

ASSOCIATION FOR **MAXIMUM SERVICE TELEVISION, INC.**



FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

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September 4, 2009

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

Re: Land Mobile Radio Station Applications
File Nos. 0003458819, 0003458876, and 0003458877

Dear Ms. Dortch:

In this letter, the Association for Maximum Service Television, Inc. ("MSTV")¹ responds to the Public Safety and Homeland Security Bureau's Public Notice seeking comment on the above-referenced applications, in which the County of Lancaster, Pennsylvania ("Lancaster") seeks waivers of the Commission's rules to construct a land mobile radio system that would operate on television channel 15.² Because Lancaster's applications have significant implications for the viability of the local broadcast service, MSTV urges the Bureau to consider deferring action on this *ad hoc* request for a *de facto* reallocation of TV spectrum until the Commission determines that channel 15 is not needed to help resolve the complex reception issues confronting stations on the east coast. Moreover, because of the inextricable link between Lancaster's applications and a petition for rulemaking recently filed by the National Public Safety Telecommunications Council, no action should be taken until the FCC concludes its consideration of that petition.³ Finally, as a matter of policy, the FCC should require a meaningful showing before it grants such waivers that spectrum reallocated for public safety in

¹ MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

² Public Notice, "Public Safety & Homeland Security Bureau Seeks Comment on Request for Waiver Filed by the County of Lancaster, Pennsylvania to Operate a County-Wide Trunked Public Safety Communications System Using Frequencies in the Television Channel (476-482 MHz) Band," File Nos. 0003458819, 0003458876, and 0003458877, DA 09-1815 (rel. Aug. 14, 2009) ("Public Notice").

³ See National Public Safety Telecommunications Council, Petition for Rulemaking to Amend the Land Mobile-TV Sharing Rules in the 470-512 MHz Band, RM-11527 (Feb. 18, 2009).

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the 700 MHz band cannot be used by the applicant. Such a showing has not been made in the instant case.

Since the close of the digital television transition on June 12, 2009, a number of broadcast television viewers have experienced unanticipated reception issues, particularly including problems receiving the signals of stations operating on high-VHF channels. As the Media Bureau has observed, this problem is particularly acute because of the public safety risks it presents: There is evidence, for example, that many viewers are unable to receive the signals of certain stations using indoor antennas, which are essential tools for obtaining critical news and weather information during severe weather conditions or other emergencies.⁴ The Media Bureau has been working with the affected stations to address these issues temporarily through power increases, channel substitutions, and other changes,⁵ but the broader technical challenges have not been fully evaluated and addressed.

Until these reception issues are resolved, the Media Bureau will need flexibility to authorize affected stations to switch channels or take other steps to ensure continued service to the public. Because occupying a viable UHF television channel with a non-television service could compromise those efforts, the Public Safety and Homeland Security Bureau should not grant waivers of the type requested by Lancaster until the Media Bureau determines that these reception issues have been satisfactorily addressed.

As stated earlier, the Bureau should defer action on Lancaster's waiver requests until the Commission concludes its consideration of the National Public Safety Telecommunications Council's recent petition for rulemaking.⁶ That proceeding concerns proposed rule changes, including a proposed additional reallocation, that would govern the use of television channels 14-

⁴ See, e.g., *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Chicago, Ill.)*, Notice of Proposed Rulemaking, MB Docket No. 09-146, RM-11553, DA 09-1795 (rel. Aug. 12, 2009); *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Biloxi, Miss.)*, Notice of Proposed Rulemaking, MB Docket No. 09-125, RM-11548, DA 09-1543 (rel. Jul. 16, 2009).

⁵ See, e.g., *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Hutchinson & Wichita, Kan.)*, Report & Order, MB Docket No. 09-129, RM-11549, DA 09-1970 (rel. Aug. 31, 2009); *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (New Orleans, La.)*, Report & Order, MB Docket No. 09-147, RM-11554, DA 09-1805 (rel. Aug. 14, 2009); *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Chicago, Ill.)*, Report & Order, MB Docket No. 09-146, RM-11553, DA 09-1795 (rel. Aug. 12, 2009).

⁶ See National Public Safety Telecommunications Council, *Petition for Rulemaking to Amend the Land Mobile-TV Sharing Rules in the 470-512 MHz Band*, RM-11527 (Feb. 18, 2009).

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20, under limited circumstances and in certain discrete areas, by public safety land mobile users.⁷ Those proposals directly address the relief that Lancaster seeks in its applications.

MSTV strongly believes that Lancaster's waiver and other similar requests are better addressed in the context of a rulemaking proceeding. However, if the Bureau ultimately grants Lancaster's applications, it should clarify that Lancaster will be required to protect existing television licensees. Accordingly, Lancaster should be required to eliminate any interference caused by its facility to television services,⁸ including immediately reducing, suspending, or terminating service to the extent necessary to avoid the interference. In addition, the Bureau should clarify that future television authorizations that might interfere with Lancaster's facilities — including modifications of existing television authorizations — will be permitted, provided that the applicant provides written notice to Lancaster at least 30 days prior to activation of its requested facility. As Lancaster recognized by agreeing to similar terms with respect to one station affected by its applications,⁹ these conditions are essential to protecting the integrity of the local broadcast service.

Finally, MSTV agrees with the Bureau's concern that Lancaster's applications do not address effectively "whether the 700 MHz public safety band would provide a viable alternative, particularly since the digital television transition date has passed, and in light of the Commission's actions facilitating a nationwide, interoperable public safety network."¹⁰ As the Bureau observed, local broadcasters already have freed a substantial amount of spectrum — and consumers have spent millions of dollars to purchase new equipment — in order to facilitate the creation of the 700 MHz public safety band, which was designed to facilitate interoperable public safety communications of the type that Lancaster proposes.¹¹ Lancaster devotes only one sentence of its request to this option, noting that "the number of narrowband channels allotted to the County in the relevant Regional Plan are ... insufficient to meet the County's

⁷ See also MSTV and National Ass'n of Broadcasters, Comments, Petition for Rulemaking to Amend the Land Mobile-TV Sharing Rules in the 470-512 MHz Band, RM-11527 (May 7, 2009); MSTV and National Ass'n of Broadcasters, Reply Comments, Petition for Rulemaking to Amend the Land Mobile-TV Sharing Rules in the 470-512 MHz Band, RM-11527 (May 22, 2009).

⁸ Specifically, Lancaster should be required to protect DTV, Class A, low power, and television translator stations, as well as wireless microphones, which are critical to newsgathering and news production activities.

⁹ Letter from Christopher G. Wood, Vice President & Sr. Legal Counsel, Telefutera D.C. LLC, to Michael W. Weaver, Director, Lancaster County-Wide Comms., File Nos. 0003458819, 0003458876 & 0003458877 (Apr. 27, 2009) (accepted by Lancaster on Apr. 29, 2009).

¹⁰ Public Notice at 3.

¹¹ *Id.*

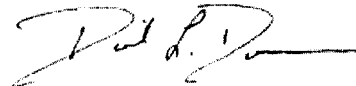
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requirements.”¹² MSTV encourages the Bureau to request more information on Lancaster’s evaluation of 700 MHz spectrum and to consider whether a waiver authorizing Lancaster to operate with more spectrum in the 700 MHz public safety band would be more appropriate than a waiver authorizing its operation on a channel allocated for television service.

MSTV recognizes the need for flexibility in authorizing public safety communications systems. That flexibility, however, should not come at the cost of free, over-the-air broadcast television, which also plays a vital role in promoting public safety. MSTV is confident that Lancaster’s spectrum needs can be accommodated, in the 700 MHz public safety band or otherwise, without compromising the integrity of the television broadcast service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. L. Donovan", written over a horizontal line.

David L. Donovan
President

¹² County of Lancaster, Penn., “Request for Waivers (Revised), Sections 2.106, 90.303, 90.305(a), 90.307(a), 90.309, and 90.311,” File Nos. 0003458819, 0003458876 & 0003458877, at 10 (Nov. 16, 2008).