

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF MSTV AND NAB**

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## EXECUTIVE SUMMARY

The Association for Maximum Service Television, Inc. (“MSTV”) and the National Association of Broadcasters (“NAB”), along with more than 100 other commenters, have encouraged the Commission to focus its efforts on adopting flexible policies for successfully concluding the digital transition. MSTV and NAB urged the Commission to adopt procedures that are straightforward, efficient, and flexible enough to allow broadcasters to complete the transition expeditiously and to accommodate the varied and substantial challenges faced by broadcasters in completing the digital transition without unnecessarily burdening Commission resources.

In these Reply Comments, we urge the Commission to adopt rules and policies that are consistent with these principles and describe the widespread support for the approaches detailed in our initial comments. Among other important issues, MSTV and NAB encourage the Commission to adopt flexible policies in these areas:

- **Analog Shut-Off**
  - *Reduction in Service.* While most stations will wish to continue their analog service until February 17, 2009, the Commission should provide flexibility for those situations in which a station must reduce or discontinue analog service before that date. The Commission should therefore allow broadcasters to reduce analog service on all channels beginning February 17, 2008, with notice to the FCC within 15 days thereafter.
  - *Termination of Service.* For similar reasons, the Commission should allow stations to discontinue analog service beginning August 17, 2008, with notice to the FCC within 15 days thereafter.
- **Construction of Post-Transition Facilities**
  - *Early Transition.* Subject to interference limitations, stations should be permitted to transition to final DTV channels six months before February 17, 2009.
  - *Redirection of Build-Out Efforts.* In order to focus effort on final DTV service, stations should be permitted – but not required – to discontinue construction of interim DTV facilities.
  - *Early Termination of Interim Service.* Stations should also be permitted to terminate interim DTV service in order to focus resources on formal DTV channels.

- *Digital Ramp-Up.* In order to provide flexibility for the challenges stations will face in transitioning to final digital facilities, the Commission should permit stations to operate with less than final DTV facilities for the twelve months following February 2009.
- **Authorization Procedures**
  - *One-Step Licensing.* The Commission should adopt a one-step licensing procedure, whereby stations could apply for a license for final DTV facilities without first needing to obtain a construction permit. This approach is particularly appropriate for stations constructing facilities consistent with the DTV Table of Allotments.
  - *Expedited Review.* The criteria for expedited review of authorization applications should be expanded to include (1) applications for facilities that fall within DTV Table contours, without regard to population served; and (2) applications seeking permission to use analog antennas for post-transition digital operations, where the service area would not exceed DTV Table contours by more than five miles in any direction.
  - *Maximization.* The Commission should accept and process maximization applications as promptly as possible to facilitate stations' ability to plain their final DTV service.
  - *Interference.* The Commission should adopt a 0.5% interference standard for modifications, but should use the Table facilities as a baseline in order to ensure that broadcasters have sufficient flexibility to adjust their final DTV facilities.
- **Coordination**
  - *International Coordination.* Resolving the remaining international coordination issues should be a top priority receiving the full support of the United States Government.
  - *MVPD Coordination.* The Commission should require MVPDs to certify that they are prepared to receive and retransmit post-transition digital broadcast signals. The Commission should monitor MVPDs' compliance to ensure that the public experiences no service disruptions.

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**REPLY COMMENTS OF MSTV AND NAB**

**INTRODUCTION**

The Commission has received comments from more than one hundred broadcasters, engineering firms, industry groups, and others, all of whom expressed support for the Commission's pivotal efforts in this proceeding to establish procedures for the close of the digital television transition.<sup>1</sup> Along with many of these commenters, the Association for Maximum Service Television, Inc. ("MSTV")<sup>2</sup> and the National Association of Broadcasters ("NAB")<sup>3</sup> encouraged the Commission to focus its efforts on achieving a successful digital transition in accordance with the statutory requirement to discontinue analog television service by February 17, 2009. In support of that endeavor, MSTV and NAB urged the Commission to adopt procedures that are efficient enough to

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

<sup>2</sup> MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

<sup>3</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 and other federal agencies, and the Courts.

allow licensees to move forward with construction of post-transition facilities in a timely manner and flexible enough to accommodate the varied and substantial challenges faced by broadcasters in completing the digital transition. Most importantly, given the complexity of the issues facing the Commission and the industry, MSTV and NAB favored straightforward transitional procedures that reduce uncertainty and that, to the greatest extent possible, reduce the case-by-case implementation burden on Commission staff.

In our comments, we offered the following specific proposals 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.

*Early Termination of Interim Service:* 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 channels.

### **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 limit increases in interference from modifications to 0.5%, but should use the Table facilities as a baseline in order to ensure that broadcasters have flexibility to adjust their final DTV facilities.

*New Allotments:* Proposals for new DTV Allotments 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 they are technically capable of receiving and processing digital broadcast signals. The FCC should monitor MVPD compliance to avoid service disruptions.

*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 should make international coordination a high priority and should 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 A/65C). At this time, the FCC should refrain from requiring Active Format Description (“AFD”).

In these Reply Comments, MSTV and NAB describe the widespread support that our proposed rules and policies have received from commenters. We urge the Commission to adopt our proposals in order to provide broadcasters with the necessary flexibility to complete digital construction and successfully transition to final DTV facilities.

**I. COMMENTERS ENCOURAGED THE COMMISSION TO FOCUS ITS EFFORTS ON ANALOG SHUT-OFF.**

Congress has directed that all analog television transmissions must be discontinued by February 17, 2009, the rapidly-approaching “hard date,” so that the analog spectrum can be reclaimed for digital television and other uses.<sup>4</sup> Even as broadcasters work to prepare for post-transition digital television service, MSTV and NAB encouraged the Commission to craft easy-to-administer, bright-line rules permitting stations to begin winding down analog service.<sup>5</sup> In particular, while we expect that most stations will wish to continue their analog service until the hard date, there may be situations in which a station must reduce or discontinue analog service before that date in order to facilitate construction of its final digital facilities or to account for weather or equipment challenges. To accommodate these stations, we proposed that the Commission allow broadcasters to reduce analog service on all channels beginning February 17, 2008 and to discontinue such service beginning August 17, 2008, with notice to the FCC within 15 days thereafter.<sup>6</sup>

Commenters strongly supported this sort of flexible approach to analog shut-off because it would give broadcasters, where necessary, discretion to reduce or terminate analog service in the months preceding the hard date.<sup>7</sup> There was support for MSTV and NAB’s position that broadcasters should be able to make these decisions without the need for prior approval or the application of a complicated multi-prong test.

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<sup>4</sup> Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4, tit. III (2006).

<sup>5</sup> MSTV/NAB Comments at 8.

<sup>6</sup> MSTV/NAB Comments at 9-12.

<sup>7</sup> *See, e.g.*, Harris Corp. Comments at 3-4; Hoak Media Comments at 3-6; APTS/PBS Comments at 14-16.

Like MSTV and NAB, many commenters found the Commission's proposed multi-prong test to be overly restrictive or unworkable or urged the Commission to establish a bright-line rule for when stations could transition early.<sup>8</sup> Although some accepted the NPRM's concept of a "rebuttable presumption" in favor of permission to reduce or terminate analog service, commenters frequently encouraged the Commission to establish a date in advance of the hard date after which no permission would be required.<sup>9</sup>

In its comments, Tribune observed that most stations' pre-transition economic support overwhelmingly comes from analog, not digital, service. Therefore, stations will only reduce analog power as much as is absolutely necessary to support digital build-out.<sup>10</sup> By February 2009, every full-power station must abandon analog service, and the myriad challenges facing broadcasters before that date put individual stations in the best position to determine if reducing or discontinuing analog service shortly in advance of the hard date would best serve their communities. The Commission simply does not have sufficient resources to consider every analog request – even without

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<sup>8</sup> See, e.g., Tribune Comments at 21-23 (proposing power reduction of up to 50% with subsequent notice to FCC); LeSEA Comments at 7 (proposing power reduction of up to 50% with subsequent notice to FCC for stations unaffiliated with the four major networks); Disney Comments at 2 (explaining that the multi-prong test proposed in the NPRM is overly restrictive); Quincy Newspapers Comments at 2 (proposing a simple bright-line test to accommodate stations that may not satisfy each prong of the proposed test).

<sup>9</sup> See, e.g., APTS/PBS Comments at 17-18 (supporting the "rebuttable presumption" concept, but proposing that the Commission set a date after which stations can freely reduce or terminate); Tribune Comments at 21-23 (urging the Commission to permit stations to reduce power by up to 50% without prior permission after February 17, 2008); Christian Television Network Comments at 7 (encouraging the Commission to allow licensees to discontinue analog service six months before the hard date without prior permission, but with subsequent notice to the FCC).

<sup>10</sup> See Tribune Comments at 21.

the multi-prong test proposed in the NPRM – on the timely basis necessary to ensure that broadcasters’ efforts to complete digital build-out are not impeded.<sup>11</sup> Broadcasters should be given discretion to schedule analog service reduction and shutdown in a manner that is appropriate for their circumstances and their communities, and, as the record makes clear, they have every economic incentive to exercise that discretion soundly.

**II. THE COMMENTS REFLECT THE CRITICAL NEED FOR FLEXIBILITY AND EFFICIENCY WITH RESPECT TO CONSTRUCTION OF POST-TRANSITION FACILITIES.**

The transition’s ultimate aim is the establishment of a robust digital television service. As the comments make clear, however, each station faces unique and idiosyncratic challenges in its effort to pursue that goal. Moreover, broadcasters and the Commission have much work to do in the short time before the transition closes. If the transition is to be successful, a streamlined and flexible approach to digital build-out is essential.

**A. The Commission Should Permit Stations to Transition to Final Facilities Before February 2009.**

Broadcasters will face unique and often unpredictable challenges as they construct their final DTV facilities. As a result, MSTV and NAB urged the Commission to adopt flexible transitional policies that will, over the months preceding and following the hard date, allow licensees to complete digital construction safely, effectively, and efficiently. In this regard, MSTV and NAB encouraged the Commission to allow stations to transition to their final DTV channels six months before the hard date if, during this

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<sup>11</sup> *See id.*

period, they would cause no more than 2% interference to existing analog stations and no more than 0.5% interference to digital operations.<sup>12</sup>

Commenters agreed that the public interest would be served by granting broadcasters flexibility to transition to digital early, consistent with interference concerns. The Association of Public Television Stations and the Public Television Service observed, for example, that the flexibility to transition early “will be integral for stations whose movement is dependent on, or will affect, the movement of other stations” and urged the Commission to allow stations to adopt the transition timelines that would best serve their communities.<sup>13</sup> Harris Corporation agreed, noting, “Early transitions could advance the transition by freeing the transition resources for those stations building later as well as ensure equipment manufacturers are not unduly stressed by last-minute orders.”<sup>14</sup>

**B. The Commission Should Allow Broadcasters to Redirect Build-Out Efforts.**

Broadcasters that have been constructing and operating interim DTV facilities for use in the transition are now turning their attention to construction of the facilities that they will use after the close of the transition. In our initial comments, MSTV and NAB supported the Commission’s proposal not to require stations to continue building interim DTV facilities that they plan to abandon in a matter of months.<sup>15</sup> At the

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<sup>12</sup> MSTV/NAB Comments at 14-16.

<sup>13</sup> APTS/PBS Comments at 20-21.

<sup>14</sup> Harris Corp. Comments at 4. *See also* KJLA Comments at 1-3.

<sup>15</sup> MSTV/NAB Comments at 18-19.

same time, stations that wish to complete construction of their interim facilities should not be deterred from doing so.<sup>16</sup>

Other commenters supported this approach, which would reduce the complexity of the construction process appreciably by not requiring stations to continue building the interim DTV facilities that they plan to abandon in a matter of months. CBS argued that “stations that will be moving to a new post-transition channel should not, at this point, be required to expend further resources on the construction of facilities that will, at most, be used for another eighteen months.”<sup>17</sup> Mid-South Public Communications Foundation agreed, explaining that it should not be required to construct interim facilities on an out-of-core channel simply to return to its current analog channel for post-transition digital operations only a year later.<sup>18</sup> Thunder Bay Broadcasting Corporation likewise urged the Commission not to require its small-market station to continue construction on its interim DTV channel before returning to its analog channel at the close of the transition.<sup>19</sup>

MSTV and NAB also urged the Commission to provide discretion to stations that wish to discontinue digital operations prior to the transition date. Specifically, we proposed that stations should be permitted to discontinue digital operations during the six months prior to February 17, 2009, with subsequent notice to the Commission. This flexibility will facilitate the prompt initiation of service on final DTV channels. For example, a station may need to terminate interim DTV service early

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<sup>16</sup> MSTV/NAB Comments at 18.

<sup>17</sup> CBS Comments at 5.

<sup>18</sup> Mid-South Public Comms. Foundation Comments at 5.

<sup>19</sup> Thunder Bay Comments at 2-4.

in order to have final DTV facilities ready for operation on February 17, 2009. This flexibility is particularly important for stations that have out-of-core interim channels and can therefore not take advantage of the flexibility urged by MSTV and NAB to transition to their final channels after the hard date.<sup>20</sup>

**C. The Commission Should Permit Stations to Transition to Final Facilities After February 2009.**

While the Commission has indicated that more than 750 stations are prepared or nearly prepared to commence final DTV operations<sup>21</sup> and many more will have completed construction by February 2009, MSTV and NAB noted in our comments that stations that are switching channels at the end of the transition have not yet been able to commence construction of their final facilities.<sup>22</sup> Likewise, stations that are already operating on their final DTV channels may still need to make adjustments based on the recently released Table of Allotments or for other reasons, such as relocating from a side-mount to a top-mount position on a tower.<sup>23</sup> Stations that have not completed construction will face numerous challenges, not the least of which are the demands that will be placed on equipment suppliers and qualified technicians in the days leading up to the hard date.<sup>24</sup> To account for these difficulties, MSTV and NAB urged the Commission adopt a more realistic and flexible approach to construction deadlines. Specifically, we proposed that stations that are providing digital service to their communities of license

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<sup>20</sup> See Norwell Comments at 2-5.

<sup>21</sup> See *NPRM* at Apx. D.

<sup>22</sup> MSTV/NAB Comments at 20.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

should be permitted to operate with less than their final facilities for 12 months following February 2009.<sup>25</sup>

The record reflects substantial support for our proposal from broadcasters who anticipate challenges in their efforts to construct final facilities.<sup>26</sup> Most commenters agreed with MSTV and NAB that providing a flexible period after the hard date to complete digital construction would allow these stations to serve as much of their service areas as possible while continuing final construction.<sup>27</sup> While many broadcasters will be ready to operate final DTV facilities on February 17, 2009, other stations will require additional flexibility. A broad rule giving stations discretion to ramp up their digital facilities would provide the necessary latitude while avoiding an increased burden on the Commission in the days before the hard date to consider individual extension and waiver requests.<sup>28</sup>

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<sup>25</sup> MSTV/NAB Comments at 22-23.

<sup>26</sup> *See, e.g.*, Scripps Comments, Engineering Statement at 1-2; Quincy Newspapers at 4-5; Gray Television Comments at 3 (“Many stations need to uninstall old equipment, receive new equipment or reconfigure existing equipment, and then install equipment in its post-transition configuration. Depending on the availability of tower crews, engineers, and other skilled technical workers, this process could take a few weeks or several months.”).

<sup>27</sup> *See, e.g.*, AFCCE Comments at 2-3 (proposing flexible build-out requirements after February 17, 2009); St. Louis PTV Comments at 4-6; Tribune Comments at 10-12; Univision Comments at 22-24; Quincy Newspapers Comments at 5.

<sup>28</sup> We note that a number of broadcasters operating digital facilities on their final DTV channels filed comments indicating that their currently authorized facilities deviate in certain respects from the precise facilities specified in Table B. Where such stations wish to remain on their authorized facilities rather than modify them to match Table B, they should be permitted to do so, provided that no impermissible interference is caused.

**III. COMMENTERS SUPPORTED STREAMLINED PROCEDURES FOR PROCESSING CONSTRUCTION PERMITS AND MAXIMIZATION APPLICATIONS.**

The procedures described in the NPRM would together require broadcasters to navigate a complex, multi-step process before they can construct final DTV facilities. Each of those steps would impose additional delays and uncertainty for broadcasters and create additional workload for the Commission's staff. Where possible, MSTV and NAB have proposed procedures that would reduce those burdens while providing needed flexibility for broadcasters completing digital construction, and commenters have supported that approach.

**A. The Commission Should Adopt a One-Step Construction Licensing Process.**

In order to promote certainty and allow broadcasters to begin construction of their final digital facilities quickly, MSTV and NAB urged the Commission to implement the one-step licensing procedure authorized by Section 319 of the Communications Act, whereby stations would obtain a license for their final DTV facilities without first having to obtain a construction permit.<sup>29</sup> While this approach would create important efficiencies in every case, it is particularly appropriate for stations seeking to construct facilities consistent with Table B.<sup>30</sup>

Commenters agreed with the MSTV/NAB proposal to eliminate the construction permit application step, noting in particular that the Commission has already reviewed and approved Table B facilities, and that a construction permit application in those cases would therefore create an unwarranted ministerial obligation on Commission

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<sup>29</sup> MSTV/NAB Comments at 25.

<sup>30</sup> See MSTV/NAB Comments at 25.

staff while simultaneously delaying final construction.<sup>31</sup> For example, Norwell Television explained that, “by eliminating this unnecessary step the Commission could shorten by weeks or months the delays already being experienced by stations [before being able] to order equipment.”<sup>32</sup> At the same time, adopting this one-step process will free Commission staff to consider more complex issues presented by the digital transition.

**B. Authorizations Should Be Granted on an Expedited Basis.**

In the NPRM, the Commission proposed to consider certain authorization requests on an expedited basis.<sup>33</sup> Whether the Commission grants authorizations using a one-step or multi-step process, expedited review is critical to ensuring that broadcasters are able to make plans to complete construction on a timely basis. In our comments, MSTV and NAB urged the Commission to expand its standards for expedited review by (1) expediting applications for facilities that fall within Table B contours, even if less than 95% of the Table B population would be served; and (2) expediting applications for stations that propose to use analog antennas for post-transition digital operations, where the service area would not exceed Table B contours by more than five miles in any direction.<sup>34</sup>

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<sup>31</sup> See Norwell Television Comments at 5.

<sup>32</sup> *Id.*

<sup>33</sup> NPRM at ¶ 94.

<sup>34</sup> MSTV/NAB Comments at 26. Given the shortage of staff resources and the number of requests the staff will be required to consider, MSTV and NAB proposed that interference analysis not be performed at this time, but that such studies should take place within 18 months after the transition date.

Commenters broadly supported the concept of expedited handling of modification requests.<sup>35</sup> Expedited processing of applications, commenters explained, is critical to allowing stations to construct digital facilities in a timely manner and to have sufficient time before their construction deadlines to place the necessary equipment orders.<sup>36</sup> Commenters also supported expanding the categories of applications that could receive the expedited processing<sup>37</sup> and noted that stations returning to their analog channels warrant particular attention.<sup>38</sup>

**C. The Commission Should Quickly Accept and Process Maximization Applications.**

As the close of the transition grows closer, stations are preparing to place orders for the equipment they will need to construct final DTV facilities. In doing so, MSTV and NAB explained that broadcasters are facing a difficult choice: whether to spend only the money necessary to construct presently authorized DTV facilities, or to invest in more expensive equipment that could be used for maximized operation.<sup>39</sup>

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<sup>35</sup> See APTS/PBS Comments at 19.

<sup>36</sup> See LeSEA Comments at 2-3.

<sup>37</sup> See, e.g., Meredith Comments at 3-4 (arguing for elimination of the requirement that stations may not deviate more than five percent from Table B population, and seeking permission to expand beyond Table B facilities); Hubbard Broadcasting Comments at 3 (proposing new flexible waiver policy for proposals that would create new interference no greater than 0.5% and serve at least 95% of Table B population).

<sup>38</sup> See, e.g., Tribune Broadcasting Comments at 8-10 (urging the Commission to allow these stations to file modification applications immediately); CBS Comments at 8-9 (encouraging the Commission to allow these stations to apply for expanded facilities); Univision Comments at 12-22 (arguing that stations returning to analog channels and using analog or multi-station antennas be exempt from the filing freeze).

<sup>39</sup> MSTV/NAB Comments at 27-28.

MSTV and NAB therefore urged the Commission to accept and process maximization applications as promptly as possible.<sup>40</sup>

Broadcasters' comments overwhelmingly echoed the idea that time is of the essence with respect to maximization applications.<sup>41</sup> While maximized operation would plainly serve the public interest by providing more viewers with access to broadcast television, broadcasters' comments indicate that they are hesitant to make the speculative – and substantial – investment in equipment at this stage when they do not know that they will be permitted to maximize.<sup>42</sup> If, however, they purchase only the equipment necessary for currently authorized facilities, it could be prohibitively expensive to later retrofit their constructed DTV facilities for maximized operation once such expansion is approved. The result would be the diminishment of digital television service ultimately provided to the public.

MSTV and NAB urge the Commission to promptly adopt a schedule for maximization applications and to begin accepting them as soon as possible, ideally before the February 2009 transition date.<sup>43</sup> By addressing this issue now – when broadcasters are making initial investments in post-transition digital equipment – the Commission will allow *all* interested broadcasters to make the necessary investments in maximization,

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<sup>40</sup> *Id.* at 28.

<sup>41</sup> *See, e.g.,* Nebraska Educ. Telecomms. Ass'n Comments at 6; Allbritton Comments at 7; Granite Broadcasting Comments at 6 (proposing that the Commission accept maximization applications for satellite stations); Christian Television Network Comments at 9 (proposing that the Commission accept maximization applications for stations facing top-mount antenna or tower issues); LeSEA Comments at 5.

<sup>42</sup> *See* Nebraska Educ. Telecomms. Ass'n Comments at 6 (“It does not make sense for the Licensees . . . to build DTV facilities on with currently proposed allotment power levels, only to have to re-build those facilities later with greater power. . .”).

<sup>43</sup> MSTV/NAB Comments at 27-28.

rather than limiting maximization to those willing to take the risk now or absorb the substantially increased construction costs later.

**D. The Commission Should Limit Interference to 0.5% Above The Level Specified In Table B.**

In the NPRM, the Commission proposed to apply a 0.5% interference standard to broadcasters' requests to modify post-transition facilities.<sup>44</sup> MSTV and NAB supported the Commission's proposed standard as a way to provide stations with sufficient flexibility to modify or maximize facilities while applying a straightforward and easy-to-apply standard that will protect the public's digital television service from harmful interference.<sup>45</sup>

Several commenters indicated that the Commission should apply its proposed 0.5% interference standard by using Table B facilities as a baseline.<sup>46</sup> In other words, stations would be permitted to create no more than 0.5% additional interference beyond the level authorized in Table B.<sup>47</sup> In particular, the engineering firm du Treil, Lundin & Rackley, Inc. found after studying Table B that 50% of all VHF digital allotments already cause more than 0.5% interference, and that an absolute 0.5% limit

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<sup>44</sup> *NPRM* at ¶ 104.

<sup>45</sup> MSTV/NAB Comments at 28-29.

<sup>46</sup> CBS Comments at 10; Allbritton Comments at 5-6; Tribune Broadcasting Comments at 4-6; Gray Television Comments at 8; Hammett & Edison Comments at 6-7; Joseph M. Davis Comments at 3-5; Cohen, Dippell & Everist Comments at 5-6.

<sup>47</sup> Hammett & Edison, Inc. has provided comments in this proceeding urging that certain changes be made in the Longley-Rice calculation methods. Hammett & Edison Comments at 1-4. At the end of the allotment process, the FCC should begin a proceeding to seriously consider this technical matter and determine what changes should be made to improve the accuracy of the calculation of coverage and interference going forward.

could therefore prevent many stations from expanding at all.<sup>48</sup> MSTV and NAB believe that it would be appropriate to use Table B as a baseline because that approach will ensure that stations have sufficient flexibility to expand or modify facilities, but will prevent substantial increases in interference between stations.

**E. Transitional, Self-Implementing Procedures Will Free Commission Resources to Deal With More Unique and Pressing Requests.**

The transitional self-implementing procedures proposed by MSTV and NAB are designed to maximize the value of the Commission's ability to facilitate the conversion to an all-digital television system. In many instances, the Commission can avoid dedicating staff time to ministerial obligations or to important but uniform requests that are likely to be received from a large portion of the industry, and instead focus the staff's attention on unique and specialized matters that require sophisticated analysis and consideration. Our comments and these Reply Comments have described many of the generalized transition issues facing broadcasters, but the record also reflects the unique circumstances of many stations that will require staff consideration.<sup>49</sup> Where such requests can be accommodated without creating impermissible interference, MSTV and NAB encourage the Commission to approve broadcasters' requests to take steps that would promote efficiency in completing the transition. Applying flexible rules of general applicability and avoiding detailed analyses and balancing tests that require intensive staff time will allow the Commission to focus its limited resources on the important issues where its involvement is needed most.

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<sup>48</sup> du Treil Comments at 2.

<sup>49</sup> See, e.g., Sunflower Broadcasting Comments (requesting to change final DTV channel in order to use one station's interim DTV equipment for newly acquired station without violating interference standards).

#### **IV. COMMENTERS URGED THE COMMISSION TO CLOSELY MONITOR THE STATUS OF IMPORTANT COORDINATION EFFORTS.**

In the NPRM, the Commission observed that the transition would require two categories of ongoing coordination, each of which is crucial to the success of the transition and which therefore require the Commission's close attention.

##### **A. The Commission Must Make International Coordination a Top Priority.**

First, the Commission observed that efforts to coordinate interference concerns with Canada and Mexico are ongoing.<sup>50</sup> In a related proceeding, it reported that "international coordination of digital allotments will proceed in a manner that will allow affected stations to construct digital facilities" before February 2009.<sup>51</sup> It observed, however, that "[i]n some cases . . . stations may need to proceed with constructing authorized facilities to the extent approved by Canada or Mexico, even if those facilities differ from the preferred facilities sought by the station, if international coordination issues arise that delay action on a pending application and those issues cannot be resolved in time to allow construction to be completed before the end of the transition."<sup>52</sup>

MSTV and NAB explained in their comments that international coordination must remain a high priority,<sup>53</sup> particularly given the prospect that some stations will have to construct limited facilities if negotiations cannot be concluded in time for the transition. Other commenters were similarly concerned. Cohen, Dippell and

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<sup>50</sup> See *NPRM* at ¶¶ 23, 83.

<sup>51</sup> *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 7th Report & Order, MB Docket No. 87-268, FCC 07-138, at ¶ 103 (rel. Aug. 6, 2007).

<sup>52</sup> *Id.*

<sup>53</sup> MSTV/NAB Comments at 32.

Everist, a consulting engineering firm, observed that licensees in border areas need certainty in order to make plans for the balance of the transition, and that under current circumstances Commission staff are often unable to provide specific guidance to licensees.<sup>54</sup>

For its part, United Communications observed that if it were required to construct digital facilities “to the extent approved by Canada,” those facilities would be “dramatically inferior” to its stations’ existing service, and that result would “deprive thousands of viewers of their only effective commercial television service.”<sup>55</sup>

Coordination delays should not prevent viewers in border areas – and, in particular, sparsely populated border areas that rely heavily on over-the-air television service – from receiving the same benefits of the digital transition as other Americans will enjoy.

MSTV and NAB therefore urge the Commission to leverage the full resources of the United States Government to ensure that coordination issues are resolved expeditiously.

**B. The Commission Should Verify MVPDs’ Compliance With Their Post-Transition Carriage Obligations.**

As the comments reflect, the broadcast and cable industries agree with the Commission that the number of stations changing facilities or channels at the close of the transition necessitates close coordination between broadcasters and the MVPDs that carry their signals.<sup>56</sup> Before a broadcaster transitions to its final facilities, the industries agree that broadcasters and MVPDs should coordinate at the local level to ensure that MVPDs

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<sup>54</sup> Cohen, Dippell & Everist Comments at 8-9.

<sup>55</sup> United Communications Corp. Comments at 2.

<sup>56</sup> See NCTA Comments at 3-4.

are prepared to receive and process local digital broadcast signals.<sup>57</sup> Just as the Commission proposes in the NPRM to require broadcasters to file progress reports on their digital transition status, MSTV and NAB urged the Commission to require MVPDs to similarly report that they are prepared to receive and process digital broadcast signals for all television stations currently carried on their systems.<sup>58</sup>

Broadcasters anticipate that MVPDs will work cooperatively with them to confirm that technical equipment is functional and to resolve any issues that arise during that testing process.<sup>59</sup> The Commission should, however, closely monitor these efforts to ensure that MVPDs quickly address any carriage concerns and that MVPDs continue to carry broadcast signals after stations switch to their final facilities.<sup>60</sup> The Commission must ensure that the switch from analog to digital broadcasting does not result in a disruption of service to MVPD consumers, and, where necessary, it should intercede rapidly to ensure that no cable or satellite viewers are disenfranchised.

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<sup>57</sup> See MSTV/NAB Comments at 30-31; NCTA Comments at 4.

<sup>58</sup> MSTV/NAB Comments at 31.

<sup>59</sup> Commenters in particular identified specific components of broadcast signals that present concerns. See Coalition of Organizations for Accessible Technologies at 12-13 (closed captioning); Capitol Broadcasting at 11 (PSIP).

<sup>60</sup> Cf. Norwell Television Comments at 6-7 (expressing concern that MVPDs may drop digital a broadcast signal, purportedly for signal quality reasons, even though the strength of the broadcaster's digital signal is no less than the strength of its previously carried analog signal).

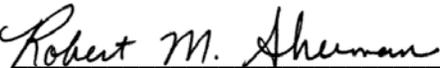
## CONCLUSION

Commenters in this proceeding overwhelmingly supported the Commission's efforts to adopt clear procedures for the balance of the digital transition. In order to promote efficiency and manage the substantial challenges that face the industry over the next 18 months, commenters urged the Commission to adopt temporary, streamlined policies and procedures that promote a flexible and efficient conclusion to the digital television transition.

Respectfully submitted,

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