

**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
Attention: The Commission

COMMENTS OF UNITED COMMUNICATIONS CORPORATION

United Communications Corporation (“United”), by counsel, hereby submits these Comments in response to the *Notice of Proposed Rulemaking* (the “NPRM”) in the captioned Third Periodic Review.¹ It is appropriate that the Commission is pausing at this time to evaluate the progress of the transition to digital television broadcasting. In the course of an undertaking like the digital transition, the participants’ initial understanding of the effect of certain procedures on service to the public may prove to have been imperfect. As the process unfolds, the unintended consequences of past steps become evident, along with the appropriate solution. The Commission may wisely seize this opportunity to authorize course corrections where the result will serve the public interest better than an undue reliance on earlier choices that in hindsight now appear erroneous.

At various points in the NPRM, the FCC seeks comment on, among other concerns, ways to minimize losses in service that may be occasioned by the transition. As dis-

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

cussed below, United is extremely concerned that critical service to underserved areas will be permanently eliminated as a function of confusion about an interim step in the transition. In addition, as another aspect of the over-arching goal of optimizing service, the Commission wishes to explore the possibility of allowing licensees to maintain digital operations temporarily on their pre-transition DTV channel assignments after February 17, 2009, to smooth the eventual transition to operations on their former analog channel that has been elected as the permanent post-transition DTV channel.²

As a separate matter, the Commission recognizes that where requests for Canadian approval of current DTV channel assignments are still pending, adjustments are possible in connection with the international coordination process. In that sense, specification of the facilities listed in the current DTV table should not, as to stations located near the border, be considered final. This is particularly important given that the DTV Table facilities designated for United's stations in New York and Minnesota will reduce coverage to a level dramatically inferior as compared with these station's historic service areas. Notably, limiting United to those facilities would deprive thousands of viewers of their only effective commercial television service.

Accordingly, we address in these comments the issue of the impending loss of service to large numbers of viewers who have no source other than United for local news coverage and emergency information. Admittedly, this issue is also appropriate in the context of reconsideration of the just-released DTV Table Order. However, a Petition for

² *Id.* at ¶90.

Reconsideration of the DTV Table Order is not yet timely, and time is of the essence here in light of the lead times required to secure equipment and arrange for installation. Nevertheless, we set it before the Commission here in the hope that expedited treatment pursuant to this proceeding will provide the surest path to achieve an equitable and timely solution to prevent significant service loss.

We regret that due to miscommunication with the FCC staff, United understood that the staff would not welcome comments requesting the relief we seek here prior to the release of the DTV Table. Thus, we apologize for any inconvenience that the timing of this request may cause. Notwithstanding any such inconvenience, the lodestar consideration in such decisions must be the interest of the public. Due to the underserved nature of the areas involved, it is unquestionably in the best interest of viewers in the affected markets for the FCC to permit United's stations in Carthage (Watertown), New York and Mankato, Minnesota to change their DTV elections from "maximization" to "replication."

In these Comments, United will show that it is possible for the FCC in this proceeding to fulfill Congressional objectives relating to the transition to digital television while permitting stations faced with massive and unanticipated loss of service area under a "maximization" election to change that election to "replication." As a stopgap, albeit an unsatisfactory and inadequate one, until this authority is granted, it may be necessary for United and licensees in similar circumstances to continue digital operations on their current channel assignment notwithstanding plans to use the channel currently allocated for their analog operations as their permanent digital assignment. It may also be necessary to

make certain allowances for stations facing delays in Canadian approval of their DTV Table assignments.

Background

United Communications Corporation is the licensee of small market television stations KEYC-TV, Mankato, Minnesota and WWNY-TV, Carthage, New York. Although these stations operate in two of the smallest television markets in the country, the stations are noted for their commitment to local service. WWNY-TV, for example, employs a staff of 63 individuals. Its audience ratings are some of the highest in the nation. These are driven largely by its superior local news operation. The station has won awards from such groups as the New York State Broadcasters Association and the Syracuse Press Club. . There is only one other commercial station in the market, and it operates more or less as a satellite of a Syracuse station. Due to the size of the market, WWNY-TV's sole competitor is unable to sustain a complete local news operation. Thus, viewers rely solely on WWNY-TV for emergency information and other local news.

In these times, with numerous viewing choices available through cable television, satellite and other means, it is virtually unheard of for a television station to enjoy anything like a 56 share of the potential audience during its local news, but that is what Nielsen reports for WWNY-TV. In part, this also reflects that large rural sections of WWNY-TV's viewing area do not have access to cable television.

United's Minnesota operations receive similarly high ratings and have been similarly honored. To this day, KEYC-TV there is viewed far more than any other signal,

even though a plethora of viewing choices are available to the Mankato-St. James area via cable, translators and satellite.

United has achieved such viewer loyalty as the result of United's commitment to local service. The company's recognition that United is the only entity producing local television news in the Watertown and Mankato DMAs has impressed it with a sense of duty to deliver the best product possible. The public has responded to that commitment and to the resulting performance of the stations.

In the Watertown-Carthage, New York Designated Market Area, United is the licensee of the local CBS affiliate, WWNY-TV, and its digital counterpart WWNY-DT. KEYC-TV/DT likewise broadcasts CBS programming in south central Minnesota, an area without any other full power television station.

Problem Posed by Digital Transition

In each market, the stations' analog broadcast transmitting antennae occupy the top spot on their respective towers. Accordingly, United built out digital transmitting facilities for the transition using side-mounted antennae. Despite certain unanticipated equipment difficulties, United succeeded at an early date in making digital broadcasts available to its markets. At all times, it expected that the eventual permanent digital antenna installations would take over the top position on the two towers, thus maximizing coverage in all directions.

When it came time to choose between "maximization" or "replication," United understood that an election to "maximize" would allow it to maximize service with its eventual omnidirectional digital operations. It did not imagine that "maximize" would really

be construed to mean “minimize.” Yet that is what has happened. Its digital authorizations have been limited by the constricting effect of the tower face not only now, during the transition. The interpretation of “maximization” as applying only to the envelope generated by the side-mounted interim digital operation means that going forward, absent the ability to modify the election, service will be severely compromised post transition even though the top position will be available to each station then.

This would not be as significant as it is but for the fact that viewers in the “loss” area have few to no other viewing options, and none that will provide them with effective local news coverage. The WWNY-DT antenna has been mounted on the south face of the tower. This facilitates coverage into the station’s city of license, but the tower face impedes coverage into the northern sections of the market. At best, only one other U.S. commercial station serves that area.

Currently, the population within the Channel 7 analog service contour of WWNY-TV is 289,781. Converting to a “maximized” directional digital operation per the DTV Table, WWNY-DT would only be able to reach 214,823 people, ***a loss of almost 75,000 people, more than 25% of the station’s current potential audience.***

It is not as though this limitation has benefited any other station or the subject population. The looming retraction in coverage is to the north and west of the tower site, yet the FCC has authorized no television stations in those directions whatsoever.

Substantially all of the losses can be avoided if WWNY-DT is permitted to replicate. An omnidirectional digital channel 7 operation carrying over the analog Grade B coverage as nearly as possible would reach 284,454 people. (This is without considering

DTV interference. However, such interference is roughly the same under either option because the areas where interference is predicted are in the opposite direction from the loss area.)

By the same token, KEYC-DT has been forced to limit service to the west of its tower due to the side-mounting of its interim pre-transition digital antenna and the need to provide for an unimpeded path to its city of license, Mankato. However, it is to the west, north and south of the station's antenna that coverage from other stations is slim to non-existent. (In all or part of ten counties, eight in Minnesota and two in Iowa, KEYC-TV currently provides the only full power over the air television service.) Consequently, it is critically important that KEYC-DT be allowed to maximize service to the public post-transition, by replicating as nearly as possible the coverage of the present omnidirectional analog facility of KEYC-TV.

Without such relief, many of the 407,455 people currently residing within the Grade B contour of KEYC-TV will lose service. The Grade B contour of the "maximized" digital facility projected by the DTV Table would encompass only 356,120 people, ***a loss of more than 51,000 people, or almost 13% of the station's present coverage.***

As with WWNY-DT, it does not appear that allowing KEYC-DT to convert to a permanent omnidirectional pattern on Channel 12 (thereby optimizing service to the public) will affect any other station or population adversely.

The Commission has long recognized that a loss in service is *prima facie* contrary to the public interest. In this regard, United salutes the concerns expressed in the NPRM about losses in analog service during the final phase of the shift to digital. (See NPRM at

paragraphs 43 through 45, and especially note 86.) Importantly, the Commission has recognized there that a service loss assumes additional gravity where those affected would receive fewer than five full power over the air signals. Consequently, the “white” and “gray” areas that will be created if United is not allowed to replicate the service of its omnidirectional analog antennae present a disaster for those affected.

For instance, southern Minnesota and northern Iowa are particularly prone to tornadoes and other natural disasters. The timely warnings and other information provided by KEYC-TV has saved many lives in the past. KEYC-DT will be able to save additional lives in the future if it is allowed to replicate the current analog coverage. It makes no sense that life and property should be placed at risk merely because United misunderstood the counterintuitive implications of the term “maximization” as used by the FCC, and elected to “maximize” without realizing that that really meant “minimize.”

Likewise, northern New York frequently receives incredible amounts of snow due to localized “lake effect” phenomena. WWNY-TV has long served as the authoritative local source for emergency information such as power outages, road closings and other developments occasioned by the region’s extreme weather. To deprive some 75,000 people of that service post-transition merely because the wrong box was checked on an FCC form would amount to a miscarriage of administrative decision-making.

Use of Pre-Transition Channel after February, 2009

As an interim expedient, there may be some merit to allowing United to continue to operate with its UHF transition channels after the February date for termination of analog service. The only party seeking to use Channel 35 in the Carthage-Watertown area post

transition is United itself, and it can wait if need be. However, United believes that for a variety of reasons, including propagation phenomena and longstanding viewing habits, the superior solution is to permit use of the permanent VHF channels on an omnidirectional basis from February 2009 forward. Considering the lead time required to order equipment and arrange for installation, it is urgent that the Commission clarify United's ability to operate on the VHF channels in the nondirectional mode, replicating current service, as soon as possible

Conclusion

For the foregoing reasons, the FCC should allow United to modify its election and replicate service to the affected regions.

Respectfully submitted

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