

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 Policies)	
Affecting the Conversion to)	RM 9832
Digital Television)	
)	
Public Interest Obligations of TV)	MM Docket No. 99-360
Broadcast Licensees)	
)	
Children's Television Obligations of)	MM Docket No. 00-167
Digital Television Broadcasters)	
)	
Standardized and Enhanced Disclosure)	MM Docket No. 00-168
Requirements for Television Broadcast)	
Licensee Public Interest Obligations)	

To: the Commission

REPLY COMMENTS OF ALOHA PARTNERS, L.P.

Respectfully Submitted,

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May 21, 2003

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REPLY COMMENTS OF ALOHA PARTNERS, L.P.

Aloha Partners, L.P. ("Aloha")¹, by its attorneys, and pursuant to the Commission's Notice of Proposed Rulemaking in the captioned proceeding² hereby submits its reply comments in the captioned proceeding. As set forth below, Aloha submits that the public interest would be best served by the Commission acting to clear quickly the Lower 700 MHz Band and to facilitate the transition to digital television.

¹ The Notice of Proposed Rulemaking in MB Docket No. 03-15, RM 9832, 68 Fed Reg 7737 (February 18, 2003), FCC R ____ (2003) (the "NPRM"), set forth May 14 as the date for filing reply comments. That date was subsequently extended until today.

² Aloha's interest in this proceeding stems directly from its considerable presence in the Lower 700 MHz Band (698-746 MHz). Aloha is the largest holder of Lower 700 MHz Band licenses, having paid to the Commission the full amount of its winning bids (net \$28,793,380), in full and on time, for the 77 licenses that it holds.

I. DISCUSSION

The Commission records reflect that approximately eighty parties (including Aloha) filed formal comments in this proceeding. Not surprisingly, the various commenters presented widely varying views regarding the DTV transition generally, and the associated clearing of the 700 MHz Band specifically. Notwithstanding such, and the considerable finger pointing that emerged at times in the comments, there was a core of urgings for a near term transition and the clearing of the 700 MHz Band. Aloha supports them for the reasons set forth below.

Key issues in the transition fall into at least two primary categories: actions that the Commission should take now, or refrain from taking now, and those that may or may not be in effect at the nominal closing date for the transition, i.e., on December 31, 2006, depending upon what Congress does in the interim. Because the transition will be, ultimately, governed by statute, and because there will likely be changes in the governing law, these reply comments focus on two issues that are effectively before the Commission now.

A. The Transition Schedule Should Not be Altered

A number of commenters properly recognized that any altering of interim milestones, even when well intended, would have the unavoidable (and perhaps unintended) effect of frustrating and delaying the DTV transition. These parties constitute a broad coalition of Public Safety organizations, recognized equipment manufacturers and 700 MHz licensees, all in support of a near term, genuine transition, and the associated clearing of the 700 MHz band.

The Public Safety Industry came out squarely in favor of there being no further delays in the transition. The Association of Public Safety Officials – International, Inc. (“APCO), who’s “over 6,000 members are state and local government personnel involved in the management and operation of communications systems for police, fire, EMS, and other public safety agencies”

first observed that the 700 MHz clearing and DTV “issues are of grave importance to public safety, as valuable public safety radio spectrum is blocked in much of the nation pending the end of the DTV transition.” APCO Comments, at 1, 2. It then urged that “every possible step must be taken to encourage television stations in the Upper 700 MHz to vacate that spectrum as quickly as possible.” APCO Comments, at 2.

Motorola, Inc. (“Motorola”), also recognized that “the FCC should pursue policies that expedite the transition to digital television (“DTV”) service with high consideration [being] given to the need for recovering the analog broadcast spectrum as early as possible.” Motorola Comments, at 1. One of Motorola’s suggestions to accomplish this, which Aloha supports, was to permit out-of-core television broadcasters, whether analog or digital, to relocate to an in-core digital allotment “even if this means allowing the broadcaster to operate on the digital allotment in the analog mode at reduced power.” Motorola Comments, at 5. One way to achieve this is to accelerate this channel election date, from May 1, 2005 to May 1, 2004. Motorola Comments, at 6.

Flarion Technologies, Inc. (“Flarion”) also urged the Commission to “adopt DTV transition rules that will expedite the clearing of the 700 MHz band and facilitate the swift entry of new services and products in the band.” Flarion Comments, at 2.

Numerous 700 MHz licensees joined Aloha in urging that no further delays be permitted in the transition. See generally comments of Cavalier Group, LLC (“Cavalier”). See Also comments of DataCom Wireless, LLC (“DataCom”) (urging no further extensions of the May 1, 2005 channel selection date.) DataCom Comments, at 4. Harbor Wireless, LLC (“Harbor”) echoed those general sentiments, observing that “the Lower 700 MHz Band will succeed only if there is a prompt, well-managed transition to DTV. Harbor Comments, at 2. It was in that

context that Harbor observed that the emerging belief that the transition will not be swift “is having an immediate adverse effect on the ability of Harbor and others to develop 700 MHz telecommunications services even in markets where broadcast incumbency is not a problem” Harbor Comments, at 3; and that “[L]enders also are reluctant to commit money to the 700 MHz telecommunications business because of uncertainty as to when they will start earning a return on their investment.” Harbor Comments, at 4 [emphasis in original.]

B. The Commission Should Protect only Actual Broadcasting Operations

Several commenters observed that one of the most straightforward ways to facilitate the DTV transition is note to incentivize broadcasters to minimize coverage, and that this could be easily accomplished by providing them only with protection of actual operations.

APCO properly pointed out that “[r]ules protecting incumbent television stations from interference must be narrowly drawn so as to avoid creating unnecessary zones of protection, which would limit the availability of the spectrum for public safety use.” APCO Comments, at 2. Motorola echoed that position, explaining that broadcasters who elect not to maximize DTV service should not be permitted to claim interference protection over their entire theoretical service contours. Motorola Comments, at 7. See also the Comments of Access Spectrum, LLC, (“Access Spectrum”), where it urged the Commission to reconsider its tentative conclusion that DTV facilities should be protected as if they were fully replicated, even when they are not. Access Spectrum Comments, at 2. See also comments of DataCom, that the Commission revisit its tentative conclusion that broadcasters’ protection reflect only the service that they are actually providing. DataCom Comments, at 7.³

³ There are two other protection matters that certain of the commenters appropriately raised, and with which Aloha agrees. First, as DataCom properly noted, no broadcasters should be entitled to interference protection in the event they elect to move to out-of-core channels (52-58) after the close of Auction No. 44. DataCom Comments, at 8.

II. CONCLUSION

For all the foregoing reasons, Aloha urges the Commission to adopt the urgings set forth herein, and in the referenced comments.

Respectfully Submitted,

ALOHA PARTNERS, L.P.

/s/ Tom Gutierrez

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Its Attorneys

May 21, 2003

Second, as Flarion noted, interference protection should be a two-way street, and Channel 51 television licenses should be required to protect wireless providers on adjacent channel 52. Flarion Comments, at 4.