

**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)	

**REPLY COMMENTS OF
THE WALT DISNEY COMPANY**

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TABLE OF CONTENTS

I.	BACKGROUND	2
II.	DISCUSSION.....	4
	A. The Commission’s Allotment of Channel 7 to WABC Pursuant to a Waiver Is Consistent with the Public Interest.....	5
	B. The Commission’s Decision in the Seventh <i>FNPRM</i> is Consistent with the FCC’s Discussions with the Parties	6
	C. NJPBA’s Comments Contain Misstatements and Mischaracterizations	8
III.	CONCLUSION.....	12

EXECUTIVE SUMMARY

In its *Seventh Further Notice of Proposed Rulemaking* (“*Seventh Notice*”), the Federal Communications Commission (“Commission”) allotted channel 7 to Station WABC-DT, New York, NY (“WABC”) as its post-transition digital television (“DTV”) channel and granted WABC’s associated waiver request. WABC filed comments in support of these actions and incorporated its prior filings into its comments by reference. Station WNJB-DT, New Brunswick, New Jersey (“WNJB”) filed comments opposing the WABC allotment and waiver grant because the FCC did not simultaneously approve WNJB’s relocation to a site at Four Times Square in New York.

WNJB had not filed an application for the Four Times Square relocation at the time that the *Seventh Notice* was released. Thus, it was appropriate for the Commission to act on the WABC allotment and waiver request without also acting on the Four Times Square proposal. The WNJB comments raise no other issue that should delay the Commission’s finalization of the channel 7 DTV allotment for WABC. Further, nothing in the *Seventh FNPRM* precludes WNJB from pursuing its Four Times Square proposal, should it choose to do so. Finally, to the extent that it considers WNJB’s comments relevant, the Commission should recognize that they contain several misstatements and mischaracterizations.

WABC continues to fully support the Commission’s actions with respect to its digital allotment. The Commission should finalize this allotment as soon as practicable to enable WABC’s digital signal to reach as many of its current analog viewers as possible.

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REPLY COMMENTS

Pursuant to Section 1.45(c) of the rules of the Federal Communications Commission (“Commission” or “FCC”),¹ the Walt Disney Company, the ultimate parent of American Broadcasting Companies, Inc. (“ABC”), licensee of commercial television station WABC-TV and permittee of WABC-DT, New York, New York (“WABC”), by its attorneys, hereby submits the instant reply comments in the above-referenced proceeding. The primary purpose of these reply comments is to summarize and complete the record regarding the Commission’s allotment of channel 7 for WABC-DT’s post-transition digital operations and associated waiver of the 0.1 percent interference standard. ABC also responds to the comments (“Comments”) of the New Jersey Public Broadcasting Authority (“NJPBA”), licensee of noncommercial television station WNJB-TV and permittee of WNJB-DT, New Brunswick, New Jersey (“WNJB”), in response to the Commission’s *Seventh Further Notice of Proposed Rulemaking* (“*Seventh FNPRM*”). As explained more fully herein, ABC continues to fully support the Commission’s actions with respect to WABC’s digital allotment. Nothing raised in NJPBA’s comments should delay

¹ 47 C.F.R. § 1.45(c).

finalizing the digital television (“DTV”) allotment of channel 7 to WABC because such allotment serves the public interest.

I. BACKGROUND

WABC, the flagship station of the ABC Television Network and the sole ABC network station serving the New York designated market area (“DMA”), has served the New York market for nearly sixty years on VHF channel 7. WABC, an early adopter of digital technology, temporarily is broadcasting in digital on channel 45 as part of the DTV transition.² WABC elected to operate its post-transition DTV facilities using its current analog channel 7 in part because it could not replicate its current analog service area on its allotted DTV channel 45. The Media Bureau initially disapproved WABC’s channel election due to its prediction that WABC would cause 2.8 percent impermissible interference to the maximized, post-transition operations of WNJB on channel 8.³

WABC attempted to negotiate an agreement with NJPBA regarding permissible interference between WABC and WNJB. Specifically, ABC proposed a technical solution whereby ABC would pay for a new antenna in New Jersey that would decrease the interference between the stations and enable both stations to continue to serve their existing viewers.⁴ NJPBA rejected this proposal and instead requested that WNJB-DT be co-located with WABC’s digital facilities and that ABC effectively fund the costs of construction, operation, and

² See FCC File Nos. BDSTA-20031024AAW (Four Times Square) and BXSTA-20040728APD (Empire State Building).

³ Because the FCC accepted the initial elections of stations choosing their allotted digital channel, regardless of the amount of interference caused to other stations, the Commission did not consider the interference from WNJB to WABC as relevant to WNJB’s initial election of its allotted digital channel but did consider interference from WABC to WNJB in evaluating WABC’s initial election of analog channel 7 for its post-transition digital operations.

⁴ See Letter to Elizabeth Christopherson, Executive Director & CEO, NJPBA, from Dave Davis, President and General Manager, WABC (Aug. 2, 2005) (attached as Exhibit 9 to WABC, *ex parte* presentation, Emergency Request for Waiver, filed Aug. 15, 2005).

maintenance of such co-located facilities.⁵ On August 10, 2005, ABC rejected this inequitable proposal because it imposed a permanent and costly burden on ABC.⁶ On August 15, 2005, ABC requested a permanent waiver of the 0.1 percent interference standard so that WABC could use channel 7 to continue to reach as many of its existing over-the-air viewers as possible following the digital transition (“Waiver Request”).⁷

NJPBA opposed ABC’s Waiver Request and, following several meetings with ABC and the Media Bureau staff, proposed to move WNJB’s digital facilities from the current New Jersey location to the Four Times Square building in New York City (“Four Times Square”).⁸ After evaluating NJPBA’s February 23, 2006 technical proposal to operate WNJB-DT at Four Times Square, ABC agreed that it would “not object to WNJB’s Four Times Square proposal from a technical perspective provided that the FCC expeditiously approved WABC’s election to construct its digital facilities using channel 7.”⁹ ABC also urged the Commission to “expeditiously and simultaneously grant its petition for waiver so that WABC has the certainty it needs to plan for operations on channel 7 and, in the event that WNJB later withdrew its proposal

⁵ See Letter to Dave Davis, President and General Manager, WABC, from Elizabeth Christopherson, Executive Director & CEO, NJPBA (Aug. 4, 2005) (attached as Exhibit 10 to WABC, *ex parte* presentation, Emergency Request for Waiver, filed Aug. 15, 2005).

⁶ See Letter to Elizabeth Christopherson, Executive Director & CEO, NJPBA, from Dave Davis, President and General Manager, WABC (Aug. 10, 2005) (attached as Exhibit 11 to WABC, *ex parte* presentation, Emergency Request for Waiver, filed Aug. 15, 2005).

⁷ ABC also filed an FCC Form 383 changing its election to channel 45. ABC’s Form 383 filing was made without prejudice and subject to its Waiver Request. Thus, ABC requested that it be permitted to amend its Form 383 filing in the event the Waiver Request was granted or if ABC and NJPBA reached a negotiated solution to the channel conflict.

⁸ See WNBC *ex parte* presentation in MB Docket No. 03-15 (Feb. 23, 2006).

⁹ See WABC *ex parte* presentation in MB Docket No. 03-15, at 4-5 (May 12, 2006). WABC offered to withhold technical objections despite its concerns that it would suffer actual interference (if not predicted interference) from WNJB at Four Times Square. *Id.* at 3. If both DTV stations actually operate at Four Times Square, ABC understands that they will be considered co-located for purposes of evaluating the acceptability of future technical modifications by either station.]

to move its facilities to Four Times Square, so that WABC no longer would be subject to further revision of WNJB's construction plans."¹⁰

Thereafter, in the *Seventh FNPRM* and consistent with those developments, the Commission proposed to allot channel 7 for WABC's post-transition digital operations and granted ABC's Waiver Request.¹¹ In addition, the Commission noted that NJPBA may apply to modify its digital construction permit to move to Four Times Square for its post-transition operations and stated that WNJB-DT's relocation to Four Times Square "would be likely to reduce or eliminate the predicted interference to its digital operations on channel 8."¹²

II. DISCUSSION

The Commission's allotment of Channel 7 to WABC pursuant to a waiver is consistent with the public interest. NJPBA's Comments raise no issue that would alter the Commission's determination to finalize the channel 7 DTV allotment for WABC; similarly, nothing in the *Seventh FNPRM* precludes WNJB from pursuing its Four Times Square proposal, should it choose to do so. To the extent that the Commission deems NJPBA's Comments relevant to its action to allot channel 7 to WABC, ABC is filing these comments to correct several misstatements and mischaracterizations in the NJPBA Comments.

¹⁰ *Id.* at 5.

¹¹ *See Seventh FNPRM*, at ¶ 36.

¹² *Id.*

A. THE COMMISSION'S ALLOTMENT OF CHANNEL 7 TO WABC PURSUANT TO A WAIVER IS CONSISTENT WITH THE PUBLIC INTEREST

In its comments regarding the *Seventh FNPRM*, ABC supported the Commission's actions regarding WABC and channel 7.¹³ In addition to referencing its previous pleadings, Disney stated that allotment of channel 7 would benefit WABC's current viewers, many of whom have received WABC on channel 7 via antenna for decades. Disney also noted that the proposed channel 7 allotment would eliminate interference between WABC and WEDH-TV, Hartford, Connecticut, on channel 45. In previous pleadings, ABC demonstrated that allocation of channel 7 to WABC pursuant to a waiver would serve the public interest without harming WNJB or its viewers because: (i) WNJB was not presently serving the vast majority of the viewers in the area in which WABC was predicted to cause interference to WNJB; and (ii) all of these potentially affected viewers already received interference-free service and the exact same programming provided by WNJB from WNJB's sister stations.¹⁴ Indeed, in various pleadings filed on this issue NJPBA acknowledge and stress that many of the viewers that would be served by its proposed Four Times Square facility currently are served by the duplicating signal of its sister station WNJT-DT, Trenton, New Jersey.¹⁵ For these and other reasons previously discussed, ABC continues to support the Commission's decision to allot channel 7 for WABC's post-transition operations and to grant its Waiver Request. ABC again incorporates by reference its earlier pleadings setting forth the arguments in support thereof.¹⁶

¹³ ABC's comments were filed by ABC's ultimate parent company, The Walt Disney Company, because the comments addressed issues relevant to WABC and another commonly-controlled station.

¹⁴ See generally WABC *ex parte* in MB Docket No. 03-15, Emergency Request for Waiver (Aug. 15, 2005).

¹⁵ See, e.g., Comments at 13-14; FCC File No. BNPEDT-20070125ACC (Waiver Request at 8); WNJB *ex parte* in MB Docket No.03-15 (Jun. 20, 2006).

¹⁶ See WABC *ex parte* in MB Docket No. 03-15, Emergency Request for Waiver (Aug. 15, 2005); WABC *ex parte* in MB Docket No. 03-15, Reply to Opposition (Oct. 7, 2005); WABC *ex parte* in

B. THE COMMISSION’S DECISION IN THE SEVENTH *FNPRM* IS CONSISTENT WITH THE FCC’S DISCUSSIONS WITH THE PARTIES

In its Comments, NJPBA opposes the allotment of channel 7 to WABC pursuant to a waiver because the Commission allegedly has denied NJPBA “the benefits of its bargain” in which: (i) NJPBA “agreed not to object to allotment of channel 7 to WABC-DT if NJPBA could secure approval of its move to [Four Times Square]” and (ii) ABC agreed not to object on technical grounds to the relocation of WNJB to Four Times Square if the FCC approved WABC’s election to use channel 7 for its post-transition operation. NJPBA states that it “merely wants the benefits of” the bargain.

The FCC’s decision is not inconsistent with any of the earlier discussions. ABC has not rescinded its commitment not to object to such a relocation proposal on technical grounds. Further, the Commission took all action that it could take at the time of the *Seventh FNPRM* because NJPBA had not yet submitted any application to relocate to Four Times Square. Specifically, the *Seventh FNPRM* was released on October 20, 2006 but NJPBA did not file an application seeking approval to move WNJB-DT to Four Times Square until January 25, 2007. Thus, NJPBA filed its application approximately one year after it first proposed to relocate to Four Times Square and three months after the FCC released the *Seventh FNPRM*.¹⁷ Thus, the Commission could not have provided in the *Seventh FNPRM* the assurances NJPBA now seeks because to do so would have required the FCC to consider a technical proposal for which an application had not yet been filed.¹⁸ Therefore, it is incorrect for WNJB to assert that the *Seventh FNPRM* somehow alters the “benefit of the bargain” for WNJB.

MB Docket No. 03-15 (Jan. 20, 2006); WABC *ex parte* in MB Docket No. 03-15 (Feb. 13, 2006); WABC *ex parte* in MB Docket No. 03-15 (May 12, 2006).

¹⁷ See FCC File No. BMPEDT-20070125ACC.

¹⁸ NJPBA provides no reason for its delay in filing its minor modification application.

Moreover, NJPBA was well aware that the Commission intended to complete the channel election process and release the Final DTV Table because the Commission announced its intention to do so as early as “August 2006.”¹⁹ It is unreasonable to expect the Commission to delay resolution of the channel election process simply because NJPBA had not yet filed its minor modification application. Such a delay would have introduced uncertainty into the Commission’s well-planned channel election process. As ABC previously has noted, WABC cannot plan its post-transition digital operations without certainty that it would receive channel 7 for its post-transition operations. Consistent with those discussions, the Commission correctly provides such certainty to ABC in the *Seventh FNPRM*. Further, the Commission expressly recognizes in the *Seventh FNPRM* that NJPBA may apply to modify WNJB-DT’s facilities to move to Four Times Square and notes that such a move may reduce or eliminate predicted interference to WNJB’s channel 8 operations.²⁰ In short, the Commission’s actions in the *Seventh FNPRM* have in no way prejudiced the WNJB’s minor modification application to relocate to Four Times Square.²¹

¹⁹ See *Second Periodic Review*, at ¶ 65 (“After completion of our channel election and repacking process, expected by August 2006, we will issue a Notice of Proposed Rulemaking to propose a New DTV Table of Allotments.”).

²⁰ See *Seventh FNPRM*, at ¶ 36.

²¹ In accordance with its prior FCC filings, because the FCC has approved WABC’s election to construct its digital facilities using channel 7 and granted the Waiver Request, WABC does not intend to object to the minor modification application on technical grounds provided that it is consistent with the proposal submitted on February 23, 2006. See WNJB *ex parte* presentation in MB Docket No. 03-15 (Feb. 23, 2006).

C. NJPBA'S COMMENTS CONTAIN MISSTATEMENTS AND MISCHARACTERIZATIONS

Although it does not wish to repeat all of the facts and arguments set forth in its prior pleadings, ABC feels compelled to address some of the assertions relied upon by NJPBA in its Comments. Many of these assertions are misstatements based on faulty technical calculations while others are misleading mischaracterizations of the facts. Each such assertion is addressed below.

In para. 1, NJPBA states that its facilities “provide programming the majority of which is unique to NJPBA and not duplicated by any other station.” Similarly, in para. 13, NJPBA claims that its “program service is in no way duplicated by other stations.” These programming-related assertions are misleading. Although NJPBA may not provide programming to stations outside of its own public television network, NJPBA does duplicate this programming on its own commonly-owned stations. Specifically, WNJB airs PBS and locally-produced programming that is identical to programming aired by every other NJPBA network station. NJPBA acknowledges this fact in numerous pleadings in this proceeding by emphasizing that its proposed move to Four Times Square will not result in any service loss because any service areas not covered by WNJB’s proposed facility presently are served by its sister station WNJT-DT, Trenton, New Jersey.²² Further, the service areas of multiple NJPBA stations overlap considerably.²³

In para. 2, NJPBA claims that it has “worked with all due diligence to make the transition from analog to digital.” This statement is a mischaracterization, at least with respect to WNJB.

²² See, e.g., Comments at 13-14; FCC File No. BNPEDT-20070125ACC (Waiver Request at 8); WNJB *ex parte* in MB Docket No.03-15 (Jun. 20, 2006).

²³ For example, WNJN-DT, Montclair, New Jersey (“WNJN”) provides redundant service to all of WNJB’s maximized DTV service area in New York and entirely encompasses the area in which WNJB is predicted to lose service from WABC. See Emergency Request for Waiver at 9-10 (providing further details concerning programming and coverage overlaps).

WNJB has built only minimal DTV facilities pursuant to special temporary authority. Almost six years after obtaining its construction permit for maximized facilities, NJPBA has yet to construct such facilities.²⁴ This delay in no way qualifies as exhibiting “all due diligence.”

In paras. 2 and 15, NJPBA claims that it “was an early pioneer in the development of DTV service” that “adopted DTV technology before ABC” because one of its stations broadcast digitally pursuant to experimental authority in July 1999. If any party was a pioneer in DTV service, it was ABC, who, in late 1998, commenced full-power DTV operations at three stations in the country’s largest markets less than a year after the Commission released its first DTV table.²⁵

In para. 5, NJPBA asserts that WABC “causes interference to 2.8% of WNJB-DT’s service area.” This is misleading. In actuality, WABC is predicted to cause new interference to 2.8% of the population within WNJB’s currently authorized DTV contour. NJPBA also mischaracterizes the interference from WABC to WNJB in para. 19. There, NJPBA notes that the *Seventh FRNPRM* predicts 9.72% interference to WNJB. However, this level of interference includes pre-existing as well as new interference from WABC and other stations.²⁶ The proper interference consideration—the level of new interference from WABC to WNJB—remains approximately 2.8%.²⁷

²⁴ See FCC File No. BNPEDT-20000425AAM (granted May 14, 2001).

²⁵ The following three stations commonly-controlled by The Walt Disney Company commenced full-power DTV operations in late 1998: KABC-DT (Los Angeles) (BLCDT-19981112KF), KGO-DT (San Francisco) (BLCDT-19981216KF) and WPVI-DT (Philadelphia) (BLCDT-19981117ABU).

²⁶ For example, some of this 9.72% total interference is attributable to station WGAL in Lancaster, Pennsylvania. See Engineering Statement, at 4.

²⁷ The amount of new interference formed the basis of all of the Commission’s channel designations and conflict analyses. To consider total interference in this case potentially would require the Commission to re-evaluate all of its previous channel designations in the same manner.

In paras.15 and 18, NJPBA asserts that WABC-DT would receive interference to over 90,000 of its viewers from WNJB at its present location and that this interference would disappear if WNJB moved to Four Times Square. However, all interference being received by WABC-DT is not caused solely by WNJB.²⁸ According to calculations based on figures from Appendix B of the *Seventh FNPRM*, 84,312 persons would continue to receive interference from other DTV stations (WXXA-DT7 in Albany, NY and WBNG-D7 in Binghamton, NY) even if WNJB vanished.²⁹

In para. 3, WNJB claims that approval of its Four Times Square proposal will “maximize efficient and effective DTV service to the public.” As stated above, WNJB has delayed construction of its full-power DTV facilities for WNJB for over six years and thus has not proven any willingness or ability to provide “effective” or “efficient” DTV service to the public. At the same time, WABC has constructed multiple DTV facilities, first at the World Trade Center and later, after those facilities were destroyed on 9/11, at the Empire State Building and at Four Times Square.³⁰

In para. 5, NJPBA claims that ABC seeks to “maximize” service on DTV channel 7. In reality, WABC merely seeks to replicate the service provided by its current analog facilities using the minimum power level that the FCC assigned to many DTV stations.³¹ By contrast, it is WNJB that obtained a construction permit to “maximize” its facilities, double its current analog

²⁸ The total predicted interference to WABC-D7 is 0.9% of 19,368,000 or 174,312. *See* Engineering Statement, at 4.

²⁹ *Id.*

³⁰ *See* BXLCDT-20051012ACE (application seeking auxiliary license for Empire State Building operation); BXPCDT-20060213ABD (application seeking construction permit for auxiliary facilities at Four Times Square consistent with facilities authorized in STA).

³¹ *See* Engineering Statement, at 4. In the *Seventh FNPRM*, 48 of the 445 High VHF (channels 7-13) DTV stations were assigned 3.2 kW, the minimum power level that the FCC initially assigned in round one. Twelve stations ultimately were assigned less power (perhaps because they voluntarily constructed a facility with a lower power level) while all other such stations were assigned a higher power level.

service area, and increase its total population coverage by 24.3%.³² It also is worth noting that ultimately, approximately 15,000 people in the state of New Jersey currently receiving WNJB's analog signal would not receive WNJB-DT's digital signal.³³ It also is uncontroverted that, using the appropriate present digital to proposed digital comparison, WNJB's total population coverage would increase overall coverage in the New York DMA at the expense of substantial population losses in New Jersey and Pennsylvania.³⁴ Approximately 500,000 residents of New Jersey within WNJB's present digital coverage area would not receive DTV service from WNJB's proposed digital operation at Four Times Square.³⁵

Finally, in paras. 7 and 8, NJPBA makes several assertions about the Metropolitan Television Alliance ("MTVA") and its alleged failure to include WNJB in its discussions or plans. As NJPBA acknowledges, MTVA was composed of a group of stations, only one of which was controlled by ABC. Thus, ABC was not in a position to control the group's decisions regarding WNJB or any other matter. Further, MTVA was composed solely of those stations who lost their primary facilities at the World Trade Center due to the 9/11 attacks. Naturally, WNJB was not included in MTVA because its facilities were not located at the World Trade Center or otherwise destroyed on 9/11.³⁶

³² See Engineering Statement, at 5.

³³ *Id.* Over 100,000 Pennsylvania residents also would lose coverage. *Id.*

³⁴ NJPBA properly asserts that New Jersey makes up a significant portion of the New York City DMA. WABC and other New York City stations value their New Jersey viewers and WNJB likely would value its New York viewers. However, the historically underserved nature of New Jersey citizens does not support WNJB's expansion into the New York portion of the New York DMA.

³⁵ See Engineering Statement, at 6. Out of 13 counties, the move to Four Times Square would cause a loss of service in nine counties. *Id.* Some of these New Jersey residents would receive service from another NJPBA station. *Id.* The Four Times Square proposal would have resulted in further losses in western New Jersey if NJPBA had not increased its proposed coverage area beyond the coverage area it had from the New Brunswick site. *Id.* at 5.

³⁶ Despite this fact, as NJPBA acknowledges, MTVA "approached NJPBA with a comprehensive channel allotment proposal affecting the mid-Atlantic region." See Comments, at 6. NJPBA rejected this

III. CONCLUSION

ABC understands the difficulties the Commission has faced in constructing the Final DTV Table, especially with respect to the channel conflict between WABC and WNJB. ABC appreciates and supports the Commission's proposed allotment of channel 7 for WABC's post-transition operations and associated grant of ABC's Waiver Request. As further explained herein, the proposed allotment of channel 7 to WABC pursuant to a waiver does not prejudice the minor modification application filed by NJPBA to relocate WNJB to Four Times Square. Thus, ABC urges the Commission to finalize the allotment of channel 7 to WABC to enable WABC's digital signal to reach as many of its current analog viewers as possible.

Respectfully submitted,

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proposal and instead requested that its facilities be co-located at the Empire State Building. MTVA did not agree to this proposal.