



MAXIMUM SERVICE TELEVISION

December 19, 2007

Eloise Gore, Esquire
Deputy Division Chief, Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Written Ex Parte Communication:
Stations Returning to Analog Channels
MB Docket No. 87-268; 07-91

Dear Ms. Gore:

I am writing to clarify the position taken by MSTV in Comments and subsequent *Ex Parte* communications in the above referenced proceeding.¹ The issue concerns stations that are currently operating on a temporary DTV channel, but will be moving their DTV facilities back to their analog channel. For example, a station currently operating its DTV facilities on channel 34 will, consistent with Table B, move its digital operations back to channel 9, where it is currently operating in analog.

More than 500 stations will be moving their DTV operations back to their current analog channel numbers. Given the fact that service replication has been one of the guiding principles of the DTV transition, these stations had a legitimate expectation that they would be able to use their current analog antenna for their digital operations, once they moved back to their final channel. Unfortunately, the antenna patterns authorized in Table B do not match the current analog antenna patterns that will be used by stations going back to their analog channels. Our best estimates indicate that 260 stations, perhaps more may be affected by this situation.

Stations attempting to meet the antenna pattern found in Table B with their current analog antenna will be forced to reduce their digital television service. Moreover, the Table B antenna patterns may force some stations to acquire and install new top-mounted antennas, thereby increasing the demands for equipment. It may also lead to a dramatic increase in tower crews, which will be in short supply through February 2009.

¹ Letter to Marlene Dortch, MB Docket No. 87-268, 07-91 dated November 19, 2009, Attachment at 11; Petition for Reconsideration and Clarification in MB docket No. 87-268, October 26, 2007 at 6; Letter to Marlene Dortch, MB Docket No. 87-268, October 23, 2007; Reply Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters in MB Docket No. 07-91, August 30 2007 (herein after *Reply Comments*); See also, Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, in MB Docket No. 07-91, August 15, 2007;

In our latest *Ex Parte* filing, dated November 19, 2009, we proposed the following solution. First, stations moving their DTV operations back to their analog channels should be allowed to use their current analog antennas and antenna patterns for the provision of digital television service. This should be permitted even though the analog antenna patterns differ from the antenna patterns contained in Table B.

Second, to use its analog antenna pattern, a station would have to certify 1) that coverage of its analog antenna pattern does not extend beyond its Table B coverage by more than five miles in any direction or 2) that by its analog antenna, the interference caused does not exceed 2% as measured by population coverage, to any surrounding station. *Note, under the proposal, a station could use its analog antenna pattern if it met either one of these criteria.*

While recognizing this real-world problem, we note that causing 2% interference to a surrounding station should not be allowed on a permanent basis. As a result, we believe that the 2% interference test stated above, should be permitted only for a temporary period of 12 months, or until February 17, 2010. After this date, stations should be required to meet the traditional 0.5% interference standard. Therefore, stations relying on either the 5-mile rule or the 2% interference temporary interference standard should not be required to meet the 0.5% interference standard until February 17, 2010.²

This proposal reflects the reality that it will be extremely difficult, if not impossible, for stations to abandon their analog transmitting antennas and replace them by the transition date. At the same time, we do not want to reduce service by trying to fit the existing analog antenna pattern into the antenna patterns outlined in Table B. This is especially important for stations that would not be able to serve their existing viewers and cannot modify their facility and antenna until the Commission begins accepting maximization applications.

We recognize the FCC may prefer to proceed by using a waiver process. Given the short time frame, and the overwhelming need for some stations to obtain equipment, we respectfully suggest that this process can be accomplished through a "check list" applications process, with appropriate certifications for the following elements:

- The station will be using its existing NTSC antenna and antenna pattern,
- For the 12 month period after February 17, 2009, the station's antenna pattern:
 - Will not cause more than 2% interference to any surrounding station, *OR*
 - Does not exceed its Table B pattern by more than five miles in any direction, *AND*,
- The station shall comply with the 0.5% interference standard no later than February 17, 2010. The 0.5% interference standard would not be applicable to either the 5-mile or 2% temporary interference standard during the 12 months after the transition date, February 17, 2009.

² Applying the 0.5% interference standard to the five-mile temporary extension would effectively preclude the use of this option. Accordingly, the temporary five-mile temporary extension should not be subject to the 0.5% interference requirement.

For stations using the temporary 2% interference standard, the FCC may require stations to file an engineering statement. Nonetheless, if challenged, stations would be required to produce such a statement. We recommend that the Commission employ a 30-day grace period for stations to resolve these disputes, before taking any action. Only after the private efforts have failed would a complaining party file with the FCC. In other words, like the channel election process, the FCC becomes involved only when private dispute resolution fails.

We believe this certification/dispute resolution approach has several advantages over an individual waiver process.

First, this process allows stations to move forward with the transition. With waivers, stations will not know whether they may proceed until the FCC approves the waiver. This may be problematic if the Commission ultimately denies a waiver after April of 2008. At this late stage, stations will be unable to secure new antennas or arrange for tower crews by the February 2009 deadline. Equipment must be ordered now!

Second, it provides a more efficient process for both the FCC and the industry. The FCC staff would not have to conduct independent engineering evaluations for the more than 500 stations that are trying to move back to their analog channels by February 17, 2009. Commission involvement would occur only if an interference complaint was filed with the Commission. Moreover, this complaint would be ripe only *after* private dispute resolution failed. For the most part, we contemplate that complaints would be filed *after* February 17, 2009. Finally, we believe the temporary interference standards outlined above would cover most situations in the industry.

Third, a certification process avoids unnecessary engineering evaluations associated with evaluating pre-transition interference waivers. For example, interference caused by a station may be eliminated, if the affected (victim) station maximizes its facilities. For example, station X moving back to its NTSC analog antenna may cause 1.5% interference to station Z's Table B facilities today. However, if station Z's maximization request is granted by the FCC, the increased power level may eliminate or significantly reduce this interference to the final 0.5% level. Thus, it is inefficient to use a waiver approach that includes an interference evaluation based on the *final* interference standard until *after* the freeze is lifted and maximization applications have been filed and evaluated. However, as noted above, waiting for the FCC to lift the freeze and process maximization request may be too late for stations to order equipment.

We understand there are several concerns with the temporary 2% interference standard. First, is the concern that this will become a permanent 2% interference standard. MSTV does not intend the 2% interference standard to become permanent. To the contrary, we believe the 0.5% interference standard should be the permanent standard. Any application grants could be conditioned on an express requirement that stations come into compliance with the permanent 0.5% interference standard as of February 17, 2010. As discussed below, allowing 2% interference for a 12-month period will give stations the opportunity to develop creative ways to come into compliance with the 0.5% interference standard.

Another concern appears to be that a temporary 2% interference standard may allow stations to extend service well beyond their current digital or analog service area, creating *de-facto*

maximization. The purpose of this temporary grace period is to allow stations to use their current analog antennas and antenna patterns. Stations know that within a 12-month period they will have to meet the 0.5% interference requirement. Stations seeking permanent maximization would follow the Commission's maximization process. Moreover, the purpose of this approach is to provide coverage to the same viewers that are now being served with the stations analog antenna pattern. This proposal is not intended to by pass the maximization process.

In addition, there is concern that some stations will have been afforded relief because they filed a petition for reconsideration to Table B. We would note that of approximately 116 petitions for reconsideration filed to Table B, there are about 75 petitions for reconsideration to Table B concerning stations that will be returning to their analog channel and want to use their current analog antenna pattern. These petitions are being evaluated pursuant to the interference standard of 0.1% that is used for the channel election process. This is different than the 0.5% standard used in the application process, and far more restrictive than the proposed temporary 2% interference standard. As a result, there is no guarantee that granting these Petitions for Reconsideration will necessarily allow stations in these situations to use their analog antennas and antenna patterns when they return to their final channel on February 17, 2009. These stations may still need relief and would have to use the procedures established herein.

Finally, allowing a 12-month period after the transition date for stations to come into compliance with the 0.5% interference rules will give these stations the opportunity to explore the range of technical remedies available to comply with the FCC's 0.5% post-transition interference rule. There are a number of remedies that could be effectively employed once the DTV transition is completed, the freeze is lifted, and stations electing to maximize their facilities are known. For example, a station may decide to down tilt its antenna through either electrical or mechanical means. In addition, consistent with the process employed during the channel election process, stations may be able to negotiate an interference agreement for this 12-month period.³ By coordinating with others, the station may be able to make minor adjustments by slightly reorienting or repositioning the antenna to avoid interference. This is difficult to accomplish during the winter months.

With only 427 days until the transition, the Commission and the industry are in a unique situation that calls for creative solutions. We must work in a cooperatively to ensure this transition moves forward. We trust you will give this your utmost consideration.

Sincerely,



David L. Donovan
President

cc: The Honorable Kevin J. Martin
The Honorable Michael J. Copps

³ We urge the FCC to clarify that the negotiations permitted regarding digital-to-digital interference during the channel election process would remain in place after the transition.

The Honorable Deborah Taylor Tate
The Honorable Jonathan S. Adelstein
The Honorable Robert M. McDowell
Monica Desai, Chief, Media Bureau
Marlene Dortch, Secretary, FCC