

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

In the Matter of)	
)	
)	
Digital Television Distributed)	MB Docket No. 05-312
Transmission System Technologies)	
)	

COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation
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Dated: February 6, 2006

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SUMMARY

DTS will allow the public to re-embrace over-the-air broadcasting and will facilitate the ability of broadcasters to remain competitive in the digital age. By moving their shorter antennas closer to viewers, DTS stations can deliver a stronger DTV signal, enhancing receiver reliability. This not only will allow set manufacturers to simplify receiver circuitry and reduce consumer costs, but it should permit the development of innovative handheld and portable receiving devices, expediting the public's transition to digital television.

Pioneering DTS technology also will allow broadcasters to reduce reliance on their traditional single-transmitter model and permit DTS stations to serve their entire DMAs, just as their fellow competitors (*i.e.*, cable and satellite providers) already do. Paxson accordingly urges the Commission to refrain from denying the full benefits of DTS to the full public. Rural viewers who otherwise could receive free, interference-free, over-the-air broadcast service for the first time should not be deprived of access simply to memorialize the legacy boundaries of a single-transmitter station. DTS will help advance the DTV transition and serve the public interest by providing more reliable service to more locations and on more devices, many of which will be more affordable. The Commission should give television broadcasters the tools necessary to compete and give all the public the opportunity to receive free, over-the-air television service.

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Paxson Communications Corporation (“Paxson”) hereby submits these comments in response to the *Clarification Order and Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ The *Notice* proposed rules to govern the implementation and operation of Distributed Transmission Systems (“DTS”) that would allow DTV broadcasters to employ multiple synchronized transmitters throughout a station’s service area. The *Notice* requested comment on the proposed rules, and in particular on how DTS could benefit the public. Paxson believes that DTS promises to enable numerous new possibilities that should allow television broadcasters to keep pace with technology and viewers.

DTS has the potential to revitalize over-the-air television broadcasting. DTS can enhance existing service, improve reliability, and enable and speed the development of new and improved receivers at lower prices. Paxson accordingly supports the

¹ Digital Television Distributed Transmission System Technologies, *Clarification Order and Notice of Proposed Rulemaking*, MB Docket No. 05-312, FCC 05-192 (rel. Nov. 4, 2005) (“*Notice*”).

Commission's efforts to create rules that would give broadcasters the tools and flexibility to remain competitive in the digital age. Paxson commends the Commission for developing the well-reasoned regulatory scheme proposed in the *Notice* and generally supports the proposed rules. Paxson respectfully submits, however, that the Commission can do more to help bring the full potential of DTS to a greater number of viewers. Paxson urges the Commission to allow DTS stations, subject to reasonable prohibitions on new interference, to deliver free, over-the-air programming throughout their markets, thereby reaching viewers in rural and outlying areas who currently must depend on subscription-based services to receive local broadcast signals.

I. DTS WILL BENEFIT THE PUBLIC SIGNIFICANTLY.

A. DTS Can Improve Reliability and Enable New Devices and Services.

The *Notice* requested comment on numerous matters related to the benefits and costs of implementing DTS, as well as the rules that should govern its use.² Paxson believes that DTS will improve service reliability for traditional television viewers and allow program delivery to new and innovative devices. By allowing the placement of transmitters at multiple locations, DTS can alleviate reception difficulties caused by terrain and building obstructions. More generally, however, by moving DTS transmitters closer to viewers, broadcasters can improve reception quality and reliability while operating transmitters at lower power and height. As a result, viewers will receive a higher power signal that more easily can penetrate buildings, making reception more reliable and robust and eliminating the need for large, relatively expensive outdoor antennas. In combination with synchronization technology that will allow signal

² *Id.*, ¶¶ 10, 13, 24.

processing by receivers, the increased signal strength can help resolve multipath and other reception problems currently experienced. By reducing the circuitry and signal processing needs of receivers, higher powered received signals also would allow manufacturers to produce such receivers less expensively and to create new types of reception devices.

DTS will help advance the DTV transition and serve the public interest by providing better, more reliable service to more locations and on more devices, many of which will be more affordable. As DTS brings transmitters closer to receivers and improves building signal penetration, viewers who currently do not or cannot receive over-the-air DTV signals may do so using smaller, less expensive equipment. The availability and desirability of such devices will help speed consumer adoption of DTV technologies and further the DTV transition.

B. DTS Will Not Inconvenience Existing Consumers or Cable Operators Nor Harm Traditional Single-Transmitter Broadcasters.

The *Notice* requested comment on how DTS might impact consumers, cable operators, and traditional single-transmitter stations.³ Although DTS will enable new and exciting advances in reception equipment and viewing devices, it will not require consumers to purchase new equipment. DTS will work with all existing DTV receivers and existing digital-to-analog converters, and should improve the performance of such receivers by delivering stronger, more reliable signals. Moreover, with its improved building penetration and distributed nature, DTS also can help reduce the need for purchases of larger, more complicated receivers. Likewise, because a DTS would

³ *Id.*, ¶ 10.

operate pursuant to existing DTV standards,⁴ cable operators would not have to purchase additional equipment either. Indeed, a DTS should improve reception reliability and robustness at cable headends as well.

A DTS would not harm stations which choose to retain traditional single-transmitter operations. Paxson supports the adoption of a reasonable prohibition on new interference to existing service areas and viewers. Indeed, by allowing operation at reduced power levels from dispersed locations, broadcasters using DTS may reduce interference to neighboring stations. In addition, the removal of high-power transmitters and antennas, and the consequential reduced need for large towers, also could alleviate space and siting concerns of some single-transmitter broadcasters. Although Paxson believes that the benefits DTS can provide to both viewers and broadcasters ultimately will lead many stations to deploy DTS, Paxson urges the Commission to adopt rules that give broadcasters the flexibility and discretion to implement DTS only when and if they determine that it is appropriate to do so in their particular circumstances. Paxson understands that, depending on the specifics in a broadcast market, some licensees may determine that they can best serve their viewers by continuing operation as a single-transmitter system. Paxson does not believe, however, that this should lead the Commission to adopt rules that would foreclose the use of DTS because of concerns that this innovation might disadvantage those which, for whatever reason, chose to maintain single-transmitter operations. Under the adopted rules, stations always should be free to convert to DTS at their discretion.

⁴ *Id.*, ¶ 34.

C. DTS Can Help Communities Resolve Aesthetic Issues Presented by Tall Broadcast Towers.

The Commission reasonably inquired in the *Notice* how DTS might burden local communities.⁵ Paxson submits that DTS will have positive effects on local communities, most notably by allowing broadcasters to provide improved service to communities throughout a station's service area. Although DTS stations necessarily will employ a greater number of transmitters, the DTS antenna structures generally should be shorter and less obtrusive than traditional broadcast towers, and would be approximate in size to cellular structures. Rather than constructing numerous new antenna structures, Paxson believes that most broadcasters will attempt to place DTS antennas on existing towers. As such, no significant environmental effect is anticipated. Indeed, DTS should allow the removal of some larger broadcast towers, which should afford aesthetic improvements to local communities. Also, improved building signal penetration will allow more viewers to eliminate outdoor receiving antennas. In this and many other ways, DTS will benefit the public significantly without appreciable harm or inconvenience.

II. THE COMMISSION SHOULD ALLOW DTS STATIONS TO SERVE THEIR ENTIRE MARKET.

A. The Commission Should Not Deliberately Deny Broadcast Service To Those Who Could Receive It With DTS.

Paxson believes DTS offers numerous significant benefits to viewers. To realize this full potential, however, the Commission should not artificially limit a station's DTS service area to whatever a single-transmitter may reach. Despite the historical

⁵ *Id.*, ¶ 10.

importance the Commission has placed on broadcasters reaching unserved or underserved areas,⁶ the rules proposed in the *Notice* largely would preclude service area expansion enabled by the innovative advances of DTS.⁷ Broadcast television service areas traditionally have been constrained by either physics or interference restrictions. DTS, however, would unshackle broadcasters from the single-transmitter model, allowing stations to expand service and reach their natural markets. In proposing a “table of distances”⁸ that sets DTS service boundaries at about what currently exists for traditional single-transmitter stations, the Commission rejected alternative proposals that would have allowed DTS stations to expand service and reach all of the station’s designated market area (“DMA”).⁹ By foreclosing the ability of broadcasters to take advantage of the technical aspects of DTS that allow expanded service, the *Notice* unreasonably would disregard the historical importance of reaching unserved and underserved areas based not on physics or interference constraints but instead on the legacy construct of a single transmitter.

1. *The Commission Should Adopt Rules Embodying a DMA Approach to Service Area Expansion as a Natural Market-Based Service Area.*

Paxson submits that the Commission should adopt rules for DTS that embody a version of the “DMA Approach.” Subject to the interference standard adopted, the Commission should allow stations implementing DTS to expand service to their entire

⁶ See Amendment of Section 3.606 of the Commission’s Rules and Regulations, *Sixth Report and Order*, 41 FCC 148, 167 (1952).

⁷ *Notice*, ¶¶ 14-24.

⁸ *Id.*, ¶ 21.

⁹ *Id.*, ¶ 18.

DMAs, which have emerged in today's competitive economy as broadcasters' natural market. The Commission almost entirely has abandoned site-based and community-based licensing for new wireless services,¹⁰ and the broadcasting and video delivery industry already makes extensive use of DMAs. For example, DMAs provide the basis for determining a station's ratings and, consequently, much of its advertising income. In addition, and more critically, the DMA boundary also currently defines the area in which cable and satellite operators generally have the right to rebroadcast a station's signal.¹¹

2. *A DMA-Based Service Area Would Provide Parity With – and Competition To – MVPDs in Unserved and Rural Areas.*

Allowing expansion of a DTS station's service area to the boundary of its DMA would provide crucial parity with cable and satellite operators – and provide service to those who may have no alternative to fee-based MVPDs. Particularly for individuals residing in rural areas or far from population centers, MVPDs often are the only means by which they can receive television programming. Such viewers largely have yet to benefit from the promise of "free television." DTS, however, could change this. If the Commission allows broadcasters to reach viewers in unserved and underserved areas, many may receive a free over-the-air video service for the first time. In addition, because DTS also will provide all of the advantages of DTV, broadcasters could provide multicast services to compete with MVPDs squarely in these underserved areas.

With the advent of DTS, there no longer is any evenhanded basis for allowing MVPDs – whom the Commission readily acknowledges as competitors to

¹⁰ See 47 C.F.R. § 22.909 (2004) (defining cellular radiotelephone markets by use of Metropolitan Statistical Areas and Rural Service Areas).

¹¹ See 47 C.F.R. §76.55 (2004).

broadcasters¹² – to serve an entire DMA while deliberately preventing television stations from doing the same. Moreover, wireless providers, who also stand to be competitors in the video programming delivery market, similarly serve market-based territories. Accordingly, it would be unreasonable to restrict broadcasters to artificial, legacy-based service areas when their competitors have access to the entire DMA.

3. *DTS Service Area Expansion Could Improve Spectrum Efficiency by Eliminating Translators.*

By allowing DTS stations to serve their entire DMA, the Commission would increase spectrum efficiency. Broadcasters relying on translators to serve their DMA could replace them with on-channel DTS transmitters, freeing spectrum for other uses – including the introduction of new broadcast stations. The *Notice* explicitly cited such channel conservation as justification for allowing the creation of Class A networks that apparently could expand service beyond that currently authorized.¹³ Although the *Notice* was silent about the similar spectral efficiency that full power DTS stations could create, it would be unreasonable to allow only one group of stations to expand service when both equally can contribute to channel conservation.

B. The Costs Articulated in the *Notice* in Allowing Service Area Expansion Are Questionable and, In Any Event, Far Outweighed By The Benefits To The Public.

1. *Service Area Expansion Will Not Detract From Broadcasters' Commitment and Obligation to Localism.*

In the *Notice*, the Commission expressed concern that, because some DMAs are geographically extensive, allowing broadcasters to serve all of such DMAs would be

¹² See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Eleventh Annual Report*, 20 FCC Rcd 2755, ¶ 4 (2005).

¹³ *Notice*, ¶ 36.

inconsistent with the traditional focus on localism.¹⁴ Paxson submits that service expansion would in no way undermine localism but reasonably would enable broadcasters to improve service to all their communities, including their communities of license. Regardless of the extent to which a broadcaster expands its service area via DTS, its longstanding, traditional commitment and obligation to serve its community of license will remain unchanged. Furthermore, expanding service to unserved viewers would reciprocally benefit television stations by allowing them to remain competitive and realize additional resources to strengthen service more.

Even in geographically extensive DMAs, the market boundary remains a natural service area limit. In sparsely populated and geographically large markets, it is entirely reasonable that viewers in outlying communities would feel connected to the nearest population centers – and to each other. This interconnection in turn makes it thoroughly consistent with localism for these dispersed communities to be linked by a single broadcast service. Such connected communities represent a much more natural market, and therefore service area, than does a defined circle about a reference point. With DTS innovations, the technological constraint of single-transmitter operations no longer exists, and broadcasters now should be allowed to serve their full natural markets.

Most DMAs in any event are not so geographically large as to lead to the massive service area expansion about which the *Notice* appears to be concerned. Paxson believes it would be unreasonably overinclusive to prevent service area expansion for all DMAs simply because a few are geographically large. To the extent

¹⁴ *Id.*, ¶ 18.

that the Commission remains concerned with expansion in some of the country's geographically largest DMAs, it should be possible to craft a rule that would allow expansion where this concern does not exist.

2. *DTS Service Area Expansion Would be Consistent With The Commission's Competitive Bidding Obligations.*

In footnote 38 to the *Notice*, the Commission expressed concern that allowing expansion of service areas through licensing of DTS transmitters could be inconsistent with the statutory requirement to award new licenses through competitive bidding as appropriate. Paxson believes that this concern is misplaced. On its face, the Commission's statutory obligation to award licenses through competitive bidding applies only in cases where "mutually exclusive applications are accepted for any initial license or construction permit."¹⁵ In many cases it is likely that applications to expand a station's service area through DTS would not be subject to any other mutually exclusive applications. Even in cases where two or more applications initially appeared to be mutually exclusive, it is likely that engineering techniques or negotiations could be employed to avoid that exclusivity¹⁶ as the Commission has routinely allowed.¹⁷ In short, the unlikely possibility of a small number of mutually exclusive applications for

¹⁵ 47 U.S.C. § 309(j)(1).

¹⁶ See 47 U.S.C. §309(j)(6)(E); see also *supra*, fn. 15.

¹⁷ See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 5946, § IV(E) (2001). The *Notice* itself also provides that additional transmitters can be added to a DTS network through a minor change application, which would not require competitive bidding. *Notice*, ¶ 28.

service area expansion should not lead the Commission to restrict DTS expansion unnecessarily.¹⁸

3. *Service Area Expansion Need Not Preclude the Creation of New Stations or the Entry of New Media Voices.*

The *Notice* expressed concern that expansion of service areas could preclude the creation of new stations.¹⁹ Paxson wishes to note that it now regularly takes ten years or more to place new stations into operation²⁰ and accordingly questions the reasonableness of withholding DTS service to unserved areas when speculative new services are less than imminent. More importantly, however, there are in reality few situations where expansion of a DTS service area would preclude the creation of a new television station. Generally, given that the DTS gain areas would be marginal, it would be practically difficult (consistent with existing interference standards) to drop in a new co-channel or adjacent-channel television station in neighboring areas – and almost certainly candidates for such new stations would have a superior alternative channel available. In any event, the new opportunities created by the return of translators most

¹⁸ Paxson also notes that if the Commission were to treat expanded service areas as secondary to other full power broadcast stations, licenses for any such subsequently created stations could be awarded through competitive bidding.

¹⁹ *Notice*, ¶ 13.

²⁰ See, e.g., FCC File No. BPCT-19870331LW, in which a new permit for a television station at Bath, New York was not granted until 2004, more than seventeen years after the application was filed. See also FCC File Nos. BPCT-19920102KE and BPET-19921210KE, in which new permits were granted more than ten years after the applications were filed, and FCC File No. BPCT-19960920WV, in which a new permit was granted more than nine years after the application was filed.

likely will exceed in number any opportunities for new stations foreclosed by DTS expansion.²¹

Paxson accordingly believes the Commission should permit DTS stations to expand service to their entire DMAs, subject to the adopted interference standard. To the extent that the Commission remains concerned about the preclusion of new stations, Paxson submits that the Commission could afford DTS stations primary status only within the service area set forth in the table of distances or their certified maximized service area. Paxson submits that the expanded service areas of DTS licensees beyond the areas set forth in the table of distances could be treated as secondary to any other full power television station. To ensure that current licensees still have incentive to expand their service areas to reach unserved and underserved portions of their markets, however, Paxson notes that this expanded service area should be secondary only to full power television stations, and not to unlicensed operations or low power television stations.

Paxson believes that the Commission should adopt rules that allow broadcasters to expand their service areas upon completion of this rulemaking and should not postpone this ability until the end of the DTV transition. Where broadcasters are already operating on their elected post-transition DTV channels, there is no reason to

²¹ The *Notice* also articulated a concern that extended service areas could conflict with exclusive territories based on contractual agreements. Paxson submits that such a concern would be an inappropriate basis on which to restrict expansion. The Commission has consistently held that it is an inappropriate forum for the resolution of private contractual matters. See, e.g. *Listener's Guild, Inc. v. FCC*, 813 F2d 465, 469 (D.C. Cir. 1987). As it has in the past, the Commission here should leave to the parties to any such contracts the resolution of any contractual issues resulting from a proposed service area expansion.

delay allowing these broadcasters the opportunity to reach unserved and underserved areas of their markets, particularly if the Commission treats these expanded service areas as secondary to other full-power broadcasters.

As demonstrated above, the introduction of DTS will enable a broad range of new services that broadcasters can deliver to viewers throughout a television station's natural market – its DMA. By adopting a DMA Approach to service area expansion, the Commission could help realize the full potential of DTS and allow viewers in currently underserved rural and isolated areas to participate fully in the benefits of DTS and DTV. Paxson respectfully submits that many of the rationales expressed in the *Notice* for restricting such expansion are speculative in nature and do not rise to the level to justify depriving broadcast services to unserved and underserved viewers.

III. THE COMMISSION SHOULD ADOPT RULES THAT ALLOW BROADCASTERS TO BRING DTS ON-LINE QUICKLY BY AFFORDING THEM FLEXIBILITY TO ADDRESS UNFORESEEN ISSUES.

Paxson generally supports the operational and interference rules proposed in the *Notice*.²² Paxson agrees that DTS licenses should cover all transmitters in a network as an interconnected group, rather than separately, and that the Commission's final rules should ensure that any DTS license clearly identifies the location of each transmitter in that group. Only by making information regarding the location and operational parameters of each transmitter in a DTS readily available to the public can the Commission ensure that licensees are able to coordinate and avoid unnecessary interference in designing proposed DTS networks. Paxson also supports the

²² *Notice*, ¶¶ 26-28.

Commission's proposed rules regarding power, antenna height and emission mask limits for DTS transmitters. To protect any current viewers from being disenfranchised, Paxson strongly supports the Commission's "cherry-picking" prohibition.

The *Notice* also specifically requested comment on how rules can be structured to allow broadcasters to bring DTS on-line as quickly as possible.²³ Paxson submits that the Commission can best enable broadcasters to implement DTS by allowing them flexibility in the design and operation of their systems. To this end, the Commission should refrain from adopting a single specific transmission or synchronization standard. As noted above, DTS will be designed to work with currently-available consumer receivers, and it clearly is in broadcasters' best interests to implement DTS in a manner such that the most possible viewers are able to receive its signals. Similarly, broadcasters implementing DTS have a very clear self-interest in minimizing self-interference and designing systems in which each DTS transmitter operates efficiently and reliably in conjunction with the other transmitters in the system. Paxson also is concerned with the adoption of a synchronization standard that solely would require use of a particular patented technology.²⁴ Reliance on such patented technology could unreasonably slow the implementation of DTS and impinge broadcasters' ability to rapidly act to resolve any problems that arise during their construction and implementation of DTS networks. Because DTS is as yet not a fully matured technology, unforeseen matters may arise as broadcasters begin to design and implement their DTS networks. To allow broadcasters the greatest flexibility to address

²³ *Id.*, ¶ 28.

²⁴ *See id.*, ¶ 34.

any unforeseen complications in the design of DTS networks, and to take advantage of any unforeseen advances, Paxson supports the Commission's proposal to refrain from adopting a specific synchronization or transmission standard, as long as any technologies employed are consistent with other Commission rules.

IV. THE COMMISSION SHOULD NOT AFFORD FAVORED TREATMENT TO CLASS A STATIONS.

The *Notice* proposed rules that would permit licensees of multiple Class A stations operating within a market to operate those stations as single-channel networks.²⁵ These proposed rules effectively thus could allow a Class A licensee to expand service beyond that authorized but could prohibit full-power licensees from doing so. Paxson does not believe that such favored treatment would be appropriate or warranted. The *Notice* proposed allowing single-channel Class A networks largely based on the contribution such networks would make to spectrum efficiency through the consolidation of stations currently operating on multiple channels. As detailed above, however, these arguments apply with equal force to full power broadcasters, who could obtain greater spectrum efficiency through DTS by replacing translator stations with single-channel DTS networks. Although Paxson believes that the Commission should allow full power broadcasters to serve their full natural markets, it does not believe that there is any reasonable argument that Class A licensees should be given such an opportunity if full power licensees are not.

²⁵ *Id.*, ¶ 36.

CONCLUSION

Paxson believes that DTS holds the potential to revitalize over-the-air broadcasting and urges the Commission to set its rules accordingly. DTS networks can deliver stronger, more reliable signals that viewers can receive on smaller, less expensive devices. Moreover, if allowed to expand their service areas to their natural market boundaries, as defined by their Designated Market Areas, broadcasters could deliver the benefits of DTS to those in rural and isolated areas and others who currently may not receive any free over-the-air television service. For the reasons explained herein, Paxson believes that the benefits service area expansion will allow far outweigh any costs or difficulties such expansion could present, and that such expansion is not inconsistent with the preservation of opportunities for new stations or new media voices. Accordingly, Paxson submits that the Commission should adopt rules that allow broadcasters implementing DTS to expand their service areas to the boundaries of their DMAs, subject to interference requirements. Paxson believes strongly in the benefits and possibilities presented by DTS, and further believes that the Commission should allow broadcasters to deliver these benefits to as many as possible.

Respectfully submitted,

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Dated: February 6, 2006