

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Parts 73 and 74 of the) MM Docket No. 03-185
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)

To: The Commission

COMMENTS OF THE DEPARTMENT OF SPECIAL DISTRICTS,
SAN BERNARDINO COUNTY, CALIFORNIA

The Department of Special Districts (“DSD”), by its attorney, respectfully submits these comments in a proceeding looking to the authorization of Digital Television (DTV) services using TV translators, boosters, and low power television broadcast stations. DSD is the umbrella administrator for a group of County Service Areas, charged with providing rural television services, and empowered to levy modest taxes in the support of such service. The County Service Areas operate some 44 translators and LPTV stations from six transmitter sites, serving small, remote communities in and near the Mojave Desert. (San Bernardino is the largest County in square mile area in the contiguous United States.)

The Notice herein reflects a great deal of consideration, care and

thoughtful deliberation. We are happy to join other commenting parties in commending the Commission and its staff for their hard work. Necessarily the discussion involves not one service but, conceptually, as many as four -- translators, LPTV, boosters and Class A (collectively, "low power services.") Congress has made the job no easier by enacting a number of specific requirements for the authorization process. With these comments, DSD intends only to highlight what appear to be a few critical issues, with the hope that this may assist the Agency in getting the major trajectory right. If that happens, many of the subordinate details should fall into place.

1. Digital Should be Added to These Services Without Delay.

DSD participated in the record in the Commission's historic television proceeding, in which "Advanced" television progressed to become "Digital" Television, with its great hopes for new service and new public benefit, MM Docket No. 87-268. In Reply Comments we submitted on January 24, 1996, we advocated an early transition scenario. The National Translator Association there had suggested that translators be permitted to adopt digital transmission standards as soon as full-service digital TV stations were on the air. We urged, instead,

that TV translator and LPTV operators be authorized to initiate digital services beginning with the adoption of the DTV Table. Then it will be up to the licensees, in response to market forces and viewer demand,

to take the digital development and further it, as they are able and when and where they will. (*Id.*, p. 2)

In nearly eight years since that Reply was submitted, events have brought such an approach much closer to practical realization. In 1997, the Commission adopted a basic framework for allowable desired-to-undesired signals in the mixed digital and analog environment, see Section 73.623(c)(2) of the Rules and Regulations. Later, in 2000, during the adoption of service rules for the new Class A LPTV service, the Commission refined these standards, by defining Class A protected contours for analog and digital television, designed for comparability with the reduced power and predicted coverage in Class A, see Section 73.6010, and the analysis in the NPRM herein, para. 31-33. Now this framework is proposed to be made applicable to digital low power facilities in general, *Id.* (This move is a major focus of the NPRM, paras. 31-60, but especially see the proposal in para. 38.) We support this approach and predict it will enjoy wide support.

We submit that, precisely because the interference standard is built upon existing practice, and on known conditions, it should be possible to add DTV authority, without a separate filing procedure. Where a licensee in the low power services desires to replace its analog input with a digital input, and leave all else the same, it should be permitted to do so with a

simple post card notification after the fact.

Attachment A is the statement of DSD's technical and engineering consultant, Jeremy Lansman. He states that, in all possible mixes and matches of digital into analog and vice versa, no new interference will be predicted, only provided that effective radiated power is reduced, generally by six decibels, see Attachment A herewith. He points out that new interference -- or its absence -- should be the only concern of the Commission in such a switch-over. The public interest is served by encouraging the adoption of DTV where it can be done, with regulatory obstacles kept only to those absolutely necessary.

2. A Second-Channel Opportunity Should Be Offered

As the Digital era approaches, or at least gathers some traction, it is becoming clear that TV translators and Low Power TV stations are tending to move down separate paths. A conventional translator can be modified to pick up a DTV signal, amplify it and rebroadcast it with only a change in channel, with but little expense. True originating DTV, even on an LPTV, is an ambitious, complicated and expensive project.

Even though the cost of originating equipment has continued to decline, and amazing consumer cameras and editing bundles arrive on the market, DSD has found that opportunities to originate are quite limited.

Regularly scheduled programs, even a local-interest program offered once a week, are difficult to produce strictly with volunteers. With state and local budgets under pressure, paid staff have many demands on their time. In San Bernardino County, only two of the special districts have been able to offer originated fare, and while it appears to be well appreciated locally, the prospects for expansion are remote. This will likely continue as the complications of DTV make production trickier and more expensive.

Meanwhile, low power television has developed by contrast, in two ways. As the number of networks has proliferated, including specialized language, religious and shopping, LPTV has provided a valuable outlet for additional network fare where formerly there were not sufficient local channels. Even more significantly, many LPTV's, Class A's in particular, have shown a dedication to local origination that is astounding, given their tight budgets and inherently lesser audience.

These differences may warrant a more refined difference in regulatory treatment. In rural areas where translators proliferate, it may be fairly easy to add second-channel allotments, especially where there is agreement to reduce power levels so that all may share. In urban areas, the chance for full second-channel replication for DTV purposes is small. The Class A and other LPTV operators will be anxious to keep the one-channel power limits

flexible, or preferably high, and will have strong competitive motivations to vie for any new channel that become available.

In rural areas, no translator operator will be able to participate in an auction. In cities, the LPTV operators may wish to, or feel they must.

This raises the question of whether a second-channel opportunity should be made available initially, only for rural areas. Such areas might be defined basically by using the same criteria that were employed during the first application freeze in 1982. At that time initial applications were limited to "Phase I" communities, defined as more than 55 miles outside the reference coordinates of 212 ranked markets in the FCC's TV Channel Utilization Report. Later Phase II was added to the eligible area -- locations outside the reference for the top 100. Phase III then had no restrictions.

That old methodology could be used to gradually phase in second-channel eligibility, for incumbent translator and LPTV operators only. Where translator systems operated inside fifty five miles, a waiver policy might also be possible, using the type of terrain-shielding showing with which the Commission and the licensees now are familiar. A major advantage of this Phase approach is that it entertains applications immediately for places where there is just one established operator, and therefore a reduced likelihood of application conflicts from multiple filers.

We submit that the Commission lost an opportunity by not including the proposal for Rural Translator Service, from the National Translator Association, as a proper subject within the scope of this NPRM. But it may be possible to further most of the same objectives, under a Phase I, second-channel approach.

Rural translator operators in Phase I locations, or closer in but able to prove their status as established translator services, should be given the initial opportunity to file for second channels in the same general area, effectively permitting up to a doubling of capacity in any place where the applicant is willing to construct and can find sufficient channels. All such second channels would be licensed on a secondary, non-interference basis.

Construction permits under this plan would be for three years, and licenses would be for a normal term. Both the application and the construction permit would be for NTSC facilities, with the opportunity to move to digital, as previously discussed, with post card notification, and with implementation of DTV upgrades and other changes, exactly as the Commission has proposed, para. 93. However, these second channels would carry a condition. For translators, the licensee would represent that the channel would convert to DTV whenever the primary being rebroadcast discontinues offering an NTSC service. For LPTV stations, the channel would

not be required to convert to DTV unless full service and translator NTSC service will have ceased to exist within the station's protected contour.

If this scheme were adopted, a great deal of congestion and competition would be foreseeable, but not until we move into Phase II. Significant benefits would have been delivered to under-served rural areas prior to the hard issues getting in the way and making matters difficult.

There is a school of thought that urban LPTV's and Class A's in particular should be accorded primary status, or a sturdier primary status in the case of the "A's," if they are to be called upon to make the investment in DTV facilities. DSD is sympathetic to this concern. The expenses are real. Of course we do not operate such metropolitan facilities. But we make this observation. For what it is worth, we might recommend the exact opposite. By maintaining secondary status, urban licensees may be able to obtain concessions otherwise unthinkable. A notable example is in the use of channels 52-69. There is no reason to preclude *secondary* users from getting and having facilities in these channels. The built-out of auction winners who hyperventilated and bid to excess may be years away, and the channels should be used for public benefit.

Assuming the DTV transition does end, full service TV second channels will revert and new spectrum will become available. Secondary out-of-core

users may be able to migrate safely to solid ground. By insisting on primary status now, they may preclude the likeliest path to expanded facilities. For these reasons, we suggest that the urban filers should advocate, and the Commission should entertain, Phase II and III second-channel applications throughout channels 2-69, on a secondary basis.

Again we submit that the initial grants should be for NTSC, with a DTV post-card upgrade, and permitted facilities changes by minor amendment. A condition would apply, stating that the station would be required to upgrade to DTV, no later than the cessation in that market (DMA) of NTSC broadcasts by one or more of the top four networks.

3. Translators Will Need Help on Relays.

DSD is concerned that, as the stations it imports from Los Angeles add digital services, or even switch to digital, our arrangements for receiving service may become more difficult. Some of our feeds are by way of common carrier, and they may become prohibitively expensive, or even cease to exist. Filing opportunities for new channels would go a long way, by making it possible to install translators that serve strategically as relays, with equipment selected to accommodate simple upgrades to DTV later. We are uncertain as to whether this will be adequate. It may be necessary to find additional spectrum to make these relays, or it may be appropriate to

re-harvest spectrum in channels 52-69 which, in the Mojave Desert, will never be fully utilized for the purposes that were so well advertised, and advocated, during the reallocation from broadcast television.

4. Conclusion: Provision for DTV on Translators is Urgent.

A study for the National Translator Association has estimated that as many as 1.5 million households receive their big-four commercial networks only by TV translators. For PBS the count of TV translator dependent homes is even higher, some 2.3 million.

A study by FCC staff found that, as of June, 2002, over 85 per cent of households were getting TV from some kind of pay provider, mainly cable and home satellite dish, see Assessment of Video Competition, Ninth Annual Report, December 31, 2002 (FCC 02-338), Table B-1. But the remaining 15.6 million still got their TV from over-the-air, almost 15 per cent of the 105.4 million TV households, *Id.*

The implications of these numbers are stunning. TV translator homes represent ten per cent of the broadcast-only homes. TV translator homes represent fifteen per cent of the PBS broadcast-only audience. It follows that, unless planning starts now, and direct action is taken soon, the entire DTV roll-out could founder on failure to accommodate TV translators.

The translator operators have been imperiled by the unwholesome mix

of forced channel changes (sometimes twice, even at times thrice), reduced spectrum, and a permanent condition of frozen application opportunities. As networks grew from three to four, and now many more, TV translators have been largely unable to expand. We are at the point of finding out whether the Commission, and beyond it the industry and the Nation have a commitment to over-the-air broadcasting. That may not be the Nation's choice, or its sufficient priority. But the choice is present now and should be made with open eyes.

5. Conclusion.

DSD thanks the Commission and its staff for its effort in bringing the NPRM to light. We hope that these comments can be of some assistance in mapping a direction that would strengthen translators and LPTV, and with them the public service delivered by television broadcasting.

Respectfully submitted,

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