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May 25, 2004

VIA HAND DELIVERY

Marlene H Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S W  
Washington, D.C 20554

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MAY 25 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ATTENTION Hon. Michael K. Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

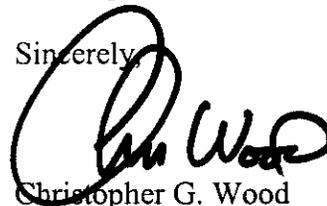
Re: **Comments on the Special Submission of  
The Association for Maximum Service Television, Inc. ("MSTV")  
Filed May 6, 2004 in MB Docket No. 03-15**

Dear Sir or Madam:

Transmitted herewith is a letter directed to Chairman Powell with respect to the above-referenced comments.

Should there be any questions regarding this matter, please contact the undersigned directly.

Sincerely,



Christopher G. Wood  
Counsel for Mountain Broadcasting  
Corporation

Enc

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Hon. Michael K. Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S W  
Washington, D.C. 20554

**Re: Comments on the Special Submission of  
The Association for Maximum Service Television, Inc. ("MSTV")  
Filed May 6, 2004 in MB Docket No. 03-15**

Dear Chairman Powell:

I am writing on behalf of our client, Mountain Broadcasting Corporation ("Mountain"), the permittee of digital television ("DTV") station WMBC-DT, Newton, New Jersey, with respect to MSTV's recent Special Submission (the "MSTV Proposal"). Mountain respectfully requests that the Commission deny MSTV's proposal for an immediate freeze on the filing of any application to modify an authorized DTV facility that would expand the station's coverage contour in any direction or result in even a very small degree of new interference.

As the Commission is well aware, a number of DTV permittees were unable to build their originally-authorized facilities, often due to significant obstacles beyond their control. For those permittees who have been diligently pursuing a new transmitter site, but have not yet secured that site and filed the necessary modification application, an immediate filing freeze could completely undermine their efforts to commence full power operations. Nor is such an extensive freeze really necessary to facilitate an informed channel election by those DTV permittees fortunate enough to have faced no obstacles to construction and to hold two in-core channel assignments

MSTV's requested filing freeze is ancillary to a larger proposal that would govern the channel election and repacking procedures. As the first step in a five-part process, MSTV proposes a clean-up of the Commission's data base to provide accurate and complete information for stations making their channel elections. Even before accepting comment on its overall proposal, however, MSTV would have the Commission impose an immediate freeze on requests for DTV channel changes, new DTV allotments, and modifications to DTV facilities that would expand the DTV station's service area in any direction or would cause new interference to any

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existing authorized facility (presumably employing the 0.1% interference standard suggested).  
MSTV Proposal at 5-6.

Mountain understands the need to temporarily freeze proposals for DTV channel changes and new DTV allotments, which are significant, time-consuming applications that directly affect the availability of channels. But a freeze on any modification that would expand a station's coverage contour in any direction or create even minor interference sweeps too far in light of the obstacles faced by many stations in the DTV buildout. Like Mountain, a number of DTV permittees were unable to build out the facility originally authorized. In many cases, those permittees may still be devoting significant manpower and resources to securing a viable new tower location from which to institute full-power DTV operations, despite legal, financial and other obstacles. A sudden ban on the filing of modification proposals except in very narrow circumstances could instantly thwart those efforts by making a possible alternative site untenable, or forcing a significant reduction in service.

For example, suppose that a DTV permittee has been legally unable to construct the DTV facility originally authorized by the Commission, but is finally able to secure a new tower site after the FCC imposes a filing freeze. If the new tower site were located further to the west than the originally-authorized tower, then the station's overall coverage contour would be expected to shift in that direction as well. The freeze would force that station to reduce power from its new site, so as not to extend its previously-authorized contour to the west at all. Thus, as a result of the freeze, the station would be forced to reduce coverage and service that would have complied with the current rules governing DTV modifications. Indeed, if the only available tower is located far enough away, the need to "pull in" a contour in one direction by reducing power could even adversely affect the station's ability to cover its community of license. This problem is exacerbated by MSTV's suggested use of a highly-restrictive 0.1% interference standard as an additional constraint on modifications.

The adverse impact of MSTV's proposed freeze is not merely hypothetical, as demonstrated by Mountain's own situation. Mountain, the licensee of WMBC-TV and permittee of WMBC-DT, Newton, New Jersey, is a local, independent, minority-owned broadcaster. Mountain sought to secure a stable, long-term tower site before making the substantial investment required to purchase and install new DTV transmission equipment. Both the Commission and the FAA authorized it to build a new communications tower in Sparta, New Jersey, on a site adjacent to the tower from which the analog broadcasts of WMBC-TV originate (FCC File No BPCDT-19990625KI, as "maximized" by FCC File No BPCDT-19991029AFC). Mountain intended to locate both its analog and DTV antennas on this new tower.

To date, Mountain has not been permitted to build the proposed tower. The local zoning board refused to grant the necessary variance, despite the fact that the proposed tower was located in a sparsely inhabited, undeveloped wilderness area adjacent to an existing tower. Following local opposition to the proposed tower, the state agency that originally approved

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Mountain's use of the site abruptly terminated Mountain's lease for its new tower. Expensive and time-consuming litigation in both cases have thus far been fruitless for Mountain, in the face of local political realities. Thus, despite its best efforts to become what MSTV describes as an "early adopter of digital technology," and despite substantial expenditures of time and money, Mountain has only been able to commence DTV operations at reduced power, pursuant to an STA grant

Recognizing the importance of constructing full-power DTV facilities in an expeditious fashion, following years of delay in local hearings and litigation, Mountain recently entered into negotiations with the owner of an existing tower site in New Jersey to relocate its antenna and transmitter there. Assuming it reaches an agreement with that site owner, Mountain intends to promptly file an application on FCC Form 301 for a modification to the WMBC-DT construction permit, to specify this new location. However, Mountain's engineers have explained that compliance with the proposed freeze would necessitate a very complicated restructuring of its engineering proposal for the site and a reduction of overall coverage.

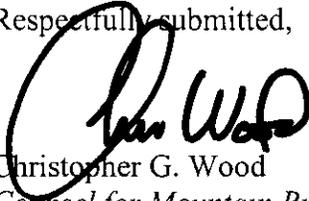
The importance of securing a suitable DTV site is particularly acute in this instance, as Mountain may not use its original analog channel assignment post-transition. Thus, while a filing freeze may be more equitable as applied to a broadcaster with two channel options, its impact on a broadcaster with only one in-core channel can be quite significant.

Nor is a far-reaching freeze necessary to aid those fortunate DTV permittees who have not faced construction obstacles. MSTV argues that the Commission has "issued several databases, each with different underlying assumptions," and that DTV licensees need to rely upon a single, accurate database in making their election. MSTV Proposal at 12. In fact, Mountain understands that the Commission's engineering data base for television stations does reflect past modifications to DTV authorizations and facilities. For example, it includes Mountain's own past DTV channel change and maximization authorizations. This engineering data base would appear to contain all of the information required by an applicant making a channel election. Moreover, it is this data base that a station's consulting engineers would utilize in preparing any modification application. While Mountain would fully support an effort to correct any discrepancies in such data, there do not appear to be multiple, conflicting versions of this technical data base justifying a sweeping freeze.

Mountain urges that the Commission not institute a freeze on DTV facilities modification applications based upon criteria as broad as any expansion of the station's authorized coverage contour in any direction, or as restrictive as a 0.1% interference standard. If the FCC ultimately does impose such a freeze, however, then it must give DTV permittees adequate time in which to complete their current efforts to secure viable transmitter sites and submit an application, and adequate flexibility once the freeze is in effect to seek necessary facilities changes, so as not to prejudice broadcasters who have already faced significant obstacles in the transition to DTV despite their own best efforts.

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Respectfully submitted,



Christopher G. Wood  
*Counsel for Mountain Broadcasting Corporation*

cc

Hon Kathleen Abernathy  
Hon Michael Copps  
Hon Kevin Martin  
Hon. Jonathan Adelstein  
Rick Chessen/FCC  
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Gordon Godfrey/FCC  
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