

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
)
Advanced Television Systems) MB Docket No. 87-268
and Their Impact upon the)
Existing Television Broadcast)
Service)

To: The Commission

COMMENTS OF DISPATCH BROADCAST GROUP

The Dispatch Broadcast Group (“Dispatch”), on behalf of its affiliated company VideoIndiana, Inc., licensee of WTHR-TV, NTSC channel 13, DTV channel 46, Indianapolis, Indiana, hereby files these comments in response to the FCC’s Seventh Further Notice of Proposed Rule Making in the above-referenced proceeding. As detailed more fully below, the Commission clearly did not follow its own procedures during the DTV channel election process when it established WTHR’s proposed channel 13 allotment – an allotment that will produce impaired coverage that is a far cry from WTHR’s certified, maximized DTV facility. For these reasons, Dispatch requests that the Commission either: (i) modify WTHR’s proposed DTV channel 13 allotment to specify the non-directional antenna pattern operated in WTHR’s certified maximized facilities or (ii) allow Dispatch to change WTHR’s DTV channel allotment from 13 to 46 to retain its certified, maximized DTV operation.

In compliance with the post-transition DTV channel selection process established by the Commission in the Second Periodic DTV Report & Order, WTHR timely submitted the following:

- FCC Form 381 (FCC File No. BCERT-20041027ACI).
WTHR certified it would operate with post-transition DTV facilities equivalent

to its maximized, licensed DTV operations including a non-directional antenna with an ERP of 1,000 kW, HAAT of 264.8 meters and a RCAGL of 270.7 meters.

- FCC Form 382 (FCC File No. BFRECT-20050209APX) in which WTHR elected its analog channel 13 for post-transition DTV operations.

The Media Bureau approved WTHR's channel 13 election and issued a Tentative Channel Designation on June 23, 2005.¹ In the First Round Public Notice, the Commission indicated that the list of stations released with the PN contained tentative channel designations, *inter alia*, for "licensees that elected their NTSC channel and did not receive a conflict letter." *Id.* This same Public Notice also confirmed that the Commission had previously notified approximately 160 licensees that elected to return to their NTSC channels that their proposed digital operations would result in impermissible interference to one or more stations.²

Because WTHR was not one of the 160 stations that received a conflict letter, it had every reason to believe that it would be allowed to operate a maximized, non-directional DTV operation on channel 13. The Commission's Report & Order announcing the post-transition channel election process confirmed that for stations like WTHR that elected their NTSC channel, the Commission staff would perform an interference conflict analysis to determine whether and to what extent DTV operations on this channel would cause new interference to the service population of other DTV stations.³ The Commission went on to note that:

If it is determined that no interference conflict exists (meaning in this context that the elected in-core NTSC station adequately protects stations in each of the three categories noted above, to the extent required), then the licensee's elected NTSC

¹ See Public Notice, *DTV Channel Designations for 1554 Stations Participating in the First Round of DTV Channel Elections*, DA 05-1743, released June 23, 2005 ("First Round PN").

² First Round PN at 1, n.2.

³ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, FCC 04-192, ¶ 47, released September 7, 2004 ("*Second Periodic Report & Order*").

channel will be “locked in” and its DTV channel will be released, if applicable. **If it is determined that an interference conflict does exist, and would therefore prevent granting the in-core NTSC channel election with the certified coverage, then the licensee must decide whether to reduce its facilities to eliminate the interference, or change its election to its DTV channel,** or be treated as a two out-of-core licensee if its paired DTV channel is out of core.⁴

Unfortunately, the FCC did not follow this procedure when it issued a Tentative Channel Designation (“TCD”) on channel 13 to WTHR. As noted in the attached engineering statement, the azimuth pattern assigned to WTHR in the proposed post-transition DTV table is irregular and not non-directional. This change alone results in a loss in coverage and service population. The problem is magnified, however, because WTHR intends to utilize a non-directional antenna as certified in FCC Form 381. WTHR’s post-transition, non-directional DTV operation will be limited by the minimum relative field in the directional antenna pattern assigned in the DTV table. What this means is that WTHR’s post-transition, non-directional DTV ERP would be reduced to 6.75 kW – 50 percent reduction in the power level from the proposed DTV table. This reduced-power operation will produce impaired, non-competitive market coverage and a materially reduced service population. Needless to say, Dispatch would never have agreed to accept a directional allotment pattern that resulted in the reduced facilities had it been given a choice that the FCC’s procedures promised to give.

Given this material degradation in WTHR’s DTV coverage area and service population, Dispatch submits that the Commission should have issued a conflict letter to WTHR before issuing a TCD with the restricted directional pattern. Because no such letter was issued at the time, the Commission should remedy that omission now. Specifically, the Commission should either: (i) change the antenna pattern for WTHR in the proposed post-transition DTV table to the non-directional pattern in WTHR’s certified facility, including waiving the 0.1

⁴ See *Id.* ¶ 56 (emphasis added) (footnotes omitted).

percent interference limit as necessary, or (ii) allow Dispatch to elect to change WTHR's post-transition DTV channel from 13 to 46 to preserve WTHR's maximized coverage.

Dispatch submits that the requested relief is particularly appropriate in these circumstances. Dispatch has been an industry leader throughout the DTV transition. Both WTHR and WBNS-TV, Dispatch's affiliated station in Columbus, Ohio, were so-called early adopters. WTHR first signed-on a DTV facility in September 1998, over one year before the FCC's rules required while WBNS-TV signed-on the air nearly three full years before the rules required. Dispatch subsequently invested approximately \$5 million for additional equipment and capital improvements to allow WTHR's DTV power to increase to 700 kW ERP by May 2002 and then 1,000 kW ERP by October 2002.

For all these reasons, Dispatch respectfully urges the Commission to modify WTHR's proposed post-transition channel 13 DTV allotment to match its long-time, maximized DTV coverage on channel 46 or allow WTHR to change its channel election to 46 in order to preserve its maximized DTV coverage. Given that WTHR recently celebrated the four year anniversary of its maximized, certified DTV operation, Dispatch submits it should be allowed to continue providing the same service post-transition either on channel 13 or channel 46.

Respectfully submitted,

DISPATCH BROADCAST GROUP

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