



Lowell W. Paxson / Chairman

May 22, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th St., SW
8th Floor
Washington, DC 20554

Re: MSTV Request for Delay of 700 MHz Auctions
WT Docket No. 99-168
GN Docket No. 01-74

Ex Parte Communication

Dear Chairman Powell:

I am writing to you as Chairman of Paxson Communications Corporation ("Paxson"), a founding member of the Spectrum Clearing Alliance, to oppose the May 15, 2002 request of MSTV, Inc. ("MSTV") for delay of the 700 MHz auctions.¹ MSTV has no interest in the 700 MHz auctions, but has jumped on the delay bandwagon as part of its strategy to oppose the Commission's band-clearing policies. MSTV opposed those policies during the extensive rulemaking proceedings that produced them and has opposed several individual band-clearing regulatory requests made pursuant to those policies. Unable to stop band-clearing through those channels, MSTV has apparently decided to try to obstruct it through delay of the 700 MHz auctions.

As Paxson and the Alliance have maintained throughout the 700 MHz auction proceedings, further delay of the upper 700 MHz auction will signal the end of voluntary band-clearing. MSTV's Delay Request attempts to exploit band-clearing's time-sensitivity by delaying it past the point where it remains feasible for 700 MHz broadcasters. The Commission explicitly rejected MSTV's anti-band-clearing positions when it adopted its current policies, and it should reject them again now. Moreover, MSTV offers the Commission no justification for disobeying the clear statutory mandates that require auction of the 700 MHz bands on June 19, 2002.

¹ See Letter to Chairman Powell from David L. Donovan, May 15, 2002 (the "Delay Request").

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Paxson and the Alliance now have shown on numerous occasions that both the law and the public interest demand that the Commission hold the auctions according to the current schedule. **Congress may direct the Commission to act otherwise, but until it does, the Commission is bound to adhere to the June 19, 2002 date.** Adhering to the June 19, 2002 date is also necessary to ensure the success of the Commission's voluntary band-clearing plan. On the other hand, MSTV's sole interest in this process stems from its opposition to band-clearing. Indeed, MSTV's chief objection to the June 19 auction date is that it will lead to "[e]arly band-clearing agreements, which naturally follow commercial auctions."² **In other words, MSTV objects to the current auction schedule because it might make the Commission's band clearing policies a success.** Obviously, the Commission cannot now decide to delay the 700 MHz auctions because its band clearing plans are about to become a reality.

Even if this were an appropriate proceeding to address MSTV's perceived short-comings in the Commission's band-clearing policies, MSTV's claims are baseless. First, MSTV's claim that band-clearing will cause "significant interference" to existing analog broadcasters is groundless. The Commission's band-clearing policies already protect stations from interference problems by subjecting each band-clearing regulatory request, including requests to operate analog facilities on in-core digital allotments, to close scrutiny by the Media Bureau. It is important to note that Paxson is the largest operator of full-power television stations, and we have a continuing interest in the operation of our stations, both digital and analog. Several Paxson stations have requested authority to operate analog facilities on their digital allotments, and the Bureau has spent several months reviewing those requests. For its part, MSTV has opposed each of Paxson's band-clearing applications, regardless of whether new interference to existing operations is predicted to occur.

Moreover, MSTV's assertion that band-clearing must be delayed until the close of the transition already has been rejected by the Commission. Indeed, the Commission has stated that "MSTV fails to recognize that the process of clearing the Upper 700 MHz band has long been an integral part of the DTV transition process."³ **What MSTV really seeks is a no new interference standard for band-clearing regulatory requests, a request the Commission also already has rejected.** As MSTV's band-clearing related interference concerns have been fully addressed and rejected by the Commission, they can form no basis for delay of the 700 MHz auctions.

Adhering to the current auction deadline and thereby encouraging band-clearing will not, as MSTV claims, further complicate the process of developing a post-transition DTV allotment scheme. Unlike broadcasters with two in-core allotments, band clearing broadcasters will have no choice but to operate on their single in-core allotment, absent "extraordinary circumstances." Thus, any uncertainty preventing the development of a post-transition allotment scheme is

² See Delay Request at 2.

³ Carriage of the Transmissions of Digital Television Broadcast Stations; Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633, ¶¶ 12-16 (2001).

caused not by band-clearing broadcasters moving into the core, but by uncertainty over which allotment broadcasters with two in-core allotments will choose for their permanent digital operations. Of course, MSTV was instrumental in gaining an indefinite delay in the date by which broadcasters with two in-core channels must make their DTV channel-election. It is both disingenuous and wrong for MSTV to blame uncertainty about a post-transition channel-plan on band-clearing.

MSTV also vaguely argues that "proceeding with auctions at this point in time may make it more difficult to meet the long term spectrum needs of the public safety community."⁴ MSTV's argument is yet another variation on the "Somewhere Over the Rainbow" theme that has been employed by certain other commenters. Like its predecessors in this argument, MSTV asks the Commission to delay the auction because somewhere out there, there might be a better way to use the 700 MHz band to serve public safety. than to simply assign the allotted spectrum and let them use it. However, MSTV cannot explain how indefinitely delaying the availability of 24 MHz of spectrum to public safety operators is better for public safety than actually giving them the spectrum that they were mandated by Congress. The only explanation is that delay gives those industries that want additional spectrum time to devise plans to get it at a lower price. Meanwhile, public safety organizations continue to suffer critical spectrum shortages. The Commission, however, has recognized that a comprehensive band-clearing plan like that offered by the Alliance is the most likely way to ensure the near-term availability of the upper 700 MHz public safety spectrum.

MSTV's thinly veiled attempt to accomplish its anti-band-clearing agenda through delay of the 700 MHz auctions must be rejected. MSTV provides no basis in law for a delay and it relies on policy positions that the Commission has repeatedly rejected elsewhere. MSTV has made full use of the Commission's procedures for opposing individual band-clearing regulatory proposals, but it must not be permitted to undo the entire band-clearing enterprise through the mechanism of delay. **It is now 28 days until the 700 MHz auctions are to begin and the Commission has admirably withstood the storm of lobbying for delay. As Paxson and the Alliance have said: the Commission must follow the law, adhere to the auction schedule, and let Congress decide whether the law must be changed.**

Sincerely,



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Chairman
Paxson Communications Corporation

⁴ See Delay Request at 2.

The Honorable Michael K. Powell

May 22, 2002

Page 4



cc: The Honorable Kathleen Q. Abernathy
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David L. Donovan, President, MSTV, Inc.