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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington DC 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**

Reply To Opposition by the Association for Maximum Service Television, Inc.

The Association for Maximum Service Television, Inc.(MSTV) hereby files the following Reply to the Opposition of the Spectrum Clearing Alliance in the above captioned proceeding.[1] The Alliance opposes MSTV's Petition for Reconsideration.[2] In our Petition for Reconsideration, MSTV asked the FCC to: 1) elevate consideration of interference and service loss issues when evaluating band clearing proposals by adopting a "no new interference

[1]Opposition of the Spectrum Clearing Alliance in WT Docket No. 98-169, CS Docket No. 98-120, MM Docket No. 00-39, December 17, 2001 (hereinafter "*Alliance*").

[2]Petition for Reconsideration by the Association for Maximum Service Television in WT Docket No. 99-168, CS Docket No., 98-120 and MM Docket No. 00-39, (November 9, 2001) (hereinafter *Reconsideration Petition*).

standard," 2) rule out the possibility of mandatory clearing from channels 60-69, and 3) ensure that these band clearing polices are not extended to channels 51-59.[3] To this end MSTV presented new factual evidence that the FCC's decision in its *Order on Reconsideration of the Third Report and Order* would result in an unparalleled levels of interference. In its Opposition, the *Alliance* decides to ignore this new evidence. Instead it simply argues that MSTV's Reconsideration Petition should be dismissed because it is repetitious and fails to consider the public interest benefits of band clearing. The Alliance is incorrect on both accounts.

I. Interference Created by the FCC's Band Clearing Policies Are Contrary to the Public Interest.

The *Alliance* seeks dismissal by the staff, arguing that MSTV's Reconsideration Petition repeats arguments that have been decided previously by the Commission.[4] Dismissal in this case is clearly inappropriate.

Section 1.429(b) of the Commission's rules permits petitions for reconsideration in circumstances where new facts are presented to the Commission which were unknown, relate to new events or changed circumstances, or where the Commission determines that consideration of the facts relied on is required in the public interest. Contrary to the *Alliance's* assertions the FCC's decision in it's *Order of Reconsideration of the Third Report and Order* for the first time gave rise to a new set of complex issues for which reconsideration is appropriate.

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[3]*Reconsideration Petition* at "i."

[4]*Alliance Opposition* at 3-4

First, for the first time the FCC stated it will permit stations using band clearing plans to continue analog operations well past the FCC's DTV construction deadlines. Indeed, these stations will be permitted to turn off their analog operations in the 60-69 band and, under the newly revised rules adopted in the *Order of Reconsideration of the Third Report and Order*, operate analog facilities on their in-core DTV channels until December 31, 2005. This new revision creates an entirely new interference situation for stations already operating on channels located "in-the core"(channel 2-51).

As we documented in our *Reconsideration Petition*, (with respect to NTSC to NTSC interference) at least 80 of these stations would create significant interference problems, amounting to 206 separate violations. Indeed 80% of these stations would have more than one short spaced interference violation and more than 50% would have three or more short spaced violations. Indeed, 60 percent would involve geographic short spaced interference violations that have never been granted by the FCC.[5] We are clearly creating unprecedented levels of interference. The problem has increased by an order of magnitude because of the FCC's decision to permit stations to continue analog operations on digitally assigned channels until December 31, 2005.

Second, the FCC has never adequately clarified the relationship between the band clearing agreements and subsequent interference that may be caused by such agreements. On the one hand the FCC acknowledges that certain band clearing agreements are "presumed" to be in

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[5]*Reconsideration Petition* at 11-12.

the public interest. Once this presumption attaches, however, the Commission does not explain how this "presumption" would be applied to subsequent interference waivers. While the FCC's decision states that it will apply traditional interference standards, it is not clear whether this "presumption" would outweigh traditional interference considerations.[6] In other words, if a station involved in a band clearing agreement creates interference to another station (that is not a party to the band clearing agreement), would the presumption accorded to the band clearing become a key element when evaluating a request to waive the short spaced interference rules?[7]

The Commission cannot have it both ways. It cannot state that it will accord a presumption of band clearing agreements for channels 60-69 and at the same time state that it is not revising its traditional interference rules. The data presented in our Petition for Reconsideration demonstrate that this is not an isolated problem. To the contrary, the issue will involved hundreds of stations.

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[6]The importance of this issue was highlighted by the FCC's recent decision to permit band clearing arrangements in channels 52-59. The FCC attempted to distinguish its treatment of band clearing agreements for channels 60-69 with those for channels 52-59. Apparently, band clearing arrangements for channels 52-59 would not be accorded a "public interest presumption, and would be reviewed on a case by case basis. Accordingly, the presumption accorded to band clearing agreements in channels 60-69 appears to be extremely important, a fact which has only become clear recently.

[7]Alternatively, the FCC could consider band clearing agreements and subsequent interference issues independently. Thus, even though it may approve the underlying agreement, a station that is a party to a band clearing agreement may be prohibited from operating because it would be inconsistent with the FCC's existing interference rules, including the current short space interference rules which govern NTSC to NTSC interference.

Third, the *Alliance* urges the FCC to reject MSTV's call for a no waiver standard. Relying on *Wait Radio*, the *Alliance* argues that waivers are appropriate "when an applicant can demonstrate that the public interest will be better served by waiver."[8] As our reconsideration demonstrated, however, the waivers required accommodate these band clearing agreements are unprecedented. In most instances, they extend far beyond any waivers granted previously by the FCC in the past 40 years. The *Alliance* does not deny this fundamental fact.

Fourth, it would appear that the FCC must completely revise its approach to NTSC interference. As MSTV's data demonstrate, there is simply no room to squeeze these stations onto "in-core" channels. Thus, in order to approve most of these potential agreements the FCC will have to move away from a spacing approach to interference, and try to "shoe horn" analog operations on to "in-core" DTV channels. While the argument that stations will just lower their power to avoid interference is seductive, it constitutes a fundamental change in the FCC's approach to television interference.[9] It forces stations, who are not part of a band clearing agreement, to defend themselves against new interference.

In summary, the data presented by MSTV in its Reconsideration Petition, demonstrate for the first time that levels of interference resulting from band clearing agreements will be unprecedented. These FCC's modifications as contained in its *Order on Reconsideration of the*

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[8]*Alliance Opposition* at 8.

[9]As MSTV Reconsideration Petition observed, lowering station power levels will not necessarily solve the interference problems. Indeed, even at lower power many stations would not meet the LPTV interference rules. *Reconsideration Petition* at 13

Third Report and Order exacerbate this problem. As a result the issues raised by MSTV cannot be considered to be repetitious.

II. The FCC Fails to Properly Analyze the Public Interest Benefits of Free, Local Over-the-Air Television.

As noted in our petition for Reconsideration, Section 337 (d)(2) requires that the FCC "*shall establish any additional restrictions necessary to protect full-service analog television service and digital television service during the transition to digital television service.*" (emphasis supplied). In response the Alliance notes that the FCC has already considered the public interest benefits of band clearing and achieved the appropriate result. In this regard the *Alliance* references the public interest benefits of clearing this band for 3-G wireless and public safety.[10]

The *Alliance* misses the point. The fundamental public interest value of these services was never in question. What is in question is whether the FCC has given appropriate weight to the Congressionally mandated requirement that full service stations be protected *during* the transition to digital under Section 337(d)(2).

MSTV recognizes that channels 60-69 will be reallocated. Our concern is not with band clearing or the reallocation *per se.* We our concerned, however, with the effects from premature clearing of the band before the digital transition has been completed . While the Congress

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[10]*Alliance Opposition* at 4-5

approved early auctioning, there is nothing in the Communications Act to indicate that Congress contemplated that stations would receive additional interference as a result of FCC policies designed to clear the band *early*. To the contrary, Section 337(d)(2) states quite clearly that local broadcast television stations should be protected during the transition. Unfortunately, the presumption accorded to these band clearing agreements and the weight given to these agreements when addressing interference waivers runs counter to this Congressional directive.[11]

III. Conclusion

MSTV believes that reconsideration of the FCC's decision is warranted. The nature and extent of the interference issues has never been addressed by the FCC. The Alliance does not challenge the factual basis that underpins our Petition for Reconsideration. Contrary to the assertions by the *Alliance*, the arguments and data presented are not repetitious. The Reconsideration Petition should be granted.

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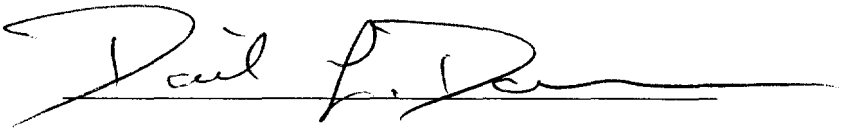
[11]MSTV does not understand the *Alliance's* arguments as it relates to clearing spectrum for public safety. Channels 63, 64, 68 and 69 have been reallocated to public safety and are not subject to any auction. Implicit in the *Alliance's* argument is the assumption that those entering into agreements to operate advanced wireless services on channels 60, 61, 62, 66 and 67 would also enter into agreements with stations currently operating on channels that are designated for use by public safety interests. However, the *Alliance* never explains why a commercial entity would pay to clear channels that it will never use? This link must be demonstrated before the *Alliance* can use public safety as a rational for band clearing policies that result in greater interference to local television stations.

Respectfully Submitted
Association for Maximum Service Television, Inc



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December 27, 2001

Certificate of Service

I David L. Donovan do hereby certify that on this 27th Day of December 2001, I caused a copy of the foregoing Reply to Opposition to be served on the party below via first class mail

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December 27, 2001