

BEFORE THE
Federal Communications Commission

WASHINGTON, D C. 20554

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In the Matter of)
)
Second Periodic Review of the)
Coinmission's Rules and Policies)
Affecting the Conversion)
To Digital Television)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MB Docket No. 03-15

RM 9832

To: The Commission

COMMENTS OF DAVIS TELEVISION WAUSAU, LLC

Davis Television Wausau, LLC ("Davis"), licensee of analog television station WFXS, Wittenberg, Wisconsin, by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, hereby comments on the Commission's second periodic review of the progress of the transition from analog television technology to digital television ("DTV").¹ In the NPRM, the Commission requests comment on ways "to address impediments that must be resolved to ensure a *coinplete* and rapid transition to digital television." Davis applauds the Commission's continuing efforts to seek broad input as it takes steps to advance the conversion to DTV, and believes that, to achieve the desired goal of a "coinplete" transition, the agency must reasonably accommodate the interests of all affected broadcasters – including specifically those, like Davis, who currently operate analog stations

¹ *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 (released January 27, 2003) ("NPRM").

Id. at ¶ 18 (emphasis added)

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outside of the “core spectrum” (*i.e.*, on TV Channels 52 through 69) without a paired DTV license.³

The Commission has committed itself to reassign all out-of-core broadcasters to DTV channels within the core at the end of the digital transition period.⁴ As existing providers of important local over-the-air television service, these broadcasters deserve a clear and secure path to a digital future. Davis urges the Commission to use the opportunity of the instant rule making proceeding to announce the specific steps along that path so that all broadcasters – and their viewers – can be certain of their DTV future. To this end, Davis recommends adoption of the following four-part procedural course:

1. Establish a channel election date reasonably in advance of the transition period’s end.

An essential first step for the Commission to take is the establishment of a channel election date, which will allow determination of the universe of channels available to broadcasters currently lacking a presence in the core. In the NPRM, the Commission asks for comment on an appropriate channel election deadline, recognizing that “stations with *two* out-of-core assignments must have time to plan their moves to in-core channels before the end of the transition.”⁵ While Davis advocates no specific deadline, it reminds the Commission that stations with a *single* out-of-core assignment face the very same time constraints and pressures

All broadcasters outside the core need a channel election date sufficiently in advance of the

³ Core TV channels are 2 through 51. WFXS broadcasts on Channel 55 pursuant to an FCC license granted on August 17, 2000. *See* FCC File No. BLCT-20000124AAY. Because the WFXS license was granted after April 3, 1997, Davis was not eligible for an initial DTV paired allotment.

See, e.g., Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, 13 FCC Rcd 6860, 6866 (1998) (“Fifth R&O Reconsideration Order”).

NPRM at ¶ 25 (emphasis added).

transition period's end to allow in-core channel assignments to be secured and the timely transition to digital completed.

2. Prioritize channel assignments.

Next, the Commission should determine the order in which the core channels that are to be relinquished may be reassigned following the channel election date. During the first digital television periodic review, the Commission stated that it would consider the issue of channel assignment priorities in a subsequent rule making.¹ While the NPRM does not explicitly address this issue, the Commission raises it implicitly through its request for comments on an appropriate channel election date, since prioritization logically must be settled immediately following the election date. In any event, Davis maintains that the Commission should address the issue of assignment priority now because by the time of the next periodic review of DTV, broadcasters may have already made their channel elections.

Consistent with the Commission's pledge to reassign full-power television stations from outside the core to an in-core channel, and in light of the substantial investments in time and money these broadcasters have made to provide free, over-the-air television service to local communities, Davis believes that the highest priority and the first assignment of channels should go to such broadcasters currently operating above Channel 51. Equity and the public interest require that these broadcasters be given a home within the core before the Commission considers proposals for new channels by other broadcasters already located there. Doing so will ensure the widest possible audience for DTV. Once broadcasters with this highest priority have been assigned their channels and have had their minor modification applications processed (as

Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, Report and Order and Further Notice of Proposed Rule Making, 16FCC Rcd **5946**, 5947 (2001).

discussed below), the Commission should then open up the remaining channels to other broadcasters.

3. Set a fixed channel assignment or selection deadline.

Following prioritization, the Commission should set a firm deadline by which the newly available channels are to be assigned to eligible broadcasters. By “assigned,” Davis does not mean the unilateral designation by the Commission of a specific channel for a specific broadcaster. Rather, once the channel election deadline has passed, Davis believes each eligible broadcaster should first be given the option of selecting its own channel, one that is within the core, protects all affected DTV and analog stations, and complies with all the DTV technical rules. The channel election should include a showing demonstrating that the selected channel is compliant with the Commission’s technical rules. Only those broadcasters that choose not to select their own channels should be assigned one by the Commission.

Regardless of how a channel is assigned, the establishment of a fixed deadline would facilitate the rapid transition to digital television. Davis specifically recommends a deadline set at 120 days following FCC release of a definitive Public Notice announcing the specifics of all channel elections made by the channel election deadline. A 120-day period should provide ample time for eligible broadcasters to identify an acceptable channel assignment. Once all eligible broadcasters have either selected or have been assigned their channels, the Commission can then address and resolve any mutual exclusivity before setting a universal deadline for the filing of implementing FCC Form 301 minor facilities change applications (see step **4** below).

4. Process the **minor change applications.**

The final step involves agency processing of the broadcasters’ applications for their newly assigned DTV channels. The Commission has already established that reassignments from an out-of-core channel to an in-core channel will be considered a minor change in

facilities.’ Davis requests that the Commission reaffirm that applications on FCC Form 301 requesting authority for such a reassignment will be subject to the agency’s minor change application processing procedures.’ Because the newly assigned in-core channel will not actually be available for use until relinquished in-core paired channels are deactivated, no fixed construction deadline should be specified. Rather, the deadline for completing construction of all new DTV channels should be the end of the digital transition period, subject to reasonable extensions authorized by the Commission on a case-by-case basis.

CONCLUSION

The Commission has pledged that analog broadcasters operating outside of the core and without a paired DTV license will be reassigned to new digital channels within the core. Davis urges the Commission to use the instant rule making proceeding to establish a clear and secure path to this digital future. Adopting the four steps outlined herein will reasonably and equitably protect the DTV prospects of Davis and other similarly situated broadcasters.

Respectfully submitted,

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¹ Fifth R&O Reconsideration Order at 6866.

⁸ See 47 C.F.R. § 73.3564.