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SUMMARY

This Second DTV Biennial Review provides the Commission with many opportunities to provide the certainty necessary for broadcasters to move towards completing the DTV transition quickly without undermining the American system of free over-the-air television service. The Commission should seize these opportunities with decisive decisions that explain precisely how the key milestones in the transition will be met from here on out. First, the Commission should construe with care the manner in which the 85% DTV penetration threshold can be satisfied in each television market across the country. The statute must be construed so that a minimum of current television viewers lose over-the-air service, and this value must inform every decision the Commission makes in this area.

Second, the Commission must describe in detail the rules and procedures governing channel election and service replications and maximization. Again, the Commission's guiding star must be continuity of over-the-air service to viewers, but the Commission must also work to maintain equity among broadcasters, each of whom will rightly be trying to end the transition providing better service to more viewers than they did when the transition began. Accordingly, the Commission must set channel election and service replication/maximization deadlines that treat every broadcaster equally regardless of what channels they have been assigned. This means that the Commission must reject suggestions that 700 MHz broadcasters be held to a compressed transition timetable and also must ensure that broadcasters not be permitted to accomplish an early channel election through DTV-analog channel swaps. Above all, the Commission must ensure that its channel election and replication/maximization rules do not create a "spectrum-rush" environment where

broadcasters are encouraged to establish their channel and service area quickly rather than fully explore how to best provide service to their communities. The Commission also must resolve expeditiously processing problems under the Canadian/American MOU that have delayed the grant of numerous stations' DTV construction permits.

Finally, but perhaps most importantly, the Commission must take the steps necessary to make certain that cable operators are contributing to the transition by ensuring that broadcasters' DTV signals are reaching viewers. Accordingly, the Commission must require cable operators to carry the entirety of broadcasters' free-to-air services. In this proceeding, several cable industry representatives have attacked DTV must-carry, but the Comments have persuasively shown that the Commission will have to grant DTV must-carry sooner or later to complete the DTV transition. The sooner DTV must-carry is granted, the sooner the transition will end.

transition by requiring mandatory carriage of broadcasters' free-to-air services; and (3) provide equitable rules governing channel election, service replication and maximization, service in the Canadian border zone, and transitional and post-transition operation of broadcasters with channels in the 700 MHz spectrum. To maintain the momentum the DTV transition has gained over the past year, the Commission must move decisively to eliminate doubt in these areas and provide the roadmap to the end of the transition. PCC offers these Reply Comments to help the Commission plot the proper course.

I. TO CARRY OUT CONGRESS'S INTENT THAT AS FEW VIEWERS AS POSSIBLE LOSE ACCESS TO OVER-THE-AIR TELEVISION, THE COMMISSION MUST STRICTLY LIMIT WHICH MVPD SUBSCRIBERS WILL BE COUNTED IN CALCULATING THE 85% DTV PENETRATION THRESHOLD.

PCC continues to believe that the proper statutory construction of Section 309(j) requires the Commission to extend the DTV transition in any market where more than 15% of households are incapable of receiving over the air DTV signals from the broadcasters in their market.² Clearly, the statute was designed to assure the continuity of the over-the-air broadcasting system throughout and after the DTV transition. Just as surely, the statute was not designed to foster increased MVPD penetration or to reduce MVPDs' mandatory carriage burdens. Consequently, even assuming that Section 309(j) can be read to allow MVPD subscribers without over-the-air DTV capability to satisfy the 85% threshold – a point PCC disputes – the class of MVPD subscribers that will satisfy the statute must be strictly limited. Accordingly, the Commission must reject

² 47 U.S.C. § 309(j)(14); PCC Comments at 15-16.

several proposals to read Section 309(j) to include nearly every MVPD subscriber, regardless of their ability to receive over-the-air DTV signals.

First, the Commission must reject CEA's suggestion that an MVPD's subscribers should be counted towards the 85% threshold so long as the MVPD would be required to carry all DTV signals pursuant to its must-carry obligations at the close of the DTV transition.³ As PCC has argued, the plain language of the statute clearly requires cable carriage of DTV broadcast stations prior to the close of the transition – not the promise to carry them once the transition is complete.⁴

Similarly, the Commission must reject NCTA's suggestion that MVPD viewers should be counted even if an MVPD operator degrades the broadcast signal at the cable headend, providing an inferior downconverted signal to subscribers.⁵ NCTA attempts to portray this issue as one of "flexibility" in providing service to cable customers. The purpose of Section 309(j), however, is to ensure that consumers gain access to DTV, not to increase cable operators' bottle-neck control over whether consumers receive high quality DTV signals. Counting consumers receiving downconverted broadcast signals would simultaneously lessen MVPD's carriage obligations and increase their bottleneck control over the quality of television that broadcasters' viewers receive.

Such an approach would place yet another anti-competitive arrow in MVPD operators' quivers, enabling them to downconvert broadcast offerings while trumpeting the superior picture quality of cable channel offerings. This the Commission cannot

³ See CEA Comments at 22.

⁴ See 47 U.S.C. 309(j)(14)(B)(iii)(I); PCC Comments at 20.

⁵ See NCTA Comments at 20.

allow. Instead, PCC agrees with the formulation put forth by NBC/Telemundo, which would allow that MVPD subscribers will only count towards the 85% threshold if they receive DTV signals via cable that possess a level of viewing quality that equals or exceeds that broadcast over-the-air.⁶

PCC also endorses the following proposals to strictly construe which MVPD subscribers should be counted as receiving the requisite DTV broadcast signals to satisfy the 85% threshold:

- MVPD subscribers must subscribe to the tier of cable service that actually features all local broadcast signals;⁷
- If MVPD subscribers are utilizing a digital-to-analog converter, they must possess a converter capable of displaying all formats of broadcast DTV programming, including standard definition and HDTV;⁸ and
- Stations with significant numbers of viewers in multiple DMAs should be granted extensions of the DTV transition unless each DMA the station reaches has met the 85% threshold.⁹

Adoption of these policies, as well as those described in PCC's Comments, will ensure that Congress's primary concern with preserving over-the-air broadcasting through adoption of the 85% threshold is not undermined by counting non-DTV capable cable subscribers.

⁶ See NBC/Telemundo Comments at 2. See also NAB Comments at 20.

⁷ See NAB/MSTV Comments at 24.

⁸ See *id.*

⁹ See *id.* at 21-22. See also APTS/CPB/PBS Comments at 34-35.

II. MANDATORY CARRIAGE OF BROADCASTERS' FREE-TO-AIR SERVICES IS CONSTITUTIONALLY SOUND AND IS THE ONLY WAY TO ENSURE THAT CABLE OPERATORS WILL CONTRIBUTE THEIR FAIR SHARE TO ENSURING THAT THE 85% THRESHOLD IS REACHED IN MOST MARKETS.

As PCC described in its Comments, the Commission's most effective regulatory lever for expediting the DTV transition is requiring mandatory carriage of broadcasters' free over-the-air programming, including multicast channels.¹⁰ Many broadcasters' persuasively argued in their Comments that the 85% threshold will be all but impossible to reach if the Commission does not order DTV must-carry prior to the close of the transition.¹¹ Some period of transitional digital must-carry will be required if the Commission is to bring the transition to a successful conclusion. Given that cable carriage is likely to spur consumer adoption of DTV technology, it would be prudent for the Commission to implement DTV must-carry sooner rather than later.

Cable operators' challenges to the need for DTV must-carry are unconvincing. For example, NCTA's shocking assertion that DTV must-carry should not even be considered until at least 50% of homes not served by MVPDs possess over-the-air DTV tuners is backed by no statutory or public interest justification.¹² As both NCTA and the Commission know, cable carriage of DTV signals is likely to spur consumer interest in DTV technology and spur broadcasters to create more DTV content because that content will have an outlet. Accordingly, DTV must-carry will accelerate the transition. The adoption of over-the-air tuners by non-MVPD viewers, on the other hand, is unlikely to have any major effect on the economics of DTV broadcasting because the non-

¹⁰ See PCC Comments at 10.

¹¹ See, e.g., NAB/MSTV Comments at 34; National Minority T.V, Inc. Comments at 2-3; APTS/CPB/PBS Comments at 19-20.

¹² See NCTA Comments at 14.

MVPD viewer market is too small to drive production decisions for broadcasters or consumer electronics manufacturers.

NCTA's proposal is nothing but a nakedly anti-competitive attempt to force broadcasters to maintain indefinitely resource-draining dual operations. Section 309(j) of the Act says nothing about requiring half of non-cable homes to possess over-the-air DTV capability before requiring DTV must-carry; what the statute says is that the transition cannot end until a significant number of MVPD subscribers can access broadcasters' DTV signals as they are broadcast over the air.¹³ Elementary mathematics should tell NCTA that this cannot happen until a significant number of cable operators voluntarily begin carrying DTV broadcast signals or until they are required to do so. There is no evidence that cable operators are inclined to begin carrying DTV signals, so the Commission must order them to do so if it wants to complete the DTV transition.

Several cable programmers devoted their Comments to recounting their First Amendment argument against DTV must-carry.¹⁴ Despite the Supreme Court's plain mandate in *Turner II*,¹⁵ cable operators somehow persuaded the Commission two years ago that DTV must-carry implicates significant First Amendment concerns.¹⁶ Two years later, however, cable operators' First Amendment argument seems even thinner than

¹³ See 47 U.S.C. § 309(j)(14)(B).

¹⁴ See Courtroom Television Network, LLC Comments; A&E Television Networks Comments.

¹⁵ *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997) ("*Turner II*") (upholding must carry provisions under intermediate scrutiny).

¹⁶ Carriage of Digital Television Broadcast Signals, *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598, ¶¶ 13-14 (2001).

before. First, they argue that if the Commission recognizes that DTV must-carry will help preserve diverse over-the-air television programming, it will be engaging in prohibited content-based regulation.¹⁷ Fortunately, the Supreme Court, not cable operators or programmers, interpret the First Amendment, and it has held in no uncertain terms that preserving a multiplicity of diverse sources of over-the-air television is a legitimate foundation for must-carry requirements.¹⁸

The Cable industry's argument that examining whether the programming facilitated by must-carry is actually diverse somehow amounts to content-based regulation is not worthy of the Commission's consideration. PCC has demonstrated on numerous occasions that DTV must-carry would help preserve a multiplicity of diverse over-the-air broadcasting voices such as PCC's family values and faith-based programming and Univision's Spanish-language programming. Courtroom Television Network and A&E make a common layman's mistake of assuming that because a content-neutral regulation incidentally effects what speech is heard, it automatically becomes an impermissible content-based regulation. Broadcasters' must-carry rights are based on their geographical location and the quality of their over-the-air signal, not on the content of their broadcasts. Nonetheless, the Commission is free to examine the incidental effects of analog must-carry – *i.e.* whether the rule is actually fostering a multiplicity of diverse voices in the analog world – when it decides whether to adopt DTV must-carry.

¹⁷ Courtroom Television Network Comments at 10; A&E Comments at 8-10.

¹⁸ See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994) (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n. 27 (1972)) (“the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”).

The cable industry's content-based argument is mostly intended to divert the Commission from the inescapable conclusion that DTV must-carry not only would accelerate the DTV transition and the return of analog spectrum, but also would serve all three interests that the Supreme Court has held justify the imposition of mandatory carriage on one-third of cable operators' channels. First, it is beyond challenge that DTV must-carry will help preserve the benefits of free, over-the-air local broadcast television.¹⁹ Without DTV must-carry, the very survival of free over-the-air broadcasting is in jeopardy.

Second, DTV must-carry would preserve and promote the widespread dissemination of information from multiple, diverse sources.²⁰ Courtroom Television Network and A&E both are owned by cable operators and broadcast networks that already have multiple platforms for airing their programming. Far from providing new or diverse sources of information, they are yet another mouth from which their corporate parents speak. The irony of denying multicast must-carry to protect cable operators "free speech" right to carry another of their wholly owned cable networks or yet another network produced by the major broadcasters should be too much for the FCC to bear.

Finally, multicast must-carry will promote fair competition in the market for television programming.²¹ If the Commission needs proof that cable operators are ready to resume the unfair competitive practices they employed prior to the advent of Congress's must-carry regime, they need look no further than the comments in this

¹⁹ *Turner Broadcasting System v. FCC*, 520 U.S. 180, 189 (1997) (quoting *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994)).

²⁰ *See id.*

²¹ *See id.*

proceeding. NCTA's Comments describe intended post-transition cable operations involving downconversion of broadcasters' DTV signals to analog,²² while at the same time touting the amazing potential of cable operators' digital cable programming.²³ Thus, the cable industry itself makes it crystal clear that it intends to compete in the DTV world only as fairly as it can plausibly argue that the letter of the law requires. Because DTV must-carry will contribute to broadcasters' ability to weather such unfair cable operator practices, it will promote the third interest recognized by the court in *Turner I and II*.

The longer the cable industry resists DTV must-carry, the clearer it becomes that its most important objective is keeping broadcast DTV off cable while it installs its own digital services. By creating the illusion that they were first to market with DTV content, the cable industry intends to leverage its bottleneck control over what programming reaches viewers to ensure that when consumers think of DTV, they think of cable – and, more specifically, they think of cable-owned cable programming. Allowing the cable industry to execute this strategy will be a huge loss for the public, and free, over-the-air television service is unlikely to survive in the form viewers have come to know and depend upon.

²² NCTA Comments at 20.

²³ *See id.* at 9.

III. THE COMMISSION MUST ADOPT EQUITABLE RULES AND PROCEDURES TO GOVERN CHANNEL ELECTION AND SERVICE REPLICATION AND MAXIMIZATION.

A. The Commission Must Clarify its Channel Election Rules.

PCC agrees with Cox Broadcasting that the Commission's vague channel election procedures must be clarified at the earliest possible date.²⁴ Channel selection is a key component of broadcasters' DTV planning, but until they know the process the Commission will employ to approve channel elections, no intelligent planning can take place. PCC does not object to the Commission's proposed May 1, 2005 channel election date, but setting a deadline is only the first small step in clarifying this essential part of broadcasters' transition. The Commission should decide and announce its channel election policies and procedures in the near future, so that broadcasters will have adequate time and information to prepare for the May 1, 2005 deadline.

In setting the channel election rules, the Commission must ensure that the process accords equity among competing broadcasters by eliminating opportunities for gaming the system. Accordingly, PCC agrees with NAB/MSTV and Sinclair that the Commission should not allow broadcasters to accomplish analog-DTV channel swaps through a simplified application process.²⁵ The interference issues that such swaps are sure to raise should continue to be aired through a dual rulemaking process that gives all interested parties sufficient notice and opportunity to comment.

It is important that the Commission not allow broadcasters to use channel swaps to accomplish a de facto early DTV channel election. The only apparent purpose of

²⁴ See Cox Comments at 2.

²⁵ NAB/MSTV Comments at 7; Sinclair Comments at 8.

such swaps would be to develop DTV "squatter's rights" on a particular channel, since it is unlikely that a broadcaster would first swap its analog and digital channels and later elect permanent DTV operations on its post-swap analog channel. To allow this result would be inconsistent with the policy of setting a relatively late channel election deadline so that all broadcasters would have an equal opportunity to determine which of their channels will best support permanent DTV operations.²⁶

The Commission also should clarify that it does not envision any circumstances under which it would reject DTV operation on both of a broadcasters' currently allotted channels and require permanent DTV operation on a third channel. Such a result should be unnecessary and would be entirely unreasonable. As the Commission knows, consistency in channel designation is essential to broadcasters' long-term success. Indeed, viewers are equally, if not more, likely to know a broadcaster by its channel as by its call-sign. In the analog world, broadcasters have invested a great deal of resources to develop customer good-will by building an identification in viewers' minds between a station and its assigned channel. Currently, broadcasters are trying to accomplish this same result with their assigned digital channels. This customer goodwill is one of any broadcaster's most valuable assets.

If the Commission were to reject permanent DTV operations on both of a station's assigned channels, it would effectively destroy that goodwill and foreclose any return on the substantial investment that station has made. The results would be wasted resources for broadcasters who already are struggling financially to make the transition a success and confusion for consumers who literally would not know where to

²⁶ See *NPRM*, ¶ 25.

turn to find expected programming. Neither of these results would be consistent with the Commission's responsibility to preserve relied-upon television service to viewers.

B. The Commission's Service Replication and Maximization Deadlines Should not Place Additional Demands on Broadcasters Before the Transition Has Progressed Sufficiently to Make Those Demands Reasonable.

PCC agrees with those commenters who argue that the Commission should not adopt its proposed July 1, 2006 replication and maximization deadline for non-Big Four network affiliated and small market stations. Instead, PCC agrees with NAB/MSTV and others that the replication/maximization deadline should coincide with the end of the DTV transition.²⁷ PCC agrees with Sinclair that an earlier deadline would do nothing to advance the transition or the public interest in access to over-the-air television broadcast signals and would amount to a pointless additional burden on broadcasters who already have borne the brunt of the expense of the DTV transition.²⁸

If the Commission does adopt its proposed July 1, 2006 deadline, it should clarify that stations with a *bona fide* reason for failing to replicate or maximize their analog service area by that date will be entitled to waiver of the rule and continued interference protection of their allotted and maximized service area. If the Commission has not solved the processing problems that have delayed grant of numerous initial DTV construction permits well in advance of any deadline, it would be highly unfair to strip broadcasters of interference protection as a penalty for delays that essentially were beyond their control.

²⁷ See NAB/MSTV Comments at 8-9.

²⁸ See Sinclair Comments at 10.

There also is no reason for the Commission to impose punitive consequences for failing to meet the replication/maximization deadline.²⁹ PCC believes the Commission should ensure that all full-power broadcasters have an opportunity to maximize their service area before Class A or LPTV stations are permitted to claim spectrum that would interfere with that endeavor. Accordingly, the Commission should not restrict broadcasters that lose interference protection due to the passing of any replication/maximization deadline from reapplying for maximized facilities, and such applications should be given priority over competing Class A and LPTV applications.

C. The Commission’s Channel Election and Service Maximization and Replication Rules Must Not Discriminate Against 700 MHz Broadcasters.

The Commission also must ensure that its channel election and replication/maximization rules do not discriminate against 700 MHz broadcasters. Broadcasters on Channels 52-69 should not be forced to meet early election or replication/maximization deadlines, and they should be accorded full protection from interference from wireless operators in the bands. The Commission should not punish broadcasters for having been assigned 700 MHz channels. Instead, the Commission should reaffirm its previous decisions that the best way to clear broadcasters from the 700 MHz spectrum is through voluntary agreements and voluntary regulatory requests from broadcasters.³⁰

²⁹ See *NPRM*, ¶ 35.

³⁰ See Service Rules for the 746-764 and 776-794 MHz Bands, *Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633 (2001) (“700 MHz Third Report and Order”); Service Rules for the 746-764 and 776-794 MHz Bands, *Third Report and Order*, 16 FCC Rcd 2703 (2001); Service Rules for the 746-764 and 776-794 MHz Bands, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845 (2000); Service Rules for the 746-764 and 776-794

All parties would like to see the 700 MHz spectrum cleared as quickly as possible, but as with the DTV transition, all burdens should not be on broadcasters and their impacted viewers. PCC's position on the band-clearing issue is well-known and has been endorsed by the Commission.³¹ Last year, PCC's band-clearing efforts culminated in a protracted battle over whether the 700 MHz auctions would be held as scheduled, or whether the 700 MHz spectrum would remain encumbered throughout the DTV transition. In that regulatory and legislative battle, wireless operators and public safety officials argued for delay of the auctions so that spectrum solutions other than band-clearing driven by private agreements could be explored.³² Predictably, one year later the Commission is no closer to clearing the 700 MHz bands or providing additional spectrum to public safety operators.

In this proceeding, however, numerous wireless operators and public safety organizations have returned to the Commission to request a range of punitive measures designed to remove broadcasters forcibly from the 700 MHz bands. They have seized on the Commission's query as to whether the 700 MHz bands should have a compressed DTV transition schedule³³ to argue that the Commission should take all necessary steps to evict broadcasters from the 700 MHz band, including stripping broadcasters' interference protection and applying more restrictive channel election,

MHz Bands, *First Report and Order*, 15 FCC Rcd 476 (2000) ("*Upper 700 MHz First Report and Order*").

³¹ See, e.g., *700 MHz Third Report and Order*, ¶ 24.

³² See *Auction of Licenses in the 747-762 and 777-792 MHz Bands* (Auction No. 31); *Auction of Licenses in the 698-746 MHz Band* (Auction No. 44). 17 FCC Rcd 10098 (2002) (Separate Statement of Chairman Powell).

³³ See *NPRM*, ¶¶ 39-40.

replication/maximization, and DTV transition extension rules. Having helped to torpedo implementation of the Commission's band-clearing policies just last year, however, these parties should not now be heard. The Commission should treat 700 MHz broadcasters equally with in-core broadcasters and should apply the same rules and policies to each.³⁴

The Commission also should reject the request of Aloha Wireless that broadcasters with one in-core and one out-of-core channel be required to forfeit their 700 MHz allotment and flash-cut to digital operation on their in-core channel at the close of the transition.³⁵ This solution may be preferable for some 700 MHz broadcasters, and, as PCC argued in its Comments, the Commission should approve such requests if they are made voluntarily. Broadcasters should not, however, be forced to vacate their 700 MHz channels unless they determine that that option will best serve their communities.

Likewise, the Commission should reject New York State and APCO's suggestions that the Commission should scrutinize requests for extension of the DTV transition more closely if they come from 700 MHz broadcasters as opposed to in-core broadcasters.³⁶ There is no basis whatsoever in Section 309(j) for holding 700 MHz broadcasters' transition extension requests to any higher standard. The 85% threshold and transition extension provisions of Section 309(j) were designed to protect viewers' access to television services, and the Commission must remain faithful to that goal.

³⁴ *Cf. Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (similarly situated licensees must be treated equally).

³⁵ See Aloha Partners, LLC Comment at 3-4.

³⁶ See APCO Comments at 4-5; New York State Comments at 7, 13, 22-23.

The Commission also should reject New York State's proposal that 700 MHz broadcasters be given less interference protection from wireless operators than they currently enjoy.³⁷ Although PCC fully appreciates the need for increased spectrum for public safety wireless operators, this flawed proposal is sure to create nothing but conflict, forcing both broadcasters and public safety operators to waste their valuable resources on solving interference problems. Public safety operators need clear channels, not the right to operate while causing (and likely receiving) harmful interference.

There is simply no basis for instituting coercive policies designed to make the 700 MHz bands so inhospitable that broadcasters are forced to move regardless of the impact on television service to those stations' communities. Instead the Commission should ensure that 700 MHz broadcasters are subject to service requirements and transition timetables that are no more restrictive than those for in-core broadcasters.

The Commission could accomplish much, however, by focusing on making **voluntary** band-clearing more attractive. The Commission should, for example, guarantee that broadcasters assigned one in-core and one out-of-core channel will be given priority for permanent DTV operations on the in-core channel if the broadcaster so elects. Furthermore, the Commission should grant broadcasters with one or both channels outside the core first priority in selecting new channels that will become available once channel elections are made and spectrum begins to be returned. Finally, as described in PCC's Comments, the most effective action the Commission could take would be to reaffirm its commitment to band-clearing through private agreement and to

³⁷ See New York State Comments at 14-15.

announce that it will be rescheduling the auction of the remaining 700 MHz licenses at the earliest feasible date.

D. The Commission Must Fix the Broken Canadian Coordination Process.

PCC also strongly supports NAB/MSTV's suggestion that the Commission do whatever it takes – including involving U.S. government officials outside the FCC – to break the logjam that has been created by the Canadian/American Letter of Understanding governing transitional DTV operations in the Canadian border zone.³⁸ The current processing procedures are not working and PCC has experienced difficulties in obtaining Canadian clearance for DTV stations across the country. No fewer than four PCC stations, from New York to Oregon have yet to be granted initial DTV construction permits due to Canadian processing delays.³⁹

In some of these cases, what would apparently be required to comply with the LOU would significantly reduce service to the stations' communities – a result the Commission should not tolerate or expect broadcasters to tolerate. In other cases, Canadian analysis of the interference issues involved has been incomplete, leading to delays in processing stations' applications. For example, WPXD-DT, Ann Arbor, Michigan, has submitted an application that PCC believes complies fully with the LOU's interference criteria, but Canadian officials have apparently rejected the application because they do not account for masking interference. The Canadian position is unreasonable for two reasons: first, because refusing to account for masking

³⁸ NAB/MSTV Comments at 36-37.

³⁹ PCC's four station facing Canadian delays are WPXJ-TV, Batavia, New York; WVPX(TV), Akron, Ohio; WPXD(TV), Ann Arbor, Michigan; and KPXG(TV), Salem, Oregon.

interference results in predicted interference that does not, in fact, exist; and second, because the FCC routinely considers masking interference in evaluating proposed DTV allotments.⁴⁰

PCC acknowledges the importance of coordinating the operations of U.S. and Canadian stations, but while U.S. stations' DTV facilities go unauthorized, American viewers in the Canadian border zone go without DTV service and are left out of the transition altogether. Incompatibility between U.S. and Canadian analytic procedures should not be permitted to delay DTV service to Americans (and Canadians) in the border zone. The Commission's commitment to placing as many DTV stations onto the air as quickly as possible to spur the DTV transition should not stop 400 km from the U.S./Canadian border – it must be a nationwide effort that includes every television station.

If the Commission cannot work to resolve these issues with Canadian authorities in the near future, PCC agrees with NAB/MSTV that it may be appropriate to involve other U.S. government agencies in the process of guaranteeing viewers in the border zone DTV service comparable to the analog service they currently enjoy.

IV. CONCLUSION

For the foregoing reasons, PCC believes that adopting rules and policies

⁴⁰ See Hartford, Connecticut, *Report and Order*, MM Docket No. 01-306, DA 03-43, ¶¶ 4, 6 (January 23, 2003).

consistent with these Reply Comments will expedite the DTV transition and help to preserve the American system of free over-the-air broadcasting.

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Dated: May 21, 2003