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

In the Matter of	)	
	)	MB Docket No. 03-15
Second Periodic Review of the	)	
Commission's Rules and Policies	)	
Affecting the Conversion	)	
To Digital Television	)	

To: The Commission

SPECIAL SUBMISSION OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.,
ON THE DTV CHANNEL ELECTION AND REPACKING PROCESS

By this submission, the Association for Maximum Service Television, Inc. ("MSTV"),[1] presents its proposal for a channel election and repacking process that will ensure to the fullest extent possible an orderly and successful migration of all of the public's broadcast service to digital and the provision of optimal digital service to consumers.

In the year since initial comments were filed responding to the Commission's Notice of Proposed Rulemaking,[2] the broadcast industry has continued to make substantial progress building out DTV facilities, developing short-term and long-term DTV business strategies, and broadcasting DTV service in more markets to more television households. As of early April 2004, 1,175 local stations were on the air in digital, servicing 205 markets that reach

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[1] MSTV represents over 500 local television stations on technical issues relating to analog and digital television services.

[2] Notice of Proposed Rulemaking, *In re Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Transition*, MB. Docket No. 03-15, FCC 03-8 (rel. Jan. 27, 2003). ("*Notice*").

99.6% of the nation's television households.[3] Approximately three-quarters of America's television households are in markets where there are at least six operating over-the-air DTV stations. On average, operating DTV stations are providing DTV service to approximately 93% of those households that receive their analog signals.[4] These figures improve every day.

Notwithstanding this progress, there remain a variety of critical issues requiring the attention of, and resolution by, the broadcast television industry and the Commission in order to achieve an effective and consumer-friendly transition to DTV. The channel election and repacking process is among the most important and complex of these issues. That is because the channel election process must occur within the physical limits of a substantially reduced "core" of DTV spectrum. In congested markets, these limitations may affect the ability of stations to protect their replicated or maximized coverage areas and thereby limit their ability to optimize service to the public. An orderly, logical, and principled channel election process — one that facilitates choices that are attuned to the channel elections of other stations — will ensure that stations make elections that provide maximum digital service to the public, preserve and even enhance viewers' existing television service in the digital age, and fulfill the promise of DTV that so many have invested heavily in.

All of the potentially complicating factors associated with channel election must be considered in light of the substantial progress already made by stations in building out their DTV facilities and providing digital service. It would be unrealistic and inequitable at this stage to require massive numbers of stations to make wholesale changes to their built-out digital

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[3] *See* NAB Press Release, 20 Stations Make Transition to DTV (March 16, 2004).

[4] *See* Mark R. Fratrik, *Reach the Audience: Analysis of Digital Broadcast Power and Coverage*, prepared for MSTV, at i (October 17, 2003) (submitted to the Commission on October 30, 2003).

facilities, for instance by requiring them to acquire entirely new transmitters, antennas, and towers. Experience with interference, tower site approvals and coordination and other practical and technical obstacles already encountered in the DTV transition cautions strongly against a wholesale, mandated reshuffling of DTV allotments and assignments. Moreover, the investments made by many stations in planning and constructing DTV facilities should not be laid to waste. If not carefully coordinated and conducted in a manner that fully accounts for these equities, the channel election process could undo much of the existing extensive groundwork already established by stations, wasting valuable resources, delaying the migration to final DTV facilities and, in the process, causing excessive interference and sub-optimal DTV service to the public.

Recognizing the complexities of this process and the importance of developing a plan that accommodates the equities and service goals of developing a final DTV Table, and as promised in previous submissions to the Commission,[5] MSTV, over the course of the last year, has studied intensively the various issues related to the channel election and repacking process. This effort included, but was not limited to, soliciting input from stations on the particular issues that have assisted or complicated their build-out, carefully examining the information available to stations through the Commission's DTV database, and modeling a number of different election and repacking scenarios to test channel availability and coverage. As a result of this process, MSTV offers a detailed, five-step channel election process that would optimize the DTV service available to the public post-transition. Specifically, MSTV proposes:

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[5] *See Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters* at 6 (April 21, 2003); *Reply Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters* at 8 (May 21, 2003).

- *Step 1:* an initial phase to clean up the Commission's DTV database to ensure that stations can make their elections based on accurate and complete information;

- *Step 2:* a first round of elections for stations with two in-core channels, with stations with two out-of-core channels indicating a preference for three possible channels that they ultimately could use in their market;

- *Step 3:* issuance of provisional authorizations by the Commission where possible, based on the first round of channel elections;

- *Step 4:* a second round of elections for remaining licensees, including licensees with two out-of-core channels whose preferences were not accommodated during the first round of elections; and

- *Step 5:* finalization of the DTV Table, taking into account general criteria and individual circumstances to resolve conflicts in channel elections.[6]

This proposal implements four principal values. First, it provides an opportunity for all licensees to select their final DTV channel assignments where channel availability makes this possible. This respects the expectations established by the Commission generally in the DTV proceeding and reduces the potential for protest by enhancing the fairness of the channel election process. Second, in offering this choice to stations, the proposal embraces, to the fullest extent possible, fundamental principles protecting existing service. Specifically, all DTV licensees that decide not to revert back to their NTSC channels will be protected to their maximized service areas. Likewise, all DTV licensees that elect to revert to their NTSC channels will be assured protection to the greater of their NTSC Grade B or maximized service areas and populations, to the extent feasible in light of interference constraints. Third, this proposal requires a joint industry-Commission effort, with the television industry taking the lead

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[6] To the extent the Commission desires to invite comment on this proposal, it should proceed expeditiously with step 1, which, as explained herein, includes a freeze on DTV channel change requests and new allotments, resolution of the Canadian and Mexican interference problems, and database clean-up. These measures are essential for any orderly channel election process and should not be delayed by any request for comment on the rest of the proposal.

in individual channel selections and the Commission issuing licenses and resolving any conflicts at the end of the process. Fourth, the proposal provides for an orderly transition, thereby minimizing the disruption to existing DTV operations. Importantly, because the proposal adheres to these principles and, in the process, respects industry expectations and the equities at stake, it is more likely to result in an efficient process that has buy-in from all parties. As a consequence, a post-transition DTV Table will be established more quickly, and the implementation of final DTV service will be facilitated.

The remainder of this submission provides an overview of each step of the proposal, and then addresses in detail how the proposal meets the challenges posed by the transition.

A. MSTV's Proposal

1. Step 1: FCC Database Correction

The first stage of MSTV's proposal would ensure that the Commission's DTV database contains all relevant, accurate data for all eligible licensees. This step would be accomplished as follows:

- In May 2004, or as soon thereafter as is possible, the Commission would issue an order to freeze for the duration of the election process new requests for (i) DTV channel changes, (ii) new DTV allotments, and (iii) modifications to DTV facilities if the modifications would expand the service area of the existing authorized facility in any direction or cause an increase in interference to any other authorized facility. (Pending applications would not be impacted.) At the same time, the Commission would open a 45-day window to allow stations to make corrections to the database to account for existing modifications to facilities and errors in the database.

- In May 2004, the Commission also would intensify its efforts, taking all appropriate proactive steps and engaging other arms of the government, as necessary, to resolve outstanding cases of Canadian and Mexican coordination and interference issues. The express goal of these efforts would be to secure by September 2004 approvals for those DTV facilities sought by U.S. television stations subject to international coordination

(rather than simply requiring these stations to construct "checklist" or below-checklist facilities), so that these licensees would have the same opportunity to construct and operate maximized DTV facilities as those licensees not subject to international coordination.

- In September 2004, the Commission would issue a preliminary revised DTV database incorporating the corrections and changes filed during the 45-day correction window. The revised database would list all DTV eligible licensees and specify their protected service areas and populations based on the corrections made in the database, including the licensees' replicating or maximized service statistics, as applicable.

- In September 2004, the Commission would have resolved Canadian and Mexican coordination issues to permit maximized service by affected U.S. stations and would issue a report detailing its resolution of these issues.

- In September 2004, stations that had not yet constructed full replicating or maximized DTV facilities would be required to file a certified statement of intent to construct those (or lesser) facilities. Failure to construct facilities consistent with this commitment may result in subsequent FCC action.

- In February 2005, the Commission would issue a final DTV database listing all DTV eligible licensees and specifying their *final* protected service areas and populations, including their maximized DTV service commitments. This would be the database on which stations would rely in making their election decisions. This database would be used by stations making their channel elections to determine the level of interference and DTV service resulting from their elections.

2. *Step 2: First Round of Elections*

With the final database in place, stations may begin the first round of elections. The purpose of the first round is to identify those channel election situations that do not raise interference issues. The process begins by permitting stations with two in-core channels to make an election, thereby creating a pool of channels from which other stations may select.[7] Under MSTV's plan, the election process would be as follows:

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[7] For purposes of the election process only, interference of less than 0.1% would qualify as "no interference"; interference of 0.1% or greater would be considered interference for purposes of (continued...)

- In June 2005, each licensee that has both its NTSC and digital channels in-core would file a notice advising the Commission of whether it wants to stay on its DTV channel, or revert to its NTSC channel.

  - A licensee electing its DTV channel would be protected to its replicating or maximized service area and population, as applicable, and would relinquish its post-transition right to its NTSC channel.

  - A licensee with two in-core channels electing its NTSC channel would be required to protect the DTV service areas and populations of stations that elect to remain on their DTV channels. Election of the NTSC channel would be evaluated based on achieving a service area and population that is equivalent to the largest of either the licensee's NTSC Grade B service area and population or its maximized DTV service area and population. A station electing its NTSC channel would not at the time relinquish its right to go back to its DTV channel, which would continue to be protected to its maximized service area.[8]

  - No filing would be required at this time for stations with one out-of-core and one in-core channel. It is assumed that those stations whose out-of-core channels are NTSC may want to stay on their in-core DTV channels, and their replicating and maximized DTV service areas and populations would be protected. Those stations whose digital channels are out-of-core would also be afforded protection on their in-core NTSC channels to the greater of their maximized DTV service areas and populations or NTSC Grade B service areas and populations.

- In July 2005, licensees with two out-of-core channels would file a notice with the Commission specifying a preference for three possible channels that they would like to use in their markets. This preference filing would be subject to the initial elections made in June 2005 by stations with two in-core channels as well as the required protection to licensees with one out-of-core channel.

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this procedure. Modifications of DTV allotments, proposed new DTV allotments, and channel changes after the election process would be subject to the Commission's mileage separation requirements

[8] If, after a station elects its NTSC channel, it is determined that the NTSC channel can fully accommodate the station's Grade B or maximized service area and population, then the station would relinquish its DTV channel.

3. *Step 3: Provisional Authorizations*

In October 2005, the Commission would issue provisional authorizations based on the first round of elections. Specifically, authorizations would be issued for:

- In-core DTV licensees that elected to remain on their in-core DTV channels.
- In-core DTV licensees that elected to go back to their NTSC channels, provided that their post-transition DTV operations on the NTSC channel (i) would not cause additional interference to licensees that elected to stay on their DTV channels; (ii) would provide service to the greater of their NTSC Grade B service areas and populations or their maximized DTV service areas and populations; and (iii) would provide protection to in-core channels (whether NTSC or DTV) of licensees that have one out-of-core channel.
- DTV licensees with two out-of-core channels that can be accommodated on one of their three channel preferences without causing any additional interference to (i) the channels elected by in-core licensees in the first round of elections and (ii) the in-core channels (whether NTSC or DTV) of licensees that have one out-of-core channel.

Licensees receiving provisional authorizations for post-transition DTV operations on in-core channels would relinquish their post-transition rights to all other channels, and all other channels would thereby become available for the second round of elections.

Requests for channel election that cause or receive interference based on the criteria set forth above would be returned. MSTV expects that once these provisional authorizations are issued, the majority of stations will have received their channel of choice.

4. *Step 4: Second Round of Elections*

Following issuance of the provisional authorizations, the Commission would create a second "pool" of channels available for stations to select. In December 2005, there would be an election for those stations that have not yet been assigned a channel or that find their selection from the first round unacceptable. The process would work as follows:

- In December 2005, licensees with two in-core channels that elected their NTSC channels in the first round of elections but were not given provisional authorizations because of losses to their replicating or maximized service areas or populations would be permitted to make a filing with the Commission to elect that channel notwithstanding the service loss. By making such a filing, these licensees would relinquish the right to use their DTV channels for post-transition operations. If these licensees failed to make such a filing, they would be deemed to have elected to remain on their DTV channels and would thereby relinquish their rights to the NTSC channels for post-transition operations.

- In January 2006:

  - Licensees with one out-of-core channel would be permitted to request a third channel.

  - Licensees with two low VHF channels would be permitted to request a third channel.

  - Licensees with two out-of-core channels whose preferences were not accommodated in the first round (*i.e.*, because they presented interference issues) would select three new channels. Their selections would be based on the list of channels that remained vacant after award of the provisional authorizations resulting from the first round of elections and from the December 2005 elections of stations that initially elected their NTSC channels but were afforded an opportunity to reconsider because of service losses.[9]

5. *Step 5: Final DTV Table*

In 2006, the Commission would resolve any conflicts in the requests from stations and would then issue licenses reflecting a final DTV Table of Allotments. While MSTV believes this process would allow most issues to be resolved during the election process, some

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[9] There are some 100 NTSC stations without a paired DTV channel. Most of these stations are on in-core NTSC channels, and they will flash cut to DTV at the end of the transition. Under the MSTV plan, the service areas of these stations will be protected consistent with the terms of their licenses, and they will be treated similarly to stations that have only one in-core channel and also have a paired out-of-core channel. There also are fewer than 10 stations that have a single channel out-of-core, either DTV or NTSC, and no paired channel. Plans to accommodate these stations, consistent with their circumstances and the terms of their authorizations, will be designed and incorporated into the procedures outlined above.

conflicts may arise. MSTV proposes that the Commission resolve these conflicts on a case-by-case basis, taking into account the following criteria:

- whether the station was an early adopter of DTV technology (i.e., the length of time the station has been operating on DTV);
- the impact on the public's access to DTV services (i.e., the population served by the station's digital signal and the percentage of the replication population covered);
- whether one or both of a station's channels is/are in the low VHF band (if so, that would weigh in favor of that station receiving priority);
- whether coordination with or interference to or from Canada or Mexico is a problem;
- whether there are particular zoning, environmental or other factors that may affect one or more of the stations requesting the same channel; and
- any other factors that may be relevant at the time.

In connection with resolving these remaining issues on a case-by-case basis, and in order to adopt the new DTV Table, the Commission might need to consider, in specific, narrow circumstances, waivers of the interference criteria used in the channel election process. In doing so, the Commission would strive to ensure the maximum DTV service to the public.

The criteria specified by MSTV are intended to address, in a fair and equitable manner, the particular challenges, sacrifices and contributions of the stations whose channel elections are at issue. For example, taking into account the length of time that a station has been broadcasting in digital recognizes the particular investments that these stations have made — whether voluntarily or as a result of Commission regulation — to the DTV transition. Early adopters of digital technology have in many ways driven the DTV transition by providing consistent DTV service throughout their market areas for the past several years despite the lack of meaningful economic incentives. These stations constructed their facilities when the costs of DTV construction and equipment were at their highest, and have been operating and building

audiences for their DTV facilities without financial return for the longest period of time. Accordingly, a preference for early adopters is appropriate. Similarly, the Commission should take into account the level of service being provided by stations whose elections conflict, in order both to optimize DTV service to the public and to recognize the contribution of those stations that have invested in more than minimum DTV facilities. Finally, the proposed criteria take into account particular technical, practical and legal challenges that limit a station's options with respect to the DTV conversion.

The "final" DTV Table resulting from this process, in effect, would become a new starting point; future changes in height, power, location or even channel number would be permitted in appropriate circumstances and subject to certain constraints, such as the existing DTV-to-DTV mileage separation requirements applicable to new DTV allotments.[10]

B. Objectives Achieved Through MSTV's Proposal

This channel election and repacking proposal achieves four important objectives. First, it will enable stations to make an informed choice about their ultimate DTV channel. Second, the plan will provide clarity in the order of election, thereby permitting as smooth an election process as possible. Third, the plan takes into consideration potential problems posed by DTV operations on low VHF channels. Fourth, and related to the first three factors, the process will honor broadcast industry expectations for digital operations, in turn respecting investments that have already been made. In accomplishing these objectives, the process will assure expedited service to the largest possible coverage areas.

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[10] *See* 47 C.F.R. § 73.623(d).

1. Enabling an Informed Choice

Step one of MSTV's proposal provides for a central element of a successful migration to digital television — namely, the ability of stations to rely upon accurate information in making channel election decisions. As it now stands, the Commission's DTV database is a substantial obstacle to stations being able to make informed decisions. For example, numerous stations have changed their DTV channel numbers and modified their existing facilities, but many of these authorized changes are not recorded in the database. As a result, if stations had to rely on the current database information, they could wind up making decisions based on another station's *former* DTV channel number or where it *formerly located* its DTV facilities. Such misinformation could lead to incorrect assumptions about a station's own coverage area and, ultimately, poor choices in selecting its final DTV channel. Because channel elections in a particular market may affect channel availability in adjacent markets, making incorrect decisions may impair the creation of a new, efficient DTV Table of Allotments for the over-the-air broadcast service. Accordingly, it is imperative that the Commission move forward with an accurate database.

A second database issue arises in connection with the nature and scope of interference protection that will be afforded to stations. Over time, the Commission has issued several databases, each with different underlying assumptions. The database used by stations to make their decisions and the definition of their coverage areas and populations within that database will have a direct impact on the potential availability of vacant channels in a market. The MSTV plan calls for the creation of a single, accurate database.

Third, the uncertainty over information in the Commission's database is exacerbated by the unresolved Canadian and Mexican interference and coordination issues. Pursuant to the United States' Letter of Understanding with the Canadian government, stations

within 400 kilometers of the Canadian border, including those in markets like Boston, Detroit and Chicago, must take Canadian interference issues into account — and will be subject to clearance by Canadian authorities — when making their channel elections.[11] In turn, channel elections in these markets affect channel availability in adjacent markets as well, thereby extending the impact of the problem beyond 400 kilometers from the border. As has been well documented, Canada lags far behind the U.S. in the deployment of digital television and has delayed or refused to approve American digital station proposals on the basis of quite distant, often vacant Canadian allotments that, as a real-world matter, are unlikely to be built or, if built, to receive or cause any interference. This has resulted in the unnecessary protection of numerous vacant or "phantom" Canadian NTSC and DTV channels that are in no real jeopardy of suffering actual interference. The resolution of Canadian and Mexican coordination and interference issues, and the availability of accurate information regarding these issues, must be assured if the large number of affected U.S. stations are to make informed and service-optimizing choices.[12] Accordingly, the full resources of the U.S., Canadian, and Mexican governments should be utilized to resolve the coordination and interference issues facing U.S. DTV stations. These issues must be resolved if the channel election process is to move forward.

MSTV's proposal addresses each of these database issues head on. Under MSTV's plan, the Commission would freeze new DTV modifications and changes in the DTV

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[11] Letter of Understanding between the Federal Communications Commission of the United States of America and Industry Canada Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz, and 470-806 MHz Bands Along the Common Border, effective September 22, 2000, available at http://www.fcc.gov/ib/sand/agree/files/can-bc/can-dtv.pdf.

[12] In addition, some stations' ability to make an informed choice could be hampered by technical and interference issues that limit the use of the low VHF band for DTV. Part B.3 infra discusses in more detail low VHF issues and how the MSTV proposal will resolve them.

Table of Allotments. The database would include applications for modified facilities and/or channel changes that are pending at the time the freeze is imposed. The 45-day window for corrections to the database then would enable stations to examine existing data as contained in the database and to make any changes necessary to correct errors or to account for modifications. The preliminary corrected and revised database would be issued in September 2004 and would specify the protected service area and population for each station.[13] To assist the Commission in finalizing the database, stations would be required to file commitments with the Commission affirming their intent to build to their protected replicating or maximized facilities (or to lesser facilities). The deadline for filing these commitments would be December 31, 2004.[14] Failure to construct facilities consistent with this commitment may result in subsequent Commission

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[13] The Commission's rules provide that a station's DTV service area/population will be protected to the greater of its authorized DTV service area/population or its replicating (or "allotment") DTV service area/population. 47 C.F.R. §73.622(e)-(f) Stations that are "maximized" are authorized at facilities that are greater than their replicating facilities established in the initial DTV Table of Allotments (*see* Appendix B, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, MM-Docket No. 87-268 (adopted Jan. 29, 1998); Appendix B, Second Memorandum Opinion and Order on Reconsideration of Fifth and Sixth Reports and Orders, MM-Docket No. 87-268 (adopted Nov. 24, 1998)); therefore, these stations are protected to their authorized, maximized facilities. Stations that have licensed their DTV facilities at less than their replicating, allotment facilities must be afforded protection beyond their authorized DTV facilities; these stations are protected to their replicating DTV facilities established in the DTV Table and, therefore, would have the opportunity during the data correction process to ensure that their replicating, DTV Table facilities are specified in the database rather than their authorized facilities, provided that they ultimately intend to build out to those replicating facilities.

[14] This timeframe might be longer for those stations that revert to their NTSC channels or that select new third channels for DTV operations post-transition (to avoid stranded investment in facilities they will abandon at the end of the transition) and for smaller market stations. For those stations with pending applications, the deadline would be tied to the date of the application's grant, so that there would be a reasonable construction period. Importantly, however, in no event does the plan require stations to have in fact built out by the filing deadline. While enforceable construction deadlines would be appropriate, stations that will be changing channels at the end of the transition should not be required to build out to maximum facilities until a reasonable period after migration to their post-transition digital channels.

action. The Commission then would issue a final database listing all eligible licensees and specifying their final protected service populations, including their maximized DTV service areas. With this newly accurate database, stations will be able to make informed decisions in the initial and subsequent rounds of channel elections.

2. Clarity in Election Process

In addition to ensuring that accurate information is available to stations when they make their elections, MSTV's proposal provides the clarity in the election process that is essential for a smooth transition. Because of the finite availability of spectrum, the selections of stations in a given market inevitably will affect and depend upon selections of others in the same and nearby markets. For example, a station currently operating on its in-core DTV channel may receive additional interference depending on the final channel elections of neighboring stations. Similarly, a station that has maximized its coverage area on its current DTV channel may not be able to maximize or even replicate its coverage area if it moves back to its original NTSC channel. Moreover, in congested regions, a station's choice regarding its final DTV channel could affect stations in adjacent markets. For example, a channel election decision in New York would have a "daisy chain" effect on stations in Philadelphia, Hartford, and other nearby markets. In the absence of an election process with clear, orderly rules, there could be a race to make the first election, without regard to how that decision affects other stations or ultimately affects the selecting station itself.

MSTV proposes a clear, orderly election process that affords choice to as many stations as possible and thereby optimizes the public's service. The logic underlying the MSTV proposal begins with the fact that, given the costs of relocation, most stations operating a DTV facility on an in-core channel may prefer to stay on that channel. The proposal would speed the

ultimate migration to post-transition DTV channels by reducing the number of channel changes necessary to implement the final DTV Table.

3. Low VHF issues

The transition to DTV raises a number of significant concerns over low VHF operations (*i.e.*, operations on channels 2-6). Specifically, while "man-made" impulse noise in the low VHF band has been an annoyance in analog broadcasting, it may cause digital television screens to go blank because of the "cliff effect" or for the picture simply to freeze.[15] Measurements conducted by ACATS, MSTV and others have identified power line and man-made impulse noise as a potential problem for digital reception on low VHF channels.[16] The Commission's proposal to operate broadband systems over power lines on television spectrum would only exacerbate these interference problems.[17] Moreover, the low VHF band may be more susceptible to interference resulting from ionospheric propagation, or "skip." While there have always been ionospheric skip in low VHF band, the manifestation of the interference in digital is more pronounced than analog because television sets may lose or freeze their pictures.

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[15] It may be possible to alleviate some of the man-made impulse noise interference in the low VHF band by significantly increasing the power of DTV stations operating on channels 2-6. It is not certain, however, that increasing power would resolve the problems in all markets and on all channels. In addition, there are already interference issues between TV channel 6 and public radio stations. Moreover, raising power levels may not resolve, and could exacerbate, the ionospheric interference issues.

[16] Field measurements conducted in 1994 in Charlotte, North Carolina, by the Advisory Committee n Advanced Television Systems (ACATS) identified impulse noise as a potential problem at low VHF. More recent measurements in 1999 and 2003 by MSTV and CBS in Cleveland, Ohio, and Chicago, Illinois, observed and identified similar conditions in the field. Further measurements are underway to better quantify the impact of this impulse noise on digital reception.

[17] *See* Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 03-104 (July 7, 2003) (arguing that permitting the operation of broadband services over power lines will increase interference to stations operating in the low VHF band).

The MSTV proposal recognizes these potential problems with operating in the low VHF band and seeks to provide a reasonable solution that balances the equities of low VHF stations with the desire for an orderly, expedited transition. To this end, it offers stations that have both their NTSC and digital channels on the low VHF band the opportunity to select a third channel. Likewise, stations that have one in-core channel in the low VHF band and that, after the first round of elections, realize there are interference issues presented by remaining on that channel may select a third channel. Finally, in resolving a conflict in channel selections at the end of the process, if one station has a channel in the low VHF band, that fact would weigh in that station's favor.

4. Faithfulness to Legitimate Industry Expectancies

Finally, the MSTV proposal achieves the important goal of meeting licensee expectations and protecting the equities of the broadcast industry. Stations have spent billions of dollars constructing new DTV facilities and developing and launching business plans for the digital age. By necessity, these investments were based on the stations' expectations and the equities and realities of the DTV transition. To this end:

- Stations with both DTV and NTSC channels in core expect to have the option to continue operations on their in-core DTV channels, although economic costs and technical constraints may lead some of these stations to move back to their NTSC channels (an option they have long been told they would have).
- Stations with in-core DTV channels and out-of-core NTSC channels generally expect that they will continue DTV operations on their in-core DTV channels.
- Stations with out-of-core DTV channels but in-core NTSC channels generally anticipate moving their DTV operations back to their NTSC channels.
- Stations with both DTV and NTSC out-of-core channels desire to obtain new in-core DTV assignments.

Under MSTV's proposal, stations in each category would have the opportunity to secure their expectations and goals in the *first* round of elections. If preferences are not secured in the first round, or if a station that selects its in-core NTSC channel in the initial round but determines it ultimately would prefer its digital channel because of service or interference losses, the proposal offers these stations the opportunity to weigh those service considerations against other alternatives before the DTV Table is finalized.

C. The Critical Role Of Branding To The DTV Transition

A key element in the digital transition is to avoid consumer confusion. For nearly 50 years, consumers have come to rely on their local favorite channels for their news, public affairs and sports programming. As with a station's call letters, consumers have come to expect their favorite station on a specific off-air channel number. Indeed, the ability to retain channel identity is a key element in the regulatory scheme.[18] From a consumer's perspective, the digital transition can be facilitated if stations have the choice to retain their time-honored channel numbers.

As the Commission has recognized with the assignment of station call letters,[19] the channel numbers assigned to local television stations may carry with them brand recognition. For example, many stations identify their news programs as "Action News 4," or "Eyewitness News 9." We believe the digital transition can be facilitated if stations are able to maintain this identity throughout the digital transition and into the post-transition environment.

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[18] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 614(b)(6), 106 Stat. 1460 (1992).

[19] Report and Order , *In re Matter of Revision of Section 73.3550 of the Commission's Rules with Respect to the Assignment of New and Modified Call Letters to AM, FM and TV Broadcast Stations*, MM Docket No. 83-373, 95 F.C.C.2d 1079 (1983).

Fortunately, digital transmission provides the technology necessary to foster consumer confidence and maintain channel identity. PSIP encoding technology will allow stations to select the channel they wish to use for their DTV signals on DTV sets. For example, a station that historically has operated on NTSC Channel 3 but operates on DTV channel 48 could choose to transmit a PSIP code that would result in the station appearing as Channel 3 on new digital television sets. Digital stations are using this technology today.

To facilitate the transition, MSTV believes the Commission should recognize the importance of the PSIP codes that are transmitted by each station. Similar to its approach on call letters, the Commission should vest in a station the exclusive right to transmit the codes that will trigger a station's historic channel number on new digital sets. Of course, if a station prefers to re-brand its station with a new channel number, it should be permitted to do so, subject to not using the code of another station.[20]

A final consideration is the retransmission of PSIP codes when a station is carried on cable or satellite systems. Whether a station is carried through the must-carry or

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[20] The Commission should ensure that branding issues are taken out of the channel election process by establishing PSIP selection rules that allow stations to preserve their identities as they transition to final DTV channels. Specifically, the Commission should provide that stations may select the PSIP codes they will use for their final DTV channels from among their (1) historic NTSC channel, (2) transitional DTV channel, and (3) final DTV channel. Where there are conflicts between the PSIP codes selected by different licensees, the station with the greatest equity (*i.e.*, investment) in branding the channel should have priority:

- a station electing the PSIP code of its historic NTSC channel would have priority over a station seeking the PSIP code of either its transitional or its final DTV channel and
- a station electing the PSIP code of its transitional DTV channel would have priority over a station seeking the code of its final DTV channel.

Of course, a station that elects a PSIP code from among its three options cannot block another station from electing to use one of the PSIP options it chose not to use.

retransmission consent process, the channel coding provided by PSIP should not be stripped from the broadcasters signal. Such a result would increase consumer confusion and undermine the digital transition.

Conclusion

The channel election and repacking process will be critical to the success of the DTV transition. The process requires great care to ensure that it does not result in poor selections and, in turn, poor service to the public. MSTV has thoroughly studied the many complex issues associated with the channel election process and believes that it has developed an orderly proposal that will secure the equities of stations and result in the best possible service for viewers. MSTV strongly urges the Commission to adopt this plan.

Respectfully Submitted,

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