

**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)	
)	
Public Interest Obligations of TV)	MM Docket No. 99-360
Broadcast Licensees)	
)	
Children’s Television Obligations of)	MM Docket No. 00-167
Digital Television Broadcasters)	
)	
Standardized and Enhanced Disclosure)	MM Docket No. 00-168
Requirements for Television Broadcast)	
Licensee Public Interest Obligations)	
To: The Commission		

COMMENTS OF COX BROADCASTING, INC.

Cox Broadcasting, Inc. (“Cox”), by its attorneys, hereby submits these comments in response to the Commission’s *Notice of Proposed Rule Making* in the above captioned-proceeding.¹ By subsidiaries, Cox owns fourteen commercial television stations licensed to various sized communities throughout the United States and has placed all fourteen DTV stations into operation. Cox is enthusiastic about the opportunities presented by digital television and urges the Commission, and the industries involved in the implementation of DTV, to remove obstacles inhibiting consumer adoption of DTV. As the Commission addresses the variety of

¹ Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03-15, *Notice of Proposed Rule Making*, FCC 03-8 (rel. Jan. 27, 2003) (“*Notice*”). The comment date was extended to April 21, 2003. *See Order* in MB Docket No. 03-15, DA 03-872 (rel. Mar. 26, 2003).

issues raised in this proceeding, Cox believes that the foremost considerations should be the expeditious completion of the DTV transition, the protection of relied-upon broadcast service, and the preservation of DTV extensibility.

I. THE COMMISSION SHOULD PROVIDE MORE STRUCTURE TO THE CHANNEL ELECTION PROCESS.

Cox supports the Commission's decision to impose a channel election deadline but believes that the FCC must provide more structure to the process. The Commission says in the *Notice* that it will require stations with dual in-core channels to elect by May 1, 2005 their permanent channel for use after the close of the DTV transition. The election deadline for these stations is intended to provide time for others to identify their own permanent channel. The *Notice* cautions, however, that to "minimize interference and maximize efficiency,"² the Commission might not authorize certain election decisions.

A. The Commission Should Clarify Several Matters to Help Broadcasters Make Informed Election Decisions.

Cox believes that clarification of some issues is needed so that broadcasters can make informed election decisions. The Commission should make plain whether interference agreements between stations pursuant to Section 73.623(g) will be given effect after the close of the DTV transition. In addition, the Commission should declare whether it expects at this time that the *de minimis* interference standard of Section 73.623(c) is transitory or will remain effective after the close of the transition. Also, as noted, the Commission has reserved the right to reject a station's election decision. Cox respectfully asks the Commission to clarify whether it can envision any circumstances that would lead it to reject the election of both of a station's assigned channels and instead assign a station an entirely new allotment, such as from the pool that will be surrendered at

² *Notice*, ¶ 27.

the close of the transition. Likewise, the Commission should declare whether stations with a single in-core allotment will be required to elect that channel. By knowing such information, broadcasters can better evaluate their election choices. If stations must make elections by 2005, the Commission should provide additional regulatory certainty, indicating whether those channels surrendered at the end of the DTV transition could be elected by stations which have, for some reason, undesirable allotments.

B. The Commission Should Add “Service Preservation” as a Criterion for Reviewing Elections.

Cox supports Commission review of stations’ channel elections, but, in addition to the explicit goals of minimizing interference and maximizing efficiency, the Commission should add preserving service to its evaluation criteria. Although this criterion arguably would be redundant, the public interest would be better served by making service preservation an explicit objective. The Commission has long considered the preservation of relied-upon service to be a fundamental tenet of Communications law.³ Submerging the notion of service preservation into the two articulated policy objectives might dilute the Commission’s traditional emphasis on protecting relied-upon broadcast service. Accordingly, where a station’s election would preclude a neighboring station from continuing to serve some portion of its traditional audience, the Commission should consider rejecting that station’s election decision.

³ See, e.g., *West Michigan Telecasters, Inc. v. FCC*, 460 F.2d 883 (DC Cir. 1972) (losses in service are *prima facie* inconsistent with the public interest and must be supported by a strong showing of countervailing factors). See also *Hall v. FCC*, 237 F.2d 567, 572 (DC Cir. 1956) (“[t]hat such a curtailment of [television broadcast] service is not in the public interest is axiomatic”).

C. Public and Industry Participation Should Help Ensure That Channel Elections Will Satisfy the Commission’s Goals.

To ensure that interference is minimized and efficiency is maximized – and to ensure that relied-upon broadcast service is protected – the Commission should establish more specific election procedures and allow for public participation in the process. Particularly, Cox believes that the Commission should accommodate general industry negotiation and coordination efforts to facilitate the election process, as it did after the issuance of the DTV Table of Allotments.⁴ In combination with the already-permissible DTV channel exchanges,⁵ broadcasters could rely upon the Commission’s proposed rule allowing DTV/Analog in-core channel swaps⁶ to facilitate timely coordination and avoid lengthy formal rulemaking proceedings. To expedite the election process, the Commission should allow stations to support their election choice if they wish with technical and/or legal exhibits so that the Commission and the public are aware of the particular merits of a station’s election.

II. IN-CORE AND OUT-OF-CORE STATIONS SHOULD HAVE THE SAME REPLICATION/MAXIMIZATION DEADLINE.

Cox opposes establishing an earlier maximization deadline for DTV stations operating on channels 52-69. In the *Notice*, the Commission questions whether stations with out-of-core DTV allotments have an economic incentive to replicate or maximize and asks if it should establish a

⁴ Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service, MM Docket No. 87-268, *Sixth Report and Order*, 12 FCC Rcd 14588, ¶ 182 (1997) (“*Sixth DTV Report and Order*”). Administrative decision making is enhanced by public participation. *See, e.g.*, Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, 13 FCC Rcd 11322, ¶ 4 (1998) (“increased public participation in our decision making process will allow us to consider a broader range of opinions and input, improving our decision making process”).

⁵ *See* 47 C.F.R. § 73.623(g).

⁶ *Notice*, ¶ 28.

separate deadline earlier than the one for in-core stations.⁷ Cox believes that imposing an earlier maximization deadline for these stations is misguided. The Commission allowed DTV stations to maximize beyond levels initially allotted so that more people could receive over-the-air broadcast service.⁸ To facilitate the commencement of digital service, however, the Commission has allowed stations to reduce their economic burden and defer construction of full DTV facilities, permitting them instead to build “low power” operations that still reach central communities where most people live.⁹ Whether or not stations have the same economic incentive to complete construction of maximized facilities would seem, then, to have little connection with the imposition of different maximization deadlines. This is in contrast to the Commission’s proposal to give smaller-market stations an additional year to complete maximization because of their “greater obstacles,”¹⁰ a notion directly linked to minimizing economic burden. Indeed, if anything, the greater economic burden on out-of-core stations to complete the digital transition argues for postponing, not accelerating, their maximization deadline.

The Commission has proposed reasonable replication/maximization deadlines that will increase the number of persons receiving over-the-air broadcast service. Creating another set of deadlines because some out-of-core stations may have different economic incentives is inconsistent with the Commission’s well-reasoned DTV replication and maximization policies.

⁷ *Id.*, ¶ 54.

⁸ *Sixth DTV Report and Order*, ¶ 31.

⁹ Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television, MM Docket No. 00-39, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 20594, ¶¶ 11, 34-36 (2001).

¹⁰ *Notice*, ¶ 34.

III. THE COMMISSION SHOULD ALLOW FOR THE SWIFT IMPLEMENTATION OF DISTRIBUTED TRANSMISSION TECHNOLOGIES.

The Commission should facilitate the expeditious development of distributed transmission technologies and not impede DTV innovations. The Commission has favorably acknowledged the importance of DTV extensibility,¹¹ and distributed transmission technologies may create important capabilities for broadcasters in the digital world. Distributed transmission systems might allow stations to adjust and optimize the energy distribution of their signal, permitting them to serve hard-to-reach locales or atypical population distributions. Such systems also might be more spectrally efficient by allowing stations to reduce reliance on translators. More fundamentally, distributed transmission systems possibly could resolve DTV reception problems caused by multipath interference. Given the significance of the benefits that could result, the Commission accordingly should move swiftly to take any steps it considers necessary or appropriate to allow for this innovation in broadcast technology. Cox further urges the Commission not to take any action that might impede or delay the introduction of this technology.

IV. THE PSIP STANDARD SHOULD BE ADOPTED INTO THE COMMISSION'S RULES.

The Commission should use this proceeding to adopt the ATSC A/65A Program System and Information Protocol ("PSIP") standard into its rules and require broadcasters to include PSIP information with their digital signals.¹² As the Commission is aware, the PSIP standard would allow stations to enhance broadcast service by offering viewers more choices and more control over received programming. By requiring broadcasters to use PSIP, the Commission would create marketplace certainty for equipment manufacturers so that they have incentive to invest in

¹¹ Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service, MM Docket No. 87-268, *Fourth Report and Order*, 11 FCC Rcd 17771, ¶ 38 (1996).

¹² *Notice*, ¶¶ 114-115.

innovative devices that would rely on the PSIP standard. Requiring broadcasters to use PSIP also would help resolve issues such as closed captioning and SAP by establishing a uniform platform for delivery of supplemental data.¹³ Accordingly, Cox asks the Commission to adopt the PSIP standard and require DTV stations to include it in their signals.

V. CONCLUSION

For these reasons, Cox respectfully requests that the Commission adopt rules in accordance with these comments.

Respectfully submitted,
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¹³ See *id.*, ¶ 116.