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

In the Matter of:	}	
	}	
Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television	}	**MB Docket No. 03-15** **RM-9832**
	}	
Public Interest Obligations of TV Broadcast Licensees	}	**MM Docket No. 99-360**
	}	
Children's Television Obligations Of Digital Television Broadcasters	}	**MM Docket No. 00-167**
	}	
Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations	}	**MM Docket No. 00-168**

TO: THE COMMISSION

JOINT COMMENTS

Alaska Broadcasters Association, Arkansas Broadcasters Association, and Thomas Broadcasting Company (the "Joint Parties"), by and through their attorneys, hereby submit the following **JOINT 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]

The Joint Parties are television broadcast licensees, or represent, as state broadcast associations, television broadcast licensees, and have a strong interest in

[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).

the roll-out of digital television service.[2] As discussed below, the NPRM sought comment on the many issues confronting television licensees as they construct and operate new DTV stations, and raised several specific matters on which the Joint Parties seek to respond.

DISCUSSION

Two key dates for television licensees in the DTV transition are the deadline to fully build-out their authorized facilities ("maximization"), and the deadline for electing with which channel they will operate when their analog license has been returned. While only those licensees with both analog and digital allotments in the "core" spectrum, *i.e.*, Channels 2-51, are in a position to elect their desired operating channel, all television licensees will be required to build-out their facilities by the maximization deadline, or else lose interference protection beyond the service contour of their then-existing facility.

The NPRM proposes to establish May 1, 2005, as the date by which channel elections must be made.[3] After this date, licensees with DTV allotments outside the core spectrum will be able to determine whether there will be any available channels for their DTV facilities within the core spectrum. Additionally, the NPRM proposes a graduated maximization schedule, with the top 4 network affiliates in

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[2] Thomas Broadcasting Company is the licensee of Station WOAY-TV, Oak Hill, West Virginia. Alaska Broadcasters Association and Arkansas Broadcasters Association are nonprofit organizations whose members comprise substantial numbers of the radio and television broadcasters in the states of Arkansas and Alaska. The State Associations represent broadcasters with respect to issues confronting the broadcasting industry and strive to promote the best interest of the broadcasting industry generally.

[3] *NPRM*, ¶ 26.

the largest 100 markets being required to maximize their facilities by July 1, 2005, and all other licensees to do so by July 1, 2006.[4]

Instead of the schedule proposed in the NPRM, the Joint Parties suggest that the Commission require the maximization of the facilities prior to requiring licensees to make their channel elections. But more importantly, both dates should be delayed until there has been a significant increase in the digital audience.

First, it only makes sense that licensees should not be forced to make their channel election until such time that they can measure and analyze the operation of the maximized facilities in their market and those stations that would affect the maximization of their station. There is a distinct possibility that once the licensee begins to operate at full-power, new and completely unanticipated interference issues will be raised. For example, several DTV stations recently began transmitting with full-power only to cause interference that was not predicted by the drafters of the DTV Table of Allotments.[5] These technical – and related business – issues will play heavily into the decisions concerning channel selection!

Preferably, the Commission should delay the channel election for a period of time, *e.g.*, one year, after the last DTV station has passed the maximization deadline, to allow the dust to settle and broadcasters – and the Commission – to assess the full-power operations of the new DTV stations. This will provide time to resolve potential technical matters and to also adapt to the new digital business atmosphere.

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[4] *Id.*, ¶ 33.

[5] Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket 02-135, pg. 6 (Jan. 27, 2003)(citing instances in Virginia, Maryland, Michigan, Wisconsin and New Jersey where fully-spaced DTV allotments have been found to cause interference to each other).

Second, the Joint Parties strongly urge the Commission to modify the trigger for both the channel election and maximization deadlines. Currently, both deadlines are arbitrary dates established by the Commission and do not reflect the reality of the DTV marketplace. While the tentative date for the end of the DTV transition is December 31, 2006, the Joint Parties urge the Commission to recognize that it is highly unlikely that ***ANY*** television market will meet the DTV receiver penetration requirements set forth in the Communications Act for the return of licenses by this date.

No one seriously believes that the current transition date of December 31, 2006, will hold -- simply because there will not be sufficient DTV receivers in the hands of the American people.[6] If the Commission establishes maximization deadlines prior to a significant marketplace penetration of DTV tuners and receivers, stations will be broadcasting both a digital and analog signal on a full-time basis at maximum power. Licensees will be forced to incur great expense in constructing maximized digital facilities, and the related power bills to run the digital station, without any corresponding benefit from such operation.

In seeking guidance with respect to defining the appropriate methods to measure compliance with Section 309(j)(14),[7] the Commission must acknowledge the need of tying together the maximization and channel election deadlines to the penetration of DTV tuners and receivers in the marketplace. This will especially help broadcasters in rural states, such as Alaska, Arkansas and West Virginia,

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

[7] NPRM, ¶¶69-94.

where the penetration of DTV tuner equipment has been very slow to date, and may not reach 85% for the foreseeable future.

In fact, there was never any raison d'etre which required the selection of the current date to return analog licenses, the date to maximize DTV facilities, and the date to make channel elections. Each of these dates are the sole creation of the Commission, and Congress has already taken steps to modify one of these dates to require the Commission to consider DTV tuner and receiver penetration as a factor in enforcing the FCC-established DTV transition deadline. The Commission must also take these same factors into consideration when determining the maximization and channel election dates, particularly for areas outside of the major television markets.

Finally, the Joint Parties do not believe that the Commission should impose additional public interest obligations on television licensees operating with digital facilities. To date, very few broadcasters have fully implemented their digital television facilities, let alone determined whether they will be utilizing their DTV channel for other purposes. Thus, the imposition of additional public interest obligations based on the "many possible ways broadcasters ***may*** choose to use their DTV spectrum" would be profoundly unjustified, and may further delay the completion of the transition to DTV service.[8]

If broadcasters are required to implement additional public interest benefits beyond their current service, the additional cost may impact the allocation of broadcasters' limited financial resources, without any corresponding benefit. In addition, the marketplace for educational and informative programming is quite

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[8] NPRM, ¶ 111 [emphasis added].

robust, with the creation of whole children-oriented networks such as Nickelodeon, Noggin, Disney Channel, and Discovery Kids. Clearly, the imposition of additional requirements before the DTV transition has even been completed is premature, and consideration of such matters should be delayed until the DTV transition has been completed, and television licensees have had the opportunity to review their various options.

CONCLUSION

The Commission cannot ignore the realities of the marketplace in developing the detailed schedule for the transition to exclusive DTV operations. Many unanswered questions remain with respect to the underlying separation requirements embedded in the DTV Table of Allotments, and with respect to the actual interference among the digital television stations. Moreover, the Commission will require all licensees with out-of-core DTV allotments to independently locate a channel in the core spectrum.

The Commission should not require such an examination until such time that the DTV channels are operating with their maximized facilities. Moreover, the Commission should not require maximization until there is an actual viewing public to justify the enormous construction and on-going expenses associated with running two full-powered television stations.

Finally, the Commission should not impose additional public interest obligations on television broadcasters until after the DTV transition has been completed, and an accurate assessment of the transmission opportunities has been reviewed by the broadcast television industry and the Commission. The children's

programming marketplace is quite robust, and additional requirements would only further slow the tedious transition to digital television.

In light of these considerations, the Joint Parties urge the Commission to revise its channel election and maximization deadlines to properly reflect the reality of the DTV marketplace, and not impose additional public interest requirements on television licensees.

Respectfully Submitted

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