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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Request by TV 14, Inc.,) MM Docket No. 92-295
to Amend Section 76.51 of the) RM-8016
Commission's Rules to Include)
Rome, Georgia, in the Atlanta,)
Georgia, Television Market)

To the Commission:

COMMENTS OF GEORGIA TELEVISION COMPANY

Georgia Television Company, licensee of Television Station WSB-TV, Atlanta, Georgia ["WSB-TV"], by its attorneys, submits herewith its comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding,^{1/} issued in response to a Petition for Rule Making filed by TV 14, Inc., licensee of Television Station WTLK(TV), Rome, Georgia ["WTLK"].

Introduction

On January 30, 1989, WTLK filed an application seeking relocation of its transmitter to a site which permits it to provide city grade service to the City of Atlanta, Georgia. File No. BPCT-890130KG. From the time it commenced operations from its new site, WTLK has repeatedly

1/ Notice of Proposed Rule Making, MM Docket No. 92-295, FCC 92-536 (December 8, 1992 ["Notice"]).

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asked the Commission for extraordinary relief to rescue it from the allegedly^{2/} adverse financial impact associated with its voluntary attempt to become an Atlanta station.^{3/} Its petition for rulemaking is its most recent venture in that regard.

Responding to WTLK's petition, the Notice proposes to amend Section 76.51 of the Commission's Rules by redesignating the Atlanta television market as the Atlanta-Rome market. WSB-TV urges the Commission to maintain its present "Atlanta" market designation: the proposed market hyphenation would not satisfy any of the four criteria set forth in prior redesignation decisions; it would be inconsistent with industry practice with respect to the market in question; and it would prejudge issues in existing rulemaking proceedings.

The Proposed Hyphenation of the Atlanta Market
Fails to Satisfy Established Redesignation Criteria

The Notice recites the factors which are relevant to a hyphenation decision:

(1) the distance between the proposed community and the existing designated communities; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and

2/ Although WTLK has repeatedly claimed that it is in dire financial straits, it has never provided figures to substantiate its claims.

3/ See TV 14, Inc., 6 FCC Rcd 7234 (1991).

(4) an indication of benefit to the public from the proposed change.

Notice at par. 6. The proposed hyphenation of the Atlanta market does not satisfy any of these criteria.

Distance. Rome is approximately 56 miles from Atlanta, a distance greater than that which the Commission's rules have generally considered to measure the market for even a small market station. See, e.g., 47 C.F.R. § 76.92(e). Moreover, 56 miles is greater than the distance involved in other redesignation decisions. See, e.g., Major Television Markets (Fresno-Visalia, Calif.), 57 RR 2d 1122 (1985) [markets added were 35, 30 and 10 miles from Fresno]; Major Television Markets (Newark, New Jersey), 47 FCC 2d 752 (1974) [Newark adjacent to New York City]. The large distance between Atlanta and Rome requires rejection of the proposed redesignation.

Cable Carriage. Comparison of WTLK's Grade B contour with the Atlanta 35-mile zone demonstrates that the proposed hyphenation of the Atlanta market would permit WTLK to be entitled to carriage in a significant area within the Atlanta 35-mile zone (particularly to the south of Atlanta) which is beyond its predicted Grade B contour. This factor, too, requires rejection of the proposed redesignation.

Particularized Need. As reflected above, although WTLK has argued in general terms that its financial situation requires extraordinary relief, it has never

provided any factual support for these claims. Again, this factor requires rejection of the proposed redesignation.

Public Interest. WTLK has never shown a public interest in the proposed redesignation. Its sole basis for relief has been its own private interest in ensuring, first, the rights to exclusivity protection and now, cable carriage.^{4/} These considerations, however, are private, not public, in nature. Indeed, it has long been held that the Commission cannot act as guarantor of a licensee's financial success.^{5/}

Moreover, WTLK's purported financial difficulties all apparently stem from its voluntary -- not coerced -- decision to move its transmitter site closer to Atlanta. The Commission should not now be cajoled into rescuing it from the adverse impact of that decision.

In sum, all four factors mandate denial of redesignation.

4/ WTLK has earlier argued that the nature of its programming requires grant of the relief it has requested. However, programming decisions are at most evanescent, and may well change with the vagaries of the marketplace. They thus afford not only an impermanent basis for Commission decision-making, but one which is constitutionally impermissible as well, as content-based regulation is clearly prohibited by the First Amendment and Section 326 of the Communications Act of 1934, as amended.

5/ See, e.g., FCC v. Sanders Bros Radio Station, 309 U.S. 470, 475 (1940).

The Proposed Redesignation
Would be Inconsistent
With Industry Practice

The proposed redesignation would not comport with industry practice. Arbitron's list of ADI's as used in industry publications does not list the market in question as "Atlanta-Rome," but rather "Atlanta (Athens & Rome)"^{6/} or simply as "Atlanta."^{7/} For the Commission to hyphenate the market designation as WTLK requests would thus be inconsistent with industry practice and general recognition that WTLK is not an Atlanta station.^{8/}

The Requested Redesignation
Would Prejudge Issues
In a Pending Rule Making Proceeding

The Commission's pending rulemaking proceeding to implement the must-carry and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992^{9/} includes among the issues to be explored questions relating to implementation of Congress'

6/ Broadcast & Cable Marketplace (1992) at E-21.

7/ TV & Cable Factbook, Stations Volume, No. 60 (1992) at A-1; Spot Television Rates and Data, Vol. 74, No. 12 (December 1992) at A36, A37, A38.

8/ It should be noted that prior Commission redesignation decisions involved situations in which Arbitron had already included as hyphenated communities at least some of the communities which the Commission added to redesignated markets. See, e.g., Major Television Markets (Orlando-Daytona Beach-Melbourne-Cocoa, FL), 57 RR 2d 685 (1985) [Melbourne a hyphenated community of the market]; Major Television Markets (Fresno-Visalia, Calif.), 57 RR 2d 1122 (1985) [Visalia a hyphenated community of the market].

9/ P.L. No. 102-385, 106 Stat. 1460 (1992).

direction that the ADI be used to measure stations' markets for purposes of the must-carry rules.^{10/} More particularly, the Commission asks what procedures should be adopted to accommodate changes in ADI's and to change market designations.^{11/}

The question of how to deal with requests like that in WTLK's petition is thus under active consideration by the Commission. It is not, however, resolved. At the very least, the Commission should dismiss WTLK's petition and require it to follow whatever procedures are adopted in MM Docket No. 92-259. Any other action would prejudice the outcome of those rulemaking proceedings.

Conclusion

WTLK once more seeks the Commission's assistance in rescuing it from the consequences of its voluntary attempt to transform what was -- and continues to be -- a Rome television station into an Atlanta station. Its attempt to force the Commission to ameliorate the private consequences of its own decision should not be permitted to succeed.

The proposed redesignation of the Atlanta market does not satisfy any of the established criteria for such action. It would be inconsistent with industry treatment of

^{10/} Notice of Proposed Rule Making, MM Docket No. 92-259, FCC 92-499, 57 Fed. Reg. 56299 (1992), at pars. 18-23.

^{11/} Id. at pars. 18 - 19.

the Atlanta market. And it would prejudice the outcome of a pending rulemaking proceeding. Georgia Television Company therefore respectfully submits that the redesignation must be rejected.

Respectfully submitted,
GEORGIA TELEVISION COMPANY

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