

**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

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

The Department of Special Districts (“DSD”), San Bernardino County, California, by its attorney, respectfully submits these reply 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 currently operating some 44 translators and LPTV stations from six transmitter sites. We submitted comments in this docket supporting the Commission’s DTV initiative for LPTV and TV translators and we are gratified to see so many thoughtful comments joining in this support.

1. DTV for Low Power Services is a Key Stepping Stone in the DTV Roll Out.

As we noted, Comments, pp. 10-11, as many as ten per cent of over-

the-air (i.e. non-subscription) households receive their television from TV translators, and the number runs as high as fifteen per cent for public TV services. Comments by the Association of Public Television Stations and Corporation for Public Broadcasting (“APTS and CPB”) cite their own studies, showing that over twelve million Americans are served by public TV translators, and two million of these have no public TV except by translators, *Id.*, pp. 3-4. Because of the concentrations in the intermountain west, these averages mask regional situations where the reliance is greater still. APTS and CPB wisely recognize that unless DTV provision is made for translators, the overall transition is likely to falter. The danger is heightened because the Commission’s roll-out design promoted aggressive DTV development in major cities, and more liberal targets in the smaller markets.

2. DTV for Translators and LPTV is not in Conflict with Full Service TV

The need to fully accommodate rural areas is a significant principled objective of national policy, as well as a key pragmatic stepping stone in the DTV roll out. Unfortunately this has not prevented some commenting parties from missing these issues. The National Association of Broadcasters and the Association for Maximum Service Television, Inc. (“NAB-MST”)

begin with a single key misconception. They contend and appear to believe that the success of the DTV roll out hinges exclusively on the success of the full service TV DTV roll out. It is easy to see how this erroneous belief could have taken root because the Commission had initially granted full service DTV channels exclusively to incumbent full service TV broadcasters. But the assumption is certainly wrong. If the television broadcast service is to survive, the Commission's DTV project must be aimed at a successful implementation in broadcast TV as a whole. The benefits of DTV must be fostered for all American households, the majority of which clearly will not receive their DTV primarily from broadcasters. The paramount standing of full service stations exists only in the imagination of their lobbying organizations, and possesses no independent factual¹ or policy value.

In our Comments DSD advocated a staged second-channel implementation, beginning with "Phase 1" locations more than 55 miles from the reference for 212 identified TV markets. Such an approach would concentrate the first wave of digital translators and LPTVs entirely away

¹Digital transmissions universally work with less power. The "low" power digital power limits (NPRM, para. 61) will make such facilities comparable to full service in many instances. Class A, of course, replicates the Part 73 rules for the stations in that class. 47 CFR Section 73.6000 et seq. So NAB and MSTV are insisting on a dividing line that has become blurred, and will be further obscured as we go forward.

from the locations whose powerful urban stations are represented so skillfully by NAB and MSTV. Only years later, in a hypothesized “Phase 3,” would direct competition for scarcer resources ensue. None of the objections by NAB and MSTV to second-channel licensing is persuasive against such a rural-first approach.

In the urban areas, the feared (or professed) down-side risks are mitigated by the necessity of new second-channel applicants locating non-interfering channels and, thereafter, not interfering. The low power services have a record of non-interference that holds every promise for expansion without significant new problems. NAB and MSTV urge the Commission not to authorize second, DTV channels for low power services “. . .to avoid disrupting the transition of full power broadcasters.” NAB-MSTV Comments, p. 6. However, these same parties represent numerous stations who, instead of building full-facility DTV, have taken advantage of the Government’s generosity by building minimum-facility DTV stations, to warehouse the second channel for as long as possible. The licensees who have let down their DTV audience in this way should not be permitted to argue that low power DTV entry could “disrupt” their own midget power TV stations.

In authorizing second channels for low power services, the

Commission should specifically waive Section 73.633(e)(3) of the Rules, which defines interference to a DTV station according to the “maximum technical facilities” of its allotment. Instead, low power and translator services should be permitted to apply for and construct DTV second channels based on a showing of non-interference to actual full service TV facilities, including reduced facilities. Such a rule will give badly needed incentive for the many lagging full service stations to build out to their DTV maximum. In a similar vein, we strongly disagree with the NAB-MSTV complaint that authorizing new DTV through second channels would result in “a tremendous diversion of Commission resources,” p. 8. Processing applications for new service to the public always involves an expenditure of administrative resources, albeit a tiny one compared with the beneficial effects for new licensees, manufacturers, program producers and the public.² One possible solution might be to suspend such fact-intensive staff

²In the Comments of Paxson Communications Corp., these arguments are carried to the point of unintentional self parody. That party avers that certain named applications in which it apparently has some interest are not being processed fast enough, and therefore that the Commission should not expend any resources on authorizing any other new service to the public, such as DTV by LPTV. Acceptance of such an argument would have precluded the authorization of new service any newer than standard AM broadcasting (or perhaps ship-to-shore under the Radio Act of 1912).

chores as reviewing DTV construction permit extension requests based on showings of financial hardship. By summarily denying all but the most compelling requests, the Commission could free staff time, as well freeing DTV spectrum from idle hands, placing it into the hands of those willing and financially able to construct.

3. In Awarding Primary Status, the Commission Should Strive for Balance, But Keep a Door Open in the Future.

On this record, the question of primary status for second channels presents many complexities. To cite one, should a Class A station receive a “primary” second channel (in some sense, and subject to late relinquishment of one of its pair), while a similarly situated LPTV would never receive a channel other than secondary?

Let us take the easy case first. There is every reason to permit the use of Channels 52 to 69, but only provided this is done on a secondary basis. Primary status in those channels is no longer available at any price, except from the present or future auctions winners. The “700 MHz” commenting parties (those identified in fn. 1 to the Reply Comments of the 700 MHz Advancement Coalition) have not offered a single reason that new secondary stations present an actual problem to them, as opposed to a speculative, conditional or imagined harm. All their arguments can be

answered by a reaffirmation here that new broadcast facilities in those places would be secondary, and that the Commission will enforce that directive.³

The Class A case may not be so difficult either. The starting point is a reaffirmation that such primary status as a Class A possesses will not be lost if it chooses to construct DTV facilities on a second channel. The second channel can be made available, based on a required relinquishment of one channel, in exact parallel with full service TV requirements. No commenting party has suggested any rational basis for saying that a Class A is of lesser public benefit than a full service TV station. In a small market they are often indistinguishable.

The remainder of low power TV's and TV translators should be eligible for second channels where these can be found. An interesting variant is proposed by the Community Broadcasters Association ("Comments"),

³Particularly unattractive is the contention by some that any new inconvenience to them from broadcasters would be "unfair." The reallocation of Channels 60 to 69, and later 52 to 59, occurred without any compensation to incumbent translators, many of them like DSD's built and operated with state and local taxes. In effect this was an unfunded mandate, or tax, that generated auction revenue to the U.S. Treasury. It should not be allowed to happen again, and all possible mitigating actions should be studied and pursued. Fortunately both public safety and other users have been slow to fire up new facilities in rural areas, cushioning the impact.

suggesting that an LPTV applicant could receive a primary designation if its second-channel proposal complied with the criteria for amending the DTV Table of Allotments. Unfortunately this will work only where the criteria of eligibility disclose but a single applicant. Otherwise the legal problems in selection (or required auction) return to the fore.

In the longer term, DSD urges that the Commission look with optimism to a day when second channels may revert and spectrum in Channel 2 to 51 may be more readily available. This enhances the prospects of expanding primary status for low power television.

Unfortunately, by the advent of that great day, the survivors may find primary status to be less needed. But the Commission should keep that door open, in recognition that TV translators and low power television as they do now and continuously will have provided vastly needed new service, in a DTV roll out scheme that gave away much in its overriding attention to existing service replication.

4. The Backlog of Rural Needs Must be Addressed.

In 1982 low power television service was grafted onto the existing TV translator service. This had the advantage of making LPTV at once understandable and acceptable, and building it on an outstanding record of thousands of translators operating since 1956 virtually without interference

complaints. But this approach came at heavy cost to the rural areas. The popularity of entrepreneurial filings overwhelmed rural translator filings at every opportunity. The Commission's response has been to restrict filings severely, as detailed in the Comments of R. Kent Parsons, pp. 1-2. The National Translator Association ("NTA") has advocated splitting off the rural areas for fresh filing opportunity, through a Rural Translator Service, see Comments of NTA, pp. 25-26.

DSD submits that, from a rural perspective, there is a pressing need for additional TV authorizations. New DTV authorization would be nice, but they are situation further South on the list of priorities. New channels to keep pace with the expansion of new networks and services, as we said in Comments here, are the standout need. It may be that one digital channel could multiplex several analog NTSC channels for amplification and rebroadcast. Certainly final rules should preserve flexibility to do just that. But it would be unfortunate in the extreme if rural areas received authority to build second, or twin digital channels, yet found that in this early phase of the transition, few would watch and the construction could not be justified. Meanwhile no channels could be found to address the backlog of unmet rural needs in NTSC.

Most of these rural systems, DSD's certainly, involve a multi-channel

group at a single location, or several of these, or even several locations is a chain. If second channels are authorized for incumbent translators in the rural areas, flexibility should be allowed to plan and implement service as a group. No *a priori* proportion of NTSC or DTV should be mandated. The sole limiting factor should be that, at such time as the primary station extinguishes its NTSC service, the translator must rebroadcast digitally, and send its analog output to the scrap heap. Until that day, TV translators should have the discretion with existing and new channels to rebroadcast in the manner they deem most effective to the area. The major market stations and their stalwart proponents here had it exactly backwards. They said that strengthening translators and LPTV might hurt the DTV transition. The fact is, strengthening over-the-air broadcasting, by helping translators and LPTV stations, will further the DTV transition, and no step of comparable ease could do as much.

Respectfully submitted,

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