

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

In the Matter of )  
)  
Amendment of Parts 1, 21, 73, 74 and 101 of )  
the Commission’s Rules to Facilitate the ) WT Docket No. 03-66  
Provision of Fixed and Mobile Broadband )  
Access, Educational and Other Advanced )  
Services in the 2150-2162 and 2500-2690 )  
MHz Bands )  
)

**REPLY COMMENTS OF DIGITAL TV ONE**

WH-TV, Inc. d/b/a Digital TV One (“Digital TV One”), a provider of digital wireless cable multichannel video service over Multipoint Distribution Service (“MDS”) and Instructional Television Fixed Service (“ITFS”) spectrum in and around San Juan, Puerto Rico, hereby submits its reply comments in response to the Commission’s *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.

Digital TV One is already on record as supporting the White Paper submitted by the Wireless Communications Association International, Inc. (“WCA”), the National ITFS Association (“NIA”) and Catholic Television Network (“CTN”), in which substantial revisions to the Commission’s rules for the MDS/ITFS spectrum at 2500-2690 MHz are proposed.<sup>1</sup> Supporting comments also have been filed by W.A.T.C.H. TV, Inc., which operates a digital multichannel video and broadband MDS/ITFS system in and around Lima, OH.<sup>2</sup> As noted there:

The *NPRM* is riddled with suggestions that the Commission intends to force the elimination of all high-power, high-site use of the 2500-2690 MHz band by some

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<sup>1</sup> See Comments of Digital TV One, RM-10586 (filed Nov. 21, 2002) (“Digital TV One Comments”).

<sup>2</sup> See Comments of W.A.T.C.H. TV, Inc., WT Docket No. 03-66 (filed Sept. 8, 2003).

date-certain in the future, seeking comment on a variety of means to that end. To W.A.T.C.H. TV, the differences between the proposed timetables to a mandatory transition to cellular architecture are of no moment, since no matter when it occurs any mandatory transition to cellular architecture would sound the death knell for W.A.T.C.H. TV. Since the video and audio services distributed by W.A.T.C.H. TV to its widely-disbursed subscriber base cannot be distributed economically over cellularized facilities, adoption of any of the Commission's proposals would force W.A.T.C.H. TV to terminate its provision of video and audio programming to subscribers, stranding investment in millions of dollars of transmission and reception equipment and wreaking financial havoc on W.A.T.C.H. TV's owners.<sup>3</sup>

The above reflects Digital TV One's situation as well. As the Commission is aware, Digital TV One has invested several million dollars to convert its wireless cable system from analog to digital technology, and thus Digital TV One sought assurances from WCA, NIA and CTN that their proposed bandplan and transition scheme would permit Digital TV One and other similarly situated operators to continue delivering digital MDS/ITFS multichannel video service to consumers.<sup>4</sup> In direct response to Digital TV One's and W.A.T.C.H. TV's concerns, WCA, NIA and CTN proposed to exempt system operators from having to transition to whatever new MDS/ITFS bandplan is adopted if they were using more than seven MDS/ITFS channels for the transmission of digitally compressed video programming to subscribers as of October 7, 2002. The rationale for this provision was stated as follows:

In crafting [the proposed transition plan], WCA, NIA and CTN were strongly influenced by the fact that virtually all of the current MVPD systems could continue their current service offerings (and, in most cases, materially increase the number of program tracks offered to subscribers) by digitizing the seven 6 MHz channels that will be in the MBS following a transition – channels that can continue to operate on a high-power, high-site basis under the proposed new rules.

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<sup>3</sup> *Id.* at 1-2 (footnotes omitted).

<sup>4</sup> Digital TV One Comments at 1-2.

However, WCA, NIA and CTN recognize that a system that currently utilizes more than seven 6 MHz channels for the transmission of digitally compressed video programming does not have the option of just using MBS channels – to continue its current service offering requires more high-power, high-site channels than are allocated to the MBS. Because a few system operators have recently digitized their video services and have been marketing those services with some success (although perhaps not yet reaching the 5% “opt-out” benchmark proposed by WCA, NIA and CTN), WCA, NIA and CTN believe that special provisions are appropriate. Thus, they are proposing that any MVPD system that as of October 7, 2002 (the date the white paper was filed) was utilizing more than seven MDS/ITFS channels for the transmission of digitally compressed video programming to subscribers should be able to invoke the MVPD “opt-out” discussed in the white paper.<sup>5</sup>

The benefits to Digital TV One of the approach described above are patent. Because Digital TV One already has digitized its service and is already utilizing more than the seven 6 MHz channels that WCA, NIA and CTN have proposed for the middle band segment, the transition system proposed in Appendix B to the White Paper could have forced Digital TV One, in the event of a transition, to reduce the number of channels it offers to the public. The resulting reduction in programming would have put Digital TV One at a substantial disadvantage vis-à-vis the incumbent cable systems and DBS operators against whom it competes, and thus would place Digital TV One’s entire business plan (which includes broadband as well as multichannel video service) at risk. There is no legitimate public interest justification for the Commission to court that result, and thus it is critical that the Commission’s new MDS/ITFS rules incorporate the “opt-out” provision for digital MDS/ITFS multichannel video systems proposed by WCA, NIA and CTN.<sup>6</sup>

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<sup>5</sup> “First Supplement to ‘A Proposal for Revising The MDS and ITFS Regulatory Regime,’” RM-10586, at 4-5 (filed Nov. 14, 2002).

<sup>6</sup> It must be remembered that Digital TV One’s system upgrades and expansion of service, like those of W.A.T.C.H. TV, were initiated in direct response to previous Commission mandates for MDS/ITFS. Indeed, when the Commission encouraged the deployment of digital technology to increase wireless  
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Although the *NPRM* inquires as to whether the Commission should forego the approach advocated by WCA, NIA and CTN and simply force all MDS/ITFS multichannel video systems to convert their facilities to a low-power, cellularized model by a date certain, only a few commenting parties (none of whom operate MDS/ITFS multichannel video systems) have supported that idea. Not surprisingly, those parties express no regard for the digital multichannel video service Digital TV One and other wireless cable operators provide to consumers, nor do they address the substantial and irreparable economic injury Digital TV One and other wireless cable operators would suffer if they are forced to convert to a cellularized paradigm. For example, while Fixed Wireless Holdings LLC (“FWH”) makes much of the spectral efficiencies of digital wireless broadband service versus the spectral inefficiencies of analog multichannel video service, it takes no account whatsoever of the spectrally efficient digital MDS/ITFS multichannel video systems operated by Digital TV One and W.A.T.C.H. TV.<sup>7</sup> Even worse, FWH goes so far as to suggest that MDS/ITFS multichannel video operators who cannot operate under a cellularized model should be content to terminate their operations and sell their spectrum in the secondary market.<sup>8</sup> Likewise, Spectrum Market, LLC advocates that MDS/ITFS multichannel video service be exterminated by a date certain, without any meaningful discussion of how this is supposed to benefit consumers who rely on Digital TV One and other MDS/ITFS

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cable’s channel capacity, Digital TV One was one of the first commercial MDS/ITFS systems to deploy digital wireless cable service. Against this backdrop, it plainly would be inequitable for the Commission to now reverse field and nullify Digital TV One’s efforts and multimillion dollar investment solely to promote a cellular paradigm for MDS/ITFS service.

<sup>7</sup> See Comments of Fixed Wireless Holdings LLC, WT Docket No. 03-66, at 6 (filed Sept. 8, 2003).

<sup>8</sup> See *id.* at 7.

operators as a source of multichannel video programming.<sup>9</sup> Finally, the arguments proffered by The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. (“IMWED”) in support of a forced transition are little more than undocumented generalizations that have no relevance whatsoever to Digital One TV and, equally important, do not represent the views of the ITFS licensees who lease spectrum to Digital TV One and rely on lease revenue from Digital TV One’s multichannel video operations to sustain their educational activities.<sup>10</sup>

For reasons already discussed at length in the comments and reply comments filed by WCA, NIA, CTN and others, it is neither necessary nor in the public interest for the Commission to put Digital TV One’s multimillion dollar investment in digital technology at risk by forcing MDS/ITFS multichannel video operators to convert to a cellularized paradigm. Digital TV One continues to believe that the proposal advanced by WCA, NIA and CTN is the most viable and efficient option for badly needed regulatory reform of the MDS/ITFS industry. By adopting that proposal, including the proposed treatment of incumbent MDS/ITFS multichannel video service providers, the Commission will permit MDS/ITFS licensees to exercise additional flexibility, while at the same time assuring that existing digital systems such as that developed by Digital TV One can continue to prosper. Chairman Powell has acknowledged that the Commission’s rules “have shifted in their objectives” and that, “[d]espite the uncertainty caused by these regulatory shifts, many licensees have strived to provide innovative and quality services.”<sup>11</sup> The

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<sup>9</sup> See Comments of Spectrum Market, LLC, WT Docket No. 03-66, at 11-13 (filed Sept. 8, 2003).

<sup>10</sup> See Comments of The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. (“IMWED”), WT Docket No. 03-66, at 13-14 (filed Sept. 8, 2003).

<sup>11</sup> Separate Statement of Chairman Michael K. Powell re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands (RM-10586)* (Mar 13, 2003).

Commission must assure that those very licensees not be penalized as the Commission, once again, shifts its objectives for the 2.5 GHz band.

Respectfully submitted,

WH-TV, Inc. d/b/a DIGITAL TV ONE

By: /s/ Jose Sala

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October 23, 2003

## CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that copies of the foregoing Reply Comments have been served by hand this 23rd day of October, 2003, on the following:

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