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

In the Matter of:	}	
	}	
Second Periodic Review of the	}	**MB Docket No. 03-15**
Commission's Rules and	}	**RM-9832**
Policies Affecting the Conversion	}	
To Digital Television	}	

TO: THE COMMISSION

COMMENTS

Communications Corporation of America ("CCA"), by and through its attorneys, hereby submits the following **COMMENTS** in response to the Notice of Proposed Rule Making, released on January 27, 2003, with respect to the conversion to Digital Television ("DTV").[1] As a licensee and time broker of television stations making the transition to DTV operations, CCA is providing its comments on the issues raised in the NPRM.

As discussed in more detail below, CCA is responding to the Commission's request for comments with respect to the procedures for television licensees to follow when maximizing their digital signal. Specifically, CCA believes that the Commission should permit, where necessary, licensees to retain interference protection beyond their then-current facilities at the maximization deadline upon a showing that the maximized facility can not be constructed by the licensee during the operation of its analog signal. Additionally, CCA strongly urges the Commission not to impose a "holding period" after the maximization deadline for licensees to file applications to expand their digital facilities.

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[1] *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, 18 FCC Rcd 1279 (2003) (the "NPRM"). On March 26, 2003, the Commission extended the deadline for submitting comments to April 21, 2003. *Order,* DA 03-872 (March 26, 2003).

DISCUSSION

The Commission is seeking comment on the timing of the various deadlines with respect to the DTV transition. In particular, the NPRM proposes to establish a deadline of July 1, 2006, as the date by which DTV stations in smaller markets must build-out their authorized DTV facilities, or else lose protection beyond their then-current facility (the "maximization" deadline).[2] The Commission is also seeking comment on the procedure for permitting other parties to file applications to expand their service, or move from outside the core spectrum, by taking advantage of the non-maximized digital facilities' relinquished interference rights.[3] Unless licensees construct their authorized digital facilities, it is very likely that licensees in most areas will be forever foreclosed from further expanding their service after the DTV transition is concluded.

CCA has a time brokerage agreement with KADN-15, Inc., the licensee of Station KADN(TV), Lafayette, Louisiana ("KADN"). The Station is authorized licensed to operate its digital facilities with 800 kW. KADN intends to use a dual antenna for its DTV and analog operations. However, due to the structural limitations of the tower on which its analog and digital facility is licensed to operate, KADN can not install the necessary transmission line to operate both its analog facility at full power and its DTV facility at 800 kW. While the parties have every intention to operate a fully-maximized digital signal from its licensed transmitter site, construction of such facilities can not be completed until after the analog equipment is turned off, which would not occur until the Commission orders the return of all analog licenses. The station can operate with essentially a full-power

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2 *NPRM*, ¶ 33.

3 *Id.*, ¶ 35.

digital signal, but it cannot maximize its coverage without using heavier transmission line. In the meantime, the Station has received special temporary authority to operate with less than full power.

Under the procedure set forth in the NPRM, KADN would be forced to make a difficult decision prior to the maximization deadline. The first option would be to either construct a new, stronger tower, or move to an existing tower that could handle the additional weight. Of course, these changes would only be necessary for the period of time before the analog license is turned in.

Alternatively, just prior to the maximization deadline, currently set for July 1, 2006, the analog antenna and equipment could be turned off, which would leave only KADN's maximized digital facility. Of course, it is estimated that only 30 million digital television sets will be in existence at this point,[4] and it is likely that only a few of these sets will be in Lafayette, Louisiana.

Finally, it could forego the opportunity to maximize its DTV facility, accept the then-current facilities under the "use it or lose it" approach, and file an application to regain its maximized facility after the maximization deadline has passed. However, as discussed *infra*, the Commission is proposing to freeze applications to further maximize digital television facilities for a period of time after the maximization deadline.

Clearly, none of these solutions is optimal either for KADN or the public. The best solution would for the Commission to adopt a "safety valve" procedure for parties such as CCA to retain their maximized DTV authorization, but not be required to either make costly and unnecessary changes to their transmitting tower, or to give up their analog signal before Congress had intended.

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[4] *See Communications Daily*, April 16, 2003, pg. 6 (estimating that there will only be 30 million DTV television sets by 2006).

CCA urges the Commission to adopt a limited exception to the maximization deadline in favor of an existing licensee providing evidence that it can not otherwise construct its maximized facility without reconstructing its tower, or going to a costly, and temporary, second tower, but that such reconstruction would be unnecessary solely for its digital facility. Forms of evidence, such as statements from tower consultants and/or consulting engineers supporting the request for waiver, could be seen as presumptively establishing compliance with this limited exception. The exception could be further limited to those stations providing a full-power, but not maximized service.

Additionally, CCA does not believe that the Commission should enforce a freeze on DTV licensees to file applications to expand their coverage after the maximization deadline has passed.[5] While the Commission is correct that other parties may have an interest in filing applications to modify their television facilities, there is no reason to restrict television licensees from also filing for modified facilities after the maximization deadline. There are many legitimate reasons for the possible filing of an application under these circumstances, such as those discussed above, and the Commission should not adopt a general rule restricting the filing of such applications.

CONCLUSION

The transition to digital television has required tremendous commitment from both the FCC and the individual licensees. The Commission has crafted a DTV Table of Allotments and the rules of DTV implementation, and the television industry has committed millions of dollars to construct their authorized DTV facilities. However,

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[5] *NPRM*, ¶35 ("Our inclination is to restrict any station...from filing an application to expand coverage for a certain period of time").

even under the best circumstances, the Commission must take into consideration those circumstances where licensees will be faced with a lose-lose situation. With respect to CCA, the licensee must either spend hundreds of thousands of dollars to construct a new tower solely to permit the maximum operation of both its analog and digital signals for the relatively brief period until the end of the DTV transition, or otherwise be foreclosed in the future from maximizing its facilities.

Under these circumstances, CCA respectfully requests that the Commission establish "safety valve" procedures to permit licensees from being forced to relinquish interference protection rights in the name of bureaucratic simplicity. Such procedures will offer licensees an important avenue to demonstrate the difficulties faced by the licensee. Finally, CCA urges the Commission not to adopt a freeze on applications filed by in-core licensees after the maximization deadline.

Respectfully Submitted

COMMUNICATIONS CORPORATION OF AMERICA

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