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ORIGINAL

June 15, 2004

By Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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JUN 15 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Notice in MB Docket No. 03-15

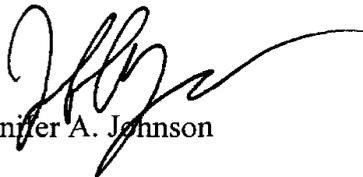
Dear Ms. Dortch:

On June 14, 2004, Jonathan Blake and Jennifer Johnson, counsel for the Association for Maximum Service Television, Inc. (MSTV), David Donovan, President of MSTV, and Victor Tawil, Senior Vice President of MSTV, met to discuss the MSTV Channel Election and Repacking Proposal with reference to the attached document with Rick Chessen, Mary Beth Murphy, Clay Pendarvis, Eloise Gore, Evan Baranoff, Gordon Godfrey, Keith Larson, Kim Matthews, William Huber, and Alan Stillwell.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to those at the FCC who participated in the meetings.

Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,


Jennifer A. Johnson

Attachment

- cc: Rick Chessen
- Mary Beth Murphy
- Clay Pendarvis
- Eloise Gore
- Evan Baranoff
- Gordon Godfrey
- Keith Larson
- Kim Matthews
- William Huber
- Alan Stillwell

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Comparison:

Industry Channel Election/Repacking Proposal And Alternative Approach

- The industry proposal establishes a transparent process that resolves channel election issues in sequence, enabling stations that are in a position to make informed decisions earlier in the process to do so, providing certainty to those stations, and, in turn, affording greater choice and more information to stations that make their final selections later in the process.
- In this way, the industry proposal reduces conflicts as the process progresses, thereby resulting in fewer challenges at the end of the process and assuring as smooth a transition as possible, in the interests of the both the public and broadcast stations.
- The alternative approach does not possess the same degree of transparency, provide certainty when the first stations make their preferences, or progress in a manner that widens choice and reduces conflicts. As a result, the alternative approach does not -- and will not -- possess wide support among the industry, and instead will almost certainly lead to a high number of challenges and a lengthy reconsideration and litigation process.

INDUSTRY PROPOSAL	POSSIBLE ALTERNATIVE APPROACH	COMMENTS
<i>Database Correction And Resolution Of International Issues</i>		
<p>Immediately freeze DTV channel changes, new DTV allotments and modifications to DTV facilities that extend service in any direction, and open 45-day window for stations to make corrections to database.</p>	<p>No database clean-up.</p>	<p>Freeze and database clean-up lends certainty to election process.</p> <p>Disagreement exists over whether FCC database has errors. Clean-up ensures there are not errors and can be done immediately, so will not delay elections. Ill-informed decisions will harm public service.</p>
<p>By September 2004 resolve outstanding Canadian and Mexican coordination and interference issues, using all available resources to promote acceptance of pending U.S. proposals.</p>	<p>Canadian and Mexican coordination issues not addressed.</p>	<p>Canadian and Mexican coordination and interference issues are seriously hampering DTV transition and limiting or blocking the service U.S. DTV stations can provide to the public. Resolution of these long-pending issues is vital for a large number of U.S. stations to make informed and service-optimizing choices.</p>

INDUSTRY PROPOSAL	POSSIBLE ALTERNATIVE APPROACH	COMMENTS
<p>In September 2004, stations not yet fully built out required to file certified statement of intent to build to maximized (or lesser) facilities.</p>	<p>In November 2004, stations file certification of intent to maximize.</p>	<p>Both approaches recognize desirability of this step; industry approach includes principle that this process should apply to all stations and deadlines to construct should take into account whether stations ultimately have to change channels at the end of the transition.</p>
<p>In February 2005 release DTV database that reflects corrections and resolution of international coordination issues.</p>	<p>Existing database would be basis of channel elections and interference and service analyses.</p>	<p>Errors in database and failure to resolve international issues prior to channel election will result in inaccurate assumptions and impede service-optimizing choices.</p>
<p><i>First Round Of Elections</i></p>		
<p>In June 2005 stations with two in-core channels will make their election.</p> <ul style="list-style-type: none"> • If DTV channel is elected, it will be protected to replicating or maximized service; NTSC channel will be released. • If NTSC channel is elected, it will be protected to equivalent of Grade B or maximized DTV service, subject to protecting the DTV service of those that elected their DTV channels. 	<p>In November 2004 stations with two in-core channels will make their election.</p> <ul style="list-style-type: none"> • Election will be weighted heavily but not guaranteed. • No channels relinquished at this time. • No certainty as to what service areas will be protected. 	<p>Industry proposal provides certainty as to at least some available channels; alternative approach does not.</p> <p>Industry proposal provides transparent, industry-endorsed parameters and priorities for determining service areas/populations; alternative approach lacks transparency, certainty, and specificity as to service baselines (exacerbating lack of industry buy-in).</p> <p>Under industry plan, first round of elections is within one month of target (May 2005) proposed by FCC. Alternative approach sets initial elections six months earlier.</p>
<p>As of June 2005, stations with only one in-core channel (including singletons) will be protected to maximized service areas and populations.</p>	<p>In November 2004, stations with only one in-core channel (including singletons) will state whether they are satisfied with in-core channel, or whether they want to elect another (to be determined) channel. If they want to elect another channel, they will need to make public</p>	<p>Industry proposal provides certainty to stations with respect to channel and service area/population protection; alternative approach lacks clarity on both channel and service protection.</p> <p>Under alternative approach, unclear when public interest determination will be made, and its affect on other stations' choices; public interest</p>

INDUSTRY PROPOSAL	POSSIBLE ALTERNATIVE APPROACH	COMMENTS
	interest showing.	statement at this stage will have little value and adds layer of ambiguity that further complicates the process.
<p>In July 2005, stations with two out-of-core channels will file for three preferences.</p>	No equivalent.	Industry proposal will take care of some out-of-core stations early; result is fewer stations competing for channels later in process and more certainty throughout.
<i>Provisional Authorizations (or "Tentative Designations")</i>		
<p>In October 2005, provisional authorizations (or tentative designations) issued for:</p> <ul style="list-style-type: none"> • in-core licensees remaining on DTV channels; • in-core licensees electing to revert to NTSC, provided no interference problems; • stations with two out-of-core channels whose preferences are accommodated in first round. <p>Stations receiving provisional authorizations would relinquish rights to other channels.</p>	No equivalent.	<p>The "provisional authorizations" or "tentative designations" would not represent a final order of the FCC and would not trigger a right to seek reconsideration.</p> <p>Industry proposal reduces likelihood for challenges by providing greater certainty with respect to stations receiving "provisional authorizations" and freeing additional channels for second round of election.</p>
<i>Second Round of Elections</i>		
<p>In December 2005, stations with one in-core and one out-of-core channel may request an alternative channel.</p>	<p>In February 2005, stations with only one in-core channel can file preference for three alternative channels.</p>	<p>Industry proposal gives these stations an opportunity for choice, while limiting potential for conflict. Alternative approach complicates selection process by soliciting three choices, which will cause uncertainty, delay, and greater conflict.</p> <p>Industry proposal has transparency; not clear under alternative approach how public interest showing required in first round affects second round.</p>

INDUSTRY PROPOSAL	POSSIBLE ALTERNATIVE APPROACH	COMMENTS
<p>In December 2005, stations with two out-of-core channels whose preferences were not accommodated in first round file preferences for three new channels.</p>	<p>In February 2005, stations with two out-of-core channels file preference for three channels.</p>	<p>Under industry approach, some out-of-core stations may have been accommodated in first round. Alternative approach does not provide stations with two out-of-core channels an early opportunity to elect.</p>
<p>In December 2005, in-core channel licensees that elected NTSC channel but did not receive provisional authorizations because of loss of service elect to either stay with NTSC channel or choose DTV channel, and will relinquish right to the channel not chosen.</p>	<p>No equivalent.</p>	<p>Industry proposal allows stations whose NTSC election resulted in a service loss to either accept that loss or revert to their DTV channel; reflects consideration of interference issues and promotes station acceptance of channel and service.</p> <p>Under alternative approach, FCC would determine/resolve interference issues without industry input; almost certain to lead to greater conflict.</p>
<p>In December 2005, low VHF stations can request third channel.</p>	<p>No equivalent.</p>	<p>Industry proposal takes into account low VHF interference issues.</p>
<p><i>Resolving Conflicts/New DTV Table</i></p>		
<p>In 2006, FCC resolves conflicts taking into account various criteria and public interest.</p> <p>Once conflicts are resolved, FCC issues R&O with new DTV Table of Allotments.</p>	<p>In August 2005, FCC issues NPRM.</p> <p>In early 2006, R&O issued.</p> <p>By mid-2006, reconsiderations resolved.</p>	<p>Industry proposal identifies reasonable criteria to consider in resolving conflicts while retaining FCC public interest discretion; sequencing of elections and decision points should minimize conflicts at end of process.</p> <p>Alternative approach is not transparent with respect to what criteria will be considered in conflict resolution; lack of transparency throughout process combined with lack of industry buy-in promotes challenge and delay.</p>