

ORIGINAL

BEFORE THE

# Federal Communications Commission

ORIGINAL  
FILE

WASHINGTON, D.C. 20554

92-47

In the Matter of )  
 )  
 Amendment of Section 73.606(b) )  
 Table of Allotments )  
 Television Broadcast Stations )  
 (Bellingham and Anacortes, Washington )  
 )  
 To: Chief, Allocations Branch )

MM Docket  
RM-7929

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SEP 24 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

### PETITION FOR RECONSIDERATION

Darlene C. Paglinawan McHenry ("McHenry"), permittee of Low Power Television Station K24CX, Channel 24, Anacortes, Washington, by her attorneys and pursuant to Section 1.429 of the Rules, hereby submits her petition for reconsideration of the Report and Order, DA 92-1067, released August 25, 1992, which amended the Television Table of Allotments to reallocate Channel 24 from Anacortes, Washington to Bellingham, Washington and to reallocate Channel 64 from Bellingham to Anacortes.

1. The Report and Order ignored the significant arguments made by McHenry which demonstrated that it was not in the public interest to make the reallocation requested by Prism Broadcasting Company, Inc. ("Prism"), permittee of unbuilt Station KBCB(TV), Channel 64, Bellingham. Prism waited until six years after it had received its construction permit to request a channel reallocation, a request which was based solely on unsupported conclusory statements. McHenry supplied the Commission with the Engineering Statement of Richard L. Biby, P.E., which provided

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substantial and material facts questioning the need for the proposed reallocations. These salient facts were dismissed summarily, For example, as Mr. Biby pointed out, Prism made no evidentiary showing supporting its conclusion that the Canadian government is "unlikely" to approve operation at greater than 1,000 KW ERP without limiting ERP toward Vancouver, British Columbia, to less than 1,000 KW ERP. Even in its reply comments, Prism did not rebut McHenry's comments in this respect; the Bureau simply chose to ignore it, except to refer incorrectly to Prism's supposed reiteration in its reply that Canadian officials had indicated opposition to KBCB(TV)'s operation with more than 1,000 KW ERP. Prism's reply did not include such a statement, but sidestepped the point that no factual evidence of any Canadian coordination was submitted to support its contention. In short, the Bureau simply accepted the conclusory statements of Prism without inquiry.

2. Further, as McHenry pointed out, Prism's public interest showing referred only generally to "difficult obstacles" and a need to achieve signal strength parity in an unidentified market. Again, in its reply Prism failed to respond to those obvious weaknesses in its proposal and the Report and Order, though mentioning McHenry's argument, does not treat it. In sum, the Bureau has accepted Prism's public interest premises for reallocation without factual support. This was arbitrary and capricious, particularly in light of the unrebutted factual showing made by McHenry that Station KBCB(TV) could operate on Channel 64 with full power from other sites and that operation on Channel 24

would make little or no difference in terms of coverage. See Engineering Statement of Richard L. Biby.

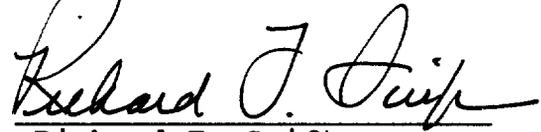
3. When the presumed public interest showing made by Prism is weighed against McHenry's readiness to commence operations on Channel 24 in Anacortes, there is a substantial advantage to be gained by the public from retention of Channel 24 in Anacortes. McHenry is prepared to commence operations. Prism has not constructed its station in six years, but suddenly desires to change channels, an option which could and should have been exercised years ago well before McHenry applied for her low power television facility. The equities in this matter clearly lie with McHenry who has moved affirmatively to go on-the-air and has promoted her operation on Channel 24, but is now forced to move from the channel. Although the Bureau relies on the Commission's policy that a full service television station may take precedence over a low power television facility, policy should not be followed blindly where, as here, the public interest showing made by Prism is so anemic. In effect, the Report and Order approves without factual foundation the belated attempt by a long-time permittee to displace an active low power television facility. It is McHenry's position that the Bureau's action is erroneous as a matter of fact and law.

Wherefore, it is respectfully requested that this petition be granted and the reallocations specified in the Report and Order be rescinded.

Respectfully submitted,

DARLENE C. PAGLINAWAN MCHENRY

By:



Richard F. Swift  
Her Attorney

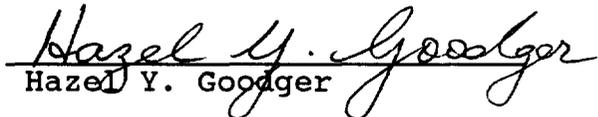
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September 24, 1992

CERTIFICATE OF SERVICE

I, Hazel Y. Goodger, a Legal Secretary with the law firm of Tierney & Swift, do hereby certify that I have sent by first-class mail, postage prepaid, this 24th day of September, 1992, copies of the foregoing Petition for Reconsideration addressed to the following:

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Hazel Y. Goodger

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