

**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: The Commission

**JOINT COMMENTS OF  
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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## EXECUTIVE SUMMARY

The Association for Maximum Service Television, Inc. (“MSTV”) and the National Association of Broadcasters (“NAB”) applaud the Commission’s efforts to move forward to a successful digital television. The Commission’s proposals in this proceeding demonstrate the number and the complexity of the issues confronting television broadcasters, the Commission, and the public as we accomplish this historic transition. With only eighteen months remaining until the statutory cut-off for all analog television, it will be critical to craft rules in this proceeding that enable all television broadcasters to make a successful transition to digital television. MSTV and NAB urge the Commission to create sensible, streamlined, and bright-line rules that would apply in the one-year window before February 2009 and the one-year window after February 2009. These rules will avoid unnecessary administrative burdens and delays. Specifically, MSTV and NAB urge the Commission to implement the following proposals:

- **Analog Service Proposals**

- *Reduction in Analog Service Window:* Stations should be allowed to reduce analog service on all channels starting one year prior to the transition date (February 17, 2008), provided stations notify the FCC within 15 days.
- *Termination of Analog Service Window:* Stations should be allowed to terminate analog service on all channels starting 6 months prior to the transition date (August 17, 2008), provided the FCC is notified within 15 days.
- *Analog Service Regulatory Stability:* During the transition period, reducing analog service should not change a local television station’s carriage rights on cable and satellite systems or rights secured pursuant to the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”).

- **Early Transition Permitted**

- *Early Transition Window:* Stations should be allowed to transition to their final DTV channels six months prior to February 2009, if, during the early transition period, they cause no more than 2% interference to existing analog stations and no more than 0.5% interference to digital operations.

- **Stations Should Focus Resources on Final DTV Channels**
  - *Construction:* No further investment or construction should be required on temporary DTV channels.
  - *DTV Cutover:* Stations should be allowed to terminate service on their temporary DTV channel 6 months prior to the deadline, in order to focus resources on their final DTV channel.
- **Construction Deadlines for Final Facilities**
  - *Twelve Month Window to Achieve Full Facilities:* To alleviate potential equipment shortages, as long as stations are providing digital service to their communities of license, they should be allowed to operate at less than full facilities for 12 months after February 2009.
  - *Continued Operation of Interim DTV Facilities:* Stations should be allowed to continue operating on their interim DTV channels after February 17, 2009, provided they turn off their analog facilities and provided that continued operation does not cause more than 0.5% interference to surrounding digital operations.
  - *Special Temporary Authorizations:* The FCC should allow flexibility in the use of special temporary authority without imposing burdensome coverage requirements.
- **Expedited Processing for Construction Permits and Modifications**
  - *No CP Required:* Where proposed facilities conform to the facilities in the DTV Table of Allotments (“Table B”), no construction permit should be required. The FCC should issue a license and avoid the two-step construction permit/license process in order to minimize administrative burdens.
  - *Elimination of Coverage Requirement:* The FCC should expedite application processing, even where a reduction in coverage exceeds 5% of the population coverage set forth in Table B.
  - *Interference Solution for Stations Returning to Analog Channels:* Many stations returning to their analog channels may have different digital antenna patterns, but may wish to utilize their existing analog antennas when they make the transition – an approach that will mitigate equipment shortages and streamline the station’s transition. To facilitate processing, station applications should be approved if the service contours do not exceed the contour predicted by the Table B facilities by more than five miles in any direction, provided a thorough interference analysis is performed within 18 months after the transition date.

- **Applications to Maximize Facilities**

- *Establishing Filing Date:* To assist stations in purchasing their final DTV equipment, the FCC should lift the freeze and establish a date for accepting maximization requests as soon as possible, preferably before the transition date.

- **Post Transition Interference Standard**

- *Modifications:* The Commission should adopt its proposed 0.5% interference standard for post-transition modifications.
- *New Allotments:* Changes to the Table should be analyzed under the 0.5% interference standard.

- **Coordination with MVPDs**

- *Coordination Required:* All multichannel video programming providers (“MVPDs”) should be required to coordinate with television stations at the local level to ensure that cable systems are technically capable of receiving and processing digital broadcast signals.
- *MVPD Status Reports:* All MVPDs should file DTV status reports with the Commission to ensure they will be capable of receiving and processing digital broadcast signals.

- **International Coordination**

- *High Priority:* The FCC must make international coordination a high priority. We urge the FCC to use all the resources in the Administration to resolve outstanding international issues.

- **Changes in the ATSC Standard**

- *Revisions:* The FCC should update and adopt A/53 parts 1-6 (January 2007) and program system information protocols (“PSIP”) (revised in A/65C). At this time the FCC should refrain from requiring Active Format Description (“AFD”).

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The Association for Maximum Service Television, Inc. ("MSTV")<sup>1</sup> and the National Association of Broadcasters ("NAB")<sup>2</sup> submit these Joint Comments responding to the Commission's initiation of the Third Periodic Review of the transition to digital television.<sup>3</sup> MSTV and NAB applaud the Commission's efforts to bring about a successful transition to digital television. We are now on the brink of realizing the important purposes of the Commission's DTV proceedings: ensuring that the introduction of digital television fully serves the public and that the spectrum is used efficiently and effectively. Achieving these goals will require regulatory flexibility and creativity in order to meet the transition date of February 17, 2009. MSTV and NAB compliment the FCC in presenting a *Notice of Proposed Rulemaking*

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<sup>1</sup> MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality of the local broadcast system.

<sup>2</sup> NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission, the Courts, and other federal agencies.

<sup>3</sup> See *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) ("*NPRM*").

that outlines the numerous and complex issues confronting television broadcasters and the public as they make this historic change from analog to digital broadcasting. The television broadcast industry is committed to working with the Commission to achieve a successful digital transition by the deadline date of February 17, 2009.

## I. INTRODUCTION

Only eighteen months remain until February 17, 2009.<sup>4</sup> There is much for the Commission and for broadcasters to do in a short period of time. These efforts must occur on many fronts, from meeting the buildout requirements at issue in this proceeding to making sure that viewers are educated about the transition and equipped to receive digital television.<sup>5</sup> The DTV Table of Allotments has only recently been released.<sup>6</sup> Hundreds of stations across the country will need to begin construction of final DTV facilities,<sup>7</sup> and many stations that are already on their final DTV channels may need to modify their existing facilities. Applications for all of these changes will have to be prepared and processed, and the procedural and technical rules in this and related proceedings must be completed.

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<sup>4</sup> February 17, 2009 is the “hard-date” established by Congress for the cessation of analog television service. *See* 47 U.S.C. § 309(j)(14)(A).

<sup>5</sup> *See DTV Consumer Education Initiative*, FCC 07-128, MB Dkt. No. 07-148 (rel. July 30, 2007), at ¶ 1 (noting that the DTV transition will “provide consumers with better quality television picture and sound, and make new services available through multicasting” but cautioning that such innovations “are dependant upon widespread consumer understanding of the benefits and mechanics of the transition”).

<sup>6</sup> *See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking, MB Dkt. No. 87-268, FCC 07-138 (rel. Aug. 6, 2007) (“*Seventh R&O*”); *see id.* at Appendix B (“Table B”).

<sup>7</sup> *See NPRM* at ¶ 24 (noting that 517 stations are returning to their analog in-core channel for their final digital operations); *see also id.* at ¶ 28 (noting that 117 stations moving to a completely new in-core channel); *id.* at ¶ 29 (stating that there are 137 singleton stations).

As the Commission has noted, “the transition to digital television is a massive and complex undertaking, affecting virtually every segment of the television industry and every American who watches television.”<sup>8</sup> Broadcasters are eager to move forward in order to ensure a successful transition to digital television and to maximize digital television service. Before proceeding with specific responses to the Notice, we believe several initial observations are in order.

*This situation is unprecedented and unique:* The Commission and the television industry confront a unique situation. Never before has an entire industry transitioned to new technology by turning off one transmission system on a coordinated schedule. Indeed, hundreds of stations will be changing channels by the night of February 17, 2009. This situation calls for unique and creative solutions.

*Changes will be temporary:* The changes proposed by MSTV and NAB are designed to address short-term, temporary situations that are related directly to meeting the transition deadline. Proposed changes in traditional procedures and interference standards must be viewed in context. The impact of these suggestions may be for only one year or even six months. In any event, they do not contemplate long term changes in Commission policy or procedures.

*Time is short:* With only 552 days until the transition date, both the industry and the FCC must act with deliberate speed to meet the deadline. As a result, many of the traditional Commission procedures have to be streamlined in order to move forward in a timely fashion.

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<sup>8</sup> See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Dkt. No. 03-15, Report and Order, 19 FCC Rcd 18279, 18284, ¶ 11 (2004) (“*Second DTV Periodic Report and Order*”).

For example, a case-by-case approval approach may be too costly and time consuming on both the industry and the Commission's resources. Importantly, FCC rules as well as individual grants and approvals are a condition precedent for stations' equipment purchases and arranging for tower construction crews. Any unintended or unforeseen delays in the regulatory process will affect the ability of the industry to move forward in a timely fashion. To the extent much of this equipment is customized and tailored to meet the specifications of individual stations, it takes time to manufacture and install. Accordingly, it is in everyone's interest to enact procedures and policies that place the highest priority on timeliness.

*Practical Realities Cannot be Ignored:* As transition polices are developed, MSTV and NAB urge the Commission to keep in mind there are basic realities involved in making the transition. For example, it will be impossible to conduct outdoor tower work during the winter in northern climates or in areas of the intermountain west. Second, there are only a handful of tower rigging companies that are capable of doing the "high" tower work that will be needed by many television broadcasters. Third, many existing towers are full to capacity. Thus, there are many situations throughout the country where placing the final DTV antenna on a tower will require the broadcaster to take another antenna off the tower. Finally, as the FCC has recognized, there are a significant number of side-mount digital antennas, which require special consideration.

*Continued Service to the Public:* We recognize, and agree with, the time-honored FCC policies designed to ensure that the public retains access to over-the-air television signals. As a matter of economics, it is in a television broadcaster's best interest to maximize the size of its audience throughout its coverage area. Thus, any reductions in over-the-air service that may occur during the transition must, as a matter of economics, be temporary. Stations do not want to

lose portions of their audience. As a result, when establishing its transition policies, the Commission need not impose unnecessarily stringent levels of oversight. Indeed, limiting coverage reductions or imposing certain coverage requirements during the transition period may have the unintended consequence of delaying the transition.

MSTV and NAB put forth several concrete proposals in these comments in order to achieve these goals. Some of these proposals are directed at providing flexibility before February 2009, while others focus on the one-year period following the transition date.

### **Analog Service Proposals**

*Reduction in Analog Service Window:* Stations should be allowed to reduce analog service on all channels starting one year prior to the transition date (February 17, 2008), provided stations notify the FCC within 15 days.

*Termination of Analog Service Window:* Stations should be allowed to terminate analog service on all channels starting 6 months prior to the transition date (August 17, 2008), provided the FCC is notified within 15 days.

*Analog Service Regulatory Stability:* During the transition period, reducing analog service should not change a local television station's carriage rights on cable and satellite systems or rights secured pursuant to the Satellite Home Viewer Extension and Reauthorization Act ("SHVERA").

### **Early Transition Permitted**

*Early Transition Window:* Stations should be allowed to transition to their final DTV channels six months prior to February 2009, if, during the early transition period, they cause no more than 2% interference to existing analog stations and no more than 0.5% interference to digital operations.

### **Stations Should Focus Resources on Final DTV Channels**

*Construction:* No further investment or construction should be required on temporary DTV channels.

*DTV Cutover:* Stations should be allowed to terminate service on their temporary DTV channel 6 months prior to the deadline, in order to focus resources on their final DTV channel.

### **Construction Deadlines for Final Facilities**

*Twelve Month Window to Achieve Full Facilities:* To alleviate potential equipment shortages, as long as stations are providing digital service to their communities of license, they should be allowed to operate at less than full facilities for 12 months after February 2009.

*Continued Operation of Interim DTV Facilities:* Stations should be allowed to continue operating on their interim DTV channels after February 17, 2009, provided they turn off their analog facilities and provided that continued operation does not cause more than 0.5% interference to surrounding digital operations.

*Special Temporary Authorizations:* The FCC should allow flexibility in the use of special temporary authority without imposing burdensome coverage requirements.

### **Expedited Processing for Construction Permits and Modifications**

*No CP Required:* Where proposed facilities conform to the facilities in the DTV Table of Allotments ("Table B"), no construction permit should be required. The FCC should issue a license and avoid the two-step construction permit/license process in order to minimize administrative burdens.

*Elimination of Coverage Requirement:* The FCC should expedite application processing, even where a reduction in coverage exceeds 5% of the population coverage set forth in Table B.

*Interference Solution for Stations Returning to Analog Channels:* Many stations returning to their analog channels may have different digital antenna patterns, but may wish to utilize their existing analog antennas when they make the transition – an approach that will mitigate equipment shortages and streamline the station's transition. To facilitate processing, station applications should be approved if the service contours do not exceed the contour predicted by the Table B facilities by more than five miles in any direction, provided a thorough interference analysis is performed within 18 months after the transition date.

### **Applications to Maximize Facilities**

*Establishing Filing Date:* To assist stations in purchasing their final DTV equipment, the FCC should lift the freeze and establish a date for accepting maximization requests as soon as possible, preferably before the transition date.

### **Post Transition Interference Standard**

*Modifications:* The Commission should adopt its proposed 0.5% interference standard for post-transition modifications.

*New Allotments:* Changes to the Table should be analyzed under the 0.5% interference standard.

### **Coordination with MVPDs**

*Coordination Required:* All multichannel video programming providers (“MVPDs”) should be required to coordinate with television stations at the local level to ensure that cable systems are technically capable of receiving and processing digital broadcast signals.

*MVPD Status Reports:* All MVPDs should file DTV status reports with the Commission to ensure they will be capable of receiving and processing digital broadcast signals.

### **International Coordination**

*High Priority:* The FCC must make international coordination a high priority. We urge the FCC to use all the resources in the Administration to resolve outstanding international issues.

### **Changes in the ATSC Standard**

*Revisions:* FCC should update and adopt A/53 parts 1-6 (January 2007) and program system information protocols (“PSIP”) (revised in A/65C). At this time the FCC should refrain from requiring Active Format Description (“AFD”).

This streamlined regulatory approach will provide necessary time and flexibility to build, install, and acquire new antennas and equipment, to make small adjustments to allow stations to better serve their audiences, and to complete any required international coordination. These temporary pre- and post-transition windows will provide for a more orderly and successful transition to digital television.

Throughout the remaining eighteen months until February 2009, it is critical that the Commission streamline procedures as much as possible. Complicated and unnecessary rules will add to the already significant challenges to meeting the hard-date. MSTV and NAB urge that broadcasters be able to proceed on the basis of bright-line rules instead of complicated factor-based tests, and suggest that, where possible, the Commission permit actions on the basis of elections or notifications instead of applications. The transition to digital television is

complex and demands the most of broadcasters and the Commission. The Commission should avoid imposing additional administrative and processing burdens that could hinder or delay the transition.

**II. THE COMMISSION SHOULD AFFORD BROADCASTERS FLEXIBILITY WITH REGARD TO EARLY REDUCTION OR TERMINATION OF ANALOG SERVICE.**

The final months leading up to the hard-date of February 17, 2009 will be a critical period in the transition to digital television. Some stations may be able to advance the transition to digital television by reducing or terminating analog service prior to the statutorily-mandated hard-date. With February 2009 fast approaching, now is the time for the Commission to craft easy-to-administer, bright-line rules permitting stations to begin winding down analog service.

Given the approaching hard-date, the Commission has recognized that there may be circumstances where an early reduction or termination of analog service may be appropriate. These circumstances include, but are not limited to, situations where a station cannot switch its side-mounted digital antenna to a top-mounted position until its top-mounted analog antenna is removed and situations where a third antenna cannot be added to a tower until another antenna is removed.<sup>9</sup> MSTV and NAB believe that the Commission should give broadcasters flexibility in temporary or permanent reductions in analog service for the one year leading up to the statutory hard-date of February 17, 2009, when all analog television service must cease anyway.

During this window, the Commission should not require broadcasters to diminish or to terminate analog service early. But if, in the station's assessment, its technical facilities and

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<sup>9</sup> See *NPRM* at ¶ 37 (also citing situations where a station seeks to terminate out-of-core analog service early under a voluntary band-clearing arrangement).

market conditions permit such a reduction or termination, then the Commission should allow it in order reach the ultimate goal of high-quality final DTV service. This rule would facilitate a robust transition to digital television and the derived benefits of digital television, as discussed below.

**A. Reduction in Analog Service: One Year Ramp Down Period**

The Commission has proposed a complex, multi-prong test in order for stations to qualify for a presumption that a reduction in analog service (for stations with in-core channels) is in the public interest.<sup>10</sup> The proposed test requires consideration of the station's top-four network status, the extent of the analog reduction (*i.e.*, whether it is greater than 5% of the station's service area or population served), whether there would be an "unreasonable reduction in the number of services available" in the area, and three other factors.<sup>11</sup>

MSTV and NAB believe that a simple, bright-line test will be easier for the Commission to administer and will better achieve the goal of ensuring that stations meet the statutory deadline. A bright-line rule also will be in the public interest because it will be more efficient and will rely on marketplace forces to provide needed services. Specifically, during the one-year period before February 2009, the Commission should give broadcasters discretion to reduce analog service. While a station commencing an early wind-down of analog service should still provide analog service to its community of license, the Commission should not impose an arbitrary 5% cap on analog reductions.<sup>12</sup> As the Commission has recognized, the

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<sup>10</sup> See *NPRM* at ¶ 44.

<sup>11</sup> *Id.*

<sup>12</sup> See *id.* (proposing to apply the permissive presumption only to reductions of less than 5%). A station whose analog service failed to cover the station's community of license should be viewed (continued...)

approaching hard-date “now weighs in favor of an increasing tolerance for the loss of analog service.”<sup>13</sup> Moreover, broadcasters are and will continue to be responsive to the needs of their viewers: if early analog ramp-down would result in the large-scale disenfranchisement of viewers, a station will not do it. As the Commission has consistently recognized, marketplace forces provide an incentive for stations to serve their viewers.<sup>14</sup>

The Commission should not create undue procedural hurdles for stations seeking to exercise this option on a temporary or permanent basis. Streamlined procedures will enable broadcasters and the Commission to focus their efforts on completing the digital transition, and will avoid needless delay and complexity. During the one-year window leading up to the February 2009 hard-date, the Commission should not require that stations seeking to reduce their analog service submit an application.<sup>15</sup> Therefore, MSTV and NAB propose that stations notify

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as having terminated its analog service. MSTV and NAB address early terminations of analog service below.

<sup>13</sup> See *NPRM* at ¶ 41.

<sup>14</sup> See *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20,594, MM Dkt. No. 00-39, at ¶ 69 (2001) (“*Reconsideration of First DTV Periodic*”) (observing that “marketplace forces will provide further incentives that will result in the expansion of DTV service in the future”); *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Dkt. No. 03-15, Notice of Proposed Rulemaking, 18 FCC Rcd 1279, ¶ 6 (2003) (noting that “marketplace forces should work to . . . provide an incentive to broadcasters to provide service to outlying areas”); *id.* at ¶ 65 (querying whether market-based incentives were sufficient in the simulcast context); *Second DTV Periodic Report and Order* at ¶ 130-31 (concluding that market realities demonstrated no need for a regulatory solution to the simulcast question).

<sup>15</sup> See *NPRM*, n.85.

the Commission by letter within 15 days of the reduction. Importantly, a notice requirement could enable other stations to make an early transition by using the vacated spectrum.<sup>16</sup>

**B. Termination of Analog Service: Six Month Period**

During the final six-month window before the hard cut-off date, the Commission should permit stations to terminate analog service if, in the station's discretion, market conditions and the particular circumstances of the stations warrant it. The Commission has suggested that stations seeking to terminate analog service prior to the statutorily mandated hard-date meet a higher standard than stations seeking to reduce analog service, perhaps by showing that a reduction in service would not be an acceptable alternative.<sup>17</sup> MSTV and NAB believe that this stricter standard is unnecessary and may be counterproductive in light of the ultimate goal that "all viewers have digital service on and after the transition date."<sup>18</sup> A more streamlined approach (and one that takes account of the fact that, in any event, all analog television service must cease by February 2009) would be to create a shorter window for analog shutdowns: six months, versus the one-year window for analog reductions.<sup>19</sup> The bright-line six-month window is appropriate given its proximity to the statutorily mandated hard-date and in light of the fact that many stations (*e.g.*, stations in Northern climates) may need to terminate analog service prior to February 2009 in order to make a timely transition.

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<sup>16</sup> Prior to the one-year pre-transition window, MSTV and NAB support a requirement that stations seek authorization to reduce analog service via applications analyzed on a case-by-case basis.

<sup>17</sup> See *NPRM* at ¶ 47.

<sup>18</sup> See *NPRM* at ¶ 46.

<sup>19</sup> Outside of the six-month window, a case-by-case analysis instead of a bright-line rule would be warranted.

**C. Out of Core Band-Clearing**

MSTV and NAB agree with the Commission’s proposal to extend the presumptive standard currently applicable to band-clearing arrangements for channels 59-69 to arrangements for channels 52-58.<sup>20</sup> That standard should apply immediately. In addition, the Commission should clarify that, to the extent a station with out-of-core analog operations seeks to reduce or terminate analog service within the bright-line six-month and one-year windows proposed above, the station would not also be required to make a showing regarding the “rebuttable presumption” applicable to band-clearing arrangements.

**D. Stabilization of Rights During the Transition Period**

One prong of the Commission’s proposed showing for analog service reduction is related to signal delivery to cable and satellite providers.<sup>21</sup> As noted above, MSTV and NAB believe that the Commission should not adopt a complex, multiprong test that would result in administrative delays for stations taking steps in order to make the transition. Nonetheless, MSTV and NAB agree with the Commission’s objective to minimize the effect of reduced analog signal coverage on consumers’ ability to receive their local signals. To this end, MSTV and NAB urge the Commission to affirm that delivery of a digital television signal that simulcasts a station’s analog signal meets the FCC’s requirement to provide a “good quality signal” to cable systems for purposes of the must-carry rules.<sup>22</sup> In *Jovon*, the Media Bureau held

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<sup>20</sup> See *NPRM* at ¶ 42.

<sup>21</sup> See *NPRM* at ¶ 44.

<sup>22</sup> See 47 C.F.R. § 76.55(c)(3); see *Jovon Broadcasting Corp. v. RCN Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 8145 (2003), at ¶ 9 (“*Jovon*”) (ruling that “[a]s long as [the station] transmits exactly the same content over its digital signal as is contained in its analog signal, and it pays the cost of delivering such a signal to the principal headend, it may do so in accordance with the Commission’s rules and policies”).

that a broadcaster satisfied the good quality signal requirement by providing a digital simulcast signal to the cable headend, ruling that “[t]his situation is analogous to the sanctioned practice of a station digitally transmitting its signal to a cable operator’s principal headend using fiber-optic cables.”<sup>23</sup> Affirmation of this principle by the Commission will ensure that broadcasters whose digital signals cover cable headends are not deterred from permissible reductions in analog service as the hard-date approaches. Likewise, MSTV and NAB believe that the Commission should clarify that the same principle applies in the context of satellite carriage.<sup>24</sup> Accordingly, delivery of a digital signal that is a simulcast of an analog signal to a satellite local receive facility is an acceptable means of providing a good quality signal.

The Commission should also address the impact of an analog reduction or termination on a household’s status as “served” or “unserved” for purposes of distant network signal importation by satellite television operators. The rules for when satellite television operators may provide distant network signals to their viewers are part of the Copyright Act as amended by the Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”). Under Section 119 of the Copyright Act, 17 U.S.C. § 119, an “unserved household” that qualifies for distant signal service is a household that cannot receive an adequate *analog* signal from a local network station. As a result, when analog signals cease, most of the nation’s households will be technically “unserved” under Section 119, even though they may receive a local digital signal. Similarly, households could be technically “unserved” if a station reduces its analog service in preparation for the digital transition.

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<sup>23</sup> See *Jovon* at ¶ 9 and at ¶¶ 4-5.

<sup>24</sup> See 47 C.F.R. § 76.66(g) (setting forth the “good quality signal” rule for local-into-local satellite carriage).

Indeed, it would be a perverse outcome, and surely one that could never have been intended by Congress, if, suddenly, on February 18, 2009, satellite carriers could retransmit distant duplicating digital network signals to virtually every household in America that can receive a perfectly acceptable digital signal from a local affiliate of the same network. Such an outcome would undermine the principles of localism, competition, and diversity that Congress sought to promote.

There are statutory limitations on the FCC's authority to deal with this problem. NAB and MSTV urge the Commission to work with Congress to ensure that, prior to February 17, 2009, an "unserved" household under Section 119 is one that (a) cannot receive an adequate analog *or* digital signal from a local station and (b) one that is located in a market in which local-into-local service is not offered. No household should be eligible to receive a distant analog network signal merely because the local station affiliated with the relevant network is broadcasting a digital, rather than analog signal, as required by federal law.

### **III. EARLY TRANSITIONS TO FINAL DIGITAL CHANNELS SHOULD BE PERMITTED**

MSTV and NAB support the Commission's proposal to permit early transitions to final DTV channels.<sup>25</sup> During the final six-month window prior to February 17, 2009, broadcasters should be able to operate on newly allotted post-transition DTV channels provided that they satisfy the applicable interference standard. The analysis for doing so should be a simple interference standard, without the need for a complex, multi-pronged analysis.<sup>26</sup>

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<sup>25</sup> See *NPRM* at ¶ 88.

<sup>26</sup> Prior to the six-month early transition window, MSTV and NAB would support case-by-case authorizations for early transitions.

Two classes of stations may desire to use this proposal: First, stations that must move to a newly assigned “third” channel for post-transition digital operations,<sup>27</sup> and second, stations that will be returning to their analog channels for post-transition DTV operations. In addition to advancing the early-transitioning station’s transition to final facilities, a streamlined rule could create daisy-chains of early transitions, as channels vacated by the departing station are freed for other stations to use. This is especially important for those stations with out-of-core channels, because it accelerates clearing opportunities in the 700 MHz band.

**A. Interference Standard**

The Commission has proposed that interference to analog-only stations could not exceed 2.0%. We agree. Early-transitioning stations should be allowed to cause no more than 2.0% interference to other stations’ analog operations (subject to the current 10% cumulative limit under the 2%/10% *de minimis* interference standard) and no more than 0.5% interference to other stations’ digital operations.<sup>28</sup> MSTV and NAB believe that the proposed interference standard applicable to early-transitioning stations takes account of the key goal of advancing DTV. In light of this goal, the standard should permit early-transitioning stations to cause slightly more interference to other stations’ analog operations than to other stations’ digital operations.<sup>29</sup> In addition to promoting digital television, this rule would account for the fact that

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<sup>27</sup> Such stations will include those currently operating both of their facilities on out-of-core channels and others, such as certain stations with low VHF channels, that are moving to a “third” and final DTV channel.

<sup>28</sup> See *NPRM* at ¶ 88 (proposing to allow early transitions provided that early-transitioning stations do not cause “impermissible interference” to another station; specifying that interference to analog-only stations could not exceed 2.0%).

<sup>29</sup> Where the station receiving interference is under common ownership with the station causing the interference, the FCC may consider allowing higher levels of interference between the (continued...)

any interference caused by an early-transitioning station to another station's analog operations will, by definition, be temporary – it will be limited to the six- month period prior to the cut-off of all analog television.

**B. Coverage Requirements for Early Transition**

MSTV and NAB also support the Commission's proposal that stations be permitted to commence early post-transition operations that may be less than their full, authorized post-transition facilities, provided that the interference standard is met (and provided that the broadcaster provides coverage to its community of license).<sup>30</sup> The goal of having stations operating on their final DTV channels as soon as possible warrants this flexibility, and market factors will protect against viewer disenfranchisement. By February 2009, broadcasters must shut off their analog broadcasts, and the only over-the-air service that they will be able to provide to viewers will be digital service. Broadcasters will be under strong market forces pressing them to provide maximum digital service, and in the lead-up to the hard-date and beyond, stations will not lightly choose to build out less than their full facilities. Given the incentives to build out full digital facilities, and to do so as soon as possible, the Commission should not presume that stations will opt for reduced build-out unless stations are forced to do so, and the Commission should not create policies that delay or discourage early and full buildout.

**C. Streamlined Procedures**

The Commission should streamline the early transition procedure as much as possible. A streamlined procedure will save both Commission and broadcaster resources,

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stations. In these limited situations it can be presumed that the station receiving interference has agreed to the increase in interference levels.

<sup>30</sup> See *NPRM* at ¶ 88.

avoiding needless complexity, confusion, and – most critically – delay. The simplest procedure would be to have stations elect the option to transition early in construction permit or modification applications for final DTV facilities.<sup>31</sup> The Commission should require that stations selecting this option certify compliance with the interference standard and attach an exhibit demonstrating this compliance, but such stations should not need to await Commission action to proceed.

In cases where a station has an opportunity to make an early transition after it has already filed for a construction permit, *e.g.*, because a station in a neighboring market begins winding down analog operations prior to the hard-date, the Commission should not preclude the station from making an early transition. Stations opting to make an early transition after filing for a construction permit or modification application should be able to notify the Commission of intent to transition early by letter (identifying the construction permit application file number). The letter, like the exhibit to the construction permit or modification applications, should demonstrate compliance with the interference standard (through a certification requiring no further FCC action).<sup>32</sup>

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<sup>31</sup> *See id.*

<sup>32</sup> Consistent with the above principles, MSTV and NAB believe that the Commission need not engage in an analysis with respect to the impact on a station's own analog or digital coverage. If the station's final DTV channel is its current analog channel, the early transition will necessarily entail an early termination of the station's analog service. Moreover, the six-month early transition window would overlap with the six-month window MSTV and NAB propose for the early termination of analog service. Consequently, there is no need for additional effort on the part of broadcasters and the Commission to explain and to approve a loss of a broadcaster's own analog service in the context of an early transition. Finally, a reduction or termination of a station's analog service (or interim digital service) in order to accomplish an early transition in the months leading up to February 2009 would be in the public interest. Not only would it facilitate a stations' transition to its final digital facilities, it may enable other stations to make an early transition as well; thus, the temporary losses would be justified.

**IV. MSTV AND NAB AGREE THAT THE FCC SHOULD PERMIT A REDIRECTION OF BUILDOUT EFFORTS.**

MSTV and NAB believe that the best way to ensure an orderly transition is to enable stations to determine the best way to allocate manpower, equipment, and other resources. We agree in large part with the Commission's proposals regarding a redirection of buildout efforts, but we disagree with proposals that would make it more difficult for stations to reach digital buildout goals.

**A. Further Investment in Pre-transition Channels Should Not Be Required.**

MSTV and NAB support the Commission's proposal to permit stations whose post-transition channel will be different from their pre-transition digital channel to decide not to invest further efforts in construction of interim facilities.<sup>33</sup> As to stations that have not built operational interim DTV facilities, we agree that such stations should be allowed to return their construction permits and obtain flash-cut approval. At this late stage in the transition, it does not make sense to require stations that have not yet been successful in building interim DTV facilities to continue to pursue those temporary facilities. However, MSTV and NAB support permitting stations to continue their interim buildout if they want to do so, and the Commission should encourage such efforts (as discussed in more detail below).

Similarly, MSTV and NAB support the Commission's proposal to permit stations whose post-transition channel will be different from their pre-transition digital channel and that have built operational DTV facilities either to continue operating these facilities (without further

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<sup>33</sup> See *NPRM* at ¶¶ 60 *et seq.*

construction), applying to modify their interim construction permit to conform to existing facilities, or to finish construction of their full, authorized interim DTV facilities.<sup>34</sup>

MSTV and NAB disagree with the FCC's proposal that stations choosing the latter option should be subject to more stringent extension criteria.<sup>35</sup> MSTV and NAB do not see any need to hinder stations' efforts to bring greater digital service to the viewing public prior to February 2009.

**B. The Commission Should Adopt Its New Flash Cut Proposal**

Consistent with the focus on building out a station's final facilities, MSTV and NAB support the Commission's new flash cut proposal.<sup>36</sup> Under this approach, a station moving to a different post-transition channel would be allowed to terminate digital service on its pre-transition (temporary) digital channel and then to "flash cut" to its final facilities on February 17, 2009.

As a general matter, stations will be reluctant to terminate their new digital services at time when they are trying to establish a digital audience. Nonetheless, there may be situations where, due to tower weight issues, or lack of space for a new transmitter, a station will have no option but to terminate its digital service in order to complete construction on its final digital channel.

With respect to this proposal, MSTV and NAB believe that the Commission need not need establish a complicated "factor test."<sup>37</sup> In deciding whether to take advantage of this

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<sup>34</sup> *See id.* at ¶ 66.

<sup>35</sup> *See id.* at ¶ 66 and ¶ 81.

<sup>36</sup> *See id.* at ¶ 66.

<sup>37</sup> *See id.* at ¶ 52 (discussing factors such as whether the station is affiliated with a "Big Four" network, whether the station's interim DTV channel is allotted to a different station for post-(continued...))

option, stations will be mindful of the desire to build its digital audience, and will take this route only when it is necessary to accomplish a successful transition to final DTV facilities.<sup>38</sup> We believe this option should be made available to stations during the last six months of the DTV transition, provided the station notifies the FCC within 15 days of termination. In short, the public interest is best served by allowing broadcasters and the Commission to focus their resources and attention on the transition, not on complicated tests and regulatory approvals.

**V. THE COMMISSION SHOULD PERMIT TRANSITIONS TO FINAL DTV FACILITIES AFTER FEBRUARY 2009 AND SHOULD NOT IMPOSE UNREASONABLE DEADLINES ON THE CONSTRUCTION OF THESE FINAL FACILITIES.**

**A. Construction Deadlines for Final DTV Facilities**

The deadlines for construction of final DTV facilities that the Commission has proposed in the *NPRM* may not be realistic for many stations. Broadcasters are eager to complete their final DTV facilities, and indeed it appears that more than 750 stations are already prepared to commence their final DTV operations.<sup>39</sup> Those stations whose post-transition channels are different from their pre-transition channels, however, have not yet been able to commence construction. Moreover, stations that are remaining on their interim digital channels may also be required to make adjustments to their plans based on the recent release of the Table. Stations may also face other challenges in reaching their final facilities. MSTV and NAB believe that the most significant of these hurdles is a shortage of equipment. There are other

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transition use, whether the station has an out-of-core interim DTV channel, and the station's financial hardship).

<sup>38</sup> See n.14, *supra*; see also *Reconsideration of First DTV Periodic* at ¶ 30 (noting that marketplace forces spur stations to increase their digital service).

<sup>39</sup> See *NPRM* at Appendix D.

technical challenges as well, such as those facing stations with side-mounted digital antennas.<sup>40</sup>

As noted previously, there are only a handful of tower rigging companies that are capable of doing “high tower” broadcast work, and this work cannot be performed in many areas during the winter.

Imposing a deadline that is not realistic for many stations will create a significant regulatory burden on the Commission and on television stations, as stations struggling to meet the deadline file requests for extension or waiver of the deadline.<sup>41</sup> Therefore, we urge the Commission to require that stations provide digital service to their communities of license by February 17, 2009, and to require that stations complete their final DTV facilities by February 17, 2010. MSTV and NAB’s proposed across-the-board deadlines take account of the real difficulties that stations may face in getting to their final facilities and will be much easier for the Commission to administer.<sup>42</sup>

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<sup>40</sup> Many stations with side-mounted digital antennas cannot simply flip the location of their analog and digital antennas; rather, they plan to install new digital antennas designed for top-mounting. These antennas cannot be installed until the analog antenna is removed from the top of the tower. Requiring stations to do this prior to the February 17, 2009 deadline would in most cases require a station to purchase a new “side mounted” analog antenna for just a few months, wasting valuable resources. The other alternative would be to force a termination in analog service. For stations in northern climates that can only build in the summer months, this disruption would happen months before the transition in February 2009. As noted above, the Commission should not require an early reduction or termination of analog service, which would be the practical effect of its proposed construction deadline in many cases.

<sup>41</sup> Specifically, eliminating the equipment shortage justification is particularly inappropriate at this time. Given the enormous anticipated demand for equipment and the relatively small number of manufacturers and installers, stations may face very real shortages. Similarly, the proposed financial requirements appear to be rather harsh. Stations should not have to file for bankruptcy in order to obtain an extension of time. Applying more stringent criteria to requests for extension of construction deadlines will have the counterproductive effect in some cases of discouraging build-out of digital facilities.

<sup>42</sup> This proposed rule does not contemplate a loss of existing digital service on a station’s final DTV channel; thus, stations already on their final digital channels should continue to operate at (continued...)

**B. One Year Post-Transition Digital Ramp-Up Period**

In order to facilitate the successful transition of all digital television stations, taking into account the real-world challenges resulting from a simultaneous, all-industry transition, MSTV and NAB believe that the Commission should establish a one-year period during which stations will be permitted to build up to their final facilities. During this one-year period, the FCC should protect stations to the greater of their allotment or authorized digital facilities.

As noted above, stations will have every incentive to maximize their digital service as quickly as possible. However, there may be situations where the additional one year period is needed. This is an extremely important option for local television stations. It will avoid problems associated with a possible equipment supply shortage that may occur as the industry rushes to meet the February 17, 2009 deadline. There are three circumstances where a longer period for digital ramp-up might be appropriate. First, there is the scenario where a station is not on its final DTV channel and wants to make a transition to its final facilities after February 2009 (thus it would need to stay on its interim channel while finishing its final DTV facilities). Second, there is the scenario where a station is on its final DTV channel but will not be able to commence full power operations until after February 2009. Third, there is the scenario where a station is not yet on its final DTV channel and plans to make its channel-change and initiate digital service on its final channel in February 2009, but will not have fully built out its

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their existing area and population, to the extent this exceeds their principal community. Six-month extensions of the final buildout deadline should be available in appropriate circumstances.

final facilities. In all three of these scenarios, it is appropriate for the Commission to give stations one year to complete their final facilities.<sup>43</sup>

With respect to the first scenario above – stations remaining on their interim channel while finishing their final DTV facilities – MSTV and NAB disagree with the Commission’s proposal that: (1) such stations serve at least the same area and population as that served by their existing analog and DTV service and (2) such stations not cause interference in excess of 0.5% to other stations.<sup>44</sup> It is in a station’s interest to provide as much coverage as possible, and MSTV and NAB believe that stations will attempt to serve as many viewers as they can (especially given that, after February 17, 2009, stations will not be able to reach viewers with an analog signal). That said, in many circumstances, avoiding more than 0.5% interference to other stations’ final facilities may prevent a station from serving the proposed minimum service area. Given that stations’ continued operations on their interim channels will be limited in time (*e.g.*, one year), the Commission should apply the interference requirement but dispense with the proposed coverage requirement.<sup>45</sup> This solution will facilitate stations’ transitions and will, in a year or less, lead to improved and maximized digital television service.<sup>46</sup>

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<sup>43</sup> During this year, the Commission should provide interference protection to stations’ Table of Allotment facilities. After that time, the Commission should protect a station’s authorized facilities (unless a station has filed an application for maximization, in which case, its proposed maximized facilities should be protected).

<sup>44</sup> *See NPRM* at ¶ 90.

<sup>45</sup> MSTV and NAB note that the Commission does not appear to address the interference protection standard that would apply between two stations that temporarily continue to operate on their interim DTV channels after February 17, 2009. The Commission should clarify that where two stations temporarily continue to operate on their interim DTV channels pursuant to this proposal, any existing interference between the two stations’ interim DTV facilities need not be considered. Rather, the 0.5% interference standard should be applied to interference caused to stations that are operating on their final DTV channels (and not to pre-existing interference (continued...))

**C. Special Temporary Authorizations (“STAs”)**

MSTV and NAB agree with the Commission that STAs to build less than full post-transition facilities can provide necessary flexibility for stations after the digital transition.<sup>47</sup> As discussed above, this solution would be appropriate for a station seeking to make a transition to its final digital channel after February 2009. In addition, this solution would be appropriate for stations that either are already on their final digital channel or that are prepared to move to their final digital channel by February 17, 2009 but will not be prepared to commence full power operations. In light of equipment shortages and other technical issues, however, it would not be appropriate to impose a requirement that stations seeking STAs serve at least the same area and population that receive their existing analog and digital service.<sup>48</sup> With digital service being their only means of reaching viewers after February 2009, broadcasters have every incentive to maximize their digital service, and imposing a premature coverage requirement may be counterproductive. Instead of imposing a stringent, regulatory coverage requirement, the Commission should permit STAs provided that stations serve their communities of license.

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caused to interim facilities of stations that also have chosen to transition off of their temporary channels after February 17, 2009).

<sup>46</sup> MSTV and NAB agree with the Commission’s proposal that stations make requests to operate on their in-core interim digital channels via an STA. In accordance with MSTV and NAB’s proposals with respect to construction deadlines, STAs for post-transition operation on in-core interim digital channels should be set to expire on February 17, 2010 (absent extension or waiver).

<sup>47</sup> See *NPRM* at ¶ 89.

<sup>48</sup> See *id.* at ¶ 89.

**VI. THE COMMISSION SHOULD STREAMLINE AND REVISE ITS PROPOSED PROCEDURES FOR PROCESSING CONSTRUCTION PERMITS, MAXIMIZATION APPLICATIONS, AND NEW ALLOTMENTS.**

**A. Construction Permits**

The Commission has proposed to expedite processing of an application for a construction permit for post-transition facilities provided that: (1) it does not seek expansion of a station's noise-limited service contour beyond that established by the DTV Table of Allotments; (2) it does not deviate more than 5% (with respect to predicted population) from the facilities specified in the Table; and (3) it is filed within 45 days of the effective date of Section 73.616.<sup>49</sup> Because stations are eager to commence construction of their final digital facilities as soon as possible, MSTV and NAB propose that the Commission broaden the criteria for expedited application processing.

First, MSTV and NAB urge the Commission to further streamline its procedures by implementing one-step licensing, whereby stations would obtain a license for their final DTV facilities without first having to obtain a construction permit. This approach would be especially appropriate where the station's proposed final facilities are identical to those facilities described in Table B. Section 319 of the Communications Act provides that the Commission may waive the construction permit requirement for broadcast stations for minor changes to authorized facilities.<sup>50</sup> The Commission has determined that stations seeking to build final DTV facilities are seeking minor modifications to their existing facilities.<sup>51</sup> Taking advantage of the one-step process, as permitted under Section 319, will ease the administrative burdens placed on both the

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<sup>49</sup> *See id.* at ¶ 94.

<sup>50</sup> *See* 47 U.S.C. § 319(d).

<sup>51</sup> *See NPRM* at n.182.

broadcast industry and the Commission and poses no risk to the Commission's processes. When construction is complete, stations could simply file a notice at the FCC to inform the Commission of that fact and to certify that construction has been completed in conformance with the license.

Second, the Commission should expedite applications for facilities that fall within the Table facilities even where a reduction in coverage exceeds 5% of the population coverage set forth in Table B. Five percent is simply too stringent a standard for many stations and may not take account of variances in antenna height, coordinates, and other technical factors. A rigid rule here will only serve to delay broadcasters in their efforts to move forward as quickly as possible with building their final digital facilities. As the Commission and stations enter the final eighteen months to the hard-date, it is imperative that the Commission not create rules that will delay this buildout. Therefore, where a station does not seek to exceed the coverage area set forth in the Table, it should be able to make a prompt start on building its facilities.

Third, the Commission should expedite applications for certain stations that propose to use their analog antennas for post-transition digital operations. This expedited processing will help to relieve the significant equipment shortage mentioned above. MSTV and NAB would support an interference showing with respect to such applications, but understand the Commission's position that interference showings may create unnecessary delays in processing applications.<sup>52</sup> As an alternative to an interference showing to be submitted with the application, the Commission should require stations to demonstrate only that their service contours would not exceed the contours established by their Table facilities by more than five

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<sup>52</sup> *See id.* at 94.

miles in any direction. Consistent with the proposals above, the Commission need not consider the extent to which the contours may provide less coverage than the Table facilities.<sup>53</sup> We believe that this 5 mile zone approach would give stations moving back to their analog channels the needed flexibility to take into account the variations in antenna patterns that may exist between their analog and digital operations. Absent this flexibility, stations may find it difficult to move back to their analog channels in a timely fashion. Expediting applications for stations that propose to use their analog antennas, with a contour rule as a proxy for an interference standard, will help to address the equipment shortage and thereby facilitate the transition to final DTV facilities for all stations. However, we do not advocate permanently setting aside interference considerations. Therefore, MSTV and NAB propose that stations seeking expedited processing under this rule be subject to a subsequent interference analysis (to be completed within, for example, eighteen months of the initial application). If necessary, stations would be required to modify their facilities so as to avoid causing excessive interference on a permanent basis to other stations' digital operations.

**B. Maximization Applications**

Broadcasters and the public are eager for maximized digital television service. The Commission has recognized that “stations may want to apply to expand their facilities to serve a larger area than defined in the new DTV Table Appendix B, as adopted,” and it has noted that the filing of early maximization applications can conserve station resources.<sup>54</sup> It is far more efficient for a station to purchase transmitters and other equipment that comport to its final

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<sup>53</sup> As noted above, the 95% coverage requirement should not apply. We note that, in order to meet the five-mile requirement with their analog antennas, stations may need to reduce power and therefore coverage.

<sup>54</sup> See *NPRM* at ¶ 98.

maximized facilitates as soon as possible. It is simply inefficient for a station to purchase some equipment now that meets the facility described in Table B, and then have to reorder new and different equipment after the transition date in order to maximize its service area. Stations understandably are inclined to defer expensive investments in antennas and other equipment until they are authorized to maximize. Nevertheless, the Commission has preliminarily decided not to accept maximization applications until it has completed processing of applications to build facilities authorized by the Table.<sup>55</sup> While MSTV and NAB would prefer that stations be able to maximize digital service as soon as possible, we respect the Commission's proposed schedule. The Commission should, however, establish a concrete date on which it will commence accepting maximization applications. This date should be as soon as possible, ideally before the February 17, 2009 transition date.<sup>56</sup>

**C. Interference Standards and Other Technical Proposals**

**1. Post-Transition Interference Standard**

MSTV and NAB agree with the Commission's proposed 0.5% interference standard for requests to modify post-transition facilities.<sup>57</sup> This standard appears to provide an appropriate amount of flexibility to stations seeking to modify or maximize their facilities, and it

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<sup>55</sup> See *NPRM* at ¶ 2 and ¶ 99.

<sup>56</sup> See Part III(A) above (proposing that stations complete their DTV facilities by February 17, 2010); see also *NPRM* at ¶ 100 (pointing to the importance of being able to “anticipate future equipment needs” and the ability to minimize “capital expenditures by buying equipment that can be used both now and in the future”).

<sup>57</sup> See *NPRM* at ¶ 104.

will be simpler to administer than the “2 percent/10 percent” rule (which requires consideration of the total amount of interference a station is receiving from all sources).<sup>58</sup>

MSTV and NAB also agree with the Commission’s proposal to use OET-69 methodology and 2000 census data to determine compliance with the 0.5% interference standard, and agree that it would be appropriate to establish a minimum cell-size so as to discourage “shopping” for advantageous cell sizes.<sup>59</sup> With respect to the adoption of variable D/U ratios for adjacent channel interference,<sup>60</sup> MSTV and NAB submit that this issue is best addressed in the distributed transmission system (“DTS”) proceeding.<sup>61</sup>

## **2. Proposed Revisions to the ATSC Standard**

MSTV and NAB agree that it is time to update the DTV transmission standard. The Commission, however, had not proposed the latest DTV standard. It proposes to adopt the ATSC’s DTV transmission standard A/53 Revision E, with Amendment 1 and Amendment 2 (“A/53-B”). MSTV and NAB recommend that the Commission update Section 73.682(d) to reflect the most recent version, which is A/53 Parts 1-6 (released in January 2007).<sup>62</sup> Indeed, we encourage the FCC to clarify that broadcasters may, upon ATSC standardization, immediately

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<sup>58</sup> The Commission has proposed that petitions to create new allotments will be subject to a geographic spacing requirement, while applications to construct facilities would be subject to the interference standard. The Commission must create and protect 175 new DTV allotments pursuant to the Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, § 1000(a)(9), 113 Stat. 1536 (1999); *see* 47 U.S.C. § 336(f)(6)(B). MSTV and NAB propose that all new allotments be evaluated under the 0.5% interference standard (at the minimum facilities for full-service digital television stations).

<sup>59</sup> *See NPRM* at ¶ 109.

<sup>60</sup> *See id.* at ¶ 110.

<sup>61</sup> *See Digital Television Distributed Transmission System Technologies*, MB Dkt. No. 05-312, Clarification Order and Notice of Proposed Rulemaking, 20 FCC Rcd 17797 (2005).

<sup>62</sup> *Available at* <http://www.atsc.org/standards/a53.html>.

begin use of any new technologies that do not cause harmful interference. Further, given the rate of change of technology and to encourage innovation, the FCC should establish a framework to enable broadcasters to begin using any new technology that they certify neither changes the nature of the emitted spectrum nor introduces any new interference or radiation characteristics nor impacts their ability to deliver the FCC-required television service, without having to apply for and obtain an experimental license.

Similarly, MSTV and NAB agree with the proposal to adopt the revised standard (A/65-C) for Program System and Information Protocol (“PSIP”). With respect to the Commission’s query regarding whether it should require broadcasters to provide Active Format Description (“AFD”) and bar data,<sup>63</sup> MSTV and NAB submit that it would be premature to mandate use of AFD and bar data, especially in light of the fact that the SMPTE standard has only recently been completed.

## **VII. THE FCC SHOULD MANDATE AND MONITOR A BROADCASTER-MVPD COORDINATION EFFORT.**

MSTV and NAB agree that it will be critical for broadcasters and MVPDs to coordinate in order to ensure a smooth transition for the viewing public.<sup>64</sup> The Commission has emphasized the importance of MVPD preparedness for the transition, observing that if MVPDs have “have problems receiving and retransmitting digital signals when analog signals are turned off, that could have a significant adverse impact on the digital transition.”<sup>65</sup> It has further noted that “the ultimate goal of Congress is that every customer should enjoy the benefits of the digital

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<sup>63</sup> See *NPRM* at ¶ 116.

<sup>64</sup> See *id.* at ¶ 124.

<sup>65</sup> *Id.*

transition. That is, [the Commission's] policies should advance the goal of transitioning all consumers—including cable consumers—to digital.”<sup>66</sup> MVPDs must ensure that they are prepared to receive and process digital signals well in advance of the statutory cut-off of analog television. For example, there may be situations where a local cable headend currently receives only analog signals from one or more broadcasters. On the night of February 17, 2009, cable headends must be able to receive and process stations on these DTV channels. MVPDs also must be prepared to meet their obligations with respect to the prohibition on material degradation of signals and with respect to continued service to both analog and digital viewers.<sup>67</sup> There must be a thorough review of all MVPDs' technical capabilities to receive and process digital broadcast signals. As broadcasters transition to their final DTV facilities, they will need to easily reach and coordinate with MVPDs with respect to these changes. In order to facilitate this coordination, the Commission should require MVPDs to register their headends with the FCC and to provide contact information (including a telephone number).<sup>68</sup> In addition, the Commission should require MVPDs to provide a status report on their preparedness for the transition by December 2007 (along the lines of the proposed FCC Form 387). These efforts, in addition to consumer education, will be critical to ensuring that the public experiences a smooth, seamless transition.

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<sup>66</sup> See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Dkt. No. 98-120, Second Further Notice of Proposed Rulemaking, at ¶ 18, FCC 07-71 (May 4, 2007).

<sup>67</sup> See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Dkt. No. 98-120, Comments of NAB and MSTV (July 16, 2007).

<sup>68</sup> The Media Bureau's list of registered cable communities may provide a useful template for this information.

### VIII. INTERNATIONAL COORDINATION.

The FCC stated that, with reference to stations remaining on their current, in-core channels, some stations may have pending applications with unresolved international coordination issues.<sup>69</sup> It has instructed licensees in this category to consult with FCC staff about the timing for action on their applications and to coordinate with the staff regarding necessary modifications to applications to get international approval. The FCC stated that these stations may need to proceed with constructing authorized facilities “to the extent approved by Canada or Mexico if the issues delaying action on their applications cannot be resolved in time to allow construction to be completed before the end of the transition.”<sup>70</sup> Indeed, in its most recent order establishing the final DTV Table of Allotments, the FCC listed more than 240 stations in border zones that must file post-transition applications.<sup>71</sup> At this point, many stations have been forced to build less than full facilities because of cross-border interference issues. Unfortunately, attempts to resolve many of these situations have met with only marginal success.

Unless resolved, American citizens may be denied access to over-the-air digital television because of unclear and uncertain international issues with Mexico and Canada. International coordination is extremely important to the successful completion of the digital television transition in the United States. While we appreciate the Commission’s efforts on this complex issue, more needs to be done. We urge the Commission to use not only its own resources, but also to engage the Administration and the State Department to resolve these critical international issues.

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<sup>69</sup> See *NPRM* at ¶ 23.

<sup>70</sup> *Id.*

<sup>71</sup> See *Seventh R&O* at Appendix D-4.

