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Mr. William F. Caton,
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Dear Mr. Caton,

Enclosed please find an original and 4 copies of the Comments of Waukesha Tower Associates to MM Docket No. 87-268 filed in response to the Commissions' Sixth Further Notice of Proposed Rule Making (FCC 96-317).

Very truly yours,


Robert J. von Berezny
General Partner

RJvB/njt

Enclosures

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the land mobile sector and why are we necessarily second class?

4. It need not be this way. If the Commission must continue its current path of allocating additional spectrum (at least during the transition) to DTV operators, it should do several things, all of which are consistent with past practices (see PR Docket No. 93-144 RM-8117, RM-8030 RM-8029 and FIRST REPORT AND ORDER, EIGHTH REPORT AND ORDER, AND SECOND FURTHER NOTICE OF PROPOSED RULE MAKING released December 15, 1995, Section 65-79) regarding spectrum reallocation migration and aggregation, but which seem to be overlooked in this proceeding.

SUGGESTED SOLUTIONS

5. Protect Incumbents. We, the LPTV incumbents, are virtually all small businesses. We do not have the financial resources to contract for expensive analysis to determine what is necessary to protect ourselves from the interference which will inevitably affect many of us. The only equitable way of providing protection is to require that those operators who will pursue the DTV opportunity provide protection to the LPTV operators from harmful interference. This protection must be provided to us in our present (incumbent) channel allocation at our present power and coverage areas. The most important element is that we be able to retain our current channels. There are no "fully comparable alternative frequencies" to which incumbents can be relocated and even if there were, any such attempted relocation would adversely affect incumbent's operations with obvious consequences such as disruption of viewer service and loss of the viewer's confidence and goodwill, not to mention the devastating effect on station revenues from advertising sales. We have worked for years to obtain viewers on our stations. Developing consistent viewer habits is difficult, time consuming and expensive. We have born the losses, the heartbreak, and the aggravation of bringing our stations to profitability and to providing valuable service to our viewers. We cannot disrupt all this previous effort. In many cases, LPTV operators simply could not survive the financial effects of relocation to other spectrum so, defacto, they would be terminated or fail after a few years of renewed operating losses. This is clearly not in the public interest, nor would it be consistent with the spirit and intent of Section 314 of the Communications Act which says in part:

"No person engaged ... in the business of transmitting and/or receiving ... communications ... shall by purchase, lease, construction or otherwise directly or indirectly acquire own control or operate any ... system if the purpose is and or the effect thereof may be to substantially lessen competition ...

Relocating LPTV operators from their present channel positions would clearly lessen competition, in fact, it would ruin an entire emerging and important industry.

6. Let the Marketplace Prevail. In the event that the DTV operator in a given area determines that it cannot or will not protect the LPTV incumbent, let the parties determine how or whether relocation to another channel should occur. These "other channels" would of course have to be available. These voluntary discussions and negotiations are important and the most expeditious way of achieving the desired result with a minimum amount of time loss, or use of Commission resources. Voluntary negotiations and discussions for the most part will result in equitable solutions for both the LPTV incumbent and the DTV operator who seeks to displace him or her. In those rare instances where agreement could not be reached, the Commission could enact a narrowly worded mandatory relocation policy to be implemented only after the passage of an appropriate period of time, for example one year. We believe that it is important that the Commission recognize that because of the voluntary nature of the discussions, a DTV operator may choose to offer a premium payment to the LPTV incumbent or offer superior facilities as an incentive to the incumbent to move quickly.

7. In the event of a non voluntary relocation, require the DTV operator to protect the LPTV operator by: a) guaranteeing payment of all costs and expenses of relocating the incumbent to a comparable or better facility; b) complete all activities necessary for placing the new facilities into operation including engineering and frequency coordination; c) build and test the new facility. Any relocation of the LPTV incumbent must be as seamless as possible so that there is not significant disruption of the incumbent's operations or viewership. This may, therefore, include payments for advertising in media other than the LPTV itself of the relocation to another channel.

8. In order for this program to be successful, however, the commission must freeze the granting of any new LPTV and NTSC full power applications. The Commission must recognize the importance of this proceeding on all those affected but particularly the LPTV operators. Granting any new licenses would potentially increase the likelihood of more damage to the LPTV incumbents.

CONCLUSION

9. The Commission must not permit the destruction of the LPTV industry. In 1981 when you created the opportunity for many of us to create the American Dream of owning and operating successful small businesses, we believed in, and relied on you. Many of us have invested our life savings and years of work in pursuit of this dream and made it reality. The Commission must affirmatively act to protect all these small businesses. We hope you will find a way to follow as many of our suggestions as possible.

Respectfully submitted,

WAUKESHA TOWER ASSOCIATES

BY


Robert J. von Bergeby
General Partner