

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**Comments of the National Association of Broadcasters
and the Association for Maximum Service Television, Inc.**

The Commission, at the time it granted further extensions of DTV construction deadlines for nine top thirty market stations, proposed a graduated set of sanctions for stations whose extension requests are denied for failure to provide satisfactory justifications.¹ The National Association of Broadcasters (NAB) and the Association for Maximum Service Television, Inc. (MSTV)² file brief comments in response to this NPRM.

At the outset, we note that the Commission's proposed sanctions policy appears designed to give serious incentives for stations to take all possible measures to complete successful DTV construction and, at the same time, by means of a graduated series of sanction steps, to give stations the opportunity over time to come into compliance and

¹ *Order and Notice of Proposed Rulemaking*, MM Docket No. 02-113, rel. May 24, 2002 (NPRM).

² NAB serves and represents the American broadcast industry as a nonprofit, incorporated association of radio and television stations and broadcast networks. MSTV represents nearly 400 local television stations on technical issues relating to analog and digital television services.

complete their DTV construction. This proposed policy is bottomed on the Commission's commitment to the rapid build out of our nation's broadcast DTV system, and follows an acknowledged aggressive timetable.³ NAB and MSTV note that the broadcast industry has supported the rapid DTV build-out and demonstrated due diligence in building DTV facilities. The Commission in fact notes early in the Order and NPRM that, in the top thirty television markets, "one hundred and ten of the one hundred nineteen network-affiliated television stations have successfully completed construction of their authorized DTV facilities."⁴ These stations have taken seriously their DTV construction responsibilities and have executed them in timely fashion. So, too, as the Commission recites, have the remaining nine of these stations demonstrated that they have taken all reasonable measures to overcome their inability to complete DTV construction, but are stymied, for various reasons, through no fault of their own. Thus, the large stations that were the initial focus of the DTV roll-out have shown their commitment to the DTV transition and to timely fulfilling their responsibilities under the Commission's DTV plan.

NAB and MSTV believe that the stations smaller than the top market affiliates subject to the earliest deadlines also are committed to this transition and have worked hard and are working hard to complete their DTV construction and get on air. The Commission's statistics show that 380 of these smaller stations are on air with DTV,⁵ many of which were up and running before their construction deadline. For all of these

³ NPRM, *supra*, at ¶ 3, 6.

⁴ *Id.* at ¶ 4.

⁵ <http://fcc.gov/mb/video/files/dtvonairsum.html>.

stations, getting on air took enormous resources, commitment and energy. The same is true of the perhaps hundreds more stations that will be on air within a matter of months.

For others, however, in lower tiers of markets and other smaller stations, with progressively less revenue and resources, there have been insurmountable difficulties, including financial ones. The Commission recognized, in establishing a simplified extension process and in acting on extension requests, that meeting the May 2002 deadline was simply impossible for many stations. A large number of the stations that obtained extensions should be on the air in the near future. For the remaining stations, the Commission should carefully evaluate their specific circumstances before invoking sanctions.⁶ Only where there has been no meaningful effort to get on the air in DTV or plan to do so should the Commission begin the sanction process.⁷

NAB and MSTV respond affirmatively to the Commission's question whether the sanctions proposed are aggressive enough to ensure that stations will move quickly toward meeting their DTV build-out responsibilities. We believe that only impossibility of building would lead stations to risk forfeiture and ultimate loss of their DTV future.

⁶ In this regard, the FCC should be especially sensitive to the complexities associated with broadcast towers. Towers raise a myriad of engineering, zoning, FAA, weather, equipment and other legal issues. These issues become more difficult when stations attempt to partner with others in the market to construct "community towers" consistent with FCC policies. Thus, when a broadcast tower issue has been raised, the FCC should give due consideration to the enormous difficulty and complexity of tower modification and construction before invoking its sanction process.

⁷ The Commission asks, NPRM at ¶ 19, whether a hearing is necessary under section 312 or section 316 of the Communications Act prior to removal of a station's DTV authorization, should a station continue to fail to explain an inability to construct after the series of enforcement steps have expired. Section 312 of the statute appears to indicate that a hearing would be required in these circumstances. 47 U.S.C. § 312(c).

The proposed milestones and reporting schedules will keep the Commission apprised of, and in a position to judge, a particular station's progress towards the goal of completed DTV facilities and operation.

At the same time, NAB and MSTV believe that the Commission should adopt a more lenient approach for the construction of digital facilities for satellite stations. While treated under the DTV construction rules like full-service stations, satellite stations broadcast the signal of a full service station to typically less populated areas, akin to translator service. And, like translators, DTV operation on satellite stations will not measurably advance the DTV transition, nor will delayed DTV operation of satellite stations measurably retard the DTV transition. NAB and MSTV suggest that, at a minimum, satellite stations should be given liberal extensions of their DTV construction deadlines.

To the Commission's question whether the Commission should, in the case of removal of a station's DTV authorization, auction or delete the vacant allotment, *id.* at ¶ 19, NAB and MSTV respond that, in most parts of the country, the allotment should be deleted, to provide a modicum of flexibility in now extremely congested television bands. One, there are certain to be more and more areas of unexpected interference,⁸ as the bulk of the stations go on air, which could be remedied or improved by removal of an allotment. Two, the current DTV Table of Allocations could not permit DTV replication and full protection of NTSC service areas for a tremendous number of stations, due to the

⁸ See, e.g., Emergency Request For Suspension or Modification of Program Test Authority and Amendment of Construction Permit and Objection to License Application, File Nos. BLEDT – 20020604AAB, BMPEDT – 20000428ADG, filed June 11, 2002. See also, "Power Struggle," *Broadcasting & Cable*, June 17, 2002, at 50; "DTV interference issues loom," *Broadcasting & Cable*, June 24, 2002, at 30-31.

crowded nature of the television band in many highly populated areas of the country and the resulting short spacing in many situations. Removal of an allotment potentially could restore some reduced DTV or NTSC service. Three, removal of an allocation could enable maximization possibilities, where they previously were not possible. Finally, any deleted DTV allocations could be "held" in reserve, for use in eventual repacking of the DTV spectrum or for DTV slots for translator service in congested areas.

NAB and MSTV have worked with the Commission over the course of fifteen years to achieve the monumental task of constructing a workable DTV Table of Allotments that encompassed all full-service stations, as well as the development of sound DTV policies and of an extraordinary DTV technical standard. It is now, in the execution of this honed DTV plan, that the careful planning and hard work will bear fruit, for the public and broadcasters alike. We are confident that the Commission will respect the difficulties that many smaller stations face in achieving their digital futures.

Respectfully submitted,

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