

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

In the Matter of)
)
Third Periodic Review of the) MB Docket No. 07-91
Commission’s Rules and Policies)
Affecting the Conversion)
To Digital Television)

To: Secretary, FCC

COMMENTS

Central Michigan University (“CMU”), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the referenced docket, FCC 07-70 (released May 18, 2007) (“*NPRM*”).

CMU applauds the FCC’s determination to have a strong DTV system in place across the country on the February 17, 2009 digital transition deadline, and it fully supports that goal. However, the FCC must resolve – **immediately** -- DTV channel, facility parameter, and construction permit issues for border-area stations with out-of-core interim DTV channels (like CMU) or face the very real prospect that hundreds of thousands of CMU’s viewers will be without public television services after the analog giveback date.

Moreover, CMU strongly urges the FCC to exercise its discretion under the law establishing the transition deadline to provide substantially more flexibility to stations regarding the process and timing of their achieving their “ultimate” or “final” DTV transmission facilities. CMU believes that stations should be accorded the maximum flexibility possible.

Specifically, with respect to CMU’s four noncommercial educational TV stations WCMU-TV, WCML-TV, WCMV-TV, WCMW-TV, and as described below, CMU urges the

FCC to gain Canadian concurrence at the earliest possible date for the proposed final DTV channel assignments for WCMU DT (channel 26), WCML DT (channel 24), and WCMW DT (channel 21) and issue construction permits for those facilities. Without prompt action and issued permits, CMU will be unable to meet the February 17, 2009 deadline. Furthermore, CMU urges the FCC to recognize and accommodate the uniquely difficult circumstances that CMU has faced in its efforts to construct its new DTV stations – three of which were assigned “out of core” DTV channels and, therefore, have the expense and burden of not one, but three, DTV buildouts, a significant challenge for any broadcaster, let alone a public broadcaster licensed to a state governmental entity of higher education.

CMU also is challenged by central and upper Michigan's limited outdoor construction season of June through September. The three DTV facilities must be constructed by October 2008 to meet the DTV transition deadline of February 2009. To meet the limited construction season, June equipment delivery can only be assured if orders are placed during November 2007 – a mere three (3) months away. Only the FCC's expeditious pursuit of Canadian concurrence and accelerated construction permit application processing can assure a successful transition for CMU.

BACKGROUND

CMU is a public institution of higher education in the State of Michigan. CMU is the licensee of four noncommercial educational television stations and two TV translator stations that cover a large, mostly rural area of 52 counties in central and northern Michigan and portions of Ontario. The network hub station is WCMU-TV, located in Mt. Pleasant, and the other three stations are satellite/repeaters of Station WCMU-TV. The CMU TV Stations provide the only PBS program service available to a substantial portion of their service area, serving

approximately 1.1 million persons. In spite of its large rural coverage area, CMU has pursued DTV construction resolutely for its FCC-authorized digital facilities at a total cost in excess of \$13 million, and is completely committed to a speedy transition to digital broadcasting.

A summary of the stations and channels assignments is as follows:

* WCMU-TV, NTSC Channel 14, Interim DTV Channel 56, Proposed Final DTV Channel 26, Mt. Pleasant, MI

* WCML, NTSC Channel 6, Interim DTV Channel 57, Proposed Final DTV Channel 24, Alpena, MI

* WCMV, NTSC Channel 27, Originally Assigned DTV Channel 58, Channel Swap to Interim DTV Channel 17, Proposed Final DTV Channel 17, Cadillac, MI

* WCMW, NTSC Channel 21, Originally Assigned DTV Channel 17, Channel Swap to Interim DTV Channel 58, Proposed Final DTV Channel 21, Manistee, MI

As the above summary demonstrates, CMU will have undertaken a total of seven (7) DTV buildouts in order to end up with four (4) “final” DTV facilities. Three stations (WCMU, WCML and WCMW) had buildouts on out of core channels. Two stations (WCMU and WCML) had new DTV channels assigned in Round 2 of the channel election process and, therefore, did not receive a tentative DTV channel until that time (and cannot make appropriate plans until after Canadian concurrence issues for these channels are resolved.) For WCMW, the planned return to the analog channel requires a new transmitter, new transmission line and a new directional antenna, which amounts to a complete “rebuild” of that station. To date, none of these proposed final DTV channel assignments have received Canadian concurrence which causes severe problems in meeting the 2009 deadline. Only Station WCMV is operating on its post-transition channel at full Table B facilities.

COMMENTS

I. The FCC must understand the critical timing issues facing CMU, given its out of core interim DTV channels and lack of Canadian concurrence or permits for final DTV facilities.

With respect to CMU, the allotments in the “Final” DTV Table of Allotments for three of its stations (WCMU-DT, WCML-DT and WCMW-DT) are apparently still subject to Canadian clearance. According to ¶ 104 of the just-released *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making* in MB Docket No. 87-268 (“Seventh Report and Order”), the FCC is “working to coordinate all Appendix B facilities as a group so that individual applications do not need to be coordinated.” Clearly, however, until the FCC can finally announce Canadian clearance on CMU’s allotments and CMU can file its applications and be authorized with fully-approved facilities specified for its stations, CMU cannot finalize its plans and take concrete steps to construct and operate its “final” DTV facilities. The uncertainty surrounding its allotments and Canadian clearance affects the timing and process for CMU’s buildout.

The FCC’s assignment of out-of-core DTV channels substantially complicated CMU’s DTV transition for its “interim” and “final” DTV channels, which transition had to be coordinated with various federal grant programs designed to provide funding for public television’s DTV transition. These grant programs require that a licensee have a construction permit “in hand” before the vast majority of funds can be released, which means that, until the FCC finalize the DTV Table for border-areas stations like CMU’s, CMU cannot move forward. It is ludicrous to expect CMU to expend thousands of dollars in state and federally-appropriated

funds on channel-specific equipment until after the channels have received a final Canadian concurrence and the FCC has issued construction permits authorizing the buildouts.

This is a particularly acute problem because of the winter weather issues that may be encountered with the CMU DTV buildouts in Northern Michigan, limiting the construction season to June – September 2008 for its final buildouts. Moreover, CMU has received estimates for 180 and 210 day delivery times for its DTV equipment, meaning that orders need to be placed soon – **within the next 3 months** – in order to assure delivery in time for next year’s construction season. Failure for the FCC to meet that timetable may well mean that CMU “misses” the analog giveback date and that its viewers are without television services until the 2009 summer construction season.

In reality, CMU now has little more than a year from the date of these Comments to complete its buildouts, meaning that the following steps must occur in short order: (1) FCC receives Canadian concurrence and adopts process for CP applications for final DTV facilities; (2) CMU applies for CPs for three stations; (3) FCC awards CPs to CMU, (4) the grant program releases funds to CMU; (5) CMU orders equipment and seeks bids for construction work; (6) bids are awarded; (7) tower crews are scheduled; and (8) construction commences and is completed for three DTV stations.

In order for CMU to successfully manage the massive amount of work necessary before the analog giveback date, CMU needs the FCC to move forward – as soon as possible – to adopt a process and issue permits for Stations returning to analog or moving to other channels. CMU cannot move forward without the permits in hand. Since CMU is presently operating DTV facilities on three (3) out of core channels that must, under the statute, cease operations on the analog giveback date, it **must** be able to focus on the end game here, without undue FCC

oversight after its permits are in hand, or face the very real problem that hundreds of thousands of viewers in multiple counties in Michigan will be without public television service after the analog giveback date.

II. The FCC should be flexible in the process for and timing of construction of final DTV facilities.

CMU pledges to continue to use its best efforts, and devote all appropriate resources, to obtaining permission to construct, and actually constructing, the authorized facilities for its DTV Stations. However, as explained above, the FCC must do its part and expedite permits on “final” channels for CMU’s out of core stations and returning-to-analog station. Otherwise, all efforts are for naught.

CMU strongly urges the FCC to exercise its discretion under the law establishing the February 17, 2009 digital transition deadline by providing substantial flexibility – the maximum flexibility possible -- to stations regarding the process for and timing of their achieving their “ultimate” or “final” DTV transmission facilities. There should be no requirement to achieve replication or maximized facilities (or such other facilities specified in the proposed DTV Table of Allotments) by any particular deadline, such as February 17, 2009, and certainly not earlier.

Clearly, the FCC has discretion to show such flexibility with respect to stations achieving their final replicating or maximized DTV facilities. The Digital Television and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006), established February 17, 2009 as the deadline for the end of analog transmissions by all full power stations, and for the end of analog and digital transmissions on all out-of-core channels, but there is no requirement in the law, or even a suggestion, that the deadline needs to become a deadline as well for final DTV facilities.

CMU urges that the FCC should take advantage of the flexibility in the law, by similarly according flexibility to stations to achieve their final DTV facilities at the time and in the manner that they are best able to do so.

For all these reasons, generally, CMU urges the FCC to be as flexible as the law allows, focusing on identifying and addressing ways to facilitate a smooth transition in February of 2009, and facilitating each station's own path and timing in achieving its final DTV facilities.

II. The FCC should not require stations to construct facilities that precisely match the facilities specified in the Table of DTV Allotments.

In paragraph 67 of the *NPRM*, the FCC suggests that all stations' constructed and licensed DTV facilities have to precisely match the facilities specified in the DTV Table of Allotments, and that such final DTV facilities will be constructed by the transition deadline.

As noted above, CMU may well need to construct DTV facilities that are not precisely the same as the facilities specified in the DTV Table. CMU therefore urges the FCC to find a way to accommodate CMU's needs in this process, either by recognizing that DTV facilities do not need to precisely line up with those specified in the DTV Table, or making changes as necessary in the DTV Table.

CONCLUSION

CMU urges the FCC to adopt flexible rules consistent with the comments above.

Respectfully submitted,

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