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September 29, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

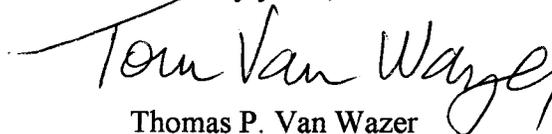
Re: Ex Parte Presentation
In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television Notice of Proposed Rulemaking, MB Docket No. 03-15

Dear Ms. Dortch:

On Friday, September 24, 2004, the attached e-mail was sent to Gordon Godfrey, Keith Larson, Rick Chessen of the Media Bureau, Bruce Franca and Alan Stillwell of the Office of Engineering and Technology and copied to Jonathan Cody of Chairman Powell's office, Stacy Fuller of Commissioner Abernathy's office, Catherine Bohigian of Commissioner Martin's office, Jordan Goldstein of Commissioner Copps' office and Johanna Mikes-Shelton of Commissioner Adelstein's office. The e-mail was circulated on behalf of the Merrill Weiss Group.

Pursuant to section 1.1206 of the Commission's rules, one copy of this letter and the attached e-mail are being filed electronically in the above-referenced docket. Please direct any questions regarding this matter to the undersigned.

Sincerely yours,


Thomas P. Van Wazer

Attachment

Ms. Marlene H. Dortch

September 29, 2004

Page 2

cc: Gordon Godfrey (via e-mail w/o attachment)
Keith Larson (via e-mail w/o attachment)
Rick Chessen (via e-mail w/o attachment)
Bruce Franca (via e-mail w/o attachment)
Alan Stillwell (via e-mail w/o attachment)
Jonathan Cody (via e-mail w/o attachment)
Stacy Fuller (via e-mail w/o attachment)
Catherine Bohigian (via e-mail w/o attachment)
Jordan Goldstein (via e-mail w/o attachment)
Johanna Mikes-Shelton (via e-mail w/o attachment)

Van Wazer, Thomas P.

From: Van Wazer, Thomas P.
Sent: Friday, September 24, 2004 4:50 PM
To: 'Keith Larson'; Gordon Godfrey; Rick Chessen; 'eloise.gore@fcc.gov'; Bruce Franca; 'alan.stillwell@fcc.gov'
Cc: 'jon.cody@fcc.gov'; 'catherine.bohigian@fcc.gov'; 'johanna.shelton@fcc.gov'; 'jordan.goldstein@fcc.gov'; 'stacy.fuller@fcc.gov'; Ed Thomas; merrill@mwgrp.com
Subject: Details of Media Bureau's Policy on Experimental Applications to Use Distributed Transmission
Importance: High

Keith et al.--

As you may remember, 32 entities, including the NAB and 23 television station licensees or group owners, submitted a letter to the FCC on June 4, 2004 urging the FCC to authorize quickly the use of Distributed Transmission ("DTx") in Digital Television broadcast operations. Following the release of the Report & Order in the Second Periodic DTV Review, the interest to deploy DTx remains, especially to address the observation that "the record in this proceeding does not reflect current successful and practical operation of DTS technology."

To prevent the needless waste of FCC staff resources as well as the expenditure of money for unnecessary engineering studies, **we are interested in clarifying some details about the FCC staff's policy when evaluating proposals for experimental authority to deploy DTx pending the completion of the "fast track" DTx rulemaking proceeding.**

We plan to share your response to this e-mail with interested broadcasters to facilitate the efficient preparation of at least generally acceptable DTx proposals. If you decide, for whatever reason, not to answer the questions in this e-mail, we would very much appreciate knowing that as well. There are several broadcasters that have an interest in moving forward now with DTx proposals and we would like to provide them as much information as we can.

Our focus is on your experimental authority policy because the limit imposed on stations proposing DTx operations under the so-called interim policy makes it unusable for most stations. Specifically, the requirement that DTx proposals under the interim policy "will not be allowed if they would provide predicted service beyond a station's currently authorized area" (para. 178) -- presents a significant, almost insurmountable, limit on the use of DTx by many stations when considered in tandem with the requirement in footnote 416 that "an acceptable application during the interim period **must** show that **all** viewers within the station's replicated service area who are predicted to be served by their analog transmitter would likewise be predicted to receive the minimum signal strength from at least one DTT transmitter." In all instances where a station has not maximized and in many instances where a station has expanded its service area beyond its DTV allotment, it will be virtually impossible to comply with footnote 416 using a multiple transmitter system when the replicated analog coverage area is based on the coverage a single transmitter without exceeding the station's authorized DTV service area. To stay within the contour, the power and placement of the transmitter will be limited. These limits will almost certainly create holes inside the service area, which will violate footnote 416.

Our questions about your experimental DTx policy include:

(1) will you permit stations proposing an experimental application of DTx to exceed their current service areas, assuming a satisfactory interference showing is made?

We strongly believe that you should consider proposed at least some coverage extensions, contrary to the blanket prohibition of these extensions in the interim policy. As you may remember, Merrill Weiss was intimately involved in securing what turned out to be the experimental authority to deploy the distributed transmission system for WPSX, the non-commercial station owned by Pennsylvania State University that has been successfully operating a DTx system for at least two years. Before settling on the use experimental authority approach to authorize the WPSX DTx system, an attempt was made to fit DTx under the current analog booster rules, which is essentially what the current interim DTx policy does. A total of 11 waivers were required, including a waiver that prohibits a booster's signal from exceeding the station's authorized contour.

Based on our understanding of some of the proposals currently under review by various interested broadcasters, it is very likely that an experimental DTx proposal will be presented that is clearly in the public interest despite the fact that the DTx network exceeds a station's currently authorized contour. If the FCC is truly interested in developing a record that

documents the "successful and practical operation of DTS technology," the DTx experimental policy must permit some extensions beyond a station's coverage area. Applicants in these situations will obviously take these authorizations with no guarantee that they will be able to continue the proposed operation. However, if these applicants are willing to assume that risk, it is difficult to understand the public interest can be harmed by letting these proposals move forward.

2) we recognize that the Commission left it to the staff to determine the adequacy of any proposed interim or experimental DTx showing on a case-by-case basis. However, there are some general issues that you could resolve that will save everyone's time:

(i) should an applicant prepare an interference analysis for each transmitter?

(ii) should an applicant prepare an analysis addressing internal interference?

One last thing. Can you provide any guidance on the timetable you expect to follow for the expedited rulemaking? It would be extremely helpful to stations interested in DTx technology to have at least a general understanding of the timing for this proceeding. This information will assist stations in planning for the DTV build-out, especially those stations with July 1, 2006 use-it or lose-it deadlines.

Thanks for any guidance you can give us. As required by the rules, I will make the appropriate ex parte filing.

Thomas Van Wazer
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