CHANNELS 60-69

In our initial Petition for Reconsideration, we asked the FCC to rule out mandatory band clearing as a future option for the 60-69 channel band. In its *Reconsideration Order,* the FCC again did not rule out mandatory relocation. The Commission dismissed the issue in one cryptic sentence:

> We continue to believe that voluntary agreements between broadcasters and new wireless licensees should result in the effective clearing of the 700 MHz band, and find no basis for disturbing our announced policy.[20]

We continue to believe that this is a fundamental error, and it is inconsistent with the public interest. There is simply no place to relocate the overwhelming majority of analog and

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[20] *Reconsideration Order* at 18.

digital stations that have been assigned to channels 60-69. Forcing stations off these channels will harm consumers and undermine the digital transition.

A. Mandatory Band Clearing Undermines Free, Over-the-air Analog Service

As noted above, stations that are forced to relocate from channels 60-69, have few options. For example, CBS operates its analog facility (WWJ-TV) on channel 62 in Detroit. It cannot move to its assigned digital channel, 44, because it is already operating its digital service on that channel. In short, if it is forced off channel 62, it has no place to go. There are few, if any, vacant analog "in-core" analog channels, especially in the large congested markets. Indeed, the reason why analog channels were assigned in the 60-69 band was that additional analog channels could not be squeezed into the lower portion of the television band. As a result, the NTSC analog stations operating on these channels have little or no place to go.

The 82 NTSC analog stations with paired DTV assignments on "in-core" channels are confronted with a dilemma. Based on the FCC's spacing interference rules, operating an analog facility on these channels will result in significant interference to surrounding stations. Even if the FCC changes its approach to analog interference, and tried to "shoe-horn" analog stations into the band, these stations would have to lower power to the point where they would effectively lose almost all of their off-air audience.[21] In short, a station's existing off-air analog business would effectively cease to exist. Such a result would immediately disenfranchise those viewers who rely on free, over-the-air analog television service. Moreover, this policy would make it

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[21]Of course the alternative, waiving the rules and permitting interference to surrounding stations, is contrary to the public interest.

more difficult for these stations to ultimately shift to digital, because the economic engine that drives the station's digital transition would be undermined.

The other alternative is for the station to abandon its analog operation and immediately shift to digital operations. Unfortunately, given the paucity of consumer products with over-the-air digital tuners, a station stands to lose most, if not all, of its off-air audience. Moreover, the lack of cable interoperability and carriage makes reliance on this platform problematic.

Either situation disenfranchises consumers. Contrary to time honored FCC policy, forced migration will lead to a net reduction in off-air service. Forcing stations to shift to digital transmission would render existing off-air television sets obsolete, a result which the government sought to avoid when it established the transition.

B. Mandatory Relocation Will Undermine the DTV Transition

There are 14 DTV stations assigned to channels 60-69, located in the largest, most congested markets. Indeed, the only reason DTV channels were assigned to this portion of the band was there was no room for them on "in-core" channels.[22] Mandatory migration of these channels would result in losing access to flagship DTV facilities in major television markets. There is little doubt that forcing mandatory relocation in this environment would have a devastating impact on the digital transition. Indeed, the irony in such a policy is that for the most

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[22]Even if an "in-core" DTV assignment can be found, it will not have the same coverage parameters of the original DTV channel assigned in channels 60-69. DTV paired channels were tailored specifically to replicate the existing service area of the broadcaster's analog channels. Many of the stations operating a DTV channel in channel 60-69 cannot replicate their analog service area by using a different DTV channel in the same local market. In short, DTV channels are not fungible. Accordingly, a mandatory relocation of a DTV channel from the 60-69 band to another "in-core" DTV channel means that the station is likely to lose coverage.

part, the DTV facilities found on these channels exist in the top 30 markets, and have just been built. It would be patently unfair for the FCC to now force these stations to relocate to other channels.

C. The Mere Possibility of Mandatory Relocation Creates Business Uncertainty.

As the Commission has recognized, the transition to digital television is in a fragile stage. The possible threat of a mandatory relocation injects uncertainty into the marketplace. Every day local stations are investing millions of dollars in a depressed advertising market to make the transition to digital television. The mere possibility that the government may force a relocation will have a negative impact on this investment, which in turn may further delay the transition to digital.

IV. BAND CLEARING PROPOSALS MUST NOT BE EXTENDED TO CHANNELS 52-59.

While this proceeding involves channels 60-69, there is little doubt that these band clearing policies may be applied to channels 52-59. We urge the FCC to resist the temptation to blindly apply these band clearing proposals to these channels. The interference and service problems outlined above would increase exponentially if these band clearing polices were extended to channels 52-59.

Today, there are 116 NTSC stations assigned to this band. There are 97 licenses and construction permits as wells as 19 pending applications. To complicate matters, 10 of these

stations have their DTV assignments in the 52 to 59 channel band. Thus, there are approximately 87 NTSC analog stations that have been paired with an "in-core" DTV station.

Employing the same analysis used for the channel 60-69 stations reveals a significant potential for interference.[23] Only seven NTSC stations would be able to operate an analog facility on their digital assignment without resulting in short spaced interference. If the remaining 80 stations attempted to operate an analog station on their DTV paired assignment, they would give rise to 198 separate short spaced interference violations. The overwhelming majority of these stations (70%) would have more than one short space violation. More than half of the violations, involve distance short falls that have never been accepted by the Commission.[24]

Operating NTSC facilities on an "in-core" paired DTV channel would also interfere with existing "in-core" DTV channels. Using the *de minimis* interference standard employed by the Commission, 18 of these stations would interfere with surrounding "in-core" DTV channels.[25]

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[23]This analysis uses the FCC current analog to analog "spacing" rules to determine the extent of interference. Again, parties seeking to waive the FCC rules could try to shoehorn stations in with a variety of engineering techniques. As noted previously, the FCC should avoid all attempts to "shoe horn" in stations by granting short spaced waivers based on lowering their power etc... Such a policy results in a net loss of service to the public. It also forces surrounding stations to endure more interference or devote valuable resources protecting their interference rights.

[24]See Appendix C. This appendix lists all the analog stations currently operating on channels 52-59 and their assigned "in-core DTV channel. It also lists all of the surrounding stations which would have a short space interference problem, if the relocated station attempted to operate an analog facility on a DTV assignment.

[25]See Appendix D for list of the stations that would violate the *de minimis* interference to DTV stations operating on in-core channels from relocating DTV channels from the 52-29 channel band.

Finally, interference problems are not limited to relocating NTSC analog stations. There are 163 DTV assignments in this portion of the band (132 licenses and CP and 31 pending applications). Again, there is simply no room to relocate these stations during the transition.

V. CONCLUSION

Throughout this proceeding, the FCC has been searching for a mechanism to "clear" the channel 60-69 band. Local stations understand and realize that broadcasters must vacate this band and ultimately relocate on to "in-core" channels. From a technical interference perspective, the issue is not relocation or band clearing *per se*. Rather, the interference problems illustrated above are the natural result of plans to clear the band *early* and relocate stations *before* the transition to digital takes place. During the transition phase of the digital roll out, the television band, especially the "core" channels, are packed very tightly. There is simply no room to squeeze in additional stations in the core.

Therefore, the Commission must weigh carefully any band clearing plans that would result in a loss of service or increased interference to surrounding stations. Pursuant to Section 337(d), we urge the FCC to give proper consideration to these issues when evaluating the interference waivers that are sure to be filed as a result of these agreements. In the context of these waivers, the Commission should not permit stations to be "shoe horned" on to "in-core" channels. Indeed, we urge the FCC to modify its decision and adopt a no new interference rule.

Finally, stations that want to continue to serve their communities with either analog or DTV service on channels 60-69 should be permitted to do so. For stations that want to provide maximum free, over-the-air service to their community, have no choice but to remain on

channels 60-69 until the transition is complete. There is simply no place to go. It is unfair and inaccurate to characterize these stations as "hold outs." These stations are not looking to "cash in" on spectrum. To the contrary, they want to remain in the business of broadcasting. Accordingly, the FCC should make it absolutely clear that it will never use mandatory relocation as an option to clear the band.

Respectfully submitted:

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November 9, 2001