

**Before the  
Federal Communications Commission  
Washington, DC 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: Office of the Secretary

**COMMENTS OF BAHAKEL COMMUNICATIONS**

Bahakel Communications, Ltd. ("Bahakel"), by its attorneys, hereby respectfully submits its comments in response to the *Notice of Proposed Rulemaking* in the above captioned proceeding regarding the DTV transition.<sup>1</sup> Bahakel is the ultimate parent company of the licensees of six commercial television stations – including WAKA(TV), Selma, Alabama and WBBJ-TV, Jackson, Tennessee – and accordingly has a significant interest in ensuring that the transition is concluded efficiently with minimal service losses. In the *Notice*, the Commission sought comment on a number of proposals to provide television stations with the regulatory flexibility needed to accomplish a "timely and efficient" conclusion to the DTV transition. Bahakel submits these comments to urge the Commission to adopt rules and procedures that will comport with that goal.

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<sup>1</sup> *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, FCC 07-70 (rel. May 18, 2007) (the "Notice").

**I. AS THE STATUTORY DEADLINE DRAWS NEAR, THE FCC SHOULD ALLOW STATIONS TO DISCONTINUE ANALOG SERVICE TO EXPEDITE IMPLEMENTATION OF POST-TRANSITION DIGITAL FACILITIES.**

The *Notice* recognizes that stations may seek to reduce or terminate analog service before the end of the transition and requests comment on the standards and procedures that the Commission should apply.<sup>2</sup> The *Notice* proposes a number of factors for the Commission to consider in weighing such requests and particularly seeks comment on whether to allow increasing losses in analog service as the end of the transition approaches.<sup>3</sup>

Bahakel supports permitting stations to discontinue analog service as the statutory deadline draws near if they are doing so to expedite their implementation of post-transition facilities especially when the physical and technical implementation requirements involved in meeting the established February 17, 2009 deadline are not optional. Bahakel is the parent company of the licensee of television station WAKA(TV), Selma, Alabama, which was assigned an out-of-core DTV channel and will operate post-transition on an entirely different channel.<sup>4</sup> If the FCC allows discontinued analog service before February 17, 2009, Bahakel expects that it may discontinue WAKA(TV)'s analog service as early as November, 2008 to allow it to take steps necessary to commence full power service on the station's post-transition DTV channel as early as physically possible.

As the Commission obviously is aware, stations moving to a third channel for post-transition operation face a number of logistical and technical challenges in completing the

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<sup>2</sup> *Notice*, ¶¶ 43-47.

<sup>3</sup> *Id.*, ¶¶ 44 and 45.

<sup>4</sup> WAKA currently operates on NTSC Channel 8 and DTV Channel 55. The Commission tentatively allotted the station Channel 42 for post-transition operation. *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Further Notice of Proposed Rulemaking, MB Docket No. 87-268, FCC 06-150 (rel. Oct. 20, 2006), at Appendix B.

transition. Because of several technical issues, including tower space and loading concerns, WAKA(TV) will be unable to install post-transition DTV transmission equipment in a timely manner if required to maintain existing analog service right up until the deadline. As the Commission surely recognizes, while stations have every incentive to maintain existing service as long as possible, they also must factor tower crew availability into their plans as well as the actual time required to make such massive changes. Accordingly, if a station asks for permission to discontinue analog service before February 18, 2009, and demonstrates that the discontinuation is necessary to implement DTV facilities, the Commission should presume that such a request is in the public interest.

**II. THE FCC SHOULD ALLOW STATIONS WITH DIFFERENT PRE- AND POST-TRANSITION DTV CHANNELS TO OPERATE BOTH CONCURRENTLY.**

In the *Notice*, the Commission proposed allowing stations to begin operation on their post-transition DTV channels before the end of the transition and inquired how such a policy might advance the transition.<sup>5</sup> Bahakel supports this proposal, which would afford stations such as WAKA(TV) flexibility to operate both pre-transition and post-transition DTV facilities concurrently, subject to interference restrictions. Permitting pre-transition operation on post-transition channels would benefit the transition because it would help stations contend with the growing competition for tower crews by allowing them to implement post-transition service earlier and provide the time required for other engineering crews to perform the necessary work, thus keeping the actual disruption of service to a minimum. The policy would give stations an incentive to complete their transition well before the statutory deadline, reducing the likelihood of an industry-wide construction crunch at the end of the transition. Reducing the number of

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<sup>5</sup> *Notice*, ¶ 88.

stations that need to be constructed at the end of the transition obviously will lower the number of last-minute transition problems.

Bahakel's WAKA(TV), in particular, would benefit from such a policy. As noted above, the station's digital operations are on out-of-core Channel 55, NTSC operations are on Channel 8, and post-transition operations tentatively are assigned to Channel 42. Interference studies show that the station could operate digitally on Channel 42 before the statutory deadline – albeit at reduced power – and Bahakel would like to do so; however, because Channel 42 operations would be restricted to less than full service and cable operators will have their own transition issues,<sup>6</sup> Bahakel would need to maintain WAKA-DT's Channel 55 operations until a time closer to the statutory deadline in order to maintain coverage to the majority of the service area. In other words, WAKA(TV) would likely discontinue analog broadcasts, as proposed in Section I above, and WAKA-DT would operate on two digital channels concurrently for a limited amount of time but until no later than February 17, 2009. This concurrent digital operation would create the best possible service area for cable and satellite systems as well as over-the-air viewers, making for a smoother transition for all. As a result, this proposal clearly serves the public interest, and the Commission should adopt rules or modify its rules to permit it.

### **III. AFTER THE STATUTORY DEADLINE, DESERVING STATIONS SHOULD BE ALLOWED TO OPERATE REDUCED FACILITIES TEMPORARILY.**

Bahakel strongly urges the Commission to afford flexibility to those licensees facing a variety of technical issues that will require them to operate post-transition DTV facilities at temporarily reduced power immediately following February 17, 2009. The *Notice* makes plain that the Commission expects stations to have their full power post-transition operations in place

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<sup>6</sup> *E.g.*, it is possible that a cable operator would find WAKA-DT's switching from Channel 55 to Channel 42 to be disruptive and would prefer to accommodate the switch on its own transition schedule.

by the statutory deadline.<sup>7</sup> The *Notice* also provides, however, that the Commission will consider issuing STAs to allow for reduced power operation after the relevant construction deadline provided there are no losses in relied-upon service.<sup>8</sup> Bahakel believes that the Commission not only should issue STAs for certain stations, but that it should do so even if there are short, temporary service area losses.

Bahakel's situation is instructive. Bahakel owns six television stations. Due to the company's consistent efforts to build-out its DTV facilities, four of those stations – WCCB(TV), Charlotte, North Carolina; WOLO-TV, Columbia, South Carolina; WFXB(TV), Myrtle Beach, South Carolina; and WABG-TV, Greenwood, Mississippi – need to do nothing further to complete the transition (other than discontinue analog service), and one station – WBBJ-TV, Jackson, Tennessee – simply should be able to increase power. Accordingly, five of Bahakel's six stations are not expected to face any difficulty in meeting the statutory deadline.

The sixth, WAKA(TV), however, faces technical challenges – like a number of similarly situated stations – that will prevent the implementation of its full power DTV operations before February 18, 2009. Bahakel believes that the Commission should establish policies that address the issues faced by this small group. As noted above, WAKA(TV) must switch to a third channel for its post-transition operations, and Bahakel is willing to undertake extraordinary and necessary steps (such as terminating analog service early and implementing reduced operations on its post-transition channel prior to February 18, 2009) to begin full power post-transition operations as soon as possible. Nonetheless, Bahakel cannot reasonably implement such full power operations until approximately one month after the statutory deadline because the station must take the time to convert at least one high power amplifier that is currently in use. Bahakel

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<sup>7</sup> *Notice*, ¶ 2.

<sup>8</sup> *Id.*, ¶ 89.

estimates that the station will need to operate at about 60 percent power for the four weeks required to make this conversion.

This situation results because WAKA(TV) is one of the unfortunate stations to which the FCC initially assigned an out-of-core channel. The majority of broadcast television stations do not face this burden of additional construction. Bahakel submits that, instead of penalizing the group of stations that must undertake even more construction, the Commission should afford them the flexibility they need to implement full power operations rapidly while still minimizing overall service losses. (It should be noted that, using Channel 55, WAKA-DT has provided full power digital service during the dual analog/digital transition period.) Stations such as WAKA(TV) have every incentive to implement full power post-transition operations as quickly as possible, but requiring such operation no later than February 18, 2009 will force some of them to encounter far greater service losses beforehand. Instead, the Commission should allow for temporary operation with reduced facilities after February 18, 2009 for those stations, like WAKA(TV), that face significant technical challenges. Stations that received out-of-core DTV channels should be accommodated, not punished further.

**IV. IF EXPANSION IS PROHIBITED INITIALLY AS PROPOSED, THE FCC SHOULD DEEM STATIONS REACHING 95 PERCENT OF THEIR ALLOTTED SERVICE POPULATION TO BE SUBSTANTIALLY COMPLIANT.**

The *Notice* proposes with little elaboration that the Commission would provide expedited processing for construction permit applications that request, among other things, facilities deviating no more than five percent from the applicant's allotted service area population.<sup>9</sup> Bahakel believes that the Commission should expand upon this provision and deem stations

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<sup>9</sup> *Id.*, ¶ 94.

meeting a 95-percent service threshold as substantially compliant with all construction obligations, especially in light of the initial prohibition against service expansion.

Bahakel's station WBBJ-TV, Jackson, Tennessee illustrates the benefit of such a policy. Like many other stations, WBBJ-TV was forced to side-mount its DTV antenna because there was no room for the antenna at the top of its tower. Bahakel certified in its Form 381 that it would replicate service but elected its current digital channel.<sup>10</sup> Accordingly, there is a mismatch between the station's actual and allotted antenna patterns. Given the *Notice's* proposed prohibition against initial service expansion,<sup>11</sup> this pattern mismatch means that stations such as WBBJ-TV cannot entirely reach their allotted service areas – at least, that is, for some time. The Commission acknowledged that this problem especially exists for stations with side-mounted antennas, but the *Notice* proposed that such stations still would have to provide service to “100 percent of their replication area.”<sup>12</sup>

Station WBBJ-TV can reach 98.5 percent of its allotted service area population by increasing power to the maximum 1000 kW and keeping its side-mounted antenna in place. In light of the Commission's proposed prohibition against initial expansion immediately following the transition deadline, Bahakel believes that the Commission should consider 98.5 percent coverage as substantially compliant with all construction obligations (including the Form 381 certification). Once the Commission eventually permits the proposed filing of applications to expand service,<sup>13</sup> Bahakel anticipates that WBBJ-TV will be able to obtain authorization to serve at least 100 percent of the allotted service population, and the service shortfall will be eliminated.

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<sup>10</sup> See FCC File Nos. BCERCT-20041105ANN and BFRECT-20050209ATZ.

<sup>11</sup> *Notice*, ¶ 99.

<sup>12</sup> *Id.*, ¶ 46.

<sup>13</sup> See *id.*, ¶ 99.

Only when Bahakel is permitted to expand WBBJ-TV's digital facilities and can then ascertain what antenna pattern would comport with existing interference restrictions will Bahakel be able to determine conclusively exactly what facilities are appropriate. Depending on what can be authorized at that time, it is entirely foreseeable that Bahakel might decide to purchase and install a different antenna instead of moving the side-mounted antenna to the top. If the Commission continues initially prohibiting service expansion, then it should deem service that reaches at least 95 percent of the allotted population as substantially compliant with its rules and policies.

**V. EXPANSION APPLICATIONS SHOULD BE ACCEPTED AS SOON AS POSSIBLE.**

The *Notice* proposes to continue to prohibit expanded facilities until after all stations have had an opportunity to apply for allotted operations.<sup>14</sup> Bahakel appreciates that the Commission must process a significant number of construction permit applications in a short period and understands why the Commission might take this position; however, television broadcasters very much want to recover service losses created by any continued prohibition on expansion, so Bahakel urges the Commission to provide for the filing of expansion applications as soon as possible. Indeed, Bahakel believes the Commission still can and should open an expansion window sufficiently early that interested stations will be able to apply, obtain a grant, and then implement expanded facilities by February 18, 2009 while avoiding a construction “two-step.”

In the *Notice*, the Commission proposes to process expeditiously – generally within 10 days of filing – applications for post-transition operations, provided they are filed no later than 45 days after its new DTV rules become effective.<sup>15</sup> The Commission explains that it will

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<sup>14</sup> *Id.*, ¶ 99.

<sup>15</sup> *Id.*, ¶ 94.

be able to accomplish such rapid processing by prohibiting service expansion and thereby avoid potentially time-consuming interference analysis. Once such expedited processing is completed, however, the Commission should be free to open a window for the filing of expansion applications, ideally in time to allow stations to implement expanded facilities by the statutory deadline.

The *Notice* includes a number of proposals that properly focus on avoiding service losses. If the Commission can open a window promptly for the filing of expansion applications, it will minimize the duration of service losses created by its restriction on expansion applications. Bahakel accordingly urges the Commission to open such a window as soon as possible.

**VI. THE COMMISSION SHOULD NOT PROTECT VACATED ALLOTMENTS WHEN EVALUATING EXPANSION APPLICATIONS.**

Once the Commission begins accepting applications for expanded facilities, it should not protect effectively vacated allotments – at least not for some initial period. Stations such as WBBJ-TV, Jackson, Tennessee, must obtain authorization for expanded facilities if they are to preserve relied-upon service due to the mismatch between the actual and allotted antenna patterns and the initial prohibition on expanded applications. WBBJ-TV's ability to preserve relied-upon service is threatened, however, if licensees must protect effectively vacant allotments for which construction permits have been forfeited. For example, the former permittee of WMAA(TV), Columbus, Mississippi (Facility ID No. 83735) failed timely to construct singleton facilities, and the Commission accordingly ruled that the permit had been forfeited.<sup>16</sup> Bahakel believes that the Commission should not protect such allotments associated with forfeited permits once expansion applications are accepted. To do so would impermissibly subordinate

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<sup>16</sup> See Letter from Clay Pendarvis, Federal Communications Commission, to Mississippi Authority for Educational TV, Ref. No. 1800E3-MHH, Jan. 29, 2007.

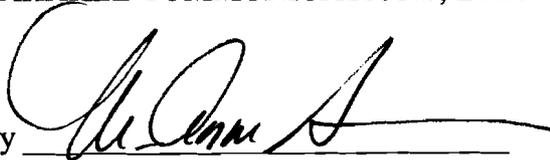
relied-upon service to prospective service.<sup>17</sup> Moreover, protection of such effectively vacated allotments puts Bahakel and similarly situated licensees at a comparative disadvantage, particularly since there is not even a party from whom they can obtain an interference consent. Notwithstanding these concerns, if the Commission concludes that it will protect effectively vacated allotments, the Commission only should apply such protection after it has completed processing the initial round of expansion applications.

### CONCLUSION

Bahakel asks that the Commission adopt the proposals set forth above that will give licensees the ability to complete their DTV transitions expeditiously with minimal service losses and disruption.

Respectfully submitted,

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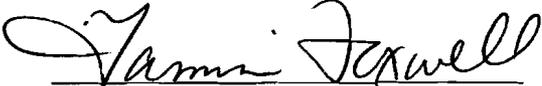
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<sup>17</sup> See, e.g., *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum, Opinion & Order, 5 FCC Rcd 7094, 7097, ¶ 19 (1990) ("From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station.").

**CERTIFICATE OF SERVICE**

I, Tammi Foxwell, hereby certify that on this 15th day of August, 2007, I caused a copy of the foregoing Comments to be served on the following via first-class mail:

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