

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

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

COMMENTS OF CAPITOL BROADCASTING COMPANY, INC.

Capitol Broadcasting Company, Inc. ("Capitol")¹ hereby respectfully submits these comments through its counsel in response to the May 18, 2007 *Notice of Proposed Rulemaking* ("*Notice*") in the Third Periodic Digital Television ("DTV") Review proceeding.² Capitol is very proud of its role in the digital transition having launched the nation's first commercial digital station on July 23, 1996. WRAL-HD operated under an experimental license on Channel 32 until March 23, 2000. At that time, WRAL-DT on out-of-core Channel 53 replaced WRAL-HD. Now, after substantial multiple investments, as WRAL-DT prepares to make its third and final digital move to Channel 48, Capitol urges the Commission to adopt rules that balance the interests of consumers pre-transition and post-transition. A successful transition on February 17, 2009 requires individual station preparation, cooperation among broadcasters and diligence by third party engineers, tower crews, equipment manufacturers and other vendors, as well as the

¹ Capitol is the licensee, by itself or through wholly-owned subsidiaries, of WRAL-TV/DT and WRAZ-TV/DT, Raleigh, North Carolina, WJZY-TV/DT, Belmont, North Carolina and WMYT-TV/DT, Rock Hill, South Carolina.

² *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).

need for flexible regulatory procedures to ensure that our viewers will continue to be served as of midnight on February 18, 2009.

I. Status of Capitol Stations

Based upon the new DTV Table of Allotments ("DTV Table"), three of Capitol's full-power television stations fall into the Commission's so-called "category one" – stations remaining on their current DTV in-core channel, while as noted earlier WRAL-DT falls into "category three" – stations moving to a completely new in-core channel. WRAZ-DT ("WRAZ"), WJZY-DT ("WJZY") and WMYT-DT ("WMYT") will remain on their pre-transition DTV channels post-transition, 49, 47 and 39 respectively.³ To meet the February 17, 2009 deadline, Capitol's engineers have developed initial transition plans subject to rules resulting from this *Notice*. In order to explain our concerns with a number of the Commission's proposed rules, these comments address each station's current situation and proposed transition plan.

A. WRAL, Raleigh North Carolina

i. WRAL Factual Scenario

- WRAL is currently licensed out-of-core at Channel 53.
- Post-transition WRAL-DT ("WRAL") will move to Channel 48, a completely new channel.⁴

³ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Further Notice of Proposed Rulemaking, 21 FCC Rcd 12100 (2006) ("*Seventh FNPRM*").

⁴ Channel 48 became available in the Raleigh-Durham market when stations in two adjacent markets elected to forego Channel 48. WMYV-TV located in Greensboro opted to remain on its current digital channel, and WCTI-DT in New Bern opted to return to its analog channel post-transition.

- WRAL's Channel 53 antenna is located at the top of a 2000ft tower that houses five other television stations: WRAZ, WLFL-DT, WRDC-DT, WNCN-DT and WNCN-TV.
- While any of the above stations are doing work at the top of the tower, all other stations will be affected. Due to safety concerns, heavy work at the top of the tower can only be accomplished during daylight hours.
- WRAL-TV is not located on this community tower, so WRAL's analog signal will not be affected by pre-transition moves. After more than 50 years of service, WRAL-TV will simply sign-off Channel 5 at 11:59:59 pm on February 17, 2009.
- Before the transition is complete, WRAL's current Channel 53 antenna must be replaced with a Channel 48 antenna and WRAL's transmitter must be converted from Channel 53 to 48.
- According to Nielsen Media Research in the May 2007 ratings book, cable and satellite penetration is 87% in the Raleigh-Durham Designated Market Area ("DMA").

ii. WRAL Engineers' Proposed Transition Plan

After evaluating numerous options and factoring in loss of service to our viewers pre- and post-transition, the reality of a community tower housing five DTV stations, and the financial and non-financial resources necessary, WRAL proposes to complete its move to Channel 48 as follows subject to Commission rules that are adopted in this proceeding:

- WRAL plans to install a new combined channel 48-49-53 antenna on the community tower at 1300ft by mid-2008. The combined channel antenna with a

cardioid pattern will accommodate WRAL's pre- and post-transition channels, as well as WRAZ's digital channel.

- By installing this combined channel antenna at a lower height, WRAL and WRAZ can continue to operate while any tower work is occurring at the top of the tower during pre- and post-transition, although each station may have to operate at a lower power while at 1300ft due to transmission line loads. However, WRAL and WRAZ will have to go off the air for short periods of time while tower crews pass through the aperture to reach the top of the tower and to return to the ground.
- WRAL anticipates that non-Capitol community tower occupants may begin transition work as early as mid-2008.
- In January 2009, WRAL will begin the conversion of half of its transmitter to Channel 48. This conversion will take approximately four weeks. During this time, WRAL proposes to operate Channel 53 at half-power at 2000ft.
- At 11:59:59 pm on February 17, 2009, WRAL proposes to begin broadcasting from the combined antenna at 1300ft on Channel 48 at full power. Although the transmitter will still be running at half-power, a higher gain antenna should make up the difference.
- On February 18, 2009, WRAL will begin the tower top work to replace the Channel 53 antenna with a 48 antenna and the conversion of the other half of the transmitter.
- In early March 2009, the WRAL transition should be complete with the station operational at full power and full height.

- To conserve resources, WRAL has not commissioned the necessary Longley-Rice study to determine how operating at half-power or at a lower height will affect its off-the-air population coverage. However, Capitol notes that WRAL-TV's analog signal will not be affected during the period before February 17, 2009, so pre-transition viewers will always have access to network programming and local news, sports, weather and emergency information.
- WRAL has engaged tower crews to execute the above plan. With the release of the new DTV table, WRAL's engineers are ordering the parts necessary to complete the transition.

B. WRAZ, Raleigh, North Carolina

i. WRAZ Factual Scenario

- WRAZ's pre- and post-transition channel is 49.
- On May 3, 2005, WRAZ filed, and the Commission accepted for filing, a License to Cover. The Commission has not granted WRAZ a license to operate at Channel 49, so WRAZ continues to operate under automatic Program Test Authority.
- WRAZ appears in Appendix D of the *Notice* as a station "ready, or very close to ready, to make their transition."⁵ Capitol agrees with that assessment, but for the lack of a license and the fact that WRAZ's antenna is located on the above-referenced community tower.
- Like WRAL-TV, WRAZ-TV is not located on this community tower, so WRAZ's analog signal will not be affected by pre-transition moves.

⁵ *Notice* at ¶ 18 and Appendix D.

ii. WRAZ Engineers' Proposed Transition Plan

If WRAZ was not on a community tower, Capitol could simply turn-off WRAZ-TV and the transition would be complete for WRAZ. However, since the WRAZ antenna resides at the top of the same 2000ft tower as five other stations, it will be affected as other stations complete their transition work. Therefore, WRAZ's engineers propose the following:

- As previously noted, WRAL plans to install a new combined channel antenna that will include Channel 49.
- WRAZ proposes to broadcast from the combined channel at 1300ft when necessary to facilitate the pre- and post-transition plans of the other community tower stations. See WRAL's January through March 2009 plan outlined above.
- In addition to operating at a lower height, WRAZ may have to operate at a lower power while at 1300 ft due to transmission line loads.
- Presumably with most of the top of the tower work being completed during daylight hours, WRAZ could develop a load management plan and operate from 2000ft at full power during primetime evening hours.
- Like WRAL, WRAZ has not commissioned the necessary Longley-Rice study to determine how operating at lower power or at a lower height will affect its off-the-air population coverage. However, Capitol notes that like WRAL-TV, WRAZ-TV's analog's signal will not be affected during the period prior to February 17, 2009, so viewers will always have access to network programming and local news, sports, weather and emergency information.

C. WJZY, Belmont, North Carolina (Charlotte DMA)

i. WJZY Factual Scenario

- WJZY's pre- and post-transition channel is 47.
- WJZY operates on Special Temporary Authority ("STA") with a Construction Permit ("WJZY CP") that expires on February 17, 2009.
- WJZY's antenna is currently side-mounted with the WJZY CP specifying a top-mounted height. The WJZY antenna is side-mounted because the WJZY-TV NTSC antenna is located at the top of the tower.
- In addition to its analog station, WJZY shares its tower with WMYT and its companion analog channel, WMYT-TV, and three FM radio stations.
- According to Nielsen Media Research in the May 2007 ratings book, cable and satellite penetration is 90% in the Charlotte Designated Market Area ("DMA").

ii. WJZY Transition Plan

WJZY's transition plan is still under development due to the public interest issues involved when a station's analog and digital antenna share the same tower. As previously noted, the WJZY CP expires on February 17, 2009. To meet this deadline, WJZY must weigh seeking the Commission's approval to terminate its analog operations before the transition with seeking a waiver to complete its digital operations after the transition and the expiration of its CP. Either way the digital station will be off-the-air for a period of time while the antenna is relocated. Also, as in every community tower situation, WJZY will need to accommodate WMYT's digital preparation.

D. WMYT, Rock Hill, South Carolina (Charlotte DMA)

i. WMYT Factual Scenario

- WMYT's current pre- and post-transition channel is 39.
- The Commission recently denied WMYT's request to relocate to Channel 46.
- WMYT operates on an STA with a construction permit ("WMYT CP") that expires on February 17, 2009.
- Like WJZY, WMYT's antenna is currently side-mounted with the WMYT CP specifying the top-mounted height. The WMYT antenna is side-mounted because the WMYT-TV NTSC antenna is located at the top of the tower.
- As previously noted, WMYT is on a community tower with WJZY and its companion analog channel, WJZY-TV, and three FM radio stations.
- According to Nielsen Media Research in the May 2007 ratings book, cable and satellite penetration is 90% in the Charlotte Designated Market Area ("DMA").

ii. WMYT Transition Plan

WMYT faces exactly the same set of issues as WJZY. Is the public interest better served by WMYT and WJZY signing-off their analog operations early and completing the necessary moves to operate their digital channels as authorized in the new DTV Table on February 17, 2009 *or* is continuing to operate the analog channel through February 17, 2009 and completing the digital moves after the transition date the better choice? Capitol remains conflicted as either choice affects viewers.

II. Regulatory Flexibility is Essential to Complete the Transition

Capitol recognizes that the Commission faces very tough choices when adopting this final set of technical rules. As indicated above, much remains to be done before **and** after February 17, 2009. First, Capitol fully supports the Commission's proposal to require every station to file a new Form 387 prior to December 1, 2007. The information contained in the Form 387 filings will further facilitate communication between and among stations, which is particularly important in community tower situations. Although community towers are not specifically addressed in the *Notice*, Capitol urges the Commission to ensure that any rules/presumptions it adopts in this proceeding are flexible enough to allow stations to accommodate other community tower occupants. For example, although WRAZ is essentially ready for the transition, it will need to operate at reduced power at various times pre- and post-transition in order to accommodate other occupants of the Raleigh-Durham community tower.

Second, Capitol takes no position as to whether it better serves the public interest to reduce and/or terminate analog service before February 17, 2009 in order to complete the construction and operation of its stations' post-transition digital facilities. Capitol's two digital stations with side-mounted antennas look to the Commission for guidance. Although the *Notice* states the adoption of the hard deadline "now weighs in favor of an increasing tolerance for the loss of analog service as we near the switch-over date and where it will facilitate the transition,"⁶ there is no good answer. An important question is are viewers better prepared for disruptions before or after February 17, 2009?

⁶ *Notice* at ¶ 41.

Third, WRAL has questions about the Commission's proposal to allow stations to remain on their in-core pre-transition channel after February 17, 2009. If the Commission allows this option, Capitol urges the Commission to apply the proposed 0.5 percent interference standard for post-transition operations. WRAL with an out-of-core pre-transition channel must move to Channel 48, its post-transition station, on February 18, 2009. A digital station in an adjacent market is moving from Channel 48 back to its analog channel, so coordination and cooperation are key to ensure that viewers in each market are not impacted. Additionally, there is a Channel 48 analog station in another market adjacent to Raleigh-Durham, so the necessary testing prior to February 18, 2009 will be challenging.

Fourth, Capitol fully supports the adoption of the 0.5 percent interference standard as proposed by the Commission.

Fifth, Capitol encourages the Commission to adopt rules to expedite the processing of Construction Permits ("CP") for post-transition channels under the circumstances outlined in the *Notice*. Capitol understands the Commission's need to prioritize applications beginning with applications to build authorized facilities. However, to allow stations to make one-time equipment purchases, such as new antennas, to avoid bringing tower crews to the same facility twice, and to avoid the off-air time required to change antennas, Capitol urges the Commission to lift the filing freeze and to process applications for facilities that meet the proposed 0.5 percent interference standard at the same time it processes those authorized in the new DTV Table. In the alternative, Paragraph 94 of the *Notice* proposes to allow expedited processing for "facilities that match or closely approximate those new DTV Table Appendix B facilities (*i.e.* if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that deviate no more than five percent from those Appendix B facilities

with respect to predicted population)." Capitol asks the Commission to expand the definition of "unable" to include stations that want to build facilities based on the proposed 0.5 interference standard, if adopted.

Sixth, numerous issues remain unresolved related to the digital transition and multichannel video providers. For matters related to this *Notice*, Capitol has not begun conversations related to channel changes and other technical issues; Capitol continues to have concerns about whether or not the information contained in Program System and Information Protocol ("PSIP") is being passed through to viewers; and as stations temporarily power up and down to complete their post-transition facilities, Capitol believes some cable and/or satellite head ends may not receive a clear off-the-air signal.

Finally, Capitol requests that any rules or policies adopted provide flexibility for broadcasters to resolve any unforeseen circumstances, including Acts of God, as we come to the successful conclusion of the DTV transition.

Respectfully submitted,

CAPITOL BROADCASTING COMPANY, INC.



Dianne Smith
Holland + Knight LLP
2099 Pennsylvania Avenue, NW
Suite 100
Washington, DC 20006-6801
Tel: (202) 457-7005
E-mail: diannev.smith@hklaw.com

August 15, 2007