Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Advanced Television Systems and	)	MB Docket No. 87-268
Their Impact Upon the Existing	)	
Television Broadcast Service	)	
	)	

To: The Commission

PETITION FOR RECONSIDERATION AND CLARIFICATION

The Association for Maximum Service Television, Inc. ("MSTV")[1] submits this Petition for Reconsideration and Clarification of the Commission's *Seventh Report and Order* in this proceeding,[2] to urge flexibility in allowing stations to build out facilities that will most closely and effectively serve the area predicted to be served by the current allotment. It is our understanding that the Commission may address the issues raised herein on reconsideration of the *Seventh Report and Order*, and MSTV is filing this Petition in this docket. These issues, however, may be more properly addressed as part of the Third Periodic Review proceeding. Accordingly, we request that the FCC provide the relief requested below as part of the rules enacted in its Third Periodic review. Nonetheless, MSTV wants to make sure that the Commission addresses these concerns. MSTV therefore respectfully submits the following Petition and notes that, in any event, these issues call for prompt resolution.

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[1] 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.

[2] Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making*, MB Dkt No. 87-268, FCC 07-138 (rel. August 6, 2007) ("*Seventh Report and Order*").

MSTV requests that, in cases where stations are not currently on their final, post-transition channels, the Commission allow the stations flexibility with respect to their antenna patterns. If such stations are limited to the exact facilities described in the current allotment, they may be unable to actually serve the predicted area. As discussed below, the Commission can achieve this regulatory flexibility and thereby facilitate a smooth transition by (1) granting stations' requests to amend their allotments by reconsideration of the *Seventh Report and Order*, and (2) clarifying that stations will be able to file applications for facilities at variance from their allotments, provided that they demonstrate that the changes are needed in order to serve the stations' predicted service area. Also, in the interest of a smooth transition, the Commission should allow stations to correct minor discrepancies between the station specifications in Appendix B and the facilities DTV stations are using or intend to use post-transition. To the extent stations have raised these issues in the context of this proceeding, the Commission may grant the relief here, or more properly redirect the request to the licensing process. For the reasons set forth below, grant of this petition would serve the public interest.

Most importantly, by providing such regulatory flexibility, the Commission will avoid administrative delays and other hardships that could needlessly complicate the transition, which the Commission has already acknowledged to be a "massive" undertaking.[3] The digital transition is a highly complex process with respect to the facilities and channel choices of over 1,600 television stations across the country. It involves many interrelated challenges, practical, real-world problems, and other issues where the Commission and the broadcasting industry have

[3] *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 18729, 18284, ¶ 11 (2004).

to partner to reach effective and timely solutions. The industry and the Commission must work together with a close eye on specifics and details for a successful transition.

I. INTRODUCTION

As the Commission observed when commencing the Third Periodic Review of the transition to DTV, over 600 television stations will have to move to a new channel for their post-transition digital operations.[4] Over 500 stations are returning to their current analog channel for their post-transition digital operations.[5] For many of these stations, and in particular for stations presently operating on a UHF channel for their digital operations and moving to a VHF channel for their post-transition operations, three related problems can arise.

First, as a technical matter it can be very difficult – and in some cases impossible – to build DTV facilities to operate on the new channel that will replicate the interim digital antenna pattern. Although the Commission tried to replicate these stations' digital antenna pattern for their post-transition allotments,[6] correction for propagation differences between the UHF and VHF bands skew the pattern and can prevent construction of the allotted facilities to the same precise specifications. This problem will affect stations moving from the UHF to the VHF band in particular.

Second, the existing analog antenna pattern may not match the theoretical antenna pattern specified in Appendix B to the *Seventh Report and Order*. Consequently, while many stations would like to use their analog antenna for their post-transition operations, use of the

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[4] *See Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, MB Dkt. No. 07-91, FCC 07-70, at ¶¶ 24 and 28 (rel. May 18, 2007) ("*Third Periodic Review NPRM*").

[5] *See id.* at ¶ 24.

[6] *See Seventh Report and Order* at ¶¶ 62 *et seq*.

analog antenna may also make it very difficult to replicate precisely the allotted pattern. This situation is applicable not only to stations going back to their VHF channels, but also to stations that are moving from a high UHF channel to a lower UHF channel.

Third, a station may struggle to keep its service contour within that allotted by the Commission for post-transition operations in light of the difficulties in attempting to replicate the interim DTV pattern on the station's new digital channel (regardless of whether the station seeks to use its analog antenna or not). The result would be that the station could have to reduce power significantly in order to shrink its service area, so as to avoid expanding its contour beyond that allotted in Appendix B.

In sum, for stations moving from their current DTV channel in full compliance with the Commission's prescribed procedures, Appendix B to the *Seventh Report and Order* may create difficult and perhaps insurmountable challenges to the construction of final digital facilities and may pose a risk of considerable service losses to the public, if the stations were to reduce power to stay within allotted contours. Attachment 1 is only one of many possible examples that illustrate this issue. This example shows that station WHAS, Louisville, KY analog channel 11, DTV channel 55 – which elected to go back to its analog channel 11 and plans to use its existing analog antenna – would lose 11.8% of its predicted DTV allotted facilities and would have to limit its ERP to 735 watts, if, as proposed by the Commission, it is required to restrict its antenna pattern within its Appendix B service contour. In contrast, WHAS would have to increase its ERP to 11.8 kW in order to fully encompass the area now served by its current channel 55 DTV facilities.

Additionally, a close examination of Appendix B has revealed many discrepancies between the station specifications in Appendix B and the facilities DTV stations

are using or intend to use post-transition. For some stations, the antenna coordinates in the table are incorrect, in at least some cases because they reflect the location of a station's analog antenna rather than the location of its licensed digital facility. In other cases – for example, where a station has been licensed for a digital facility or where the Commission has granted approval for a new antenna— the antenna ID in Appendix B reflects the values for the station's analog antenna or a prior digital antenna, and, therefore, may need updating.

II. RECONSIDERATION AND CLARIFICATION ARE WARRANTED IN THE PUBLIC INTEREST WITH RESPECT TO STATIONS MOVING FROM THEIR CURRENT DIGITAL CHANNELS.

MSTV respectfully requests that the Commission entertain and grant stations' requests as part of the applications process rather than in through the allotment process. This is the preferable approach. However, as a cautionary measure, some stations may have made this request in the instant proceeding, seeking to amend their allotments so that the facilities authorized will actually serve the area currently predicted to be served by their allotments. For stations that seek to address these issues in construction permit applications for post-transition facilities, the Commission should provide clarification and assurance that it will permit necessary changes. Likewise, with respect to the other discrepancies cited above, the Commission should grant requests to amend allotments and should clarify that stations will otherwise be able to remedy these discrepancies in the application and licensing process.

In the Third Periodic Review proceeding, broadcasters have proposed a number of solutions to address the antenna pattern issue described above. For example, in their Joint Comments, MSTV and the National Association of Broadcasters proposed that the Commission permit stations going back to their analog channel and planning to use their existing analog

antenna for post-transition digital operations to submit applications for checklist review so long as their service contours would not exceed their Appendix B contours by more than five miles.[7] This proposal was intended to streamline the FCC application process and to provide broadcasters with certainty as to equipment needs in order to meet the transition timetable. In addition, in a more recent meeting with certain Commission staff members, broadcasters further suggested that an alternate way to deal with this issue would be to apply a more relaxed interference standard to stations returning to their NTSC channel (*i.e.*, to permit such stations to cause a maximum of 2% interference for twelve months after February 2009 so as to afford stations the ability to replicate their NTSC coverage).[8] This is especially important for stations that would not be able to serve their existing NTSC viewers and cannot modify their facilities until the Commission begins accepting maximization applications.[9]

We believe that the Commission can satisfactory resolve this issue by adopting the above proposals in the Third Periodic Review — thus alleviating the need to address each individual change in the allotment process. Nonetheless, MSTV understands that many stations

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[7] *See Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Joint Comments of MSTV and NAB, MB Dkt. No. 07-91, at 26-27 (filed Aug. 15, 2007).

[8] *See Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Ex Parte Notice of MSTV, MB Dkt. No. 07-91 (filed Oct. 23, 2007) (summarizing discussion of MSTV Engineering Committee with certain FCC staff members).

[9] MSTV also requests the Commission to apply the 0.5% interference standard, as opposed to the 0.1% standard, to the instant Petitions for Reconsideration, assuming that the Commission adopts the 0.5% standard, as it tentatively concluded it would in the Third DTV Periodic Review NPRM. This would apply to permanent changes and is not inconsistent with the request to allow up to 2% interference for a temporary period as noted above. Applying this standard allows stations to make final post-transition plans and conserve resources. Using existing facilities will preserve valuable resources, such as tower crew time, at a critical period when demand will likely exceed supply. Existing facilities and equipment will be fully utilized instead of being abandoned for parts, and there will be no unnecessary building of duplicate facilities.

have filed and will file for reconsideration of their post-transition allotments as specified in Appendix B to the *Seventh Report and Order*. Thus, MSTV respectfully requests that the Commission grant these stations' requests. This would be in the public interest for several reasons:

First, reconsideration and clarification would promote improved digital television service after the transition. Instead of reducing power so as to stay within the presently-allotted contour, a broadcaster would be able to fully build out post-transition facilities and provide many more viewers with free, over-the-air digital television service. Permitting stations to use their analog antennas after the transition may also help to avoid service disruptions to analog broadcasting prior to the transition, as broadcasters would thereby avoid having to remove or move analog antennas as they prepare for February 17, 2009.

Second, reconsideration and clarification would promote efficiency in construction efforts and would help to relieve equipment shortages.[10] By using their analog antennas, these stations will help to alleviate demand for new digital antennas (as well as for the related resources necessary to install these antennas, including tower crews).

Third, reconsideration and clarification would address the real-world difficulties that broadcasters face as they plan for building out their post-transition facilities. While the allotments specified in Appendix B to the *Seventh Report and Order* appear to permit replication "on paper," the reality is that they may be difficult or impossible to build due to the propagation anomalies noted above and the limitations of available antennas.[11]

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[10] *See id.* at 26-27; *see also id.* at n.41 (noting the "the enormous anticipated demand for equipment and the relatively small number of manufacturers and installers").

[11] The Commission appears to have recognized this problem. *See Seventh Report and Order* at ¶¶ 83-88; *see also Third Periodic Review NPRM* at ¶ 93 (seeking "input from any stations that (continued…)

Finally, by granting stations' requests to amend their post-transition allotments, the Commission can help to facilitate application processing for post-transition facilities. To the extent that a station can file an application for a construction permit that exactly matches its allotment, instead of filing an application that specifies facilities at variance from the allotment, application processing time will be improved and both the Commission and broadcasters will benefit.

MSTV notes that the Commission has treated some requests for use of analog antennas as "speculative" or "premature."[12] In light of the practical realities discussed above, and with many stations committed to using their analog antennas, MSTV respectfully submits that this type of request is neither speculative nor premature. With 480 days left until the transition, these requests are ripe for Commission consideration, will advance the goals of the transition, and will address a major set of practical problems that could otherwise bedevil the transition.

III. RECONSIDERATION AND CLARIFICATION ARE WARRANTED IN THE PUBLIC INTEREST WITH RESPECT TO REQUESTS TO MODIFY MINOR DISCREPANCIES IN APPENDIX B.

As noted above, there are a number of discrepancies between Appendix B specifications and the facilities DTV stations are using or intend to use post-transition. These discrepancies may involve antenna coordinates (*e.g.*, reflecting the station's analog antenna location, rather than the location of its licensed digital facility) or may involve antenna IDs (*e.g.*,

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may be unable to build precisely the facilities specified in the new DTV Table Appendix B (for example, if an antenna producing the exact antenna pattern described in Appendix B is not available)" and asking how to address "the difference between the theoretical facilities specified in the new DTV Table Appendix B and the actual facilities which they are able to build").

[12] *Seventh Report and Order* at ¶ 84.

reflecting the values for the station's analog antenna or a prior digital antenna, even when the FCC has authorized and/or licensed the station's use of a new digital antenna).

Many broadcasters did not appreciate that the Commission, departing from longstanding procedures, expected these issues to be addressed in the rulemaking process. But these problems can be addressed in the licensing process through requests for minor modification to construction permits. The Commission should clarify that stations that do not seek reconsideration of such discrepancies at this time will not be deemed to have given up any rights to fix these discrepancies at the application and licensing stage (although special consideration may be warranted where the changes sought represent a significant change in location or other facility). In any event, correcting these discrepancies is unlikely to have any impact on the Commission's allotment process. If stations are upgrading or replacing antennas as part of the move to digital television, then that should not result in any interference to other stations, but instead will allow stations to reach the viewers they are licensed to serve. Similarly, the Commission's staff has long recognized that minor discrepancies in the coordinates of towers most often reflect errors in measurement or confusion between the NAD27 system used by the Commission and the NAD83 coordinates used by the Federal Aviation Administration.

Again, we believe these problems are best addressed in the licensing process through requests for minor modification to construction permits. Rather than complicating the allocation process with minor changes, the Commission should make clear that discrepancies between Appendix B specifications and a station's ultimate digital facilities can be addressed in the licensing process.

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For the reasons discussed herein, and in particular as requested by stations in the circumstances described above, MSTV respectfully requests that the Commission reconsider and clarify the *Seventh Report and Order*.

Respectfully submitted,

THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

By: 

Jonathan D. Blake
Matthew S. DelNero
Eve R. Pogoriler

COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
202.662.6000 (tel.)
202.662.6291 (fax)

Its Attorneys

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Attachment 1

WHAS-DT, Louisville, KY Case Study

Meintel, Sgrignoli, & Wallace

Post DTV Transition Planning
WHAS Louisville, KY
October 25, 2007

WHAS Louisville, KY analog channel 11, DTV channel 55 elected to return to its analog channel 11 for post transition operation. In that WHAS certified that it will operate its post-transition DTV station at maximized facilities, as authorized by FCC File No. BLCDT - 20020503AAT its post transition allotment facility replicates on channel 11 the facility specified in the certification.

However, WHAS wishes to utilize its omni-directional analog antenna for post transition operation instead of the directional replication pattern specified in the post transition allotment. This presents a problem in that the power would need to be reduced below that of the allotted facility to meet the FCC's proposed criteria that requires that for initial post transition operation the service contour cannot exceed that predicted for the allotted facility.

In order to restrict the extent of the service contour to that of the allotted facility the maximum power that could be utilized with the omni-directional analog antenna would be 735 watts. At that power level the predicted service population is 1,423,239 as opposed to the predicted allotted facility service population of 1,613,620. This represents a predicted loss of service to 190,381 people or 11.8% of the allotted service. In addition, the area inside the predicted service contour would be reduced from the allotted 27,238.1 square

P. O. Box 907
Warrenton, VA 20188
Phone 540-428-2308 - Fax 540-428-2309

kilometers to 18,743.3 square kilometers for an overall loss of service to 8494.8 square kilometers or 31.2% of the area within the allotted contour.

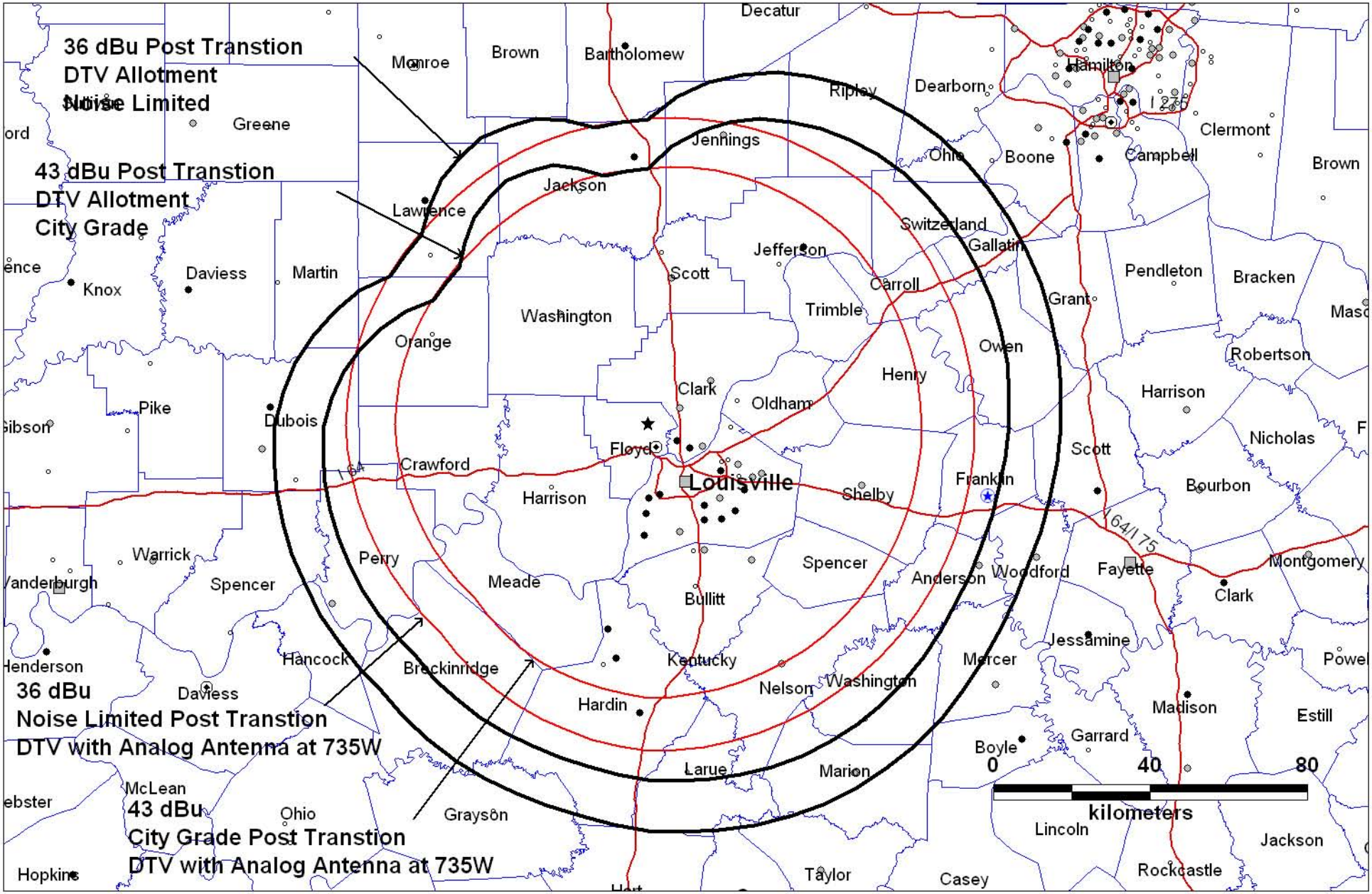
It is also noted that to replicate the current analog Grade B the effective radiated power (ERP) would need to be approximately 6 kW. Furthermore, to fully encompass the area now served by the current maximized channel 55 DTV facility using the omni-directional analog antenna the ERP would need to be approximately 11.8 kW.

Plots of the predicted service contours for the allotted facility and the facility utilizing the WHAS analog antenna with an ERP of 735 watts are attached to illustrate the dramatic difference in the service area.

The above was prepared by:

William R. Meintel
Partner, Meintel, Sgrignoli & Wallace

P. O. Box 907
Warrenton, VA 20188
Phone 540-428-2308 - Fax 540-428-2309



WHAS Louisville, KY
Post Transition Channel 11 Allotment (Black)
Post Transition Channel 11 with Analog Antenna at 735W (Red)