

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Parts 73 and 74 of the) MB Docket No. 08-253
Commission's Rules to Establish Rules for)
Replacement Digital Low Power Television)
Translator Stations)

To: The Commission

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS AND
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

I. Introduction and Summary

The National Association of Broadcasters (NAB)¹ and the Association for Maximum Service Television, Inc. (MSTV)² submit these reply comments to address certain limited issues in the above proceeding.³ As we noted in our initial comments, NAB and MSTV support the Commission's effort to provide broadcasters with the tools necessary to ensure greater coverage for their viewers. Like the Commission, broadcasters are eager to make certain that television viewers receive better quality reception and a better overall television experience with digital. NAB and MSTV believe that along with

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission, the Courts, and other federal agencies.

² MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality of the local broadcast system.

³ *Notice of Proposed Rulemaking* in MB Docket No. 08-253 (rel. Dec. 23, 2008) ("*Notice*").

the recent rules regarding Distributed Transmission Systems (DTS), this proceeding will give broadcasters an additional mechanism to reach over-the-air viewers.⁴

Commenters generally did not oppose the deployment of a new replacement translator service. The wireless community did express concern that broadcasters' use of channels 52-59 -- the lower 700 MHz band -- could interfere with plans to roll out wireless broadband services. NAB and MSTV agree with the Commission's conclusion that broadcaster use of the lower 700 MHz band is not likely to be extensive and that existing rules regulating low-power television (LPTV) stations and TV translator stations operating in that band are sufficient to protect wireless licensees from interference. In contrast, NAB and MSTV disagree with the request of the Community Broadcast Association (CBA) that broadcasters be forced to show clearly that an on-channel booster or DTS system is technically infeasible as an alternative before an application for a replacement translator is granted.

II. Replacement Translators Should Be Allowed Limited Access to Channels 52-59

In the *Notice*, the Commission proposes that this new class of replacement translators be allowed limited access to channels 52-59 -- the lower 700 MHz band -- on the condition that such translators will operate as a secondary service and not interfere with new wireless services. *Notice* at 4. NAB and MSTV agree with this proposal. Broadcaster use of these channels would be very limited in light of the obvious restrictions and limitations imposed. Given their secondary status, NAB and MSTV

⁴ MSTV filed a Petition for Reconsideration in the DTS proceeding requesting that the FCC adopt a variable desired to undesired protection ratio (D/U) to avoid interference. *Petition for Reconsideration* by the Association for Maximum Service Television, Inc., in MB Docket No. 05-312, December 31, 2008.

anticipate that broadcasters will only use channels 52-59 as a last resort and as a temporary solution to ensure complete digital television coverage. Broadcasters are mindful of the concerns of wireless companies, but NAB and MSTV do not agree that allowing replacement translators onto channels 52-59 would unfairly burden licensees on those channels as they deploy new services. To the contrary, the *Notice* ensures that this new class of translators is treated the same as existing LPTV stations and TV Translators that operate digital companion channels or will perform a digital flash-cut in that band. The criteria set forth in the Commission's 2004 digital low-power television proceeding – and that would apply here -- is simple, straightforward and provides sufficient protection for incoming wireless licensees.⁵

Commenters that oppose the deployment, even temporarily, of digital translators on channels 52-59 appear to be primarily concerned that removing the translators from these channels when a licensee begins build-out of its new service will be a difficult, and possibly even intractable, process. AT&T, for example, says that allowing digital translators in the lower 700 MHz band will create a “substantial hardship” on new licensees that bear the “heavy burden of tracking DTV replacement translator deployment, developing and expending resources on determining when such facilities will interfere with mobile development plans, and coordinating the shut-down of those facilities.”⁶ CTIA likewise notes that these proposed rules “impose an unreasonable

⁵ See *Report and Order*, Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, 19 FCC Rcd 19331, ¶71 (2004) (*Digital LPTV Order*).

⁶ See Comments of AT&T Inc. in MB Docket No. 08-253 at 4, 6 (filed Jan. 12, 2009) (AT&T Comments).

burden” on 700 MHz licensees that may have to show interference caused by secondary services in that band.⁷

These commenters overstate the potential problem. First, broadcasters are unlikely to commit substantial resources to deployment of translators on channels 52-59. To the extent that replacement translators are needed, broadcasters will always opt first for in-core channels. In the rare case that such channels are not available, broadcasters may still be hesitant to build translators that will operate in the lower 700 MHz band – if any space is available.⁸ Aware that such translators may have a short lifespan, broadcasters will operate on channels 52-59 only in unusual circumstances and likely with a contingency plan in place. A few commenters expressed concern that television viewers could be confused if and when a translator is forced to abandon a broadcast above channel 51.⁹ Nonetheless, the possibility of consumer confusion in these rare cases, which could be eliminated with a targeted education campaign, is not a strong enough reason to prevent broadcasters from operating in the band if the translator does not interfere with new wireless services.¹⁰ On balance, public policy should favor the deployment of free local television when such broadcasts will not interfere with other services.

⁷ See Comments of CTIA – The Wireless Association in MB Docket No. 08-253 at 5 (filed Jan. 12, 2009).

⁸ NAB and MSTV note that new licensees operating in the lower 700 MHz band may be deploying new services within months of the transition, thus preventing broadcasting from ever commencing replacement translator service in that band.

⁹ See Comments of AT&T at 6, Comments of CTIA at 5.

¹⁰ In most case, consumers will be required only to rescan their converter box or digital tuner to receive the station at its new channel location.

Second, allowing broadcasters to operate replacement translators on channels 52-59 as a secondary service is consistent with Commission policy. As noted above, the Commission already allows LPTV stations and TV translators that are operating digital companion channels or implementing a flash cut to broadcast on channels 52-59. There is no sound reason to prevent replacement translators that perform the same function from accessing the same channels. The Commission has already established a clear process that provides adequate notification and protection for incoming wireless services.¹¹ That process favors the 700 MHz licensee. It requires that stations proposing use of channels between 52 and 59 “notify all potentially affected 700 MHz commercial wireless licensees of the spectrum comprising the proposed TV channel and the spectrum in the first adjacent channels thereto.” *Digital LPTV Order* at ¶ 71. When new wireless licensees plan to begin operation in the 700 MHz band, they are asked to send letters to affected LPTV and translator stations that detail the scope of that operation so that the LPTV or translator station can determine if its current broadcasts will interfere with new 700 MHz operations. If the answer is yes, the LPTV station or translator must cease broadcasting on that channel within 120 days. LPTV and translator operators are also given the option of negotiating with the primary licensee to work out a mutually beneficial agreement. *Id.* In the case of an interference conflict between a primary licensee and an LPTV or translator station that cannot be resolved, the Commission requires the LPTV or translator station to cease operation within 120 days. *Id.* at ¶ 74.

While some commenters appear to be concerned by the possibility of a noncompliant broadcaster unwilling to abandon a translator operating in the lower 700

¹¹ See, *Supra*, Footnote 5.

MHz band, NAB and MSTV submit that such a scenario would rarely, if ever, occur.¹²

Broadcasters respect their license obligations and will follow FCC rules. Contrary speculation by commenters does not justify eliminating much-needed flexibility for broadcasters that may need a temporary fix to fill in loss areas. To be consistent with prior decisions and to benefit the public's interest in a smooth transition to digital television, the Commission should allow broadcasters to operate replacement translators on channels 52-59 on a secondary and non-interfering basis.

III. Broadcasters Should Not Be Required To Show That DTS or On-Channel Boosters Cannot Work As Alternatives To Replacement Translators

The Community Broadcasters Association suggests in their comments that replacement translators, on any channel, should be approved by the Commission only after broadcasters have proven that on-channel boosters or DTS would not work to fill in the loss area or areas.¹³ NAB and MSTV urge the Commission to reject this suggestion. DTS requires a larger investment in a more complex technology than translators. While some broadcasters may need to use replacement translators at multiple places within their signal area, some broadcasters may only need one to fill in a valley or to cover a small town. A DTS system could achieve the same result, but may not be the cost-effective solution. Broadcasters should be allowed the flexibility to provide coverage that best suits their local market and their business approach. Requiring broadcasters to

¹² AT&T is concerned, for example, that a broadcaster would employ "delay tactics" because it is "reluctant to shutdown facilities in which it has invested a significant amount of money." AT&T Comments at 7. For the reasons set forth above, NAB and MSTV do not expect many broadcasters to even consider using channels 52-59. If they do, the broadcaster will know that their use is secondary and that they may be required by FCC rule to cease operation.

¹³ See Comments of the Community Broadcasters Association in MB Docket No. 08-253 (filed Jan. 12, 2009).

show that DTS or on-channel boosters are not viable alternatives is an unnecessary time-consuming hurdle that runs contrary to the purpose of this proceeding. NAB and MSTV urge the Commission to adopt rules that ensure broadcasters can quickly and easily provide complete coverage to their local communities.

IV. Conclusion

NAB and MSTV again commend the Commission for initiating this proceeding. Replacement translators could prove to be an invaluable tool in an all-digital broadcasting environment. NAB and MSTV urge the Commission to provide maximum flexibility to broadcasters that will help them serve everyone in their local communities with a free, high-quality, over-the-air signal.

Respectfully submitted,

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