

DOCKET FILE COPY ORIGINAL

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

RECEIVED

JUL 20 1992

In the Matter of )  
 )  
 Amendment of Parts 2, 21 and 94 ) RM-7872  
 of the Commission's Rules )  
 Concerning Channel Assignments )  
 in the 27.5-29.5 GHz Band )

Federal Communications Commission  
Office of the Secretary

ORIGINAL  
FILE

To: The Commission

PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules, the University of Texas-Pan American ("UTPA") hereby petitions for reconsideration of the action of the Chief Engineer in the captioned rulemaking proceeding denying UTPA's request for a pioneer's preference. See Letter from Thomas P. Stanley to Steven D. Copold, dated June 18, 1992 ("June 18 Letter"). As shown below, UTPA's proposal was improvidently denied. It wholly satisfied the FCC's requirements for a pioneer's preference in this proceeding.

UTPA's preference petition relates to a new video delivery system denominated by its proponents "MLDS" -- Multichannel Local Distribution Service. The MLDS technology, which utilizes high frequency microwaves in the 28 GHz spectrum, is the product of research undertaken over the past several years at Sarnoff

No. of Copies rec'd 0+9  
 List A B C D E  
 \_\_\_\_\_

Research Center. MLDS employs a cellular model for the transmission of video signals.

As explained in its preference request, UTPA plans to utilize the MLDS technology in a radically innovative way -- in the service of education in the impoverished Rio Grande Valley of Texas. The proposal is not merely an implementation of the MLDS technology, but a revolutionary extension of its potential. A copy of UTPA's petition is attached hereto and is incorporated herein by reference. Supported by the enormous scientific and technical resources of the University of Texas System, UTPA's plan will bring the MLDS technology "to a more advanced or effective state" -- a qualifying criterion for grant of a pioneer's preference under 47 C.F.R. § 1.402(a). Accordingly, grant of UTPA's preference request was warranted under the Rules.

The June 18 Letter states that UTPA's request did not satisfy the Commission's requirements because it did not "describe or otherwise document the role of the University of Texas-Pan American in having developed a specific distinctive innovation or new technology.... Proposing a series of applications for a technology developed by another party, in and of itself, does not constitute grounds for award of a pioneer's preference." Id.

We believe the Commission erred by oversimplifying an analysis requiring much more thoughtful consideration than that shown in the two-sentence rationale of the June 18 Letter. As a general proposition, the *application* of a technology may well be as innovative and creative as the *development* of the technology is

in the first instance. In today's science, systems innovations typically evolve incrementally, with one generation of technology building step-by-step upon an earlier generation. Indeed, the MLDS concept itself is fundamentally an adaptation of cellular telephony.

On the other hand, innovative *applications* of technical systems -- applied technology -- are often truly revolutionary and may, in any number of ways, affect quality of life even more significantly than the development of the underlying system. Viewed in this way, it can be seen that the line between systems developments and systems applications is not sharp and fixed, but blurred and changing. For this reason, the development/applications dichotomy the FCC draws in the June 18 Letter -- which totally ignores the public interest value in novel applications of a technology -- is an artificial distinction.

The essential premise of the FCC's pioneer's preference policy is that technical innovation in the service of the public interest should be rewarded. It is difficult to imagine a proposal that more perfectly reflects that idea than does UTPA's plan to redeem the quality of life in the Rio Grande Valley by implementing the MLDS technology on a uniquely grand scale. If UTPA's proposal does not extend the potential of MLDS "to a more advanced or effective state," we challenge the Commission to show us any proposal that satisfies that criterion.

Accordingly, because the June 18 Letter did not properly consider UTPA's pioneer's petition, that action must be reconsidered and reversed.

Respectfully submitted,

**UNIVERSITY OF TEXAS - PAN  
AMERICAN**

By: *Ronald D. Maines*  
Ronald D. Maines

JONES, WALDO, HOLBROOK  
& McDONOUGH, P.C.  
Suite 900  
2300 M Street, N.W.  
Washington, D.C. 20554  
(202) 296-5950

Its Attorneys

July 20, 1992