

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 )

**PETITION FOR RECONSIDERATION BY  
COHEN, DIPPELL AND EVERIST, P.C.**

The following Petition for Reconsideration (“Petition”) by the firm of Cohen, Dippell and Everist, P.C. (“CDE”) concerns the Federal Communications Commission (“Commission”) adoption of Rules<sup>1</sup> regarding MB Docket No. 07-91 on December 31, 2007. CDE and its predecessors have practiced before the FCC for over 60 years in broadcast and telecommunications matters. The Commission published the Final Rule with reference to the *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television in MB Docket No. 07-91* (“Third Periodic Review”) in the *Federal Register*<sup>2</sup>.

The following addresses certain aspects of this comprehensive document. Briefly, the Petition concerns:

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<sup>1</sup>Report and Order of *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television* adopted December 22, 2007 and Released December 31, 2007.

<sup>2</sup>Published in the *Federal Register* January 30, 2008, Pages 5634 to 5704

- Channel 51 and future protection from Wireless Communication Services
- Protection to Class A LPTV by DTV stations seeking to implement their post transition operation
- ATSC PSIP
- Protection Requirements for subsequent channel change request to the Seventh Report and Order and Eighth Further Notice<sup>3</sup>
- Fixed Grid - FCC Longley-Rice

**Channel 51 and Further Protection From  
Wireless Communication Services**

The Commission responded to CDE's Ex Parte comments dated September 27, 2007 regarding the issue of protection by future protection to DTV Channel 51 operation from future Wireless Communication Services ("WCS"). The Commission addressed that in the Report and Order, Paragraph 169. Later the Commission issued an Erratum<sup>4</sup>. CDE urges the Commission to revisit this language and provide clear and sufficient guidance that future WCS users need to provide protection to Ch. 51 facilities requesting modification beyond the transition.

**Protection to Class A LPTV by DTV Stations Seeking to**

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<sup>3</sup>Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, Adopted: August 1, 2007 and Released: August 6, 2007

<sup>4</sup>Second Erratum—Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 7-91, released January 23, 2008.

**Establish Post Transition Facilities**

CDE requests clarification of the Commission's Rules as adopted in the Third Periodic Review as stations implement the final post transition operation with reference to protection to Class A stations. There are two categories of stations which have not or will not be able to fully implement their post transition operation until some future date. First, those stations which have adopted the channel assigned in the current Table of Allotments, Section 73.622 of the FCC Rules and second, those stations that are reverting back to their NTSC channel or are out-of-core and will build a post-transition facility on an in-core channel. Simply stated, each of the above could have been hampered by a variety of obstacles beyond that station's control. Some of these include international coordination issues, licensed analog NTSC operations, stricter interference criteria, land-mobile constraints, tower constraints due to maintaining NTSC antennas and the FCC freeze.<sup>5</sup>

The Commission in implementing Class A in MM Docket No. 00-10 authorized these stations as primary status based on compliance with certain requirements. At that time, the then translator received a certain interference level from other full and secondary service stations. These translator stations operated under those received interference conditions based on their acceptance of that interference level. That same level of interference should be the condition under which DTV stations seeking to modify their facilities to implement the final post-

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<sup>5</sup>See FCC Public Notice (DA 04-2446) dated August 3, 2004, entitled, "*Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*"

transition operation. To do otherwise will hamper and frustrate the stated goal of achieving a viable off-the-air DTV service.

In the *Third DTV Periodic Report & Order*, the Commission made a number of important decisions regarding the post-transition operations of full-power stations including, most importantly, adopting a 0.5 percent new interference standard when evaluating applications of full power stations after the transition.<sup>6</sup> Although the Order was silent on the calculation of interference to Class A stations from the post-transition applications of full power DTV stations, the Media Bureau technical staff has informally announced a new policy that will prevent full power stations from counting pre-transition masking interference received by Class A stations before applying the 0.5 percent new interference standard.

The Commission should reverse the Bureau's decision and clarify that full power stations can count pre-transition masking interference before computing or applying the 0.5 incremental standard. If this policy is not reversed, it will result in a dramatic and unprecedented increase in the protected service areas of the overwhelming majority of Class A stations across the country. This increase in the protected service areas of Class A stations will inevitably wreck havoc on the plans of many full power stations to expand and improve their over-the-air digital service to the public. Given the overriding importance of improving and enhancing over-the-air digital television service on and around February 17, 2009, the Commission should eliminate this potential drag on the service area expansion plans of many full power stations and reverse the staff's policy on the treatment of masking interference.

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<sup>6</sup>See *Third DTV Periodic Report and Order*, supra. Para. 155-160

One purported justification for the staff's policy is that the Commission is somehow required to do by the Federal statute that created Class A stations. As discussed herein, the Federal statute requires no such thing. The *Community Broadcasters Protection Act of 1999* (the "Act") made certain low power television stations eligible, for the first time, to secure future interference protection from later filed applications from full power, low power and television translator stations.<sup>7</sup> Shortly after the *Act* was signed into law on November 29, 1999, the Commission was required to preserve the service areas of any low power television station that filed an application for Class A status, subject to several exceptions specified in the *Act*.<sup>8</sup> Because these low power stations had been secondary stations up to that point, their service areas were ultimately defined not by coverage contours but by the interference they were forced to accept from full power television stations and earlier filed low power and television translator operations.

Thus, from the outset, the Class A station service areas that the Commission was required to protect had already been reduced by the interference caused by nearby full-power, low-power and television translator stations. No other provision of the *Act* or the Commission's rules expanded the service area protection for Class A stations. Despite this, the staff's new policy will greatly exceed the requirements of the *Act* because today's masking interference is the same interference that existed at the time these stations filed for Class A status in 2000.

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<sup>7</sup> The Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-111, 113 Stat. 1501 (1999), *codified at* 47 U.S.C. § 336(f).

<sup>8</sup> *See* 47 U.S.C. § 336 (f) (1)(D) (generally codifying).

The staff's decision to ignore the interference that actually defined the protected service areas for Class A stations will unleash a wave of problems for full power stations. One of the most severe will involve those former low power stations that were famously shoe-horned into large metropolitan areas by accepting enormous levels of co-channel and/or adjacent channel interference while complying with the Commission's rules on interference caused to full power and low power stations. Practically overnight, nearby full power stations will go from protecting a very small, makeshift service area to facing a major obstacle to any service area expansion. These situations will multiply across the country and could severely hamper the ability of the industry to build-out and expand its over-the-air service during and after the transition.

For these reasons, the Commission should reverse this staff policy and confirm that full power television stations can count masking interference when calculating interference to a Class A station from a proposed post-transition operation.

#### **ATSC PSIP**

In the DTV Third Periodic Review,<sup>9</sup> the Commission adopted the proposal to update Section 73.682(d) of the FCC Rules to reflect the latest revisions to the ATSC PSIP standard since the Second DTV Periodic Report and Order. The adopted proposal will thereby incorporate the latest version of the ATSC standard A/53-3 and ATSC PSIP standard A/65C into Section 73.682(d) of the FCC Rules, which will require broadcasters to populate the Event Information Tables ("EITs") with information on each event.

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<sup>9</sup>See Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07-91, Released: December 31, 2007, Para. 179-185

We agree with the Commission that certain elements of the updated ATSC PSIP standard A/65C enhances consumers' viewing experience by providing detailed information about digital channels and programs. Under the previous version of the standard, A/65-B, broadcasters were required to provide only general information in the EIT such as, "network programming" as the descriptor for the majority of its program offerings. Despite the fact that only general info in the EIT was previously required, many broadcasters are already populating the EIT with specific programming information as required in the updated ATSC PSIP standard A/65-C. However, many existing devices used to generate the Program System and Protocol data do not currently support the proposed ATSC changes to the AC3\_audio\_stream\_descriptor() in the EIT, specifically, Sections 6.8.1 and 6.8.3. These sections specify that audio language shall be indicated by including the optional ISO-639 Language bytes within the AC3\_audio\_stream\_descriptor(), at which point the use of the ISO-639 Language Descriptor to indicate language shall be optional, but recommended to support legacy devices requiring the ISO-639\_language\_descriptor().

The use of the AC-3\_audio\_stream\_decriptor() in the EIT should not be mandatory for legacy equipment when there is only one audio service planned for or present as an element of the event. Updating legacy equipment to meet this new requirement will create a financial burden on small and medium market broadcasters. We encourage the Commission to reconsider the adoption of this standard which will require small and medium market broadcasters to update legacy equipment to conform to the updated standard. Rather than mandating the new standard, we request that these sections be made voluntary, as many stations are already populating the EITs and only carrying one audio service.

**Protection Requirements for Subsequent Channel Change Request to the Seventh Report and Order and Eighth Further Notice<sup>10</sup>**

Paragraph 161 entitled, “Interference Criteria for New Allotments” states in part, “As proposed, we will use geographic spacing requirements as the standards for determining the technical acceptability of channel use in evaluating rule making petitions seeking new DTV channel allotments.” The Commission is invited to clarify the intent as it applies to those DTV stations which are on Table B of the Seventh Report and Order and subsequent additions to not apply the DTV to DTV geographic separation requirements but only apply the 0.5 percent interference standard.

**Fixed Grid**

The Commission, again, is urged to modify the Longley-Rice evaluation software to use a cell grid defined by cardinal values of latitude and longitude (NAD83). Cells defined by one minute of latitude and longitude would range in size from approximately 2.3 sq km to 3.1 sq km in the continental U.S. Cells defined by 30 seconds of latitude and longitude would range from approximately 0.6 sq km to 0.8 sq km. Limiting analysis to these 2 cell grids would provide simplicity without any loss of accuracy. The fact that the transmitter site would not be in the exact center of a cell would not significantly affect the results of any study.

Using a grid standard of cardinal latitude and longitude values would provide a host of other benefits including:

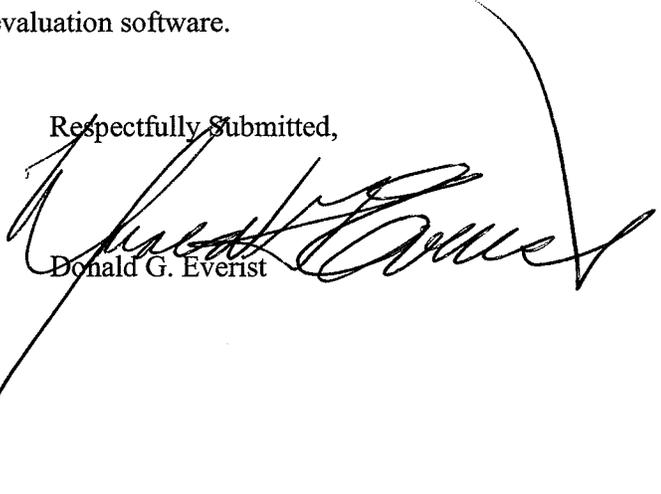
- a grid that does not change as the desired station changes.

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<sup>10</sup>Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, Adopted: August 1, 2007 and Released: August 6, 2007

- the ability to store cell results of stations that do not vary for use across multiple studies.
- a simplified analysis for digital transmission systems and single frequency networks systems with multiple transmitters.
- the means to easily compare, sum and difference the service areas of stations in the same geography.
- streamlined code for the evaluation software.

Respectfully Submitted,

  
Donald G. Everist

Date: February 29, 2008