

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

In the Matter of)	
)	
Second Periodic Review of the)	MB Docket No. 03-15
Commission's Rules and Policies)	
Affecting the Conversion)	RM 9832
To Digital Television)	

Comments of Crown Castle USA, Inc.

April 14, 2003

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Crown Castle USA ("Crown Castle"),¹ Inc. hereby submits these comments in this Notice of Proposed Rulemaking ("NPRM")² addressing the DTV transition and associated issues and herein urges the Commission to find every reasonable means to expedite a timely transition that would allow for new commercial and public safety services to be launched in the 700 MHz band.

- I. The spectrum now used for TV channels 52-69 has been allotted for new services that will provide substantial benefit to the American public and the productive use of this spectrum should not be held hostage to a policy that ignores the reality that fewer and fewer households rely on over-the-air broadcast for their television programming.**

The DTV transition is an effort of massive proportions and Congress has properly tasked the FCC with overseeing a seamless digital transition that will preserve the ability of Americans to receive television transmissions from all the broadcasters serving their home market. This includes giving Americans every reasonable opportunity to acquire digital-capable televisions or

¹ Crown Castle USA, Inc. is the domestic United States operating division of Houston, Texas-based Crown Castle International Corp. Crown Castle International Corp. develops, owns, and manages shared infrastructure facilities such as towers and rooftops for wireless telecommunications and broadcast services in the United States, the United Kingdom, and Australia. In addition, in the UK, Crown Castle owns and operates the transmission network that broadcasts the television signal of the BBC (British Broadcasting Corporation) and other content providers.

² January 15, 2003 NPRM for MB Docket No. 03-15 and RM 9832.

digital-to-analog converter devices. Additionally, Congress has directed the FCC to provide broadcasters, especially those without the financial and technical resources of the major networks, with enough time and operational flexibility to allow them to successfully deploy their digital facilities and replicate the coverage contours of their existing analog services.

Another Congressional objective associated with the digital transition is to consolidate television broadcasting into the core channels (2-51) in order to recover the out-of-core channels (52-69) for the provision of a wide range of public safety, land mobile, and commercial communications services. However, little or no discernable progress has been made towards this objective and some experts believe that incumbent broadcasters will continue to operate in the out-of-core channels until the end of the next decade and thus preclude the transition of any currently encumbered spectrum to new public safety or private or commercial services. For example, in a recent presentation at the International Wireless Communications Exposition (IWCE), Ralph Haller of Fox Ridge Communications and former chief of the FCC Private Wireless Division indicated his view that no appreciable encumbered spectrum would be available, even in the Upper 700 MHz band, until the 2012-2016 period and even this timeframe is optimistic.³

The developments surrounding Auction 44 of the Lower 700 MHz underscores the skepticism of potential bidders about recovering any spectrum currently encumbered by broadcasters. In fact, in Auction 44, 256 of the 740 geographic licenses did not receive any bids. This clearly evidences the fact that prospective entrepreneurs, wireless carriers, and investors see little opportunity for recovering spectrum in encumbered geographic areas.

³ Ralph Haller presentation to a session at IWCE in Las Vegas, NV addressing potential uses of the 700 MHz band on March 13, 2003.

Even though the FCC approved a voluntary swapping mechanism where an incumbent broadcaster could voluntarily vacate its 700 MHz channel and relocate to an in-core channel under an agreement where the winning bidder would agree to compensate the broadcasters,⁴ the momentum to facilitate a timely recovery of the 700 MHz spectrum may have dissipated. For example, in this NPRM,⁵ the Commission posits whether a logical application of §309(j)(14)(B)(iii) would effectively compel the FCC to grant every extension request (to continue analog transmissions) unless a full 85% of a market's households have digital televisions or converters, while not including Multichannel Video Programming Provider (MVPD) subscribers who can effectively access digital-originated content.⁶ Since §309(j)(14)(B)(iii) makes it more likely that extensions may be granted, one might conclude that Congress's true intentions belied its stated objectives to expeditiously recover the 700 MHz spectrum.

However, the FCC here has the opportunity to create a regulatory framework that will ensure the digital transition progresses and that the 700 MHz band is recovered within a reasonable timeframe. In fact, the case for trying to recover the 700 MHz spectrum makes even more sense if one considers that by some estimates only about 13% of American households rely

⁴ Third Report and Order, January 18, 2001

⁵ January 15, 2003 NPRM for MB Docket No. 03-15 and RM 9832.

⁶ In the discussion of the "15 per cent" test in this NPRM (paragraphs 84-92), the Commission examines the plain language of 309(j)(14)(B)(iii) as well as the legislative history to determine how to apply the 15% threshold for whether the necessary proportion of the market demographic possesses the technical capability to make use of digital signals. Here the FCC points out that both the statutory language and the conference report are instructive of the following. If any local digital station is not carried by a particular subscriber's MVPD and that subscriber doesn't have the equipment to convert the digital signal over-the-air, this subscriber would fall into the category of those households who don't have the capability to use digital signals. If these households in combination with all others in a market that do not have either a digital television or digital-to-analog converter exceed 15% of all households, an analog broadcaster in that market would be entitled to an extension.

on over-the-air broadcasting for their television reception.⁷ (The FCC's most recent report on competition in the video market indicates that in 2002, households that rely only on over-the-air reception increased to 14.7% of households.⁸) Based on the small portion of households that actually receive their video programming from over-the-air broadcast, the public derives very little value in the large allotment of spectrum for television broadcasting.

II. A primary objective for the FCC in crafting an orderly transition to DTV should be to facilitate the timely clearing of channels 52-69 so that the Upper and Lower 700 MHz spectrum can be utilized for both public safety and commercial service operations.

A. The FCC should set early deadlines that will terminate interference protection for analog replication or coverage maximization for DTV stations operating at channels 54, 55, and 59 (e.g., the C and D block licenses of the Lower 700 MHz band) and channels 60-69 (the Upper 700 MHz band).

The FCC has asked whether earlier deadlines should be established that would end interference protection for signal replication or maximization for DTV stations currently operating in spectrum slated for recovery for fixed and mobile service. The answer is clearly yes. Without early deadlines, the FCC would be sending a clear message that recovery of the Lower and Upper 700 MHz band is not a priority.

The FCC also asks whether an early deadline should apply to just the Upper 700 MHz bands or to both the Upper and the Lower bands. Crown Castle believes the early deadlines should apply to the Upper 700 MHz band (channels 60-69) and channels 54, 55, and 59 of the Lower band.⁹ As the FCC has repeatedly pointed out, the Upper 700 MHz is significantly less encumbered than the Lower band and as such, there would be relatively less inconvenience

⁷ August 6, 2002 statement by Jenny Miller of the Consumers Electronic Association (CEA) on *Marketplace*, a daily radio program from Pacifica that reports on business issues.

⁸ FCC Ninth Annual Report on Competition in Video Markets. December 31, 2002

⁹ Channels 54, 55, and 59 have already been subject to auction (Auction 44) and a re-auction (Auction 49) is scheduled for May 30 of those channels for which bids were not received in the first auction.

visited upon incumbent broadcasters. More importantly, however, public safety agencies and first responders are facing a desperate shortage of radio spectrum and the 24 MHz allocated to them will not only provide them with much needed additional capacity but will also provide them the necessary flexibility to make their networks interoperable.

It is inconsistent for the FCC to auction this spectrum and not take any steps to make the spectrum available in the envisioned timeframe.

B. DTV stations should not be allowed to move to channels 54 or 55; at a minimum, any DTV station initiating service on channels 54 or 55 should not be accorded interference protection from wireless service providers who have acquired their license at auction.

The FCC should not permit DTV stations to move to channels 54 or 55. However, should the FCC allow DTV stations to move to these channels, no interference protection should be provided to such stations.

Under current regulations, a broadcaster operating a digital station can apply to move its station to the Lower 700 MHz band in channel 52-58. In this NPRM, the FCC indicated it is considering taking steps to limit the ability of a DTV station to move to a Lower 700 MHz channel and be assured of receiving interference protection from newly licensed wireless operators. Here the FCC's misgivings are justified. While there is no question that Lower 700 MHz auction winners must provide interference protection to incumbent broadcasters during the transition period, an auction winner should not be obliged to provide co-channel or adjacent channel interference protection to a newly relocated DTV station assuming the auction winner's system operates within the technical requirements for the Lower 700 MHz band.

III. In determining whether a waiver should be granted under §309(j)(14), the FCC should develop rational measurements that reflect the dual Congressional goals of (a) effecting an orderly adoption of and migration to DTV and (b) opening up the 698-806 MHz band for new commercial and public safety services.

A. If the FCC considers granting blanket extensions under § 309(j)(14)(B) for stations operating in channels 52-69, it should only do so for subparts (i) or (ii) and blanket exemptions should be reevaluated at least every six months.

There is a compelling national interest in recovering the 700 MHz spectrum and the FCC should be fastidious in ensuring that exemptions for channels 52-69 are only granted under appropriate circumstances. Even if the FCC provides for blanket exemptions for analog stations in the core channels, it may be best to avoid issuing such exemptions for analog stations in the out-of-core channels so that incumbent broadcasters do not assume that an exemption should be considered automatic or pro-forma. All exemptions, whether blanket or individually approved, should only be valid for a short period.

If a process allowing blanket exemptions for channels 52-59 is put in place, such exemptions should only be based on §309(j)(14)(B) subparts (i) and (ii) – that is they should be based only on whether the affiliates of the four large networks operate in a particular market and whether digital-to-analog converter technology is generally available. If a blanket exemption for an analog station could not be issued under subparts (i) or (ii), the consideration under subpart (iii) (whether 15% of the market’s households subscribe to a MVPD that carries every digital station broadcasting in that market), should be performed with an evaluation of the facts of the individual case based on a broadcaster’s unique market.

B. DMA is too unwieldy and imprecise a term to be relied on as the exclusive definition of a station's television market.

As the FCC discusses in this NPRM,¹⁰ the way that a television market is defined for the purpose of determining whether extensions should be granted under §309(j)(14)(B) could profoundly affect how well the congressional objectives can be met. In the NPRM, the FCC asks what measures are appropriate for defining a market and discusses the relative advantages and drawbacks of using Designated Market Areas (DMAs), Grade B contours, or modified DMAs.

The FCC points out that a DMA is often much larger than a station's over-the-air viewing area and it is not unusual for a station's Grade B contour to overlap two or more DMAs. As such, the use of a DMA definition could artificially and inappropriately distort the analysis for granting an extension. This is because the fundamental question of whether to grant an extension bears on whether an analog signal will continue to be received within the station's Grade B contour area. Using a DMA analysis could require that households far removed from a station's geographic coverage area could be a determining factor in terms of whether an extension would be granted. This seems arbitrary and illogical.

One example of this type of perverse logic is the criterion in §309(j)(14)(B)(iii) that requires that an extension be issued if 15% or more of the households in the "market" do not subscribe to an MVPD that carries every digital station in the station's television market. As the FCC correctly observed, if the DMA market area definition would apply, "it would be difficult, if not impossible, to meet this test, as cable systems almost never carry all stations in the DMA."¹¹ On the other hand, the FCC points out that a cable system is more likely to carry all

¹⁰ January 15, 2003 NPRM for MB Docket No. 03-15 and RM 9832.

¹¹ NPRM at 75.

television stations that broadcast within the station's Grade B contour area.¹² As such, if the FCC used the DMA definition exclusively, the practical result may be that every application for an extension would need to be granted. Unfortunately, this type of result would eliminate any chance that the 700 MHz band would be recovered and this is not what Congress intended.

IV. In no small way, the success of the digital transition will hinge on how readily the consuming public acquires digital-capable equipment and the FCC must provide more guidance to the public and more direction to the industry, or the transition period will extend for years longer than it should.

In the NPRM, the FCC examines the statutory underpinnings for the DTV transition and its analysis suggests that the plain language of §309(j)(14)(B) and the conference report provide a multitude of safeguards to protect both broadcasters and consumers that could prolong the transition. Under the existing framework, broadcasters are given every opportunity to secure the financial capabilities to deploy a digital operation. In addition, broadcasters are also given as much leeway as possible to forego a transition if it appears that a small fraction of consumer households either resist or are unable to afford a digital television or digital-to-analog converter.

Given how critical consumer adoption of the digital capabilities will be to the transition, the transition's success will be jeopardized if the FCC does not set a more ambitious and predictable agenda for increasing the availability of digital equipment.

A. For a broadcaster to qualify for an extension under the "generally available" test in §309(j)(14)(B), there should be significant impediments in the ability of consumers to buy or acquire digital-to-analog converter technologies.

The FCC should not use the general unavailability of digital-to-analog converters as the primary basis for granting an extension unless a manifest unavailability of converters is directly responsible for consumers in a particular market not having the necessary digital reception technology. Neither should the general availability of converters be a basis for issuing "blanket"

¹² *Ibid.*

exemptions unless the unavailability is stark and undeniable. Instead, a decision should be based on a more detailed §309(j)(14)(B)(iii) analysis where it would need to be determined that over 15% of households in the market do not have digital televisions or the necessary converters.

B. There is evidence from the United Kingdom that consumers will acquire either digital televisions or converters if given information and opportunity.

Crown Castle has seen first hand how readily consumers can embrace or acquire new technologies if provided with a compelling benefit proposition. In the United Kingdom, Crown Castle International (CCI), the BBC, and BSkyB formed DTV Services Ltd. to launch a new free service called *Freeview* that provides consumers with up to 30 channels, including sports, entertainment, and news channels that were available previously only by satellite or cable.¹³ To be able to access this service, consumers only need to purchase a set top digital-to-analog adapter. *Freeview*'s success suggests that consumers are receptive to new services or information delivery systems if such services can serve a real need and are affordable. In less than six months since *Freeview* was launched in October 2002, Britons purchased over 1,450,000 digital-to-analog adapters that allow consumers to watch *Freeview* on their analog televisions.¹⁴

The *Freeview* experience might also provide incentive to broadcasters. The relatively inexpensive converters could provide consumers with functionality on which broadcasters can capitalize. In other words, for consumers the digital transition doesn't necessarily have to be burdensome, especially if they get more than just the ability to just keep receiving the same free, analog, over-the-air programming. If consumers can get programming that was previously

¹³ DTV Services LTD is an equal partnership between Crown Castle, the BBC, and BskyB.

¹⁴ As of March 2003, *Freeview* is serving an estimated 1.845 million households in the UK. In addition to the approximate 1,450,000 households that are viewing *Freeview* either on adapters purchased after *Freeview*'s launch in October or on digital televisions also purchased in this timeframe, *Freeview* is also serving another estimated 375,000 viewers who were former subscribers of the now defunct ITV Digital network. (ITC Multichannel Quarterly, March 2003 / Europedia.net, March 5, 2003.)

unavailable, except through an MVPD subscription, they will embrace the transition much more readily.

C. The FCC should implement labeling requirements that will inform consumers purchasing analog television sets that these units will not be capable of receiving digital television signals without a converter unit once broadcasters discontinue analog transmissions.

If consumers are not informed about the accelerated obsolescence of analog-only televisions they purchase before the transition date, there will be an understandable consumer backlash once consumers learn the facts. In turn, this could create pressure on lawmakers to further push back the transition. It is important that the FCC continues to provide leadership on this question and ensures that consumers are informed about the planned transition whenever they purchase an analog-only television or related equipment.

V. Conclusion

Congress mandated the expeditious clearing of the Upper 700 MHz band to provide desperately needed spectrum for public safety communications networks and for new advanced services such as 3G. In addition, portions of the Lower 700 MHz spectrum have been auctioned and further auctions will begin next month. This spectrum provides what may be the only real opportunity for rural telephone companies to acquire spectrum that will allow them to serve the communities in which they are based.

If measured by the number and proportion (13 to 15%)¹⁵ of households that derive their video programming by television broadcast, spectrum allocated to this use could accurately be characterized as underutilized. Former FCC chief economist Thomas Hazlett put it this way: “Broadcasting is dying” and “this is a product that 88% of the population pays money to

¹⁵ FCC Ninth Annual Report on Competition in Video Markets. December 31, 2002

avoid.”¹⁶ At the same time, some broadcasters have avowedly admitted that “other people would put the spectrum to much more valuable use” and that their objective for the digital transition is to “sell the spectrum at market prices and pocket the profit.”¹⁷ The result is that the process of transitioning from an inefficient use of the UHF spectrum that serves only a fraction of all households may be unduly delayed for reasons that are unrelated to serving the public or achieving the will of Congress.

The FCC has an important opportunity to provide the leadership for a successful and timely transition that can best serve the public interest by clearing radio spectrum desperately needed by public safety providers and first responders as well as commercial providers of advanced fixed and mobile services. Clearing the 700 MHz band in a timely manner is an important congressional objective and the FCC must continue to work with the industry to accomplish this goal.

Respectfully submitted,
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¹⁶ *Dead Air* by Scott Woolley, Forbes Magazine, November 25, 2002. (Page 144)

¹⁷ *Ibid.* This is the author’s (Scott Woolley) paraphrase of comments from Lowell (Bud) Paxson of Pax TV.