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

In the Matter of	)	
	)	
Amendment of Section 73.622(b)	)	MB Docket No. 02-92
Table of Allotments	)	RM-10363
Digital Television Broadcast Stations	)	
(Albany, New York)	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Video Division

COMMENTS OF AMERICAN BROADCASTING COMPANIES, INC.

I. INTRODUCTION

American Broadcasting Companies, Inc. ("ABC"), by its attorneys and pursuant to Section 1.415 of the rules of the Federal Communications Commission ("Commission"), 47 C.F.R. § 1.415, hereby submits these comments ("Comments") in response to the Notice of Proposed Rulemaking ("Notice") issued by the Video Division ("Division") in the above-captioned proceeding.

In the Notice, the Division proposes to amend the digital television ("DTV") table of allotments, 47 C.F.R. § 73.622(b), to substitute DTV channel 7 for DTV channel 4 at Albany, New York.[1] ABC, which is the licensee of commercial television station WABC-TV, channel 7,

[1] The Division issued the Notice in response to a petition for rulemaking ("Petition") filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of commercial television station WXXA-TV, channel 23, Albany, New York ("WXXA"). Clear Channel's original Petition seeking a substitution of DTV channel 7 for DTV channel 4, which was filed on October 22, 1999, was dismissed due to objectionable interference to station WWNY-TV, channel 7, Watertown, New York. Clear Channel subsequently amended the Petition, and currently requests

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New York, New York ("WABC"), and the permittee of DTV station WABC-DT, channel 45, New York, New York, urges the Division to deny Clear Channel's Petition to amend the DTV table of allotments because Clear Channel has failed to demonstrate that the proposed change is in the public interest. In fact, for the reasons set forth below, the substitution of DTV channel 7 for DTV channel 4 at Albany is contrary to the public interest. First, the Commission previously has held that the reason Clear Channel asserts for the reallotment, i.e., that operation on channel 4 may cause interference to video cassette recorder ("VCR") users, is an insufficient reason to justify a reallocation under the Commission's public interest mandate. Second, if the proposed reallocation is granted, the public interest will not be served because additional interference will be caused to numerous WABC viewers in the New York metropolitan area, who rely on WABC for their only free over-the-air ABC network programming.

II. THE COMMISSION SHOULD PROMPTLY DENY CLEAR CHANNEL'S PETITION TO AMEND THE DTV TABLE OF ALLOTMENTS BECAUSE THE PROPOSED REALLOTMENT DOES NOT SERVE THE PUBLIC INTEREST

The Commission cannot modify an initial DTV allocation unless such reallocation is in the public interest.[2] In an effort to show that the proposed reallotment is in the public interest,

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that the Commission authorize operation of WXXA on channel 7 at a maximum effective radiated power ("ERP") of 10 kilowatts and a height above average terrain ("HAAT") of 366 meters.

Five days after filing its original Petition, Clear Channel filed an application ("Application") to construct DTV facilities on its assigned DTV channel 4. (See FCC File No. BPCDT-19991027ABR). In the Application, Clear Channel requested that the Commission authorize a maximum ERP of 8.1 kilowatts and a HAAT of 347 meters. The Application currently is pending.

[2] See, e.g., Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations; and Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations, *Report and Order*, MM Docket No. 02-27 (rel. May 9, 2002); Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations, *Report and Order*, MM Docket No. 01-167

Clear Channel alleges that the channel change would eliminate the potential for interference by WXXA to VCRs in the Albany area.[3] However, Clear Channel has not made any factual showing to substantiate its claim, nor cited any relevant Commission precedent to justify the requested reallocation. Clear Channel's allegation of the potential for interference to VCRs thus is insufficient under the Commission's public interest mandate to substantiate the proposed channel change. Moreover, any public interest benefit of the proposed channel change to VCR users in Albany is outweighed significantly by the detriment to a substantial number of television viewers in the New York metropolitan area, who will completely lose free over-the-air ABC network service if the Commission grants the proposed reallotment.

A. The Proposed Reallotment Would Not Create Any Public Interest Benefit

It is well established that a claim of potential interference to VCRs cannot alone justify a DTV channel reallotment.[4] Nevertheless, Clear Channel's explanation for its requested channel change—the avoidance of potential interference to VCR users in the WXXA service area—is based solely on the dubious premise that operation of WXXA on channel 4 would cause interference to VCR users in Albany.[5] Because VCRs typically use either channel 3 (60-66 MHz) or channel 4 (66-72 MHz) for their output signal, the Commission recognized that

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(rel. May 9, 2002) (both decisions stating that the Commission "believe[s] the public interest would be served" by the proposed reallotment).

[3] See Petition at ¶ 2; Clear Channel Broadcasting Licenses, Inc. Petition for Reconsideration (filed Sept. 27, 2001) ("Petition for Reconsideration") at 2.

[4] See, e.g., Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd. 7418 (1998) ("1998 DTV Order") at ¶ 469; Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Sixth Report and Order*, 11 FCC Rcd. 10,968 (1997) ("1997 DTV Order") at ¶ 151.

[5] See Petition at ¶ 2; Petition for Reconsideration at 2.

channels 3 and 4 potentially could cause interference to VCRs.[6] However, the Commission has concluded that because either channel can be used for a VCR output signal, it is possible for a television signal to create a problem for VCRs only if *neither* channel 3 nor channel 4 is available for VCR use in a given service area.[7]

Even in cases where potential interference is alleged because an area falls within the DTV coverage of both a channel 3 and a channel 4, the Commission has declined to change a channel allotment based on VCR interference alone.[8] For example, WBBM-TV, DTV channel 3, Chicago, Illinois ("WBBM"), claimed that the Grade B contour of an NTSC station on channel 4 in Milwaukee, Wisconsin (located 134 kilometers from WBBM) would overlap the WBBM DTV service contour and that viewers in the overlap area might experience operational difficulties with their VCRs.[9] However, the Commission denied WBBM's request for a substitute allotment for its DTV channel 3, finding that the station's "concerns about operational difficulties for tuners and VCRs when both channels 3 and 4 are in use [were] unfounded."[10] Because channel 3 is available for VCR use throughout the Albany area, WXXA can operate on its assigned channel 4 without causing interference to VCRs in the Albany area.[11] Even if channel 3 were not generally available throughout the Albany area, the Commission has held that a VCR

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[6] 1997 DTV Order at ¶ 148.

[7] See id. at ¶ 151. To avoid any potential for interference, the Commission determined that it would refrain from allotting both channels 3 and 4 in the same market. Id.

[8] See 1998 DTV Order at ¶ 468-469.

[9] Id. at ¶ 468.

[10] Id. at ¶ 469.

[11] Ironically, Clear Channel also is the licensee of television station WHP-TV, NTSC channel 21, Harrisburg, Pennsylvania, and the permittee of DTV station WHP-DT, channel 4, Harrisburg, Pennsylvania. Clear Channel has filed a license to cover application for WHP-DT and, presumably, intends to operate on channel 4 in Harrisburg. (See FCC File No. BLCDT-20020508AAD).

interference claim alone is insufficient to justify a channel change.[12] Thus, Clear Channel's claim does not provide a sufficient public interest basis to justify the requested channel reallotment.

Grant of the proposed reallotment will result in an unnecessary expenditure of Commission and Division resources, uncertainty for viewers regarding channel assignments, and the inefficient use of spectrum. If the instant request is granted, the inevitable result is that the Division, at the request of other DTV channel 3 and channel 4 licensees, will be forced to commence rulemaking proceedings to move such licensees' DTV allotments from channel 3 or channel 4 to more desirable channels, based only on the alleged claim of avoiding potential VCR interference. These filings will harm the public interest in at least three ways. First, scarce Commission and Division resources will be required to process the filings. The Commission and Division resources required to process such requests could be better devoted to addressing DTV allocation and other issues genuinely necessary to minimize interference and hasten the provision of DTV service to the public. Second, television viewers in markets around the country will face uncertainty based on frequent movement between channels of television stations in their community. The general uncertainty the public faces regarding the DTV transition will be compounded by a series of channel changes in a number of communities.

Third, because the Division will be forced on the basis of the precedent it establishes in this proceeding to grant the request of any television station seeking to move from DTV channel 3 or 4, these channel allotments will become vacant nationwide, which will result in valuable in-core DTV spectrum laying fallow at the end of the DTV transition period. This result would be

[12] See 1998 DTV Order at ¶ 469.

inconsistent with the efforts of the Commission in establishing the DTV table of allotments and the DTV core spectrum. The Commission, through a notice and comment rulemaking process in which numerous broadcasters participated, explicitly determined that the low VHF channels (including channels 3 and 4 as two of the five channels) are suitable for in-core DTV use and assigned DTV allocations accordingly.[13] Thus, if the Division grants moves from channels 3 and 4 solely on the basis of alleged VCR interference, the basis for inclusion of channels 3 and 4 in the DTV core spectrum will be undermined and valuable spectrum will go to waste.

For the reasons outlined above, Clear Channel has not established that the proposed channel change would be in the public interest.

B. The Proposed Reallotment Would Not Serve the Public Interest Because WXXA Operations on Channel 7 Would Cause Substantial Interference to Populations Currently Dependent on WABC-TV for ABC Programming

Even assuming some public interest benefit from the proposed channel change, and that moving from channel 4 would benefit VCR users in the Albany area, such interest is outweighed by the significant detriment to a substantial number of television viewers in the New York metropolitan area who will completely lose free over-the-air ABC network service if the Division grants the proposed reallotment.

Although the level of interference that would be caused to WABC by WXXA operations on channel 7 technically meets the two percent de minimis criterion, the proposed operations, if authorized, would substantially harm the ability of significant populations dependent on WABC for their ABC network programming to receive WABC's over-the-air signal and any ABC

[13] See 1998 DTV Order at ¶ 41 (concluding that no engineering evidence indicated that channels 2-6 "are unsuitable for DTV operation" and that "such channels offer desirable propagation characteristics for television service").

network programming. Specifically, if the proposed reallotment is granted and WXXA commences operation with the requested technical parameters, nearly 45,000 people who currently rely on WABC will be unable to receive WABC's over-the-air signal.[14] Of these nearly 45,000 people that will lose WABC service, a significant number are in Putnam and Westchester Counties. Portions of the populations in Putnam and Westchester Counties currently do not receive ABC network programming or ABC affiliate local programming over the air from any source other than WABC.[15] Thus, for these populations, the interference from WXXA on channel 7 would eliminate reception of their only free ABC network news, public affairs, and entertainment programming. The loss of a first local network or programming service is an overriding public interest harm, particularly compared with the minimal benefit, if any, of removing the potential for VCR interference.

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[14] See attached Engineering Exhibit at Figure 1. WABC currently is providing only NTSC service and is operating from a location other than its licensed transmitter site at the World Trade Center ("WTC"). The interference numbers discussed herein represent the interference that would be caused to WABC operations from its licensed location at the WTC. However, significant interference also would be caused to WABC's current reduced-power NTSC operations from the Empire State Building ("ESB"). Despite WABC's reduced-power operations, which result in a smaller NTSC contour than that authorized at WTC, interference from WXXA would be caused to nearly as many people as would be caused to full-power operations at WTC. Specifically, the additional interference caused to the WABC reduced-power ESB operations by WXXA on DTV channel 7 would affect 42,953 people. See attached Engineering Exhibit at Figure 2.

[15] In portions of Putnam and Westchester Counties, WABC causes interference to WTNH, channel 8, New Haven, Connecticut (the New Haven ABC affiliate) such that certain populations in these counties cannot receive WTNH. Therefore, the only over-the-air ABC programming received by these populations is broadcast by WABC. See attached Engineering Exhibit at Figure 3.

III. IF THE DIVISION AMENDS THE DTV TABLE OF ALLOTMENTS CONSISTENT WITH CLEAR CHANNEL'S PETITION, THE DIVISION SHOULD REDUCE WXXA'S AUTHORIZED POWER

As described above, the interference that would be caused to populations currently receiving WABC over the air would be substantial if Clear Channel's proposed 10 kW ERP is authorized for WXXA operations on channel 7. If the Division adopts the channel 7 reallotment proposed by Clear Channel, the Division should modify its proposed specifications to authorize a maximum ERP no greater than 2 kilowatts, which will allow WXXA to replicate its NTSC contour while significantly reducing the level of interference to WABC.

IV. CONCLUSION

Based on the foregoing, ABC respectfully requests that the Division deny Clear Channel's Petition and refrain from amending the DTV table of allotments to substitute channel 7 for channel 4 at Albany. In the alternative, ABC requests that if the Division grants Clear Channel's Petition, that the authorized power for WXXA's operations on channel 7 be reduced from the 10 kW ERP proposed in the Notice to 2 kilowatts.

Respectfully submitted,

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Its Attorneys

June 24, 2002

Engineering Exhibit

in Support of

Comments of American Broadcasting Companies, Inc.

in MB Docket No. 02-92

June 24, 2002

Antoon G. Uyttendaele

I carried out the attached engineering studies in support of the comments of American Broadcasting Companies, Inc. in MB Docket No. 02-92 ("Comments").

Antoon G. Uyttendaele

June 24, 2002

FIGURE 1

V-Soft Communications Population Report

WABCTV (07Z) New York, NY
TV Incoming Interference Study
Signal Resolution: 1 km
Consider NTSC Taboo: Yes
KWX error points are considered as
possible interference points.
# of radials computed for contours: 360
Contours calculated using 8 radial HAAT.
LR Profile Spacing Increment: 1.0 km
Interference considered within the
reference station's noise limited contour.
Using NTSC lptv/translators D/U rules.
Threshold for reception: 56.0

Study Date: 6/24/2002
TV Database Date: 07-20-01

Population Database: 1990 US Census

Percentages calculated using a baseline population of 17,623,993.

Stations which cause interference:

Call Letters	H Units	Population	%	Area (sq. km)
WTNH (08Z)	187067	520171	2.951	1231.50
WJLATV (07+)	68270	188385	1.069	862.84
WHDHTV (07+)	101189	282072	1.600	1017.49
WNJB-D.C (08)	17137	47774	0.271	216.26
WBNG-D.A (07)	38008	98595	0.559	746.15
WXXA-DTV (07)	43809	123307	0.700	577.08

Masking Summary:

	Total Interference		Unique Interference	
Call Letters	Population	%	Population	%
WTNH (08Z)	520171	2.951	299473	1.699
WJLATV (07+)	188385	1.069	161738	0.918
WHDHTV (07+)	282072	1.600	54324	0.308
WNJB-D.C (08)	47774	0.271	43901	0.249
WBNG-D.A (07)	98595	0.559	49445	0.281
WXXA-DTV (07)	123307	0.700	44281	0.251

Stations considered which do not cause interference:

WWNYTV (07-)

Call Letters	City	State	Dist	Bear
WTNH (08Z)	New Haven	CT	119.2	48.2

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WJLATV (07+)	Washington	DC	327.3	234.3
WHDHTV (07+)	Boston	MA	293.3	51.8
WNJB-D.C (08)	New Brunswick	NJ	42.7	256.5
WWNYTV (07-)	Carthage	NY	386.8	339.1
WBNG-D.A (07)	Binghamton	NY	220.5	313.3
WXXA-DTV (07)	Albany	NY	212.5	0.1

Totals for WABCTV (07Z)

Calculation Area Population:	18,258,306	(28750.3 sq. km)
Not Affected by Terrain Loss:	17,623,993	(24453.8 sq. km)
Total NTSC Interference:	775,993	(2438.0 sq. km)
DTV Only Interference:	144,367	(874.0 sq. km)
Total DTV Interference:	245,091	(1389.6 sq. km)
Interfered Population:	920,360	(3312.0 sq. km)
Interference Free:	16,703,633	(21141.8 sq. km)
Percent Interference:	5.22	
Terrain Blocked Population:	634,313	(4296.5 sq. km)
KWX Error Region Population:	0	
Contour Area Population:	18,257,071	

	Housing Units	Population	% of County
New Jersey			
Bergen County			
County Pop	324,817	825,380	
WABCTV (07Z)	324,817	825,380	
Ix Free	324,817	825,380	100.00
Burlington County			
County Pop	143,236	395,066	
WABCTV (07Z)	16,512	52,518	
WJLATV (07+)	13,869	42,919	81.72
WBNG-D.A (07)	1,229	3,006	5.72
Ix Free	2,643	9,599	18.28
Essex County			
County Pop	298,710	778,206	
WABCTV (07Z)	298,710	778,206	
Ix Free	298,710	778,206	100.00
Hudson County			
County Pop	229,682	553,099	
WABCTV (07Z)	229,682	553,099	
Ix Free	229,682	553,099	100.00
Hunterdon County			
County Pop	39,987	107,776	
WABCTV (07Z)	26,833	74,212	
WJLATV (07+)	3,630	10,633	14.33
WNJB-D.C (08)	1,181	4,646	6.26