

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

In the Matter of	)	
	)	
Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules	)	WT Docket No. 99-168
	)	
Carriage of the Transmissions of Digital Television Broadcast Stations	)	CS Docket No. 98-120
	)	
Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television	)	MM Docket No. 00-39
	)	

**SECOND ORDER ON RECONSIDERATION OF THE THIRD REPORT AND ORDER**

**Adopted:** October 2, 2003

**Released:** November 3, 2003

By the Commission: Commissioner Capps issuing a statement.

**I. INTRODUCTION AND BACKGROUND**

1. We have before us two petitions for reconsideration of the Order on Reconsideration of the Third Report and Order (“*Third R&O Recon*”) in WT Docket No. 99-168.<sup>1</sup> In the *Third R&O Recon*, the Commission generally affirmed the decisions that it had reached in the Third Report and Order and prior orders with regard to certain policies to facilitate voluntary clearing of the spectrum currently used for TV Channels 59-69 to allow for the introduction of new wireless services and to promote the transition of incumbent analog television licensees to digital television (“DTV”) service.<sup>2</sup> The *Third R&O Recon* also

<sup>1</sup> Service Rules for 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, Carriage of the Transmissions of Digital Television Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633 (2001) (“*Third R&O Recon*”).

<sup>2</sup> See Service Rules for 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, Carriage of the Transmissions of Digital Television Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *Third Report and Order*, 16 FCC Rcd 2703 (2001) (“*Third Report and Order*”). The foundation for these policies was established in earlier decisions in the Upper 700 MHz proceeding. See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, Carriage of the Transmissions of Digital Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845, 20860-72 ¶¶ 39-66, 20880-86 ¶¶ 86-105 (2000) (*MO&O and FNPRM*); Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, Carriage of the Transmissions of Digital Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *First Report and Order*, 15 FCC Rcd 476, 534 ¶ 145 (2000) (*Upper 700 MHz First Report and Order*). Subsequently, the Commission extended its (continued...)

made certain adjustments to the rules and policies adopted in this proceeding and the related digital television (“DTV”) proceeding to accommodate the implementation of voluntary band clearing agreements among incumbent broadcasters on TV Channels 59-69 and new licensees in the 746-806 MHz (“Upper 700 MHz”) band, which is currently occupied by TV Channels 60-69.<sup>3</sup> Further, the *Third R&O Recon* denied an earlier petition for reconsideration filed by the Association for Maximum Service Television, Inc. (“MSTV”), which urged the Commission to adopt a strict “no new interference” standard.<sup>4</sup>

2. MSTV and the National Association of Broadcasters (“NAB”) now seek further reconsideration of the *Third R&O Recon*.<sup>5</sup> In its petition for reconsideration of the *Third R&O Recon*, MSTV urges the Commission to reverse its prior decisions and adopt a “no new interference” standard, to rule out the possibility of mandatory clearing for the Upper 700 MHz band, and not to extend its voluntary clearing policies to the Lower 700 MHz band.<sup>6</sup> NAB also filed a brief petition for reconsideration in support of MSTV’s filing.<sup>7</sup> Paxson Communications Corporation opposed the petition,<sup>8</sup> and MSTV filed a reply.<sup>9</sup>

3. Subsequently, Congress passed and the President signed into law the Auction Reform Act of 2002.<sup>10</sup> Section 6 of the Auction Reform Act reads in full:

(Continued from previous page) \_\_\_\_\_  
voluntary clearing policy to the 698-746 band, albeit with significant differences. *See* Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022 (2002) (“*Lower 700 MHz Report and Order*”).

<sup>3</sup> *Third R&O Recon*, 16 FCC Rcd 21633.

<sup>4</sup> *Id.*, 16 FCC Rcd at 21641-43. The Commission also had previously considered, and rejected, MSTV’s effort to secure an inflexible “no interference” standard in the *Third Report and Order*. 16 FCC Rcd at 2713 ¶ 22.

<sup>5</sup> Petition for Reconsideration of the Association for Maximum Service Television, Inc., WT Docket No. 99-168 (filed Nov. 9, 2001) (“MSTV Petition”); Petition for Reconsideration of the National Association of Broadcasters, WT Docket No. 99-168 (filed Nov. 9, 2001) (“NAB Petition”).

<sup>6</sup> MSTV Petition at 1-15; Reply to Opposition by MSTV, WT Docket No. 99-168, at 1-7 (filed Dec. 27, 2001) (“MSTV Reply”).

<sup>7</sup> NAB Petition at 1.

<sup>8</sup> Paxson observes that it has formed the Spectrum Clearing Alliance, which is a group of Channel 60-69 broadcasters and other parties interested in band clearing. *See* Opposition of the Spectrum Clearing Alliance, WT Docket No. 99-168 (filed Dec. 17, 2001).

<sup>9</sup> *See* MSTV Reply.

<sup>10</sup> Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715 (“Auction Reform Act”).

**SEC. 6. INTERFERENCE PROTECTION.**

(a) INTERFERENCE WAIVERS - In granting a request by a television broadcast station licensee assigned to any of channels 52-69 to utilize any channel of channels 2-51 that is assigned for digital broadcasting in order to continue analog broadcasting during the transition to digital broadcasting, the Federal Communications Commission may not, either at the time of the grant or thereafter, waive or otherwise reduce--

(1) the spacing requirements provided for analog broadcasting licensees within channels 2-51 as required by section 73.610 of the Commission's rules (and the table contained therein) (47 CFR 73.610), or

(2) the interference standards provided for digital broadcasting licensees within channels 2-51 as required by sections 73.622 and 73.623 of such rules (47 CFR 73.622, 73.623),

if such waiver or reduction will result in any degradation in or loss of service, or an increased level of interference, to any television household except as the Commission's rules would otherwise expressly permit, exclusive of any waivers previously granted.

(b) EXCEPTION FOR PUBLIC SAFETY CHANNEL CLEARING – The restrictions in subsection (a) shall not apply to a station licensee that is seeking authority (either by waiver or otherwise) to vacate the frequencies that constitute television channel 63, 64, 68, or 69 in order to make such frequencies available for public safety purposes pursuant to the provisions of section 337 of the Communications Act of 1934 (47 U.S.C. 337).<sup>11</sup>

4. The Auction Reform Act's interference protection provisions directly impact our current policies with regard to the voluntary clearing of TV Channels 59-62 and 65-67. We discuss further below the Act's slight effect on our treatment of proposals to relocate Channel 52-69 analog operations as part of a band clearing arrangement. To the extent that the Act limits our ability to grant requests for waiver of specific interference-related rules in connection with band clearing, the Act provides some of the relief sought by MSTV and NAB in their petitions. Except for the changes to our existing policies mandated by the Act, however, we deny MSTV's and NAB's petitions as repetitious pursuant to Section 1.429 of the Commission's rules.

**II. DISCUSSION**

5. Section 1.429 of the Commission's Rules sets forth the circumstances under which the Commission will reconsider a rule making action.<sup>12</sup> Reconsideration is warranted only if the petitioner cites error of fact or law, or the party presents facts or circumstances that raise substantial or material questions of fact which otherwise warrant Commission review of its prior action.<sup>13</sup> The Commission has previously considered the arguments raised by MSTV and NAB. Except as mandated by the Auction Reform Act, we find that petitioners have neither presented new questions of fact nor demonstrated that the public interest requires further reconsideration of these claims.

---

<sup>11</sup> *Id.*, Section 6.

<sup>12</sup> *Id.*

<sup>13</sup> *See id.*

### A. “No New Interference” Standard

6. *Background.* The Commission has twice considered and twice denied MSTV’s request to establish a “no new interference” standard to protect broadcasters from broadcast interference that might result from the implementation of voluntary clearing agreements.<sup>14</sup> Petitioners contend yet again that Section 337(d)(2) of the Communications Act of 1934, as amended, requires adoption of more stringent rules to protect broadcasters from interference that might result from band clearing arrangements.<sup>15</sup> Section 337(d)(2) provides that “[i]n establishing service rules with respect to licenses [for new 700 MHz services] granted pursuant to this section, the Commission shall establish any additional technical restrictions necessary to protect full-service analog television service and digital television service during the transition to digital television service.”<sup>16</sup> In MSTV’s view, Section 337(d)(2) “indicates that local television stations should incur no new additional interference as a result of the reallocation of channels 60-69.”<sup>17</sup>

7. *Discussion.* The Commission originally rejected petitioners’ interpretation of this statutory provision in the *MO&O and FNPRM*, which it adopted in June 2000.<sup>18</sup> In that decision, the Commission rejected NAB’s interpretation of Section 337(d)(2) and instead found that Section 337, as well as the other statutory provisions and legislative history cited by NAB, “support our authority to facilitate the early relocation of incumbent broadcasters.”<sup>19</sup> We do not agree with MSTV that a “plain language” reading of the statute compels a different result. Section 337(d)(2) is intended to minimize the possibility of interference to broadcast operations from new 700 MHz services, not to impose stringent “no new interference” requirements on TV license modifications submitted in connection with band clearing arrangements. By its terms, Section 337(d)(2) instructed the Commission to establish technical safeguards in the service rules for the new 700 MHz services, and this has been done.<sup>20</sup>

8. Moreover, we are not persuaded by MSTV’s contention that the *Third R&O Recon* has given rise to new facts that would support a petition for reconsideration, or that the public interest requires further consideration of MSTV’s arguments.<sup>21</sup> In support of its proposed “no new interference” standard, MSTV now argues that the Commission’s band clearing policies should not be applied to allow analog operations to temporarily “squeeze in” to DTV allotments because this would undercut the traditional “approach to analog interference [which] has been to establish strict distance requirements between NTSC stations,” would represent a move “to an uncertain interference protection standard,” and would cause significant interference.<sup>22</sup> In its reply comments, MSTV also argues that the Commission has not

---

<sup>14</sup> See *Third Report and Order* at ¶ 22; *Third R&O Recon* at ¶¶ 12-16.

<sup>15</sup> See MSTV Petition at 5-7; NAB Petition at 2.

<sup>16</sup> 47 U.S.C. § 337(d)(2).

<sup>17</sup> See MSTV Petition at 7.

<sup>18</sup> *MO&O and FNPRM*, 15 FCC Rcd 20863 ¶ 46, 20865 ¶ 49.

<sup>19</sup> *Id.*, 15 FCC Rcd at 20863 ¶ 46.

<sup>20</sup> See *MO&O and FNPRM*, 15 FCC Rcd at 20865 ¶ 49.

<sup>21</sup> See MSTV Reply at 2-6 (citing 47 C.F.R. § 1.429(b) standards governing petitions for reconsideration).

<sup>22</sup> MSTV Petition at 7-13. MSTV assumes that every Channel 60-69 broadcasters having an in-core DTV allotment would move onto its core DTV allotment and would propose to operate the relocated analog facility at (continued....)

adequately explained how the rebuttable presumption favoring the grant of certain regulatory requests (*i.e.*, those that would result in certain public interest benefits and avoid enumerated public interest detriments) would be applied in cases where requests also involve requests for waiver of the broadcast interference standards and/or minimum spacing rules.<sup>23</sup> However, MSTV fails to acknowledge that, except for the changes mandated by the Auction Reform Act and discussed below, the Commission's policy towards addressing regulatory requests that implicate interference issues was established in Commission decisions that were adopted prior to the *Third R&O Recon*.<sup>24</sup> As such, the Commission's rules do not require reconsideration of MSTV's renewed criticism of our voluntary band clearing approach.<sup>25</sup> Moreover, we do not believe that it would be appropriate to rule out consideration of every band clearing arrangement that includes the use of interference avoidance techniques, such as use of directional antennas or operations at reduced power and/or antenna height, as MSTV requests.<sup>26</sup>

## B. Auction Reform Act

9. The Auction Reform Act did not overturn the basic principles of the Commission's voluntary band clearing policy,<sup>27</sup> but the legislation does limit our ability to consider requests for waiver of specific interference-related rules for analog operations seeking to relocate to in-core DTV allotments in connection with voluntary clearing arrangements.<sup>28</sup> Specifically, as set forth above, Section 6 of the Auction Reform Act directs the Commission not to "waive or otherwise reduce the [analog] spacing requirements" set out in section 73.610 of the Commission's rules, or the DTV interference standards set out in sections 73.622 and 73.623 of the rules for proposals to relocate Channel 52-69 analog operations to a Channel 2-51 DTV allotment, if such waiver "will result in any degradation in or loss of service, or an increased level of interference to any television household except as the Commission's rules would otherwise expressly permit, exclusive of any waivers previously granted."<sup>29</sup> In adopting our band

(Continued from previous page) \_\_\_\_\_

maximum power and antenna height. *See id.* at n. 14. However, this assumption is contradicted by MSTV's simultaneous recognition that band clearing broadcasters also may propose to operate at lower powers and use other interference-avoidance techniques. *See id.* at 12-14.

<sup>23</sup> MSTV Reply at 3-4.

<sup>24</sup> *See Upper 700 MHz First Report and Order*, 15 FCC Rcd at 534 ¶ 145; *MO&O and FNPRM*, 15 FCC Rcd at 20868-72 ¶¶ 56-66; *Third Report and Order*, 16 FCC Rcd at 2704, 2709-17 ¶ 2, 13-33. We did not change our policies or prior determinations regarding interference issues in *Third R&O Recon*. To the contrary, we rejected MSTV's contention that the use of DTV interference standards in the context of band clearing agreements was contrary to the public interest, observing that the Upper 700 MHz band clearing process "has long been an integral part" of the DTV transition and spectrum recovery processes. *Third R&O Recon*, 16 FCC Rcd at 21641-43 ¶¶ 12-16.

<sup>25</sup> *See* 47 C.F.R. § 1.429(b).

<sup>26</sup> *See* MSTV Petition at 12-15.

<sup>27</sup> The legislation expressly contemplates that broadcasters may relocate their analog operations to a DTV allotment within the DTV core (Channels 2-51) in connection with an arrangement for voluntary clearing of the 700 MHz bands. *See* Auction Reform Act, section 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, Section 6(a). These restriction do not, however, apply to proposals to move Channel 63, 64, 68, or 69 analog operations to in-core DTV allotments "in order to make such frequencies available for public safety purposes." *Id.*, Section 6(b).

clearing policy we did not relax or modify our spacing or interference rules. The Commission stated in the *Third Report and Order* that “[i]f the modification involves the relocation of an analog operation either (1) into a digital allotment; or (2) into an analog allotment, where the relocated station does not operate at the same location or with the same or lower power and the same or lower antenna height as the lower band incumbent, we will require such modification to comply with the provisions of Sections 73.610 and 73.698 of our rules in instances where an analog operation may affect the operation of another analog allotment, and the provisions of Section 73.623(c) in instances where an analog operation may affect the operation of a digital allotment.”<sup>30</sup> Thus, in providing an exception “as the Commission’s rules would otherwise expressly permit,”<sup>31</sup> the Auction Reform Act does not restrict our ability to consider band clearing proposals that meet these interference requirements.

10. The Auction Reform Act limits our ability to consider requests for waiver or reduction of certain interference-related rules in connection with certain band clearing proposals where such waiver or reduction “will result in *any* degradation in or loss of service, or an increased level of interference, to *any* television household except as the Commission’s rules would otherwise expressly permit...” (emphasis added).<sup>32</sup> We interpret this requirement to prohibit grant of waiver requests of the type identified by the statute if the waiver would result in any degradation in or loss of service to either (1) any household served by the station involved in the band clearing itself or (2) any household served by another station affected by the band clearing proposal. Thus, for example, a station seeking to relocate to an in-core digital channel in circumstances identified by the statute and seeking a waiver of the type identified by the statute could not propose to reduce power if such reduction in power would result in loss of service to any TV household of the station. The Act does not prohibit the Commission from waiving interference or spacing requirements where we find that the band clearing proposal serves the public interest and would not result in any degradation or loss of the service provided by the band-clearing station itself or any increase in interference to the service provided by any other DTV or analog TV station.

11. The Auction Reform Act’s restrictions do not extend to proposals to relocate analog operations from Channels 63, 64, 68, or 69 to an in-core DTV allotment.<sup>33</sup> Nor does the statute cover proposals to relocate an analog operation within the core, to move a Channel 52-69 analog operation to an analog allotment in the core, or to clear Channel 52-69 DTV stations. With regard to these proposals and any other proposal not covered by the specific terms of the Act, we affirm our previous determination, as discussed further below, to consider requests for waiver of our interference-related rules in connection with band clearing applications on a case-by-case basis.<sup>34</sup>

---

<sup>30</sup> *Third Report and Order*, 16 FCC Rcd at 2712-13 ¶ 21 (citations omitted).

<sup>31</sup> Auction Reform Act, section 6(a).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> In our formal review of any regulatory request to implement a voluntary band clearing agreement seeking to clear incumbent TV/DTV operations from Channels 63, 64, 68, or 69 that contains an interference-related waiver request, we intend to give careful attention to whether the proposed modification reduces interference, demonstrates protection of neighboring, non-participating stations from interference, is not likely to result in interference to over-the-air TV households, or includes consent from the affected broadcaster to such interference. *See, e.g.*, KRCA License Corp., *Memorandum Opinion and Order*, 15 FCC Rcd 1794 (1999); Caloosa Television Corp., *Memorandum Opinion and Order*, 4 FCC Rcd 4762 (1989); WTVA, Inc., *Memorandum Opinion and Order*, 11 FCC Rcd 2978 (MMB, VSD 1996). In each case, we will examine all the (continued....)

### C. Band Clearing Proposals Not Subject to the Auction Reform Act

12. We intend to review any proposals for band clearing that are not subject to the interference provisions of the Auction Reform Act using the framework of Commission precedents, appropriately balancing the competing public interest objectives of maintaining interference-free service and facilitating voluntary band clearing of this spectrum. Our voluntary clearing policy has been designed to permit us to determine whether particular regulatory requests to implement band clearing agreements will, on balance, further the various public interest objectives underlying the statutory scheme.<sup>35</sup> Implementing Congress's various directives for these bands in a manner consistent with other public interest objectives, the Commission has acknowledged, poses significant spectrum management challenges.<sup>36</sup> Moreover, as we pointed out in the *Third R&O Recon*, "the process of clearing the Upper 700 MHz band has long been an integral part of the DTV transition process."<sup>37</sup> A central aim of the DTV spectrum recovery process is to ensure that the spectrum is used efficiently during and after the DTV transition period.<sup>38</sup> In implementing this principle, the Commission has also remained mindful of concerns that use of interference-avoidance techniques, such as lowering power, could result in some losses of service.<sup>39</sup> Nevertheless, DTV broadcasters have been given significant flexibility to employ technical solutions, such as use of directional antennas or operations at reduced power and/or antenna height, to resolve actual interference or minimize potential interference to other stations.<sup>40</sup> While we will remain mindful of concerns over possible loss of the service provided by all the stations participating in (or potentially affected by) band clearing arrangements, the use of interference-avoidance techniques could significantly benefit the spectrum recovery goals and processes of the DTV transition.

### D. Potential Future Use of Mandatory Clearing Mechanisms

(Continued from previous page) \_\_\_\_\_

facts presented and balance the public interest objectives of our band clearing proposal and any harm caused to the existing viewing public.

<sup>35</sup> To assist in such determinations, the Commission adopted a rebuttable presumption that, in certain circumstances, substantial public interest benefits will arise from a voluntary agreement between an Upper 700 MHz licensee and an incumbent broadcast licensee on channels 59-69 that clears the 700 MHz band of incumbent television licensee(s). When the presumption is not established, or is rebutted, we will review regulatory requests by weighing the loss of broadcast service and the advent of new wireless service on a case-by-case basis. The circumstances under which we would recognize such a presumption favoring grant of a regulatory requests are that the proposal: (1) would make new or expanded wireless service, such as '2.5' or '3G' services, available to consumers; (2) would clear commercial frequencies that enable provision of public safety services; or (3) would result in the provision of wireless service to rural or other underserved communities. The applicant also needs to show that grant of the request would not result in any one of the following: (1) the loss of any of the four stations in the designated market area (DMA) with the largest audience share; (2) the loss of the sole service licensed to the local community; or (3) the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service. See *MO&O and FNPRM*, 15 FCC Rcd at 20869-71 ¶¶ 60-62.

<sup>36</sup> See, e.g., *id.*, 15 FCC Rcd at 533 ¶ 143.

<sup>37</sup> *Third R&O Recon*, 16 FCC Rcd at 21641-42 ¶ 14.

<sup>38</sup> See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968, 10977 ¶ 18 (1996).

<sup>39</sup> See *id.*

<sup>40</sup> See, e.g., *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, *Sixth Report and Order*, 12 FCC Rcd 14588, 14625 ¶ 77 (1997).

13. *Background.* In the 700 MHz proceeding, the Commission has chosen to rely on voluntary, market-based efforts to clear the band, rather than mandate that broadcasters vacate this spectrum. The *Upper 700 MHz Third Report and Order* also states that the Commission may revisit this approach in the future “if we find it necessary.”<sup>41</sup> The *Third R&O Recon* found “no basis for disturbing our announced policy” in this regard. MSTV again seeks reconsideration of this determination, arguing that it would be “patently unfair” to force broadcasters to relocate involuntarily, and that the “mere possibility of mandatory relocation creates business uncertainty.”<sup>42</sup> Similarly, NAB emphasizes its view that band clearing efforts “must be entirely voluntary and that no pressure of any sort should be placed on broadcasters who choose to continue operating on channels 60-69.”<sup>43</sup>

14. *Discussion.* We recognize that broadcasters face uncertainties as they move forward with the DTV transition, as do many other businesses in the communications marketplace. However, we find that MSTV’s suggestion that a “possible threat” of mandatory relocation will deter investment and delay the transition process is overstated. Our refusal to predetermine any action we might or might not take in the future should not be viewed as a “threat.” We will not revisit this policy at this time.

#### **E. Extension of Band Clearing Policies to Lower 700 MHz Band**

15. We dismiss as moot MSTV’s request that the Commission “resist the temptation to blindly apply” its band clearing policies to allow for early clearing of the Lower 700 MHz band. In a separate decision adopted subsequent to the filing of MSTV’s Petition, the Commission has established voluntary clearing policies for the Lower 700 MHz band that differ in certain respects from the policies for the Upper 700 MHz band.<sup>44</sup>

### **III. PROCEDURAL MATTERS**

16. Section 213 of the Consolidated Appropriations Act, 2000 states that the Regulatory Flexibility Act (as well as certain provisions of the Contract With America Advancement Act of 1996 and the Paperwork Reduction Act) shall not apply to the rules and competitive bidding procedures governing the frequencies in the 746 – 806 MHz band. Because the policies and rules adopted in this Second Order on Reconsideration of the Third Report and Order relate only to assignments of those frequencies, no Final Regulatory Flexibility Analysis or Paperwork Reduction Analysis is necessary.

17. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 (voice), TTY (202) 418-7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This Second Order on Reconsideration of the Third Report and Order can also be downloaded at <http://www.fcc.gov/Bureaus/Wireless/Orders/2003/index.html>.

18. For further information concerning this Second Order on Reconsideration of the Third Report and Order, contact William Huber of the Auctions and Industry Analysis Division at (202) 418-0660 (voice), (202) 418-7233 (TTY), e-mail: [whuber@fcc.gov](mailto:whuber@fcc.gov), Wireless Telecommunications Bureau, Washington, DC 20554.

---

<sup>41</sup> *Third Report and Order*, 16 FCC Rcd at 2727 ¶ 56.

<sup>42</sup> MSTV Petition at 15-18.

<sup>43</sup> NAB Petition at 2-3.

<sup>44</sup> See *Lower 700 MHz Report and Order*, FCC 01-364 (rel. Jan 18, 2002). We also note that MSTV has not sought reconsideration of that decision.



**IV. ORDERING CLAUSES**

19. Pursuant to Sections 1, 2, 4(i), 5(c), 7(a), 301, 302, 303, 307, 308, 309(j), 309(k), 311, 316, 319, 324, 331, 332, 333, 336, 337, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157(a), 301, 302, 303, 307, 308, 309(j), 309(k), 311, 316, 319, 324, 331, 332, 333, 336, 337, 614, and 615, the Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 2502, and Section 1.425 of the Commission's Rules, 47 C.F.R. § 1.425, IT IS ORDERED that the SECOND ORDER ON RECONSIDERATION OF THE THIRD REPORT AND ORDER is hereby ADOPTED.

20. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i) and 303, and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, the Petitions for Reconsideration filed by MSTV and NAB on November 9, 2001 are DENIED except for those changes to our policies mandated by the Auction Reform Act.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*RE: Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules.*

I support today's action. In doing so I wish to note that this item does not address the issue of compensating incumbent license holders for their early transition out of the bands at issue.