DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

JOHN R. FEORE, JR.
DIRECT DIAL 202-776-2786
jfeore@dowlohnes.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. · SUITE 800 · WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 · FACSIMILE 202-776-2222
www.dowlohnes.com

ONE RAVINIA DRIVE · SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

June 16, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Communication
Proposed MSTV Channel Election Plan
MB Docket No. 03-15

Dear Ms. Dortch:

Paxson Communications Corporation ("PCC") supports MSTV's May 6, 2004, DTV channel election and repack "blueprint" that has been presented to the FCC for consideration ("MSTV Plan"). PCC believes that formalizing the complex channel election process is absolutely vital to a successful digital transition – and statutorily necessary to achieve a "fair, efficient, and equitable distribution" of television service. The MSTV Plan offers a reasonable, straight-forward, and transparent process to minimize uncertainty and conflicts, and for these reasons PCC urges the Commission to adopt the general proposal. In addition, PCC herein notes several specific, long-pending matters that must be addressed by the FCC in adopting MSTV's blueprint and moving forward on the DTV transition. **It is critical that the FCC process all pending DTV construction permit applications and channel change petitions before proceeding with the DTV channel election process.**

The channel election process will greatly impact PCC, which owns 57 full-power television stations in large and small communities throughout the country, making it one of the largest owners of television stations. PCC as well owns PAXTV, the nation's newest broadcast television network. PCC television stations fall in practically every category set forth in the MSTV Plan. Some PCC stations have two in-core allotments, some have one, others no in-core allotment. Three PCC stations – in Ann Arbor, Michigan, Akron, Ohio, and Batavia, New York – are without DTV construction permits due to the failure of the U.S.-Canadian coordination procedure. Something must be done by the FCC to fix the non-functioning L.O.U. that the FCC signed with Canada in 1999. In addition, five PCC stations were not assigned a paired allotment, and one of those, WSPX(TV) (Syracuse, New York), is awaiting action on its request for a paired channel. In the other four markets (Greenville, North Carolina; Spokane, Washington; Newton, Iowa; and Uvalde, Texas), PCC has filed for a digital allotment and these pending petitions, together with all other similarly-situated petitions, must be processed by the FCC before moving on to implement the MSTV Plan.

Given the sizable number of television stations PCC owns, it is statistically likely that some PCC stations will not secure their desired channel in either round of the election process proposed by MSTV. Accordingly, because PCC's stations will not all get their preferred channels under the MSTV Plan, the fact that PCC nonetheless endorses the MSTV channel election proposal should be given great weight. PCC will win some and lose some under the MSTV Plan, but PCC nevertheless endorses the MSTV Plan and urges the FCC to move to adopt it.

Broadcasters and the Commission will benefit from adoption of MSTV's Plan. The two rounds of proposed elections (or three rounds if the FCC adopts the Pappas Telecasting suggestion) will ensure that stations can make a reasonably informed choice and serve as many viewers as possible. This will minimize conflicts between television stations, which in turn will conserve the Commission's administrative resources. Such conflicts also would tend to extend the DTV transition, so the MSTV Plan would help expedite its completion as well. Moreover, for those conflicts that actually arise, the MSTV Plan contemplates a fair and transparent tie-breaking process, although PCC believes further discussion needs to be given to the specific tie-breakers. For all these reasons, PCC believes that the Commission and fellow broadcasters should approve of MSTV's Plan.

MSTV acknowledges that its proposal is a general blueprint that in some instances lacks the specificity of an adopted regulation. PCC wishes to comment on certain details and urges the Commission to consider these concerns in formulating its election rules.

- ***No Single-Step Election***. Absent an extended period of pre-arranged intra-industry coordination and negotiation, the Commission should refrain from imposing a single-step election. Such an approach surely would result in numerous channel deficiencies as many broadcasters essentially would receive randomly assigned permanent channels – in contravention of the Commission's obligation in Section 307(b) of the Communications Act to provide a "fair, efficient, and equitable distribution" of television service. The MTSV Plan contemplates two rounds of elections, which PCC believes should be the absolute minimum. See Comments of Pappas Telecasting Companies filed June 3, 2004.

- ***Additional Time for Stations With No In-Core Allotments.*** The MSTV Plan would have stations with two in-core allotments elect their permanent channel in June 2005, but allows only one month for those stations with no in-core allotments to digest this information and specify a preference for three possible permanent channels. PCC believes this amount of time is insufficient for what arguably is the most difficult choice of any in the process. PCC believes that these stations should have at least two months to select their three preference channels. Additionally, the Commission should specify that a single-allotment station whose sole channel is out-of-core at this time also would specify their channel preferences.

- ***Canadian Coordination***. While PCC supports the ambitious timeline in the MSTV Plan, it cannot be achieved without addressing Canadian coordination. **Nearly five years after commercial stations were required to submit construction permit**

applications and nearly four years after adoption of the U.S.-Canadian L.O.U., numerous border stations are unauthorized to construct their DTV stations. The lack of transparency and extensive delays in the Canadian review of DTV applications have been well documented, and the MSTV Plan itself rightfully urges the Commission to resolve the remaining Canadian issues prior to the first round of channel elections. Yet these elections and the election process are illusory if Canada can veto a channel choice at a time of its choosing – perhaps long after the election process is over. Accordingly, PCC urges the Commission to make clear well in advance of the first round of elections that broadcasters can presume that Canada will not object to the digital equivalent of a station's NTSC service area. Given that stations electing their digital allotment would not require additional Canadian review, this declaration should remove potential Canadian obstacles to the vast majority of elections. For those stations which must elect a channel currently unassigned to them, the Commission should act appropriately with Canada to ensure expedited approval; otherwise, the election process will have as many problems as the current DTV construction permit process.

- ***Tie-Breakers.*** PCC urges the Commission to adopt clear tie-breakers, including, for example, that great weight be given to first-filers and that would allow broadcasters in advance to determine the outcome of any channel conflicts. Such transparency and certainty would facilitate private resolution of potential conflicts and eliminate needless "prisoner's dilemmas" that otherwise would result. For example, the construction permit for PCC's station in Denver remains tied up with a mutually exclusive application years after filing. Before the second round, the FCC should issue a public notice listing "mutually exclusive" election choices and giving parties 90 days to settle. PCC respectfully disagrees with Pappas that open-ended negotiations will work.

- ***Action on Pending Requests.*** The Commission must first process all pending DTV construction permit applications and petitions for DTV allocations before it implements any election plan. These actions should be taken within the next few months so that broadcasters will have full information for their election choices.

PCC urges the Commission to adopt the MSTV channel election proposal and consider the specific items it has raised. A formalized, multi-step channel election process will maximize over-the-air broadcast television service and conserve the Commission's administrative resources.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION

John R. Feore, Jr., Esq.