

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

In the Matter of)
)
Second Periodic Review of the Commission's) MB Docket No. 03-15
Rules and Policies Affecting the Conversion to)
Digital Television) RM 9832
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COMMENTS OF DATACOM WIRELESS, LLC

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I. INTRODUCTION

DataCom Wireless, LLC (“DataCom”)¹ hereby submits its comments in the above-referenced rulemaking proceeding, the second periodic review by the Federal Communications Commission (“FCC” or “Commission”) of the conversion of the nation’s television broadcast system from analog to digital television (“DTV”).² DataCom urges the Commission to remain vigilant in maintaining as its guiding principles *both* of the primary objectives of the DTV transition: “to promote and preserve free, universally available, local broadcast television in a digital world” *and* “to promote spectrum efficiency and rapid recovery of spectrum.”³

As the Commission’s Spectrum Policy Task Force recently noted in its *Report*, there has been a explosive increase in overall demand for spectrum-based services and devices in recent

¹ DataCom currently holds lower 700 MHz Band licenses in three major metropolitan markets.

² *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, Notice of Proposed Rulemaking, MB Docket No. 03-15, RM 9832 (rel. Jan. 27, 2003) (“*NPRM*”).

³ *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, ¶¶ 5-6 (1997) (“*DTV Fifth Report and Order*”).

years, particularly with respect to mobile and portable spectrum-based applications.⁴ Indeed, as the Commission recognized when reallocating and adopting service rules for the Lower 700 MHz Band, “[i]n the United States, virtually all spectrum, particularly in the most sought after bands below 3 GHz, has been assigned to various services [and] with the exception of several small bandwidth segments of only a few megahertz each that are not sufficient to support high volume operations, there is very little unencumbered spectrum available for new uses or users.”⁵ The reclamation of the Lower 700 MHz Band is a prime example of an effort by the Commission to make new spectrum available to meet this explosive demand. As the Commission has recognized, the Lower 700 MHz Band is “ideal for two-way mobile communications” given its propagation characteristics, and is “well-suited for a variety new services,” including the next generation of advanced wireless services designed to provide a wide range of voice, data and broadband services to the American public.⁶

Given the dual goals of DTV transition and the recognized value to the American public of utilizing the Lower 700 MHz Band for wireless services, it is essential that any decisions reached in this docket promote, rather than impede, the rapid development and deployment of innovative services and applications in the *entire* 700 MHz Band, and ensure that this much-needed spectrum is put to its most beneficial use as quickly as possible. This will only occur, however, if the Commission adopts policies that ensure that DTV transition moves forward at an expeditious pace. As set forth more fully below, DataCom respectfully urges the Commission to

⁴ See *Spectrum Policy Task Force Report*, ET Docket No. 02-13, (rel. November 7, 2002) at 12 (“*Task Force Report*”).

⁵ *In the Matter of Reallocation and Service Rules of for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd 1022, ¶ 8 (2002) (“*Lower 700 MHz Report and Order*”).

⁶ See *id.*

avoid decisions that further extend the DTV transition timeline or that restrict the ability of new 700 MHz licensees to bring innovative and important services to the American public.

II. DISCUSSION

Channel Election. In the *First DTV Periodic Review Report and Order*, the Commission established December 31, 2003 as the deadline by which commercial television licensees with both their NTSC and DTV operations on in-core channels could decide which of their two in-core channels to use for DTV operations after the transition.⁷ Non-commercial licensees with two in-core channels were given until the end of 2004 to elect their channels.⁸ These original deadlines provided broadcasters with more than one and a half years after the applicable construction deadlines to make their election, a period of time that the Commission indicated gave broadcasters “ample time to decide” which of their core channels would be most suitable for DTV broadcasting.⁹

In response to assertions that the original deadlines were too soon for broadcasters to fully analyze which in-core channel offered superior prospects for digital service, the Commission subsequently deferred these deadlines until the current periodic review. According to the Commission, this deferral was warranted because broadcasters were permitted greater flexibility to increase digital power and hours of service over time, and thus must also be given an opportunity to increase power and gain experience at those higher power levels before they can make an educated channel election.¹⁰

⁷ *In the Matter of Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946, ¶ 14 (2001) (“*First DTV Periodic Review Report and Order*”)

⁸ *See id.* at ¶ 15.

⁹ *See id.* at ¶ 14.

¹⁰ *See Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 20594, ¶ 18 (2001) (“*First DTV Periodic Review MO&O*”)

The Commission has repeatedly recognized, however, that any delay in channel elections by in-core broadcasters has direct negative consequence on the ability of broadcasters with two out-of-core channels to plan for the DTV channel conversion before the end of the transition.¹¹ Until local channel alignments are clear, out-of-core broadcasters necessarily will not be able to transition their digital facilities in-core and thus will remain broadcasting in the 700 MHz Band, hindering the ability of new 700 MHz licensees to develop and deploy innovative services and applications in the Band.

In the *NPRM*, the Commission proposes a new channel election deadline of May 1, 2005, giving commercial broadcasters three years and non-commercial broadcasters two years after the applicable construction deadlines to determine which of their core channels are most suitable for DTV broadcasting. Given the importance of election deadlines to the progress of the DTV transition and clearing of the 700 MHz Band, DataCom strongly opposes any further extension of the May 1, 2005 channel election deadline, including extending the deadline to mirror the proposed in-core replication and maximization deadlines.

As an additional matter, DataCom urges the FCC to consider means to encourage broadcasters with out-of-core allotments to relocate voluntarily to their in-core digital assignments and use those in-core assignments for the purpose of broadcasting an analog signal until the transition. At that point, those broadcasts would have to implement a difficult flash-cut transition to digital, but DataCom understands that there may be broadcasters nonetheless willing to relocate on a voluntary basis. DataCom further understands that there has been some opposition raised to the voluntary use of in-core assignments for analog operation based upon the different interference profile of the analog and digital signals, which presumably could be

¹¹ See *First DTV Periodic Review Report and Order* at ¶ 14; *First DTV Periodic Review MO&O* at ¶ 14; *NPRM* at ¶ 26.

overcome if the broadcaster in question reduced its power sufficiently.¹² One possible means of minimizing the impact on a broadcaster that voluntarily relocates their operations, thus freeing out-of-core spectrum during the transition for publicly beneficial services, is to consider means for guaranteeing must-carry rights for broadcasters electing to relocate notwithstanding the reduction in power required in transitioning from out-of-core to in-core assignments.

Maximization and Replication. The Commission's stated goal in establishing the service maximization and replication interference protection deadlines in the *NPRM* is to allow broadcasters sufficient time to maximize and replicate their analog service area, while at the same time ensuring that broadcasters implement replication or maximization facilities by a date certain at the risk of losing interference protection for the unused portion of the area.¹³ Strict enforcement of a "use it or lose it" protection deadline is designed to prompt broadcasters to expand their digital service area, spurring consumer demand for DTV programming, speeding the transition and ensuring that the valuable spectrum resource is efficiently used.¹⁴

In order to meet these goals, the Commission proposes in-core maximization and replication interference protection deadlines of July 1, 2005 for the top-four network affiliates in markets 1-100 and July 1, 2006 for all other DTV licensees. The *NPRM* seeks comment on whether the Commission should adopt the same or different replication and maximization deadlines for out-of-core stations currently operating in the 700 MHz Band as those stations in the core spectrum.¹⁵ The Commission notes that it may be appropriate to establish earlier

¹² See Petition for Reconsideration, The Association For Maximum Service Television, Inc., MM Docket No. 00-39, filed November 9, 2001.

¹³ See *NPRM* at ¶¶ 32, 34.

¹⁴ See *NPRM* at ¶ 34; *First DTV Periodic Review Report and Order* at ¶ 22.

¹⁵ See *NPRM* at ¶ 39.

protection deadlines for incumbent broadcasters in the 700 MHz Band in order to speed the clearing of the Band for use by new services and “to ensure continued progress in the digital transition.”¹⁶

As the Commission recognizes, the incentive for broadcasters in the 700 MHz Band to fully replicate their analog facilities or maximize their digital coverage area is limited, given the necessary cost of expanding DTV coverage areas and the fact that those facilities will only receive interference protection until the stations are required to migrate into core spectrum.¹⁷ Given this disincentive, earlier interference deadlines are entirely appropriate for broadcasters in the 700 MHz Band. As noted above, the primary purpose of the deadlines is to ensure efficient use of the spectrum by establishing a “use-it-or-lose it” date. It is likely that many out-of-core broadcasters, faced with a cost-benefit analysis that clearly weighs against maximization or replication of facilities on channels with a limited life-span, will simply choose to retain their current coverage area until forced to migrate in-core. Thus, large amounts of valuable 700 MHz spectrum will most likely remain fallow until the end of the digital transition. Setting earlier deadlines will thus free up spectrum never intended to be utilized during the transition period in the first place. For those out-of-core broadcasters that do intend to replicate their analog coverage areas, or that have applied for facilities to maximize their DTV coverage, providing a strong incentive to replicate or maximize as early as possible is clearly in the public interest, given the lack of internal incentives to do so and the recognized value of the 700 MHz spectrum to the American public for land mobile services. DataCom therefore strongly supports establishing earlier service maximization and replication interference deadlines

¹⁶ *Id.* at ¶ 40.

¹⁷ *See id.* at ¶ 52, ¶53.

For the same reasons, DataCom also strongly urges to Commission to reconsider its tentative conclusion that DTV full replication facilities in the 700 MHz Band should be protected as “actual,” regardless of whether the DTV station is currently operating, or has filed an application to operate, pursuant to those facilities.¹⁸ Given the lack of incentives for out-of-core broadcasters to fully replicate their analog coverage area, such a requirement fails to further the Commission’s goal of ensuring efficient use of the spectrum by requiring wireless operators to protect spectrum that will most likely lie fallow until the end of the transition.

The Commission also seeks comment on whether to distinguish between the Upper and Lower 700 MHz Bands when establishing maximization and replication interference protection deadlines, and if shorter deadlines are more appropriate for channels 60-69 because of the fewer number of broadcast incumbents in the Upper 700 MHz Band and the Commission’s plan for early recovery of this spectrum.¹⁹ DataCom submits that there is no reason to distinguish between the Upper and Lower 700 MHz Bands and, if a distinction must be made, it is more appropriate to establish earlier deadlines in the *Lower* 700 MHz Band. Although early recovery of the Lower 700 MHz Band was not initially contemplated by either Congress or the Commission, the entire 700 MHz Band has subsequently been reallocated and portions of both the Upper and Lower 700 MHz Bands have been licensed to eligible land mobile communications providers. As the Commission noted when reallocating and adopting service rules for the Lower 700 MHz band, however, the degree of incumbency in the Lower 700 MHz Band “is likely to make it far more difficult for new services to operate in this band, particularly

¹⁸ See *NPRM* at ¶ 53.

¹⁹ See *id.* at ¶¶ 53-54.

in major metropolitan markets.”²⁰ Again, as noted above, the purpose of deadlines is to promote efficient spectrum use and encourage broadcasters to expand their services area, thereby spurring consumer demand for DTV programming and speeding the transition. The higher degree of broadcast incumbency in the Lower 700 MHz Band creates both a greater potential for DTV broadcasters in the Lower Band to provide consumers with digital programming *and* a greater potential for spectrum inefficiency if broadcasters fail to replicate or maximize their analog service areas. In light of the Commission’s goals, earlier deadlines are most appropriate in the portions of the 700 MHz Band that contain the *largest, not the least, number of incumbent broadcasters*.

Finally, new post-auction digital broadcast services in the Lower 700 MHz Band should not be entitled to interference protection from wireless and other services operating on channels 52-58 acquired through auction.²¹ Although DataCom agrees that, as a practical matter, few broadcasters may seek to move into these channels because of the required migration into the core channels at the end of the transition, providing such new entrants with interference protection would cause further uncertainty in the band, thus severely hampering the ability of Lower 700 MHz Band licensees to accurately develop and deploy services to the American Public.

III. CONCLUSION

Given the dual goals of DTV transition and the recognized value to the American public of utilizing the Lower 700 MHz Band for wireless services, it is essential that any decisions reached in this docket promote, rather than impede, the rapid development and deployment of innovative

²⁰ *Lower 700 MHz Report and Order* at ¶ 38.

²¹ *See NPRM* at ¶ 59.

services and applications in the *entire* 700 MHz Band, and ensure that this much-needed spectrum is put to its most beneficial use as quickly as possible. DataCom therefore respectfully submits that the Commission should reject any proposals to further extend the May 1, 2005 channel election deadline, should establish earlier protections deadlines for incumbent broadcasters in the 700 MHz Band, and reconsider its tentative conclusion that DTV full replication facilities in the 700 MHz Band should be protected as “actual,” regardless of whether the DTV station is currently operating, or has filed an application to operate, pursuant to those facilities. Finally, if a distinction must be made between the Upper and Lower 700 MHz Bands, DataCom submits that it is more appropriate to establish earlier maximization and replication deadlines in the Lower 700 MHz Band where the purpose of the deadlines will best be served.

Respectfully submitted,

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