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

In the Matter of	)	
Amendment of Part 73 and 74 of the	)	
Commission' Rules to Establish Rules	)	
For Digital Low Power Television,	)	MB Docket No. 03-185
Television Translator, and Television	)	
Booster Stations and to Amend Rules	)	
For Digital Class A Television Stations	)	

COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION

Greg A. James
Vice President Technology
Bonneville International Corporation
55 North 300 West, 8th Floor
Salt Lake City, UT 84110
(801) 575-7500

November 25, 2003

TABLE OF CONTENTS

I. Introduction and Summary 1

II. The Commission Should Provide Significant Flexibility for Rural Translators to Transition to Digital Service 3

1. *Down-converting To Analog Format* 4

2. *Digital Translator Multi-casting* 5

3. *Digital Conversion on Channel Authorized for Analog Service* 5

4. *Digital Translator Input Signal Sources* 6

5. *Channel Assignments* 7

III. The Commission Should Provide Significant Flexibility for Rural Translators to Operate Digitally. 8

1. *Transmission Modes* 8

2. *Unattended Operation* 9

IV. The Commission Should Adopt Application Processing Priorities that Recognize the Importance of Rural Television Translators to the DTV Transition. 9

1. *Processing Priorities for Rural Translators are Critical to the Expeditious Deployment of DTV to Rural America.* 10

2. *Processing Priorities for Rural Translators are Consistent with Ashbacker and the "Spirit of Ashbacker" Line of Cases* 11

V. Conclusion 13

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

In the Matter of	)	
Amendment of Part 73 and 74 of the	)	
Commission' Rules to Establish Rules	)	
For Digital Low Power Television,	)	MB Docket No. 03-185
Television Translator, and Television	)	
Booster Stations and to Amend Rules	)	
For Digital Class A Television Stations	)	

COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION

I. INTRODUCTION AND SUMMARY

Bonneville International Corporation ("Bonneville") hereby submits these comments in response to the Commission's *Notice of Proposed Rulemaking* ("*Notice*") seeking comment on the establishment of service rules and procedures for digital low power television, television translator, and television booster stations.[1] Bonneville is a diversified media company that operates a full service television station, KSL-TV, in Salt Lake City and several television translator stations in Utah.[2] KSL-TV participates in Utah's extensive translator network that brings free over-the-air television service to many rural areas in Utah that would otherwise be underserved. Indeed, viewers in rural Utah depend upon this translator network to provide them with their daily television programming. And, across the country television translators in rural

[1] *In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, *Notice of Proposed Rulemaking*, FCC 03-198 (rel. Aug. 29, 2003).

[2] BIC also is the operator of twenty radio stations in the Chicago, Salt Lake City, San Francisco, St. Louis and Washington, D.C. markets. All of the stations operated by BIC are licensed to a BIC-affiliated company, Bonneville Holding Company.

areas provide many Americans with their only access to free over-the-air television. The adoption of digital television translator service rules is essential to ensure that all Americans will have access to free over-the-air digital television in the Digital Age.

From the outset, The Commission must recognize that this promise cannot be realized without digital television translator service rules that take into account the significant challenges facing rural translator operators as they consider the transition, such as the costs involved and the limited channel availability to deploy digital service in rural areas. Many rural television translator operators are local governmental entities and community associations. They simply will not be able to afford to transition to digital service if the Commission imposes on the translator transition only the full-service television digital transition model which is predicated on concurrent analog and digital operations. Additionally, the spectrum to transition to digital is scarce in many rural areas. In Utah, for example, there are over 650 translators already providing service to rural communities. It is unlikely that each of these incumbent operators will be able to identify an additional channel to provide digital service -- especially as wireless service providers begin deployment of service on channels 52-59 on a primary basis and UHF channels 60-69 are reclaimed for commercial and public safety operations, at the end of the full service digital television transition.[3] The Commission must adopt digital television translator service rules that consider these significant challenges facing rural translator operators today.

[3] The lower 700 MHz spectrum (channels 52-59) has been reallocated for new fixed, mobile, private and broadcast services. The upper 700 MHz spectrum has been reallocated for new commercial services (fixed, mobile, private, band manager and broadcast on channels 60-62 and 65-67) and public safety services (channels 63-64 and 68-69). *See Reallocation and Service Rules for the 698-746 Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd 1022 (2001) (*Channel 52-59 reallocation order*) and *Reallocation of Television Channels 60-69, the 746-806 MHz band*, 12 FCC Rcd 22953 (1997).

Accordingly, Bonneville submits these comments in support of the establishment of service rules and procedures providing a roadmap for digital transition of low power television, television translator, and television booster stations. Bonneville strongly encourages the Commission to recognize both the obstacles confronting rural translator operators' transition to digital and the importance of digital rural translators in ensuring that the DTV transition is not an urban only policy.

Bonneville believes that the Commission should establish service rules that: provide television translator licensees with significant flexibility *to transition* to digital operations and *to operate* digital translator stations in a cost effective, spectrum efficient manner. With respect to the transition, the Commission should allow translator operators to down-convert digital signals to analog, to "flash cut" from analog to digital, and to multi-cast multiple video streams of different broadcast stations on the same output channels. The Commission should also provide flexibility in operations, such as a translator operator's choice of transmission. Finally, the Commission must establish application processing priorities that recognize the importance of rural translators to the DTV transition.

II. THE COMMISSION SHOULD PROVIDE SIGNIFICANT FLEXIBILITY FOR RURAL TRANSLATORS TO TRANSITION TO DIGITAL SERVICE.

In the *Notice* the Commission raises a number of issues for consideration that, if adopted, would provide the flexibility needed to ensure that rural translator operators are not excluded from the digital transition. For example, the *Notice* considers permitting incumbent licensees to down-convert digital signals to analog, to multicast on one digital channel so that multiple licensees can share a single 6 MHz block of spectrum, and to flash cut to digital operations on their existing analog channel. As discussed more fully below, Bonneville supports these and

other Commission proposals that would provide translator operators with a flexible array of solutions to transition to digital operations in a cost effective, spectrum efficient manner.

1. *Down-converting To Analog Format*

In the *Notice* the Commission seeks comment on whether any limitations should be imposed on the ability of a television translator to alter the signal of the main station being rebroadcast.[4] Specifically, comment is sought on whether the rules should permit television translators to down-convert a signal to analog format that was originally broadcast by the parent station in digital format. The flexibility to down-convert digital signals broadcast by the parent stations into an analog format is critical to the transition of television translators operations to digital operations for two important reasons. First, there is a very real possibility that the digital transition of television translators will lag significantly behind the full-power DTV transition. The flexibility to down-convert digital signals to analog will allow rural translator operators that may encounter difficulty in making the transition to digital operations to continue providing free over-the-air service to viewers in remote areas throughout the DTV transition and at its end -- once full-power stations being rebroadcast return analog channels and broadcast only digital signals. Second, flexibility to down-convert digital signals to analog will allow translator operators to continue to serve their viewers with analog programming until a sufficient base of DTV receivers exists in rural communities. Accordingly, Bonneville supports maximum flexibility on this issue and submits that no limitations should be imposed on the ability of a translator to alter the signal of the main station.

---

[4] *See Notice* at ¶ 13.

2. *Digital Translator Multi-casting*

In the *Notice* the Commission recognizes that limited spectrum availability may preclude translator operators from securing additional channels for digital operations and seeks comment on the merits, technical feasibility, and cost of permitting DTV translators to rebroadcast multiple video program streams of different broadcast stations in the same output channel (DTV translator multi-casting).[5] There are multiple benefits to be realized in permitting DTV multicasting. Multicasting is spectrally efficient, cost effective, and will result in benefits to the public. In areas of high translator congestion, operators could realize spectrum efficiencies by sharing spectrum to provide more than one DTV signal over a single channel. The costs associated with the transition to digital for these stations would consequently not burden a lone operator, but instead be borne by the multiple operators sharing the digital channel. Importantly, under a multicasting approach rural translator operators could continue to provide analog service on their existing analog channel to viewers without DTV receivers during the transition while rebroadcasting digital programming over a shared multicast channel for those viewers with DTV receivers.

Multicasting is perhaps one of the most important tools that could be utilized to accomplish the digital translator transition in rural areas. Accordingly, Bonneville fully supports the flexibility to multicast DTV signals on a shared television translator channel where such arrangements serve the community interest and the station being rebroadcast.

3. *Digital Conversion on Channel Authorized for Analog Service*

In the *Notice* the Commission proposes to allow television translator operators to convert

[5] *See Notice* at ¶ 16.

to digital operations on their existing analog channels provided that the protected digital signal contour overlaps some portion of the protected contour of their analog signal. The Commission proposes to process these "digital conversion" applications as minor change applications, on a first come, first served basis.

Bonneville supports the Commission's proposal. First, permitting on-channel digital conversion, where it is necessary and appropriate, is spectrally efficient because the operator requires no additional spectrum to transition to digital service. In addition, on-channel conversion is cost effective because operators can "flash cut" from analog to digital operations once they determine that DTV receiver penetration warrants conversion, saving the operator the expense of powering both an analog and digital signal during the transition. The Commission should process these "digital conversion" proposals as minor change applications to expedite the authorization of service. In the event that mutually exclusive applications are filed, Commission policy should be to direct the applicants to resolve the conflicts through engineering solutions or settlements to ensure an expedited authorization of service.

4. *Digital Translator Input Signal Sources*

The Commission also seeks comment on its proposal to allow digital TV translators to receive DTV broadcast signals using any of the signal delivery means available to analog TV translators (*e.g.*, a TV translator relay or other suitable terrestrial microwave source).[6] The flexibility to use broadcast auxiliary and terrestrial microwave service frequencies to "feed" digital translators is particularly important in the context of rural translators. Many rural

[6] *See Notice* at ¶ 17.

translator stations are part of multi-hop networks that not only rebroadcast signals to their immediate community, but also serve as a link in a "chain" that carries the signal to the next translator and its community. Consequently, the failure of one translator in the network to convert to digital operations will result in an inability to provide digital service to each of the communities that follow in the translator "chain." The flexibility to employ an alternative signal delivery solution is therefore vital to the integrity of digital operations throughout the rural translator network and to ensure that all communities in the network can receive digital service. Accordingly, Bonneville supports the Commission's proposal to allow digital TV translators to receive DTV broadcast signals using a TV translator relay or other suitable terrestrial microwave source.

5. *Channel Assignments*

In the *Notice* the Commission proposes to make channels 2-59 (except channel 37) available for digital translator stations and seeks comment on whether channels 60-69 should be made available during the DTV transition.[7] Given the dearth of spectrum available to rural translator operators, it follows that making the most channels available for digital translator stations improves the chances of accomplishing a digital transition. Accordingly, Bonneville supports the Commission's proposal to make channels 2-59 (except channel 37) available for digital translator stations and allowing digital translator operations on channels 60-69 during the DTV transition.

[7] *See Notice* at ¶¶ 28-30.

III. THE COMMISSION SHOULD PROVIDE SIGNIFICANT FLEXIBILITY FOR RURAL TRANSLATORS TO OPERATE DIGITALLY.

Digital translator service rules must also afford television translator licensees significant flexibility to operate digital translator stations. In the *Notice* the Commission raises two issues for consideration that, if adopted, would provide the flexibility needed to help rural translator operators to operate digitally in a cost effective manner. Specifically, the *Notice* considers: (1) whether to permit translator operators to choose the method of transmission based on individual circumstances; and (2) whether to permit unattended operation of digital television translator stations. As discussed more fully below, Bonneville supports flexibility to allow television translator operators to choose the method of transmission and to permit unattended operation of digital television translators.

1. *Transmission Modes*

In the *Notice* the Commission seeks comment on two transmission modes – heterodyne frequency conversion and a "regenerative" mode -- and asks whether it should permit translator operators to choose their mode of transmission based on individual circumstances. The Commission notes that a regenerative DTV translator, while more expensive to construct, could be particularly beneficial in multi-hop translator networks because regenerative translators will perform signal and data processing to mitigate distortion and bit errors in the input signal.[8] Accordingly, the technical quality of the translator output signal would be restored at each translator (hop) in the network. Bonneville supports a flexible approach on this issue and submits that the choice of modes should be determined by the technical requirements of each

[8] *See Notice* at ¶ 14.

translator station. Television translator operators should be permitted to choose their mode of transmission on a case-by-case basis, based on individual requirements.

2. *Unattended Operation*

The Commission's existing rules provide for unattended operation for analog translator stations. In the *Notice* the Commission seeks comment as to whether the same rule should be adopted for digital translator operations.[9] Rural television translator networks often involve hundreds of translator stations in remote areas. Bonneville respectfully submits that permitting unattended operations of digital television translators is critical to rural television translators' conversion to digital operations and supports adoption of the same rule currently applied to analog television translators.

IV. THE COMMISSION SHOULD ADOPT APPLICATION PROCESSING PRIORITIES THAT RECOGNIZE THE IMPORTANCE OF RURAL TELEVISION TRANSLATORS TO THE DTV TRANSITION.

The adoption of service rules that promote an efficient, complete rural television translator transition to digital is the only way to ensure that DTV is not an urban-only service. As previously discussed, flexible service rules that promote cost and spectral efficiencies will put rural television translator operators in the best position to make the transition. The successful transition to rural digital television translators, however, depends on application processing priorities that recognize the importance of rural television translators to the DTV transition.

In the *Notice* the Commission tentatively concludes it should place a high priority on facilitating the digital transition of existing LPTV and television translator stations. The Commission proposes to open a digital-only application filing window with eligibility limited to

[9] *See Notice* at ¶ ¶ 97-108.

incumbent LPTV, television translator and Class A TV licensees and no geographic restrictions. After processing of applications received in the initial window, there would be a separate filing procedure using rolling one-day filing windows. Bonneville submits that the Commission should recognize a rural priority and restrict the initial filing window to incumbent-only, digital-only, rural area applicants.

1. *Processing Priorities for Rural Translators are Critical to the Expeditious Deployment of DTV to Rural America.*

Rural television viewers are already routinely denied access to free over-the-air analog and digital programming comparable to the level currently available in urban areas. Further compounding the situation, rural areas are often not served by cable and technical limitations inherent to direct broadcast satellite service preclude the offering of digital programming to many of these communities. While the DTV transition is now underway in urban areas, the deployment of digital television translators will provide many rural viewers their only glimpse of the DTV transition. This reason alone warrants the special consideration of incumbent rural operators in the establishment of application processing priorities for the transition to digital operations.

In the *Notice* the Commission expresses "concern[] that an unrestricted window, albeit digital-only, could result in the filing of many thousands of applications, especially if we [do] not impose geographic restrictions on application filing."[10] Even with an incumbent-only window, the Commission may experience so much interest that rural applicants could be precluded from making digital service available. As a result, the Commission should adopt application

[10] *See Notice* at FN 169 (noting that the most recent LPTV Service auction filing window that occurred in August 2000 was geographically restricted in an effort to provide filing opportunitiesin rural areas, yet approximately 4700 (Continued...)

processing priorities to ensure deployment of digital service to rural areas by geographically restricting the initial incumbent only, digital only, filing window to rural areas.

2. *Processing Priorities for Rural Translators are Consistent with Ashbacker and the "Spirit of Ashbacker" Line of Cases*

In the *Notice* the Commission seeks comment on whether an incumbent-first filing approach is consistent with the Supreme Court's decision in *Ashbacker* and the "spirit of Ashbacker" line of cases that followed.[11] Neither *Ashbacker* nor its progeny preclude the Commission from adopting an incumbent-first filing approach or an incumbent-first, geographically restricted filing approach.

The Court's holding in *Ashbacker* concerned the hearing requirement in Section 309(a) of the Communications Act and its applicability in the context of mutually exclusive applications.[12] Specifically, the Court held that where two "*bona fide* applications are mutually exclusive," the Commission must consider both in a comparative hearing before granting one denying the other.[13] *Ashbacker* concerns the Commission's obligations under Section 309(a) and an applicant's rights *after* an application has been filed. In contrast, the issue here involves eligibility restrictions that limit the scope and potential applicants. A policy that limits the eligibility in an initial filing window to incumbent licensees in the instant proceeding does not concern the rights of *bona fide* mutual exclusive applicants. Accordingly, the adoption of an incumbent-first filing approach is not inconsistent with *Ashbacker*.

---

applications were filed in this window. Approximately 3700 of these applications were mutually exclusive).

[11] *See Notice* at ¶¶ 101-103.

[12] *See Ashbacker Radio Co. v. F.C.C.*, 326 U.S. 327 (1945).

[13] *Id.* at 333.

Moreover, an incumbent-first filing approach is not inconsistent with the "spirit of Ashbacker" line of cases. These cases do not prohibit the Commission from limiting the eligibility for new spectrum to incumbent licensees. Rather, they find a presumption in *Ashbacker* that a licensing paradigm that promotes "comparative consideration by the Commission and competition between applicants is the process *most likely* to serve the public interest."[14] In this case, the presumption is easily overcome. As the Commission acknowledges in its *Notice*, a failure to adopt licensing eligibility restrictions in the instant proceeding will likely result in an inordinate number of mutually exclusive applications that significantly delay the deployment of this vital digital service to the public.[15] As such, eligibility restrictions, such as limiting an initial filing window to incumbent licensees, are *more likely* to serve the public interest than a licensing process that promotes "comparative consideration" and "competition between applicants."[16]

Accordingly, for the policy and legal reasons set forth above, Bonneville submits that the Commission should adopt application processing priorities that recognize the importance of rural television translator stations to the DTV transition by opening an initial incumbent-only, digital-

---

[14] *See Community Broadcasting Co. v. F.C.C.,* 274 F.2d 753, 759 (1960); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202, 205 (1956); *see also, Aeronautical Radio, Inc. v. F.C.C.*, 928 F.2d 428, 429 (D.C. Cir 1991).

[15] *See supra* note 10 and accompanying discussion at 11.

[16] Indeed, in *U.S. v. Storer Broadcasting,* the Supreme Court stated that the Commission may screen applicants for eligibility, provided that the eligibility restrictions are adequately supported in the rulemaking proceeding.*U.S. v. Storer Broadcasting* at 333. Moreover, the Commission has on a number of occasions found that eligibility restrictions such as those being considered here are consistent with*Ashbacker* and its progeny. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket. No 87-268, *Fifth Report and Order*,12 FCC Rcd 12809, 16584 (1997); *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, FCC 96-183, *First Report and Order*, 11 FCC Rcd16570, para 27 (1996).

only application filing window that is geographically restricted to rural areas, perhaps followed by rolling windows for digital only incumbents without geographic restriction, with rolling windows for new digital entrants to follow at a later date.[17]

V. CONCLUSION

Establishing service rules and procedures for digital low power television, television translator, and television, booster stations is an essential step in moving the DTV transition forward. Bonneville submits that rural television translators are critical to the provision of DTV service to much of rural America. Accordingly, for the reasons set forth above, in adopting service rules and procedures for digital low power television, television translator, and television, booster stations it is imperative that the Commission: (1) adopt flexible service rules that allow rural television translator service providers to realize cost efficiencies and overcome the present congestion in the spectrum band; and (2) establish application processing priorities that recognize the significance of rural television translators to the digital transition by opening an initial window for digital only, incumbents in rural areas.

Respectfully submitted,

BONNEVILLE INTERNATIONAL CORPORATION

By: /s/

Gregory A. James
Vice President Technology

November 25, 2003

[17] The Commission should also encourage cooperative efforts among full service stations, translator operators and local governments at both the application and implementation stages of the DTV transition.