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June 4, 2004

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Merlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C.

RE: Ex Parte Communication
MB Docket No. 03-15

Dear Ms. Dortch:

On June 3, 2004, the undersigned and Arthur H. Harding of this firm met with Jon Cody, Stacy Robinson Fuller and Johnanna Mikes Shelton concerning the comments filed by our client, Mountain Broadcasting Corporation, on May 25, 2004, with respect to the Special Submission of Maximum Service Television, Inc., filed May 6, 2004, in the above-referenced proceeding. Attached are a set of Talking Points submitted at those meetings.

Sincerely,

Christopher G. Wood

cc: Jon Cody
Stacy Robinson Fuller
Johanna Mikes Shelton

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TALKING POINTS ON MSTV'S PROPOSED FREEZE ON
DTV MODIFICATION APPLICATIONS
(MB Docket No. 03-15)

- In a “Special Submission” filed May 6, 2004, the **Association for Maximum Service Television, Inc. (“MSTV”)** submitted a five-step proposal to govern the channel election and repacking procedures in the DTV transition. Even before accepting comments on its proposal, MSTV would have the Commission impose an immediate freeze on all applications for DTV channel changes, new DTV allotments, and modifications to DTV facilities that would expand a DTV station’s authorized service area in any direction or would cause new interference to any existing authorized facility, employing an unduly rigid 0.1% interference standard to replace the current 2%/10% rule.
- Our client, **Mountain Broadcasting Corp. (“Mountain”)**, filed comments on May 26th in opposition to the freeze proposed by MSTV. Mountain is the licensee of WMBC-TV and permittee of WMBC-DT, Newton, New Jersey. As shown in its comments, the immediate imposition of a far reaching filing freeze could adversely affect DTV permittees who have faced significant obstacles to building out their authorized DTV facility, for reasons beyond their control, and are diligently pursuing a new transmitter site, but have not yet secured that site and filed the necessary modification application.
- If a DTV station that now faces construction obstacles is ultimately forced to move to a new tower, and that site is not immediately adjacent to the originally authorized site, then the station’s coverage contour would normally be extended in the same direction as the new tower. However, the freeze would prevent that station from seeking authority for the new tower site unless the station reduced power in order to “pull in” its contour to match the existing one. This reduction in power would shrink a station’s contour in all directions, resulting in a smaller service area and decreased population coverage. Moreover, if the only available tower is far enough away from the originally authorized site, the necessary reduction in power could even affect the station’s ability to place the requisite signal strength over its community of license.
- It is important to realize that broadcasters face this predicament despite their own best efforts to become what MSTV describes as “early adopters of digital technology” and notwithstanding substantial expenditures of time and money.
- Mountain, an independent, local, minority-owned broadcaster, airs unique foreign language programming for various ethnic groups and produces its own *daily* newscasts in two different languages. Before making the substantial investment required to purchase and install new DTV transmission equipment, Mountain sought to secure a stable, long-term tower site. The Commission, the FAA and the State of New Jersey all authorized it to build a new communications tower in Sparta, New Jersey, on a site adjacent to the tower from which its analog station broadcasts.

- To date, Mountain has not been permitted to build its proposed tower. The local zoning board refused to grant the necessary approval, despite the fact that the proposed tower was located in a sparsely inhabited wilderness area, adjacent to an existing communications tower and to high voltage electric towers. Following local opposition to the proposed tower, the state agency that originally approved Mountain's use of the site abruptly terminated Mountain's lease. Expensive and time-consuming litigation in both cases have thus far been fruitless for Mountain.
- As a result of these legal obstacles, WMBC-DT has only been able to commence operations with reduced power, at an alternative site, pursuant to an STA grant.
- The importance of securing a suitable DTV site is particularly acute in this instance, as Mountain may not use its original analog channel assignment (63) post-transition. 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 with two in-core channel assignments who have not faced construction obstacles. Although MSTV argues that broadcasters face multiple DTV databases, Mountain understands that the Commission's engineering data base for television stations does reflect past modifications to DTV authorizations and facilities. This engineering data base would appear to contain all of the information required by an applicant making a channel election.
- Mountain urges that the Commission not institute a freeze on DTV 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 should 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.