

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

**In the Matter of:**

**Second Periodic Review of the  
Commission's Rules and Policies  
Affecting the Conversion to  
Digital Television**

**MB Docket No.: 03-15**

**TO: THE COMMISSION**

**COMMENTS OF PAPPAS TELECASTING COMPANIES**

Pappas Telecasting Companies ("Pappas"), by and through its attorneys, hereby submits the following Comments regarding the "Special Submission" filed by the Association for Maximum Service Television, Inc. ("MSTV") on May 6, 2004, in the above-referenced proceeding.<sup>1</sup> MSTV's Special Submission presented a detailed proposal relating to the final stages of the DTV transition. Pappas whole-heartedly supports the goal of resolving the many unsettled matters associated with the DTV transition, and applauds MSTV for taking the lead in developing and presenting its plan to the Commission.

However, as discussed in more detail below, Pappas has certain concerns and proposes certain remedial modifications to the plan specified in the Special Submission. Most of these concerns relate to the timing of channel elections among the various stakeholders in the DTV transition. Pappas urges the adoption of a revised timeline as more fully described herein, and urges the Commission to

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<sup>1</sup> Although MSTV requests that the Commission seek separate comments on its plan, it is not clear whether that step will be taken. Several parties have already submitted *ex parte* comments regarding the Special Submission. Therefore, given Pappas' strong interest in this matter, these Comments are being provided in the event that separate comments will not be requested by the Commission.

resolve these channel selection issues expeditiously and in a manner which ensures that the needs and interests of all licensees are fairly resolved.

### **INTRODUCTION**

Through its affiliated entities, Pappas currently is the licensee or permittee of 16 full-power television stations, operates four additional full-power stations pursuant to local marketing agreements, and is the provider of free over-the-air local television programming in 16 markets in 10 states across the country.<sup>2</sup> Based on these holdings, Pappas has a significant vested interest in the development of an expeditious and fair transition to digital television.

In its Special Submission, MSTV establishes a two round, multi-stage channel election process. Under the MSTV plan, those licensees with NTCS and DTV channels located in the core TV spectrum (Channels 2-51) would select the channel on which they will operate their permanent DTV facility. Those licensees with one in-core and one out-of-core channel would not be required to make a channel election at this time, as it would be assumed that licensees would select their in-core channel at this initial stage.

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<sup>2</sup> Pappas operates the following full-power stations in the following markets: WWSW-TV, Opelika, Alabama (Columbus, Georgia Designated Market Area or "DMA"); KPWB-TV, Ames, Iowa (Des Moines, Iowa DMA); KMPH-TV, Visalia, California, and KFRE-TV, Sanger, California (Fresno, California DMA) WTWB-TV, Lexington, North Carolina (Greensboro-Winston-Salem-High Point, North Carolina DMA); KAZH(TV), Baytown, Texas (Houston, Texas DMA); KDBC(TV), El Paso, Texas (El Paso, Texas DMA); KTVG-TV, Grand Island, Nebraska, KHGI-TV, Kearney, Nebraska, KSNB-TV, Superior, Nebraska, and KWNB-TV, Hayes Center, Nebraska (Lincoln-Hastings-Kearney, Nebraska DMA); KAZA-TV, Avalon, California (Los Angeles, California DMA); WMMF-TV, Fond du Lac, Wisconsin (Green Bay, Wisconsin DMA); KPTM-TV and KXVO-TV, Omaha, Nebraska (Omaha, Nebraska DMA); KREN-TV, Reno, Nevada (Reno, Nevada DMA); KTNC-TV, Concord, California, (San Francisco, San Jose and Sacramento-Modesto, California DMAs); KFWU-TV, Fort Bragg, California (San Francisco, California DMA), KPTH-TV, Sioux City, Iowa (Sioux City, Iowa DMA); KSWT-TV, Yuma, Arizona (Yuma, Arizona/El Centro, California DMA) KAZW-TV, Walla Walla, Washington (Yakima-Pasco-Richland-Kennewick, Washington DMA).

Once this initial stage is completed, MSTV's plan would have those licensees with two out-of-core channels submit a list of three possible channels, which would be required to protect the earlier elections made by those licensees with two in-core channels, as well as the in-core channel of those licensees with one in-core and one out-of-core channel.

Subsequent to these initial elections, MSTV proposes that the Commission issue provisional authorizations for all licenses. Those licensees who are not satisfied with the facilities specified in their provisional licenses could file during a second election window, which would also be open to those with licensees with no in-core DTV channel. Based on this plan, the Commission would issue a final DTV Table in 2006 that would serve as the basis for future modifications to DTV facilities.

## **DISCUSSION**

While Pappas agrees the general premise and goals of MSTV's plan, it proposes several refinements that it believes will better serve the DTV transition. These refinements would streamline the initial round of elections into two stages, rather than the three stages proposed by MSTV. This refinement is both more efficient and more equitable, and should avoid the need for, and delay from, reconsideration filings. Pappas supports the Commission's adoption of MSTV's plan to assist in the rapid DTV transition, subject to the refinements proposed herein.

### **A. The Initial Round of Elections**

Pappas agrees with MSTV that it would be preferable that existing licensees have maximum flexibility in making their channel elections. However, Pappas believes that those licensees with two in-core channels should be required to make

their elections prior to any other licensee group in order to facilitate a more orderly and equitable process.

Under MSTV's plan, licensees with two in-core channels that select their analog channel would be permitted to subsequently (at some unfixed point in the future) elect their DTV channel if their NTSC facility does not provide adequate coverage. A necessary corollary of this is that all other licensees must protect the analog **and** digital channel of these licensees until such time, which obviously reduces the number of available channels for other licensees.

The better approach would be to have an initial round of elections **solely** for licensees with two in-core channels, and issue provisional licenses to these licensees before any other licensee is required to make an election. Since these licensees have known which two channels they would be required to choose from for the longest period of time, there is little reason for extending the period of uncertainty for the other licensees without two in-core channels.

In addition, Pappas submits that this process could be handled even more expeditiously, without the necessary consideration of the elections of other licensees. While the MSTV plan would have the initial round of elections occur in June 2005 (and the provisional authorizations issued in October 2005), Pappas believes that the day on which provisional authorizations are issued could be moved up several months if the initial round only included licensees with two in-core channels. Pappas also believes that the process could be further streamlined.

Specifically, Pappas proposes that, once the licensees with two in-core channels have made their elections, and have received provisional authorizations for those channels (and released either the analog or DTV in-core channel), the

second round should include ***all*** other licensees, including (i) those with one in-core channel,<sup>3</sup> (ii) those with two out-of-core channels, and (iii) stand-alone, out-of-the-core DTV licensees. Each of these groups of licensees should have the right to make their elections at the same time and should be treated as similarly situated. To do otherwise would be to penalize certain licensees by making them wait needlessly for future election periods.

Of special interest to Pappas is the protection of the rights of DTV stand-alone licensees. As noted above, Pappas urges the Commission to include the DTV stand-alone licensees in the modified second round of elections, rather than delaying their elections until subsequent rounds. These licensees have faced great risks and challenges as they have been required to construct a new television station with no incoming revenue from advertising, an uncertain future with respect to cable carriage rights and the low penetration rate of digital-ready television sets. Rather than delaying the election rights of these licensees to the later stages of the repacking process, DTV stand-alone licensees should be included in the same round of elections as all other licensees without two in-core channels. There is simply no equitable basis for disadvantaging them by placing them at the end of the line.

To reduce the number of conflicting elections, the Commission could permit these licensees to submit a list of three preferred channels to assist in the process. Moreover, the Commission could permit licensees located in the same area to submit regional plans that would serve to expedite the transition.

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<sup>3</sup> As noted above, Pappas does not agree with MSTV that the Commission should assume that licensees with an analog channel in-core, and a DTV channel out-of-core, will select the in-core analog channel for its DTV operation. It is possible that these licensees may decide to wait until the second round of elections to select a third channel. Therefore, these licensees should be required to make known their election decisions along with the other licensees to ensure that the maximum number of DTV channels are available for the second round of elections.

To further expedite the process, the initial election choices for the licensees in these groups could be staged soon after the Commission releases a public notice announcing the election choices of the two in-core channel licensees. For example, if the Commission were to accept the elections for the two in-core licensees on June 1, 2005, it could complete its study of the elections, and release a public notice of these elections on August 1, 2005. At the same time, the Commission could announce the commencement of Step Two in the process, *i.e.*, that it would be accepting channel elections from the other licensees on October 1, 2005. In the time between August 1, 2005, and October 1, 2005, the Commission could still be issuing the provisional authorizations for the two in-core licensees.

Given the more painstaking process associated with the elections made by the licensees without two in-core channels, it can be expected to take longer, probably until January 2006, before the Commission would be able to resolve the remaining channel elections and issue provisional licenses for the remaining licensees. However, the Commission's paramount goal at this time should be to reach a final decision on the channel elections, even at the expense of a few additional months.

In fact, the approach suggested by Pappas takes into account the fact that the number of broadcast engineering consultants comprises a limited universe of highly specialized professionals, all of whose time will be in great demand and short supply at this critical juncture in the DTV transition process. It is simply unrealistic to believe that they could manage to satisfy the needs of the entire broadcast industry within the one month time period proposed by MSTV between the election

dates for licensees with two in-core licensees and the submission of election choices by licensees with two out-of-core channels.

Moreover, this extremely quick turn-around would likely put enormous strains on the Commission to process the channel elections and give public notice of such elections. It is also extremely unlikely that the limited number of broadcast consulting engineers would be able to adequately serve the needs of television licensees in preparing for the second phase of elections. As such, the adoption of a staggered election plan will reduce the strain on the limited resources of the Commission, and the broadcasting industry, and will protect the interests of all television licensees.

**B. Other Related Matters**

Once all television licensees have received their provisional licenses, Pappas agrees with MSTV that there should be a subsequent period for modifications to the allotment table prior to accepting minor modification applications. However, it is questionable whether the Commission can utilize MSTV's plan to resolve conflicts between competing channel elections. The factors proposed in MSTV's plan (i.e., early adopter of DTV technology) are, by their nature, difficult to measure, and, more importantly, extremely difficult to weigh in relation to the other factors.

For example, it is not clear how the Commission would compare two licensees, one, for example, that constructed its DTV facilities in 2001, and one that has been waiting for three years for Mexican concurrence. Obviously, the licensee that had constructed its facility in 2001 has expended more construction and operating costs, but it is not clear why that licensee should be preferred over

the licensee that has been thwarted by international considerations that are outside of its control.<sup>4</sup>

Instead, in those situations where there are competing election requests, the Commission should encourage the parties to reach resolutions without resorting to a comparison of the MSTV factors. One option would be to accept regional settlements between parties that would resolve competing requests between the parties. Another option would be to have the licensees making elections in the second round to propose three possible channels, and have the Commission make the decision based on coverage considerations. Regardless, the Commission should avoid the application of the comparative criteria proposed by MSTV.

### **CONCLUSION**

As stated above, Pappas applauds MSTV's efforts and consideration in putting together the Special Submission. The refinements proposed herein are meant to provide enhancements to MSTV's Plan, to streamline the first round of elections, and to identify areas in the plan that should be revised to better protect all television licensees and their viewers.

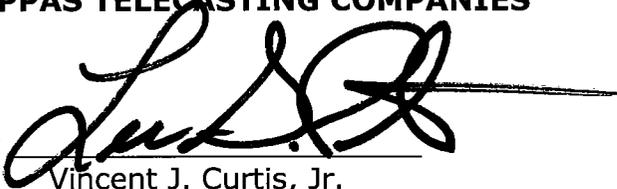
To that end, Pappas Telecasting Companies requests that the Commission consider these Comments in conjunction with its consideration of MSTV's Special Submission, and strongly urges the Commission to adopt a revised form of MSTV's Special Submission that incorporates the refinements proposed herein.

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<sup>4</sup> Similarly, a party who has gone forward as a stand-alone DTV operation certainly has taken the greatest risk, regardless of when it constructed its DTV facility.

Respectfully submitted,

**PAPPAS TELECASTING COMPANIES**

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