

June 15, 2004

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FILED ELECTRONICALLY

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

Re: Written *Ex Parte* Submission in MB Docket 03-15

Dear Chairman Powell:

I write on behalf of Cavalier Group, LLC. ("Cavalier"). Cavalier is the holder of 51 C Block Lower 700 MHz Band licenses covering a total of approximately 38 million persons. I write to support the efforts of Association of Public Television Stations ("APTS") and WLNY-TV to allow public broadcast and out-of-core digital stations to delay the replication and maximization deadline subject to certain key, express conditions.

By letter dated May 18, 2004 the APTS submitted a written *ex parte* submission in the above captioned docket addressing channel election, replication and maximization deadline issues. The APTS submission, as well as certain others such as the *ex parte* presentation of WLNY-TV Inc.,<sup>1</sup> presents compelling evidence of the financial burden public broadcast stations and digital stations located on out-of-core channels face to upgrade their facilities for full replication or maximization.

The critical conditions that must be met before any further delay in replication or maximization can be given are as follows:

**First**, any delay in the replication or maximization deadline should not form the basis for any further delay in deadlines for channel elections. If a station cannot make an informed channel election prior to the time all stations in the area have completed replication and maximization efforts, then the replication and maximization deadline should be expedited, not delayed.

**Second**, if by a date certain such as December 31, 2004 an out-of-core digital station has not replicated or maximized, then it should not be granted interference protection over the unserved areas from 700 MHz licensees such as Cavalier. It should continue to have interference protection over the unserved areas from other television stations. There is no compelling reason whatsoever to require new licensees such as

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<sup>1</sup> Ex parte presentation of WLNY-TV Inc. presented under cover of that letter dated October 15, 2003 by Ronald A. Siegel, Esq.

Cavalier to provide interference protection to an area over which a station would most likely never provide a digital broadcast signal. With respect to out-of-core digital stations that elect not to replicate or maximize, new licensees should only be required to protect the actual operations of the out-of-core station, not some phantom projected curve. It is unrealistic to assume that any out-of-core station which elected not to replicate or maximize by the end of this year would subsequently decide to do so if the cost to upgrade were in the \$500,000 to \$700,000 (or more) range, when they know the additional investment would be lost shortly thereafter when they have to clear the 700 MHz band.<sup>2</sup> Prohibiting new licensees such a Cavalier from providing new wireless services in the unserved areas because a station, at some date in the future, might possibly broadcast a digital signal into the area would clearly be inefficient spectrum management.

The purpose of these review proceedings is to give the Commission the opportunity to review the progress of the DTV Transition and to make such changes or amendments to the transition plan and regulations as are necessary or appropriate to *both* promote the broadcast industry's transition to digital and to reclaim the 700 MHz band spectrum. Under the original DTV plan, by this time all digital stations would be operating at full power and simultaneously providing in digital the programming they are providing on their analog channels. Instead the Commission has chosen not to require service area replication, reduced required hours of operation and is considering alleviating simulcasting obligations altogether, in all cases due primarily to broadcast industry financial concerns.

With cable and satellite penetration already in excess of 85%, and with digital stations already providing service to "approximately 93% of households that receive their analog signals,"<sup>3</sup> it seems questionable whether any digital station that has not already done so would make the additional investment to upgrade facilities for full power and maximization and take on the added operating expenses prior to the time that they are required to terminate analog operations. Given these changes in circumstances and unmet expectations at a minimum the Commission should not require replication and maximization for out-of-core digital stations and for public broadcast stations while

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<sup>2</sup> Actually, we believe that given the apparent lack of any significant consumer demand for over-the-air digital television, the reluctance of many out-of-core digital stations to operate at full power and with significant hours of simulcasting, and the significant costs faced by these stations which will be forced to purchase additional equipment when they move in-core, the Commission should use these proceedings to require the termination of all out-of-core digital operations by the end of 2006. The terminated stations should still be given interference protection for their in-core digital operations and allowed to flash convert on an available in-core channel at their discretion anytime prior to the end of the DTV Transition. Requiring out-of-core digital stations to broadcast to a virtually non-existent market has resulted in a tremendous inefficient use of valuable spectrum that new licensees such as Cavalier could use to provide new wireless services to consumers, broadband to rural America, additional competition to existing wireless providers (both voice and data), and clear the Upper 700 MHz band for public safety and other commercial applications.

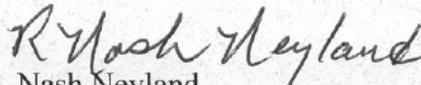
<sup>3</sup> See Mark R. Fratrik, *Reach the Audience: Analysis of Digital Broadcast Power and Coverage*, prepared for MSTV, at I (October 17, 2003)(submitted to the Commission on October 30, 2003).

continuing to provide those stations interference protection over the unserved areas from other television stations, ***but not from new 700 MHz licensees such as Cavalier***. At the same time, however, in-core digital stations should be required at least to replicate their NTSC service areas by a date in the near future in order to provide compelling digital programming to the largest number of consumers. In-core digital stations do not face the same risks and uncertainties faced by the unfortunate out-of-core digital stations such as WLNY-TV.

Notwithstanding the foregoing, we still believe that the Commission's better course of action at this time may be to clear the 700MHz band of all television stations by the end of 2006 and allow the DTV Transition to continue on the in-core channels at whatever pace is driven by consumer demand.<sup>4</sup> Requiring the entire broadcast television industry to convert to all digital as a condition precedent to the clearing of 18 television channels is, under the circumstances as they exist today, both unnecessary and inefficient. It is likewise unnecessary and inefficient to require new 700 MHz licensees to provide interference protection over areas that are not currently served by out-of-core digital stations, and most likely would never be served by those stations.

Respectfully submitted,

CAVALIER GROUP, LLC

  
R. Nash Neyland  
Manager and General Counsel

cc: Commissioner Kathleen Q. Abernathy  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Commissioner Jonathan S. Adelstein  
Mr. W. Kenneth Ferree, Esquire  
Ms. Dortch (MB Docket 03-15)

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<sup>4</sup> See Cavalier's *ex parte* submission in this docket dated May 16, 2004 for a discussion of possible alternatives to clear the 700 MHz band of television incumbency by a date certain.