

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

In the Matter of )  
 )  
Amendment of Parts 73 and 74 of the ) MB Docket No. 03-185  
Commission's Rules to Establish Rules for )  
Digital Low Power Television, Television )  
Translator, and Television Booster Stations and )  
to Amend Rules for Digital Class A Television )  
Stations )

To: The Commission

**COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING**

**CELLULAR SOUTH, INC.**

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## Summary

In these comments, Cellular South, Inc., a licensee of Block A lower 700 MHz wireless spectrum, urges the Commission to take the following steps to facilitate the transition of LPTV stations to digital operation. The Commission should (1) adopt a hard deadline of July 12, 2012, for the termination of analog LPTV facilities with an earlier date of December 31, 2011 for out-of-core and Channel 51 analog LPTV stations; (2) require existing analog and digital LPTV stations in the 700 MHz band (channels 52-69) to submit displacement applications by June 30, 2011, or discontinue operations altogether; (3) dismiss any analog LPTV station applications that remain pending , (4) modify the LPTV minor change rule so that it covers a proposed change in a low power television station's transmitter site of no more than to 15 miles (24 kilometers) from the reference coordinates of the station's transmitting antenna; (5) revise the vertical antenna patterns used in the prediction methodology for LPTV stations; and (6) allow LPTV stations to use the emission mask used by full power television stations.

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Cellular South, Inc. (“Cellular South”), by its attorneys and pursuant to the FCC Rule Section 1.401, *et seq.*, submits its comments on the Further Notice of Proposed Rulemaking, 25 FCC Rcd 13833 (2010) (“FNPRM”) looking to establish rules to complete the low power television station (“LPTV”) digital transition.<sup>1</sup> In support, the following is shown:

**I. Introduction.**

The Commission seeks comment on several LPTV transition issues. These include: (1) whether to adopt a hard deadline during 2012 for the termination of analog LPTV facilities; (2) whether to require existing analog and digital LPTV stations in the 700 MHz band (channels 52-69) to cease operations by a date certain and to submit displacement applications or discontinue operations altogether; (3) whether to modify the Commission’s minor change rule so that it covers a proposed change in a low power television station’s transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station’s transmitting antenna; (4) whether to revise the vertical antenna patterns used in the prediction methodology for the low power

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<sup>1</sup> For the purposes of this proceeding, the FCC considers Class A Television stations, low power television stations, and TV translators, as “low power television stations.” FNPRM, 25 FCC Rcd 13834.

television services; and (5) whether to allow low power television stations to use the emission mask used by full power television stations. FNPRM, 25 FCC Rcd at 13834.

## **II. Cellular South's Interest.**

Cellular South is the nation's largest privately-held wireless carrier. It currently provides wireless services to approximately 850,000 customers throughout Mississippi and in portions of Alabama, Tennessee and Florida. It holds licenses to operate wireless systems on Frequency Block A in the Lower 700 MHz Band, and recently announced its plans for building out some of those licenses. In effecting its build-out, it is facing potential interference from LPTV facilities which continue to operate on TV channels above 51, as well as facilities operating on Channel 51 and to a lesser degree on Channel 50. Because of the potential interference to its operations posed by these facilities, Cellular South has a vital interest in expediting the DTV conversion of LPTV stations and the clearing of TV facilities outside the core TV spectrum, TV Channels 2-51, excluding channel 37. Cellular South is thus an interested party to this proceeding.<sup>2</sup>

## **III. LPTV Digital Conversion Issues.**

In the *Digital LPTV Order*,<sup>3</sup> the Commission sought to facilitate the digital transition of LPTV stations. The Commission granted all existing LPTV stations the opportunity to seek either an on-channel digital conversion ("flash cut") authorization or the opportunity to receive a "digital companion channel" to operate temporarily with their analog channel.<sup>4</sup> Nevertheless, the FNPRM indicates that only 56 percent of the existing 7536 LPTV stations have taken steps to move toward digital operation. FNPRM, 25 FCC Rcd at 13834-35.

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<sup>2</sup> Cellular South is commenting only on those specific issues which affect or have the potential to affect its operations.

<sup>3</sup> *Digital LPTV Order*, 19 FCC Rcd 19331 (2004).

<sup>4</sup> *Id.* at 19376 and 19379.

As the FNPRM notes, the recently-released National Broadband Plan recommended several measures to increase the efficiency of spectrum use in the broadcast TV bands with the goal of ultimately reallocating spectrum from those bands for use in the provision of mobile broadband services.<sup>5</sup> Among other things, the Plan recommended establishing “a deadline to achieve the DTV transition of low-power TV (LPTV) stations by the end of 2015 or after the reallocation of spectrum from the broadcast TV bands is complete.”<sup>6</sup> The FNPRM is therefore proposing deadlines and procedures to complete the LPTV transition to digital to help meet the Commission’s goal of more efficient use of spectrum in the broadcast TV bands. Cellular South supports this effort and in its comments below urges the Commission to expedite the digital transition of LPTV stations.

**a. Analog Shutoff Date.**

The FNPRM seeks comment on establishing a deadline for LPTV licensees to cease operating their analog facilities. Specifically, the Commission inquires as to whether to establish a date in 2012 for the digital conversion deadline and the shutoff of analog LPTV facilities. 25 FCC Rcd at 13837. For the reasons which follow, Cellular South believes that the Commission should adopt the following deadlines for effecting the transition of LPTV stations to digital and for clearing LPTV stations from out of core spectrum.

1. The Commission should require the following LPTV analog stations to cease operations by December 31, 2011:
  - a. All LPTV stations that have been granted digital companion channels.
  - b. All LPTV stations operating outside the core TV spectrum (channels 2-51, excluding channel 37).
  - c. All LPTV stations operating on Channel 51.
2. All other LPTV stations should be required to cease analog operation by July 12, 2012.

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<sup>5</sup> FNPRM, 25 FCC Rcd at 13835. See *National Broadband Plan*, at p. 94 (March 16, 2010).

<sup>6</sup> *Id.* at p. 92.

No reason exists for continued analog operation beyond these dates. The full power TV digital transition is complete. The vast majority of TV viewers have made the transition to over the air digital, or to a cable/satellite system. Additional time beyond that discussed above is not necessary to complete the full digital TV transition.

As the FNPRM notes, Congress created a special fund to assist LPTV stations with their conversion to digital. FNPRM, 25 FCC Rcd at 13838. The Digital Television Transition and Public Safety Fund provides up to \$65 million to reimburse LPTV stations in eligible rural communities for their cost of upgrading to digital equipment.<sup>7</sup> The National Telecommunications and Information Administration began accepting applications for reimbursements in July 2009.<sup>8</sup> A transition date occurring by 2012 allows more than ample time for eligible LPTV stations to take advantage of the availability of this fund to defray the costs of constructing digital facilities.

Expedited transition of LPTV stations to digital operation is essential for several reasons. As the FNPRM points out, establishing an analog termination date for the low power television services in 2012 is consistent with the Broadband Plan's recommendations related to increasing the efficient use of the broadcast TV bands and facilitating the deployment of new mobile broadband facilities since the number of channels that will have to be considered with respect to the potential broadband reallocation/repacking proposals will be decreased with LPTV stations having returned their second channel and with all stations operating on their final digital facilities. FNPRM, 25 FCC Rcd at 13837-38.

Moreover, clearing spectrum now used by LPTV stations out of the core TV spectrum is necessary to prevent destructive interference to 700 MHz licensees. Although 700 MHz licensees currently have remedies available to them in the event of interference with legacy out of core

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<sup>7</sup> *Digital Television and Public Safety Act of 2005*, codified as 47 U.S.C. §§ 309(j)(14) & 337 (e).

<sup>8</sup> 74 F.R. 22402 (May 12, 2009).

LPTV stations, resort to those remedies distracts them from system implementation and imposes unnecessary expense on 700 MHz licensees. Likewise eliminating analog facilities operating on Channel 51, adjacent to 700 MHz systems, minimizes the expense and distraction of resolving interference issues between 700 MHz licensees and those analog Channel 51 facilities.

As the FNPRM notes, adoption of a 2012 analog termination date would give LPTV analog stations approximately three years from the June 2009 full power digital transition to apply for and construct digital facilities. FNPRM, 25 FCC Rcd at 13838. It should, however, further be noted that all television licensees have been on notice for many years of the need to convert to digital operation. It can hardly be said then that any television licensee has lacked sufficient time or notice to prepare for and implement its transition to digital. Nor can Cellular South foresee any serious case of hardship where a licensee for reasons beyond its reasonable control is unable to make a timely conversion to digital. Nevertheless, the Commission's waiver processes are more than adequate to deal with that eventuality in the unlikely circumstance that it should arise. That said, waiver of the LPTV digital transition deadline should be considered an extraordinary remedy and the Commission should require a compelling showing to extend the deadline for any LPTV station to cease analog operation. Any such showing should be required to include at a minimum proof of lack of harm to any potentially affected party, such as a 700 MHz wireless licensee.

In this connection, Cellular South endorses the FNPRM's suggestion that LPTV stations be afforded the opportunity to operate in VHF spectrum with higher power than currently allowed. FNPRM, 25 FCC Rcd at 13839. We recommend, moreover, that priority be given immediately to currently out of core LPTV stations and to stations located on Channel 51 in order to encourage migration of these facilities to areas of the television band that do not risk interference to 700 MHz spectrum wireless operation.

Cellular South sees no need for extensive outreach to be a delaying factor in effecting the LPTV digital conversion. The outreach associated with the full power television digital transition has served to educate all television consumers of the need for digital receivers or conversion boxes. To the extent additional outreach may be necessary for those few communities which continue to rely on analog LPTV for the bulk of their video programming needs, Cellular South believes the Commission has sufficient resources to handle this task without delaying the digital transition deadline.<sup>9</sup>

**b. Out-of-Core Transition Date.**

With specific reference to out of core LPTV stations, the FNPRM proposes adopting a date by which existing LPTV stations must submit a displacement application for an in-core (channels 2-51 excluding channel 37) digital channel. To that end, the NPRM proposes an “out-of-core transition date” of December 31, 2011, by which all LPTV low power television stations must cease all operations (both analog and digital) on channels 52-69. FNPRM, 25 FCC Rcd at 13841. Cellular South agrees with the FNPRM that proposing an earlier transition date for the out-of-core channels will facilitate the clearing of these channels while permitting existing out-of-core stations a sufficient amount of time to identify in-core channels and prepare and file digital displacement applications.

To facilitate the final clearing of the 700 MHz band of LPTV stations the FNPRM proposes requiring that all low power stations with facilities on channels 52-69 submit a digital displacement application proposing an in-core channel (channels 2-51 excluding channel 37) not later than June 30, 2011 – six months prior to the out-of-core transition date. FNPRM, 25 FCC

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<sup>9</sup> Cellular South supports allowing LPTV stations to continue to terminate their analog operations and transition to digital without a requirement of notice to the public. See FNPRM, 25 FCC Rcd at 13843. As rational business people, who desire to continue to serve their viewers, LPTV licensees will provide the public with reasonable notice of their transition to digital and do not need to be curtailed by any specific notice requirement.

Rcd at 13841-42. The FNPRM further proposes that any LPTV station that cannot identify a workable in-core channel and submit a digital displacement application by the deadline would be required to cease operations by the out-of-core transition date. *Id.* at 13842.

As indicated above, Cellular South supports requiring out of core analog or digital LPTV stations to vacate 700 MHz spectrum by the end of 2011. Likewise, the requirement that such stations file a displacement application for an in core channel by June 30, 2011 is reasonable and necessary to ensure that these stations vacate 700 MHz spectrum by the end of 2011. However, Cellular South suggests that the Commission limit the filing of displacement applications to channels below Channel 50 in order to minimize the potential for interference to wireless operations in the 700 MHz band.

Cellular South further supports the FNPRM proposal to extend the notification and termination provisions contained in FCC Rule Section 74.703(g) to analog LPTV facilities currently operating in the 700 MHz band. FNPRM, 25 FCC Rcd at 13842. Pursuant to those provisions, a primary wireless licensee in the 700 MHz band may notify affected digital LPTV stations of its intent to initiate or change operations and upon receipt of such notice the digital LPTV station must cease operation of any interference-causing operation within 120 days, unless it obtains the agreement of the primary licensee to continue operations.

The FNPRM notes that since adoption of these provisions, new wireless licensees have been using the digital provisions to notify analog LPTV and TV translator stations in the 700 MHz band of their intent to initiate or modify their service and to request that they terminate operations. FNPRM, 25 FCC Rcd at 13842. It makes sense then for the FCC to formally extend the notification and termination provisions in FCC Rule Section 74.703(g) to analog LPTV stations in the 700 MHz band.

**c. Filing Freeze.**

Effective upon the adoption date of the FNPRM, the Commission announced a freeze on the filing of (1) applications for new analog low power television and TV translator facilities; and (2) applications for new or modified, analog or digital, low power television stations on channels 52-69. FNPRM, 25 FCC Rcd at 13842. Cellular South agrees that it is time to discontinue the licensing of all new analog facilities and new or modified analog and digital facilities in the 700 MHz band. The FNPRM further explains that the staff has notified all pending applicants for new analog LPTV facilities that they must amend their pending applications to specify digital operations by May 24, 2010, and those pending applications that are not amended to specify digital operations by the deadline will not be processed.<sup>10</sup> Cellular South supports the FCC's proposal to dismiss those applications for new analog LPTV facilities that remain pending after the May 24, 2010 deadline for amendment to specify digital facilities. Any other course of action would frustrate the expeditious transition of LPTV stations to digital and impose an unnecessary workload on the staff processing applications for analog facilities that would be required to convert to digital in a very short time period.

**d. Minor Change Definition.**

The FNPRM explains that in the *Digital LPTV Order*, the FCC modified the minor change processing rule for digital LPTV displacement applications filed to replace channels displaced by full-service TV station or by a 700 MHz commercial wireless or public safety operation. FNPRM, 25 FCC Rcd at 13845<sup>11</sup> The rule was changed to provide that such applications may propose a transmitter site move of no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's community of license, as provided in FCC

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<sup>10</sup> *Id.* See "Applicants for New Low Power Television and TV Translator Stations Must Convert to Digital By May 24, 2010", *Public Notice*, DA 10-496 (March 25, 2010).

<sup>11</sup> *Digital LPTV Order*, 19 FCC Rcd at 19377.

Rule Section 76.53.<sup>12</sup> The FCC found that such a change would help to prevent applicants from using the displacement process to propose greater than needed modifications to their facilities.<sup>13</sup>

The NPRM further explains that an existing LPTV station can now file any modification application as a “minor change” as long as there is a contour overlap between the proposal and the station’s existing facilities.<sup>14</sup> FNPRM, 25 FCC Rcd 13845. “Thus, there is no limitation as to how far a station may relocate its transmitter site, as long as some contour overlap is demonstrated.” *Id.* The FNPRM suggests that stations are able to frustrate the intent of the minor change rule by proposing a modified facility that is a substantial distance from the station’s existing location while showing only a very slight amount of contour overlap. *Id.* at 13845-46. To address this issue, the FNPRM proposes to expand the 30 mile rule to all LPTV proposed minor modification applications. *Id.* at 13846.

The proposed LPTV minor change rule would still be considerably more liberal than the minor change rules for other broadcast services. Although the rule may have some justification to afford LPTV licensees flexibility in a congested spectral environment, Cellular South is concerned the proposed rule affords an excessive amount of leeway to LPTV applicants to vacate their licensed communities and service areas in favor of other more favorable service areas. This is likely to result in loss of service to those rural communities which do rely on LPTV for their video programming. Cellular South suggests that the FCC apply a rule more approximating that employed for other broadcast services. Requiring LPTV applicants to propose overlap of at least 35 percent of their existing service area would insure a continued connection with their designated community of license and service area while still affording LPTV licensees substantial flexibility. Similarly, Cellular South would limit the distance an LPTV station could

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<sup>12</sup> *Id.* at 19376.

<sup>13</sup> *Id.*

<sup>14</sup> See 47 C.F.R. §§73.3572(a)II (analog) and 74.787(b) (digital).

move its transmitter site on a minor change application to 15 miles, rather than 30 miles from the reference coordinates of the community of license. A 15 mile limit affords LPTV licensees more than 700 square miles to locate alternative transmitter sites. Surely that is enough flexibility.

**e. Antenna Vertical Radiation Patterns.**

The FNPRM proposes to revise the vertical patterns used in the temporary prediction methodology for LPTV facilities that the FCC adopted in the *Digital LPTV Order*. FNPRM, 25 FCC Rcd at 13847-48. The FNPRM suggests that use of the actual vertical patterns of proposed LPTV facilities would enable a more realistic determination of the service areas of these stations and their potential for interfering with other stations, as well as more accurate determinations of application mutual exclusivity. *Id.* The FNPRM acknowledges that collecting vertical relative field strength data from the thousands of existing stations could be time consuming. Rather than undertaking the task of collecting vertical patterns from existing stations, however, the FNPRM indicates that the FCC is considering the use of assumed vertical patterns while allowing existing stations the option of filing applications for minor changes to their facilities and submitting their actual proposed vertical patterns with their applications. *Id.* at 13848.

Cellular South supports the FNPRM's proposal. We agree that the current methodology is imprecise and underestimates interference potential from LPTV stations and overestimates LPTV service area. The FCC should obtain on an ongoing basis the actual vertical pattern for LPTV proposals, and in the absence of receipt of actual data from existing stations, should use assumed patterns modeled on those employed by full service TV stations.

**f. Use of Full-Power DTV Emission Mask.**

The *Digital LPTV Order* adopted relaxed emission masks.<sup>15</sup> The FNPRM states the FCC has received numerous waiver requests from LPTV applicants to substitute the full-power DTV

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<sup>15</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19400-19405; 47 C.F.R. §74.794(a)(2) and 74.793(c).

emission mask. FNPRM, 25 FCC Rcd at 13848. According to the FNPRM, these applicants argue that in the areas where frequencies are not available, use of the full-power DTV emission mask would enable them to secure a channel even though it would cost more to install such a mask. *Id.* The FNPRM also notes that the National Broadband Plan recommended allowing LPTV stations to use improved mask filters to enable more efficient channel allotments.<sup>16</sup> *Id.* Cellular South supports allowing LPTV stations to use full power DTV emission masks. Not only would doing so allow for more efficient allotments, but it would also lessen interference by Channels 51 and 50 LPTV stations to lower 700 MHz wireless operations.

#### **IV. Conclusion.**

As set forth above, the Commission should take the following steps to facilitate the transition of LPTV stations to digital operation. The Commission should (1) adopt a hard deadline of July 12, 2012, for the termination of analog LPTV facilities with an earlier date of December 31, 2011 for out of core and Channel 51 analog LPTV stations; (2) require existing analog and digital LPTV stations in the 700 MHz band (channels 52-69) to submit displacement applications by June 30, 2011, or discontinue operations altogether; (3) dismiss any analog LPTV station applications that remain pending, (4) modify the LPTV minor change rule so that it covers a proposed change in a low power television station's transmitter site of no more than to 15 miles (24 kilometers) from the reference coordinates of the station's transmitting antenna; (5) revise the vertical antenna patterns used in the prediction methodology for LPTV stations; and (6) allow LPTV stations to use the emission mask used by full power television stations.

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<sup>16</sup> See *National Broadband Plan*, at p. 94.

**CELLULAR SOUTH, INC.**

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