

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:)
)
Remedial Steps For Failure to Comply With) **MM Docket No. 02-113**
Digital Television Construction Schedule)
)
Requests For Extension of the
October 5, 2001, Digital Television
Construction Deadline

NOTICE OF PROPOSED RULEMAKING

The International Municipal Signal Association (“IMSA”) and The International Association of Fire Chiefs, Inc. (“IAFC”), by their attorney, respectfully submit their comments in response to the above-captioned notice of proposed rulemaking.¹

I. STATEMENT OF INTEREST

IAFC is a voluntary, professional membership society. Its membership, comprised of approximately 12,000 senior Fire Service officials, is dedicated to the protection of life and property throughout the United States and abroad. IAFC is the major national professional association representing the interests of senior management in the Fire Service. The Fire Service is the largest provider of emergency response medical services (“ERMS”) in the United States.

IMSA is a non-profit organization dedicated to the development and use of electrical signaling and communications systems in the furtherance of public safety. IMSA members, numbering almost 9000, include representatives of federal, state, county, city, township and

¹ 67 Fed. Reg. 38423 (June 4, 2002).

borough governmental bodies, and representatives of governmental bodies from foreign nations. Organized in 1896, IMSA is the oldest organization in the world dedicated to activities pertaining to electrical engineering, including the Public Safety use of radio technology.

The fire and emergency medical services communities, like other public safety organizations, eagerly are awaiting access to the 24 MHz of spectrum allocated for public safety use from the band now utilized for television channels 60-69. While a nominal transition date from the channel 60-69 frequencies is December 31, 2006, in fact broadcast stations may continue to operate on those channels until 85% of the market is equipped to receive digital television (“DTV”).² Accordingly, compliance with the Commission’s construction deadline is important to IAFC and IMSA.

II. COMMENTS

The Commission has proposed a three-step remedial process for those broadcast stations which fail to comply with the DTV construction schedule, as follows:

1. Denial of a request for an unqualified extension and admonishment of the station for failure to comply with its DTV construction obligation, accompanied by reporting requirements;
2. For failure of the licensee to complete the conversion within six months and to demonstrate that it is taking all reasonable steps to complete construction, or failure to justify further delays, the Commission proposes to issue a Notice of Apparent Liability, accompanied by reports every thirty days; and

² 47 U.S.C. 309 (j)(14).

3. For failure to come into compliance with the DTV construction schedule within one year from the date of formal admonition, “absent extraordinary and compelling circumstances” the Commission proposes to rescind the station’s DTV authorization.³

First, in each of the three remedial steps, the Commission sets forth qualifiers and potential exculpatory conditions. IAFC/IMSA know of no reason why a television broadcast licensee should not be able to comply with the DTV construction requirement. The construction deadline should be considered to be a firm and fast deadline. Only an “act of God” should constitute justification for not complying, *e.g.*, the equipment was installed but a hurricane destroyed the tower or station before the equipment could be activated and compliance thereby achieved. Site acquisition, equipment ordering and financing all are conditions within the control of the licensee. If the licensee is unwilling to fulfill its regulatory requirements, it should not be permitted to plead “hardship” in order to avoid its DTV construction deadline and conversion.

Second, the Commission proposes to issue Notice of Apparent Liability in the second stage of the remedial measures. IMSA/IAFC respectfully submit the Commission should impose a fine or forfeiture as soon as the licensee is in violation of the agency’s rules. A further, and more severe, forfeiture should be imposed at the second stage. Moreover, the Commission should enunciate a policy of forfeiture amounts sufficiently meaningful so to constitute adequate incentive for licensees to fulfill their regulatory responsibilities.⁴

Third, any station that forfeits its license under the third step of the Commission’s remedial measures should be required to vacate any authorization that operates on an assignment

³ Order and NPRM at ¶¶17-19.

⁴ Broadcast licensees are subject to forfeitures of up to \$25,000 per day, to a maximum of \$250,000 for a continuing violation. 49 U.S.C. 503 (b) (2).

on television broadcast channels 60-69 effective December 31, 2006. A broadcaster should not be allowed to utilize its own failure to avail itself of its opportunity to implement an improved replacement operation as a justification to impede public safety or others from access to spectrum which has been reallocated in accordance with Congressional direction.⁵

Finally, the DTV installation should be substantive and not merely nominal in character. It is understood that at the recent National Association of Broadcasters convention, manufacturers were offering turnkey DTV transmitters for as low as \$30,000 for a 100 watt system. At that power, the station would offer very limited coverage. Indeed, there are reports about “quick fix” transmitters that cost less than \$10,000.⁶ Such token compliance should not be tolerated. DTV construction, for purposes of meeting the Commission’s deadline, should be required to constitute no less than 90% of the broadcast station’s Grade B contour. To allow a broadcaster to satisfy the DTV construction deadline with a transmitter of only nominal power, and/or a low-level antenna, would be self-defeating of the Commission’s policy of DTV conversion. Without an adequate signal and coverage pattern, viewers will not install DTV sets. Absent viewer penetration, broadcasters will not have the necessary incentive to make the investment in additional transmitter power and/or antenna height. Broadcasters should not be allowed to themselves create the environment to frustrate the DTV conversion program and therefore frustrate the allocation of television channels 60-69 for public safety and other mobile telecommunications purposes.

⁵ 47 U.S.C. 337 (a) (1).

⁶ See W5YI Report at p.6 (May 15, 2002).

WHEREFORE, THE PREMISES CONSIDERED, the International Association of Fire Chiefs, Inc., and The International Municipal Signal Association respectfully urge the Federal Communications Commission to adopt a DTV construction compliance and remedial program in accordance with the foregoing comments.

Respectfully submitted,

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