

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Wireless Broadband Access) GN Docket No. 04-163
Task Force Report)

**COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

As a longstanding proponent of the transition to digital television, the Association for Maximum Service Television, Inc. (MSTV)¹ agrees with the Wireless Broadband Access Task Force Report (Report) that “[w]e are at the dawn of a digital telecommunications revolution.”² The DTV transition is an important component of that “revolution,” as it will (1) provide – on a free and over-the-air basis – “brilliant, high definition, multiple digital-quality programs, and ancillary and supplementary services such as data transfer” to the American public;³ and (2) free up 108 MHz of spectrum, currently allocated to “out-of-core” television channels 52 through 69, for interoperable public safety and commercial wireless uses at the conclusion of the transition.

The Report’s proposal to grant wireless entrants liberal access to the out-of-core spectrum *before* the conclusion of the digital transition, however, would put *both* of these objectives of the transition at risk by creating disincentives for consumers to adopt DTV

¹ MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

² Wireless Broadband Access Task Force, *Report*, GN Docket No. 04-163, at 1 (rel. Feb. 2005) (*Report*).

³ *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd. 12809, 12811 (1997).

technology.⁴ Specifically, MSTV objects to the recommendation that the Commission “consider additional mechanisms for allowing 700 MHz channels to be used for wireless broadband services before the completion of the DTV transition.”⁵ Any recommendations that would lead to increased levels of interference to viewers of free, over-the-air television service should be rejected. The Commission already has adopted service rules for the 700 MHz band which allow wireless entrants to use the out-of-core spectrum prior to clearing of those bands, on the condition that they “fully protect incumbent full-power analog and digital broadcasters during the transition period.”⁶ Yet by allowing the few existing 700 MHz entrants (which occupy only 24 MHz of the 108 MHz allocated for new uses after the transition) to interfere with the public’s over-the-air television service, the Report’s proposal would fail to protect that “core value.”⁷ Although those few entrants may benefit from the Report’s proposal, the interference caused to the viewing public would stunt acceptance of DTV technology and thereby delay conclusion of the digital transition and the clearance of the 700 MHz spectrum for public safety and future

⁴ *Report* at 62-63.

⁵ *Id.*

⁶ *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd. 1022, 1039 (2001).

⁷ The existing 700 MHz entrants, the largest of which is reportedly Aloha Partners, L.P., participated in the considerably scaled-back auctions for 6 MHz of upper 700 MHz guard band spectrum and 18 MHz of lower 700 MHz spectrum. Shortly after the Commission promulgated its 700 MHz service rules, Congress passed the Auction Reform Act of 2002, which delayed auction of most of the 700 MHz spectrum based on the finding that the pending digital transition “creates a tremendous amount of uncertainty concerning when the spectrum will be available and reduces the value placed on the spectrum by potential bidders.” Pub. L. 107-195, 116 Stat. 716 (2002). As Congress concluded, “[t]he encumbrance of the 700 megahertz band reduces ... the amount of money that the auction would be likely to produce.” *Id.* The prices paid for this spectrum reflected these encumbrances, and MSTV has previously expressed to the Commission that granting the few existing 700 MHz entrants unfettered access to the spectrum ahead of the transition’s conclusion would grant them an unjust windfall. *See* Comments of MSTV and NAB, WT Docket No. 05-7, at 21-22 (filed March 10, 2005).

wireless uses. Accordingly, MSTV submits these comments opposing the Report's proposals to the extent they would interfere with viewers of out-of-core television services.

I. TO ACHIEVE A SUCCESSFUL TRANSITION AND THE RESULTING CLEARANCE OF THE 700 MHZ BANDS, IT IS ESSENTIAL THAT CONSUMERS HAVE INCENTIVES TO PURCHASE DTV TECHNOLOGY.

A successful conclusion for the DTV transition and the resulting clearance of 700 MHz spectrum for wireless broadband and public safety uses depend upon fulfillment of two fundamental prerequisites: broadcasters' transmission of DTV signals and consumers' adoption of the technology necessary to receive those signals. Overcoming significant technical and financial challenges, local television broadcasters have virtually completed the transmission piece of that equation. Indeed, the Commission recently reported that 1,497 of the 1,697 U.S. television stations with a DTV construction permit or license are broadcasting a digital signal.⁸ Over-the-air DTV service is now available in virtually every corner of the United States.

The critical issue now to be addressed is the second prong of the DTV equation; American consumers must have the incentive to purchase the equipment necessary to enjoy local DTV services. The Communications Act does not allow analog shutdown in a given market unless 85 percent or more of TV households in that market have "at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market" or a digital-to-analog converter for their analog-only television sets.⁹ Thus, to meet the Report's goal of freeing up 700 MHz spectrum for new uses, it would be counterproductive

⁸ See Summary of DTV Applications Filed and DTV Build Out Status, April 7, 2005, available at <http://www.fcc.gov/mb/video/files/dtvsum.html> (last visited April 12, 2005).

⁹ See 47 U.S.C. § 309(j)(14)(B)(iii).

for the Commission to take any action which would discourage consumers from purchasing DTV technology.

In reaching the statutory threshold in a given market, the role of over-the-air viewers should not be underestimated. Over-the-air viewership is pervasive: as confirmed in a recent study of the Government Accountability Office (GAO), 21 million U.S. households rely *solely* on free, over-the-air television.¹⁰ In some markets the number of homes not connected to cable or satellite services may reach as high as 40 percent.¹¹ Each over-the-air household that purchases a DTV-capable set advances its market closer to the 85 percent statutory threshold, and further reduces the number of American consumers that will have to obtain a digital-to-analog converter box at the end of the DTV transition.¹²

Many viewers in cable households also must rely on over-the-air signals for receiving broadcasters' digital services. The National Cable & Telecommunications Association (NCTA) has reported that less than one third of DTV channels are carried by cable providers.¹³ That number appears unlikely to rapidly increase, given the Commission's recent decision providing that a cable operator may deny carriage of a broadcasters' DTV signal if it also carries

¹⁰ *Estimated Cost of Supporting Set-Top Boxes to Help Advance the DTV Transition: Testimony Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, U.S. House of Representatives*, Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, GAO, 7-8 (Feb. 17, 2005) (GAO Study). There are an estimated 45 million television sets in these households. Comments of NAB and MSTV, MB Docket No. 04-210, *passim*, Attachment A (2004) (MSTV/NAB OTA Comments).

¹¹ Variations may also occur along cultural lines. Univision has reported that nationwide, 33 percent of Hispanic households receive their programming solely over the air. *See* Comments of Univision Communications, Inc., MB docket No. 04-210, at 8 (filed Aug. 11, 2004).

¹² *See, e.g., Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers*, MB Docket No. 04-210, at ¶ 40 (rel. Feb. 28, 2005) (estimating costs of a subsidy to analog-only households).

¹³ *See* Ted Hearn, *Powell Seems Ready to Nix Multicasting*, Multichannel News, Jan. 24, 2005 ("NCTA said last week that 450 DTV stations are carried by cable.").

the analog signal.¹⁴ Thus, even a digital cable subscriber is not necessarily “capable of receiving the digital television service signals of the television stations licensed”¹⁵ in a given market. The situation is perhaps worse in the Direct Broadcast Satellite (DBS) context, where digital carriage issues are also unresolved and even less DTV signals are carried. Over-the-air viewing is often the only way to obtain the full panoply of broadcasters’ DTV services.¹⁶

Even where there is digital carriage, there are a significant number of cable and satellite households that still place heavy reliance on over-the-air television reception. For example, the GAO has reported that over 10 million households that subscribe to cable have *at least* one television that is not connected to cable.¹⁷ It is estimated that such households represent an aggregate of 28 million television sets not connected to cable.¹⁸ Moreover, consistent with the 1992 Cable Act,¹⁹ a number of local television stations use their over-the-air signal to reach a cable headend. Interference to signal reception at a cable headend must be considered if the Commission were to amend its current rules for providing new services in the 700 MHz band during the transition.

¹⁴ *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, MB Docket No. 98-120, FCC 05-27, at ¶ 2 (rel. Feb. 23, 2005).

¹⁵ 47 U.S.C. § 309(j)(14)(B)(ii).

¹⁶ *See, e.g., Three Ways to Get HDTV Programming*, CNET.com, available at http://www.cnet.com/4520-7874_1-5108854-3.html (last visited April 20, 2005) (“While a good number of cable networks are broadcasting in HDTV, they’ve been slow in rolling out the service to their customers, and there’s no sign of that changing soon.”).

¹⁷ GAO Study at 8.

¹⁸ Comments of NAB and MSTV, MB Docket No. 04-210, *passim*, Attachment A (2004) (MSTV/NAB OTA Comments).

¹⁹ *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460, 1477 (1992), *codified* at 47 U.S.C. § 534.

II. BY INTERFERING WITH VIEWERS' ABILITY TO RECEIVE DTV SIGNALS ON OUT-OF-CORE CHANNELS, THE REPORT'S PROPOSAL WOULD DISCOURAGE CONSUMERS FROM PURCHASING DTV TECHNOLOGY.

The Report's proposal that the Commission allow 700 MHz entrants to operate without providing "full protection" to out-of-core stations would, by definition, interfere with viewers ability to receive out-of-core DTV programming. Because such interference would frustrate the above-described goal of fostering consumers' adoption of DTV technology, the Commission should not adopt the Report's proposal.

In response to a similar proposal by a 700 MHz entrant, MSTV has already documented the likely interference which would result from the Report's proposals to "revis[e] [its] interference criteria, and/or devis[e] a streamlined process by which licensees can establish that their operations comply with the applicable interference criteria or only result in a *de minimis* impact on viewers."²⁰ Specifically, QUALCOMM, Inc. (QUALCOMM) has petitioned the Commission to "declare" that (1) 700 MHz entrants be allowed to create allegedly "*de minimis*" interference to up to two percent of viewers within a given station's licensed service contour; (2) a broadcast interference standard, OET-69, be declared an "acceptable" methodology for demonstrating "compliance" with Section 27.60, including when the 700 MHz entrant proposes operation inside an adjacent television station's licensed service contour; and (3) new procedures be adopted to overwhelmingly favor grant of 700 MHz applications premised on the unsuitable OET-69 methodology.²¹ As MSTV and the National Association of

²⁰ *Report* at 62-63.

²¹ *See* Petition for Declaratory Ruling, QUALCOMM Inc., WT Docket No. 05-7 (filed Jan. 10, 2005) (QUALCOMM Petition). QUALCOMM's request inappropriately seeks to have the Wireless Telecommunications Bureau amend the Commission's Section 27.60 rules. The Report appears not to make the same error, addressing its suggestion instead to the Commission. In any event, given that both QUALCOMM's and the Report's proposals seek an unprecedented (continued...)

Broadcasters (NAB) explained in response to QUALCOMM's petition, grant of such a request would "result in a net loss of the public's access to free, over-the-air television services" and would significantly degrade the viewing options of viewers owning the millions of exclusively over-the-air sets across the U.S.²²

Many of the stations which would experience interference from 700 MHz entrants broadcast in DTV. Because the broadcast spectrum is particularly crowded during the transition, with approximately 1600 digital television channels squeezed in between the approximately 1600 existing analog stations, the Commission allotted many broadcasters an out-of-core DTV channel. Nationwide, there are over 180 stations operation a digital channel outside of the core. These out-of-core DTV channels are particularly prevalent in crowded markets. For example, in the Los Angeles market, which has 5,431,140 TV households,²³ the ABC, CBS, Fox, and UPN affiliates all operate their DTV channels outside of the core, as does a noncommercial educational station.²⁴ The Commission would leave many viewers without access to those out-of-core DTV channels were it to weaken its interference standards for 700 MHz entrants.²⁵

tradeoff whereby *free*, over-the-air viewers would be sacrificed in favor of *subscription* wireless services, it would not be appropriate for these proposals to be considered on delegated authority.

²² Reply Comments of MSTV and NAB, WT Docket No. 05-7, at 2 (filed March 25, 2005).

²³ U.S. TV Households by Market, Nielsen Media Research/NSI Estimates, 2004-05, *available at* http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp (last visited April 21, 2005).

²⁴ In Los Angeles, KABC-DT, the ABC affiliate, operates on channel 53; KCBS-DT, the CBS affiliate, operates on channel 60; KTTV-DT, the Fox affiliate, operates on channel 65, KCOP-DT, the UPN affiliate, operates on channel 66; and KCET-DT, a noncommercial educational station, operates on channel 59.

²⁵ Also, the potential for interference from these services is not limited to base station operation. The Commission must consider potential interference to television receivers from mobile devices that will be operated in the home. Specifically, Section 27.60 of the rules, which may govern some of these devices, was not intended to deal with the operation of such devices indoors or where these devices operate for long durations as opposed to short-burst duty cycles. When (continued...)

In addition, many out-of-core DTV stations, such as the aforementioned ABC, CBS, and Fox affiliates in Los Angeles, face the “use-it-or-lose-it” deadline by which they must serve at least 100 percent of the number of viewers served by the 1997 facility on which their replication coverage was based.²⁶ In imposing that deadline, the Commission found that “the time has come to ensure that consumers have access to a full range of digital programming services from their local broadcast stations.”²⁷ If it were to allow 700 MHz entrants to interfere with over-the-air viewership of out-of-core DTV channels, however, the Commission would prevent viewers from accessing the “full range” of DTV services provided by their local broadcasters.

If consumers are subjected to harmful interference from 700 MHz entrants, they will see a frozen picture or blank screen when attempting to view an out-of-core DTV channel. DTV is an all-or-nothing technology; loss of service means not just a poor picture, but no picture at all.²⁸ Current owners of DTV technology would have little positive to say about digital television to friends and neighbors if they experience such interference. Thus, by interfering

operated indoors, certain 700 MHz entrants’ mobile devices may cause harmful interference and out-of-band emissions which would interfere with or desensitize a television receiver. As a result, affected viewers would be unable to watch television, whether digital or analog, on *any* channel. MSTV has previously urged the Commission to revisit its Section 27.60 rules to ensure that they protect viewers – and the progress of the digital transition – from such harmful interference. Also, similar problems exist for unlicensed devices regulated under Part 15 of the Commission’s rules. *See, e.g.*, Letter from Matthew S. DelNero, Covington & Burling, counsel for MSTV, to Marlene H. Dortch, Secretary, FCC, WTB File No. 0001777981, Dec. 6, 2004.

²⁶ *See Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, 19 FCC Rcd. 18279, ¶¶ 72-87 (2004) (Second DTV Periodic Review). DTV licensees affiliated with the top-four networks in markets 1-100 are subject to the July 1, 2005 use-it-or-lose-it deadline. All other DTV licensees are subject to a July 1, 2006 deadline. *Id.*

²⁷ *Id.* at ¶ 79.

²⁸ *See* Joint Comments of MSTV and NAB, ET Docket No. 02-380 (filed Jan. 27, 2003).

with consumers' ability to receive DTV signals, the operations of 700 MHz entrants would stunt consumer adoption of digital technology. Plainly, the short-term gains to a few 700 MHz entrants would be outweighed by the costs of slowing down the DTV transition and the benefits it otherwise will produce for the public's television service, interoperable public safety communications, and commercial wireless broadband alternatives.

CONCLUSION

To protect consumers generally and the progress of the digital transition specifically, MSTV urges against any action which would interfere with viewers' ability to receive out-of-core television services. Such interference would discourage consumers from purchasing DTV technology, and would thereby slow down the digital transition and the corresponding return of 700 MHz spectrum for public safety and commercial wireless uses. In light of these concerns, any request – whether by a waiver application or petition of general applicability – that seeks the right to operate in violation of Section 27.60 should be reviewed solely by the Commission and not on delegated authority. In its review, the Commission should reject any request which result in harmful interference to the public's television service. The Commission should instead focus on fostering consumers' acceptance of the DTV transition, and thereby allow broadcasters to vacate the 700 MHz spectrum in a timely manner and in accordance with the Communications Act.

Respectfully Submitted,



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