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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Advanced Television Systems) **MM Docket No. 87-268**
and Their Impact upon the)
Existing Television Broadcast)
Service)

To: The Commission

PETITION FOR RECONSIDERATION

Skinner Broadcasting, Inc.

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June 13, 1997

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SUMMARY

Skinner Broadcasting, Inc., (Skinner) by counsel, respectfully petitions the Commission for reconsideration of the *Sixth Report and Order* (6th R&O), FCC 97-115, (released April 21, 1997), in the above-captioned proceeding, relative to its treatment of displaced Low-Power TV Stations (LPTV) and television translators.

Specifically, Skinner requests that the Commission reconsider the methodology utilized in making DTV channel allotments, which has resulted in significant displacement of LPTV stations and TV translators. Further, to the extent that some displacement proves inevitable, the Commission should reconsider its stated intention to separately adopt reimbursement criteria for displaced secondary stations.

The Commission should conduct a reasonable Regulatory Flexibility Act analysis, and it must review, pursuant to Section 307(b) of the Communications Act of 1934, as amended, the impact of its decision on the communities which will lose LPTV or TV translator service. Furthermore, the Commission should hold in abeyance the implementation of the analog-to-digital conversion, particularly the dual-channel simulcasting provisions, until a reasonable system has been implemented for reimbursing, or otherwise reaccommodating unavoidably-displaced Low Power and TV Translator Stations.

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Skinner Broadcasting, Inc., (Skinner) by counsel and pursuant to 47 C.F.R. §1.429, respectfully petitions the Commission for reconsideration of the *Sixth Report and Order* (6th R&O), FCC 97-115, (released April 21, 1997), in the above-captioned proceeding, relative to its treatment of displaced Low-Power TV Stations (LPTV) and television translators. Specifically, the Commission should reconsider the methodology utilized in making DTV channel allotments, which has resulted in significant displacement of LPTV stations and TV translators. Further, to the extent that some displacement proves inevitable, the Commission should reconsider its stated intention to separately adopt reimbursement criteria for displaced secondary stations. As grounds for this petition, Skinner states as follows:

I. BACKGROUND

1. The Commission has considered various alternatives in establishing channel assignment priorities, but it has not adequately considered alternatives to the channel configuration adopted. Early in the proceeding, in the Memorandum Opinion and Order/Third Report and Order/Third

Further Notice of Proposed Rule Making (3rd R&O/FNPRM), 7 FCC Rcd 6924 (1992), the Commission determined that, in the absence of sufficient spectrum, a second channel would be assigned to entities by order of their operational status: first to licensees and permittees with program test authority, then to other permittees, and finally to parties with applications for construction permits pending as of October 24, 1991. *Id.*, 7 FCC Rcd 6924, 6933 ¶10. The Commission later added that, if dual channels could not be assigned, stations could be required to switch directly to digital service without a period of simulcasting. Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry (4th FNPRM), 10 FCC Rcd 10540, 10544 n. 24 (1995).¹ In the 6th R&O, the Commission has determined that sufficient spectrum is available to accommodate all full-service stations.

2. In the companion Fifth Report and Order (5th R&O), FCC 97-116, (released April 21, 1997), the Commission established timelines for construction of digital facilities, program simulcasting, and termination of analog broadcasting. For example, primary stations in the top 10 markets affiliated with the four major commercial networks must construct digital facilities by May 1, 1999, while affiliates in the remainder of the top 30 markets must construct by November 1, 1999. All remaining commercial stations must construct by May 1, 2002, and all noncommercial stations must construct by May 1, 2003. *Id.* ¶76. The Commission also established a target date of 2006 for cessation of analog television service. *Id.* ¶99.

¹ See also Sixth Further Notice Of Proposed Rule Making (6th FNPRM), Appendix C: Initial Regulatory Flexibility Analysis, 11 FCC Rcd 10968, 11060, 11066 (1996) (At the Commission's December 12, 1995, *en banc* meeting on digital television, Community Broadcasters Association argued that the Commission should require "all existing stations to convert to DTV service, rather than giving them a second channel").

3. Given the foregoing timetables, the period during which simulcast is mandated ranges from a minimum of two and one-half years (assuming analog cessation in early 2006) to over six and one-half years. During this time, secondary broadcast stations — LPTV and TV translators — are subject to displacement by primary stations simulcasting in digital format on the channels allotted in the 6th R&O.

4. Because the Commission ultimately determined that sufficient spectrum was available for each full-service station to be allotted a second channel, and because the Commission has consistently relegated Low Power and TV Translator stations to secondary status, the Commission, in the 6th R&O, affirmed its conclusion that providing duplicate channels to all existing broadcasters and permittees would necessarily "displace a number of LPTV and TV translator operations, especially in the major markets." ¶141. This would occur despite various ameliorating measures, such as relaxation of UHF taboos and other types of "displacement relief" — and regardless of the availability *vel non* of UHF channels 60-69. By implementing schedules for simulcasting in both analog and digital mode during the transition period, the Commission has implicitly rejected the possibility of requiring displacing stations to switch directly to digital operation.

5. Although the use of the interim channel assignments is only temporary, and Low Power and TV Translator stations are allowed to continue to operate until such time as the digital stations are actually on the air, displacement of such operations in the top 30 markets will continue, under the Commission's timetable, during the next 6 years. Stations unable to secure adequate "displacement relief" by relocating to other available channels must cease operation

during this interim period.² Because Low Power and TV Translator stations are generally small businesses operated by sole proprietors, unavoidably-displaced licensees will inevitably be unable to merely put their operations on hold until channels are again available. They will be put out of business, purely and simply.

6. In the 6th R&O, the Commission discussed the status of Low Power and TV translator stations. Although it recognized the inevitable impact the digital allotments would have on the secondary stations, the Commission expressly declined to address issues of compensation for displaced stations — even for those doubly displaced by the Commission's determination to recover channels 60-69.³ At the same time, in the Sixth Report and Order, it failed to adequately consider alternative channel configurations, such as that suggested by the Community Broadcasters Association, which would have resulted in channel configurations that would have preserved numerous additional LPTV and TV translator stations. Neither did the Commission consider other channel configurations that it could have developed, which would have constituted less burdensome alternatives to the table adopted relative to LPTV and TV translators.

II. STANDING

7. Petitioner Skinner is licensee of TV translator W27AQ at Fort Lauderdale, Florida, which operates on Channel 27. The translator rebroadcasts the programming of NBC owned and

² The problem is compounded by the fact that, in the top 30 markets, where the simulcast period is longest, the broadcast spectrum is virtually saturated. Thus, more often than not, secondary stations have no viable channel-change options and will be forced to cease operations.

³ *Cf.* Sixth R&O at ¶143 ("With regard to compensation, as indicated above, we will address this issue in our forthcoming Notice of Proposed Rule Making on reallocation of channels 60-69").

operated WTVJ at Miami. W27AQ provides coverage to more than 1.4 million people at the northern end of the Miami/Fort Lauderdale ADI, where WTVJ's signal is not sufficient for over-the-air reception. This is due to the fact that the WTVJ Channel 6 transmitter site is located some 33 miles south of the antenna farm where all the television stations in the market have their antenna sites. Channel 6, unable to move its transmitter site, relies on W27AQ to provide NBC programming to this large population in Broward County. Thus, the population within the W27AQ coverage area represents over 35% of the total ADI. Although WTVJ has two other translators, one on the southern end of Broward County and one in southwestern Broward County, none provides a comparable signal in the northern end of Broward County where the channel 6 signal is weakest. W27AQ is unique in numerous other respects⁴. In the 6th R&O, the Commission assigned channels 27 and 28 for interim digital operation to WXEL-TV and WFLX-TV, respectively, both licensed to West Palm Beach. Continued operation of Skinner's translator would be mutually exclusive with each of these stations, given the geographic proximity of these facilities to Skinner's translator. Accordingly, Skinner's translator will be displaced.

8. Upon release of the 6th R&O, Skinner commissioned an engineering study to determine whether, in light of the relaxation of UHF taboos, another channel existed to which Skinner could relocate. Given the extensive saturation of the television broadcast spectrum in

⁴ Skinner was a pioneer in the LPTV and TV translator services, having participated in the rulemaking proceeding that resulted in the creation of the LPTV service in the first place. J. Rodger Skinner, the principal of Skinner, filed his application for an LPTV station in 1980. He received a grant finally in 1988, and invested his life savings in the facility. W27AQ has operated continuously since that time, at great personal expense to Mr. Skinner and his small business.

the Fort Lauderdale area, and given the channel configuration adopted by the Commission in the 6th R&O, no such channel is available. The engineering study commissioned by Skinner considered co-location of channels at both the Miami antenna farm, to the south of its present site, and at the West Palm Beach antenna farm in the next adjacent ADI to the north of its present site. No useful channel could be found in either location to which Skinner could move to avoid displacement. Even the alternative DTV allocation table prepared by the Community Broadcasters Association could not provide displacement relief to W27AQ. Accordingly, Skinner will be required to cease operations once the West Palm Beach stations, or either of them, begin their digital transmissions. Skinner is therefore directly and adversely affected by the promulgation of the 6th R&O.

III. THE COMMISSION FAILED TO CONSIDER LESS BURDENSOME ALTERNATIVES TO ITS DTV CHANNEL PLAN

9. By law and court order, the Commission is required to consider reasonable alternatives to its proposals set forth in rulemaking proceedings — particularly those which provide a more rational, fair, and equitable regulatory framework. The Court of Appeals for the District of Columbia Circuit has repeatedly stated that it "will demand that the Commission consider reasonably obvious alternative ... rules, and explain its reasons for rejecting alternatives in sufficient detail to permit judicial review." *NAACP v. FCC*, 682 F.2d 993, 998 (D.C. Cir. 1982) (punctuation and citation omitted). *Accord Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413, 1426 (D.C. Cir. 1983) ("we will look carefully at the Commission's

reasoning to ensure that all relevant factors and available alternatives were given adequate consideration").

10. Furthermore, the Regulatory Flexibility Act (RFA), 5 U.S.C. §601 *et seq.*, requires that agencies conducting a rulemaking proceeding must assess the "impact of the proposed rule on small entities." 5 U.S.C. §603. Their evaluation must include an Initial Regulatory Flexibility Analysis (IRFA), *id.* §603, as well as a Final Regulatory Flexibility Analysis (FRFA), §604. For present purposes, such small entities are defined as small business concerns which are (1) independently owned and operated, (2) not dominant in their field of operation, and (3) have a maximum of \$10.5 million in annual receipts. *See* 6th FNPRM, Appendix C: Initial Regulatory Flexibility Analysis, 11 FCC Rcd 10968, 11060, 11060-61 (1996).

11. In the 6th R&O, the Commission acknowledged that over 60 United States Senators had joined in strongly urging that the Commission expressly facilitate the needs of Low Power and TV Translator stations. ¶121. The Commission also noted that commenting parties had proffered alternative DTV allotment tables which reduced the number of displaced licensees. ¶7. Although the Commission did relax many of the UHF taboos, and provided for non-window channel-change filings and other displacement relief, it conceded that many LPTV and TV Translator facilities will nevertheless be displaced. However, the Commission made no proffer, in its discussion of Low Power and TV Translator stations (¶¶114-147), of alternative digital channel allotment configurations. On March 26, 1997, the Community Broadcasters Association submitted an Ex Parte Presentation in which it provided an alternate allotment table which offered a greatly-reduced number of displacements of Low Power and TV Translator stations. That alternative was not mentioned in the 6th R&O. Indeed, the Commission, without regard

for the small business status of the LPTV industry, failed to consider LPTV stations and TV translators, satisfied, apparently, with the "secondary" status of LPTVs and TV translators relative to full power stations⁵. That is not, however, a sufficient analysis under the Regulatory Flexibility Act.

12. Because alternatives obviously exist which would reduce the number of displacements, the Commission has not complied with the judicial and legislative mandate that it consider reasonable, less-burdensome alternatives and specifically address reasons for its failure to adopt them. Accordingly, the Commission must reconsider the 6th R&O insofar as it adopts an allotment plan which is inferior to other available options in terms of preservation of LPTV and TV translators.

⁵ As stated in the Regulatory Flexibility Act analysis of the 6th R&O, the Commission stated (page D-10, Appendix D, 6th R&O):

...(W)e have determined that the primary allotment objective should be to develop an Allotments Table that provides a channel for all eligible broadcasters, consistent with the provisions of the 1996 Telecommunications Act regarding initial eligibility for DTV licenses. As a result, some LPTV and TV translator licensees currently on the subject DTV spectrum will be displaced. One alternative to this approach would have been to permit existing LPTV and TV translator stations to remain on their incumbent channels; this approach was not chosen because it would have resulted in providing allotments for fewer than all full service licensees (footnote omitted). In making this determination, the Commission noted that LPTV and TV translator operations have always been authorized on a secondary basis. To mitigate the effect of this determination on those LPTV stations likely to be displaced, we adopted the following policies.

The policies included entertaining applications for replacement channels on a first-come, first-served basis, certain technical changes, and continued operation until displacement occurs. There was no consideration, however, of the effect of the displacement, or the number of LPTV stations or TV translators on the licensees thereof, as small business entities.

IV. THE DTV CHANNEL PLAN WAS NOT IN ACCORDANCE WITH SECTION 307(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

13. Section 307(b) of the Communications Act of 1934, as amended [47 U.S.C. §307(b)] requires that the Commission, in considering applications for licenses, and modifications and renewals thereof, insofar as there is demand for the same, make such distribution of licenses, frequencies, hours of operation, and power among the several States and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same. In this matter, there has been no analysis whatsoever of the effect on the communities of displaced LPTV stations and TV translators, especially where there is no possible replacement for those facilities in those communities. A review of available television service in those communities is necessary to determine whether the survival of a particular LPTV station or TV translator is necessary to preserve local transmission service to that community, *vice* the displacement of that station in favor of a DTV channel in a nearby community which already has analog service.⁶

14. For example, it is to be presumed that a community's first local station is to be preferred over additional stations in communities which have existing service. *Pasadena Broadcasting Co. v. FCC*, 555 F.2d 1046 (D.C. Cir. 1977). In conducting a Section 307(b) analysis, the Commission, under the "fair and equitable" factors, weighs the relative needs of each of the proposed communities for a new transmission service as an outlet for local expression, and as well the needs of the proposed service area for additional video service. Under the efficiency factor, the Commission looks to the areas and populations to be served, the

⁶ There is no difference, and there cannot be under Section 307(b), between LPTV stations and TV translators. A translator provides as much local service news, public affairs programming, etc. as does an LPTV station in most cases, and a translator can change its status to an LPTV station by sending a letter notification to the Commission.

type or class of frequency involved, the power and hours of service, and the elimination or causation of an interference area. *Kittyhawk Broadcasting Corp.*, 20 FCC 2d 1011 (Review Board 1969). None of this analysis was made in the case of Skinner, nor any other LPTV or TV translator station. The Commission simply declared those facilities to be "secondary" and made no Section 307(b) analysis whatsoever. As the result, the 6th R&O fails to comply with the mandate placed upon the Commission to consider community needs prior to displacing facilities that cannot be replaced on other channels to serve the same community.

15. The "secondary" claim is a particularly inadequate defense to the Commission's failure to make any analysis of the effect of its DTV allocation table on either the licensees or the communities affected by the LPTV/translator displacement, since no LPTV or TV translator licensee licensed earlier than five years ago ever envisioned the extent of displacement that would occur on a national scale from rulemaking such as the instant proceeding.⁷ Some LPTV and TV translator licensees, such as Skinner, carefully selected markets in which it was unlikely that the television table of allotments would result in displacement. As the result, the extent of displacement was, at the inception of licensing for many displaced licensees, unforeseeable. Accordingly, the Commission must revisit, and seriously analyze, the number, and locations,

⁷ It is only equitable, when the Commission's decision stands to put licensees such as Skinner out of business completely, despite investment of the licensee's entire life savings, to determine what risk of displacement that the licensee actually assumed when it applied for the LPTV or TV translator facility in the first place: in Skinner's case, in 1980, when he first applied for W27AQ, and in 1988, when the station was authorized and constructed, he could not have assumed that the band utilization by full power stations would double. Therefore, it was not foreseeable that his station would be displaced in the fashion that it has been. It would be inequitable in the extreme to cause the deletion of Skinner's license, when the rules that triggered the deletion have changed so radically since the station was first authorized, and hence were unforeseeable.

of potentially displaced LPTV and TV translator stations, to determine, in accordance with Section 307(b) of the Communications Act of 1934, whether displacement of those existing facilities will comport with the Commission's obligations to the communities of license of those stations.

V. REMUNERATION, OR SUBSTITUTE FACILITIES, MUST BE INCLUDED IN THIS PROCEEDING FOR DISPLACED LPTV/TV TRANSLATOR STATIONS

A. The Commission Has An Extensive Regulatory Structure Regarding Reimbursement

16. The Commission has an extensive body of rules and case law regarding reimbursement policies in various aspects of the Radio Broadcast Service, with the goal of making whole those stations who are displaced to accommodate other licensees. Perhaps most analogous to the present situation is the Commission's policy regarding amendment of the FM Table of Allotments, 47 C.F.R. §73.202(b). The Commission allows individual applicants to propose changes in the Allotment Table if doing so will result in a more efficient use of broadcast spectrum, *i.e.*, allow the petitioner to upgrade its facilities. *Cf.* Report and Order, *Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels*, 51 FR 20290, 60 RR 2d 114, 118; *id.* n. 10 (1986). However, when any such upgrade necessitates that another station change frequency in order to avoid mutual interference, the petitioning party is required to pay the reasonable and necessary expenses faced by the displaced licensee in moving to its new frequency. *Cf. Circleville, Ohio*, 8 FCC.2d 159 (1967). This reimbursement requirement is fair and equitable because it assures that the costs of the burdened station are borne by the benefitted party, which is, in each case, the party but for whose actions such costs would not have been incurred.

17. On the other hand, the Commission has imposed specific rules regarding permissible and mandatory payment provisions in such circumstances as (i) the sale of built and unbuilt broadcast facilities, 47 C.F.R. §73.3597; (ii) the withdrawal of mutually-exclusive applications prior to designation for comparative hearing, 47 C.F.R. §73.3525(a)(3); (iii) the withdrawal of a party's own petition to deny or informal objection submitted in a renewal proceeding, 47 C.F.R. §73.3588; and (iv) withdrawal of a "threat" to file, or refrain from filing, a petition to deny or informal objection, 47 C.F.R. §73.3589. These rules act to prohibit such activities as trafficking in licenses and the filing of strike applications by ensuring that no more than a reasonable measure of compensation is awarded — *i.e.*, in cases where there has not been long-term operation, the permittees/licensees/objectors may only be remunerated for the reasonable, legitimate, and prudent expenses incurred in good faith efforts to construct and operate a Commission-licensed facility.⁸

18. Given the Commission's evident regulatory concern for ensuring fair economic consequences of a potential broadcaster's activities, the refusal in the 6th R&O to implement reimbursement procedures for displaced secondary facilities concurrent with the implementation of the interim digital Table of Allotments (which created the displacement problem in the first instance) is contrary to the Commission's own practice and general standards of fairness. This is particularly the case where those being displaced are small business entities with limited ability to launch an attack on the fairness of the rules being enacted.

⁸ In the case of W27AQ, it has been in operation since 1989 continuously.

19. Finally on this subject, when the Commission has "cleared" a band or band segment to permit a new radio service, it has required that the newcomer compensate the incumbents for the cost of relocating. This has been done following spectrum allocation decisions in the lower microwave spectrum. Displaced fixed microwave users are subject to compensation from those who are awarded licenses in the "cleared" spectrum, such as PCS companies. There is no good reason why LPTV and TV translator facilities should not be afforded the same treatment.

**B. The Commission Must Adopt A Reasonable Reimbursement Policy
For ALL Unavoidably Displaced Secondary Stations, Or Provide
For Substitute Licenses**

20. As outlined above, the Commission has an extensive set of policies regulating reimbursement for certain expenses incurred by means of regulatory obligations or entitlements within the Broadcast Services. As also noted above, and as established by the attached engineering exhibit, given the saturation of the broadcast spectrum in the Miami/Ft. Lauderdale ADI, there is *no* alternative allotment configuration which would provide a channel to which petitioner Skinner could relocate — given the Commission's determination to provide interim dual-channel operation by full-service stations rather than a switch from analog to digital operation on the same channel. Many other Low Power and TV Translator operators share the same predicament.⁹ The licensees know they are to be ousted, but they have no idea what, if

⁹ *Accord*, 6th NPRM, Appendix C: Initial Regulatory Flexibility Analysis, 11 FCC Rcd 10968, 11060, 11065-66 (1996) ("[U]p to about one-third of all LPTV stations and one-quarter of all TV translators may have to cease operation to make way for DTV stations. In general, most LPTV stations within major markets will be affected, while rural operations will be affected to lesser degrees.")

anything, they might expect by way of reimbursement. They therefore cannot plan for anything. Rather, they must simply wait for the axe to fall.

21. Skinner proposes that the Commission hold in abeyance any implementation of the simulcast provisions of the 6th R&O until the Commission has adopted a suitable policy for either reaccommodation of displaced Low Power and TV Translators, or for reimbursement of those stations which are permanently displaced. There are several methods of accomplishing this. As a principal creative alternative, the Commission could allow displaced Low Power and TV Translator station licensees to apply for and obtain construction permits to operate FM broadcast stations on the second adjacent Class A FM frequency to existing stations, provided that the transmitter for such could be located at the transmitter of the existing second-adjacent channel FM station. That way, the interference area, if any, between the two FM stations would be limited to a very small area in the immediate vicinity of the common transmitter site. Since the 2nd adjacent channel to the proposed Class A 6 kw station would be a Class C 100 kw station, no interference is predicted but if any did occur in this small area, it could be treated on a case-by-case basis with filters by the Class A licensee. While the FM broadcast service is admittedly a different service than that from which the LPTV or TV translator licensee was displaced, it would, at no cost to the government or television broadcast licensees, provide a substitute broadcast facility with a coverage area roughly commensurate with that of the displaced LPTV station or TV translator.

22. With the relaxation of several of the UHF taboos and other limited technical relief provided to displaced LPTV/TV translators by the 6th R&O, some, perhaps a majority, of displaced stations should be able to find another channel on which to locate their LPTV/TV

translator station. However, those stations, such as W27AQ, for which there is no replacement channel, should be given the opportunity to apply, outside of a filing window and not subject to competing applications, for a Class A FM facility to serve the same city of license, by means of co-location with a 2nd or 3rd adjacent channel FM station in the market. This concept is not new; it was recommended by numerous engineering firms in prior rule making proceedings dealing with modifications to short-spaced, grandfathered FM stations. The engineering submissions in those proceedings noted that co-location would eliminate the potential for interference when operating on a 2nd or 3rd adjacent channel.

23. Such a policy for unavoidably displaced LPTV/TV translator licensees, who have no possibility of reaccommodation on another channel, would represent a fair replacement for the effectively canceled LPTV/TV translator license, and should have to be implemented in perhaps only a few markets. Again, this would constitute a no-cost remedy, both with respect to the Government, and to the displacing full-power TV licensees. This option should be an alternative to financial remuneration for the canceled LPTV/TV translator license.

24. As an alternative to the above, reimbursement to each station could be made, and should equal the station's fair market value as of the time it is forced off the air by a full-service station's digital operations.^{10 11} The initial source of such funds should be the revenues

¹⁰ This could be determined on the basis of a multiple of the stations' revenues over a period of time, which would assure fairness in terms of those licensees which have constructed and operated LPTV/TV translator stations for reasonable periods of time.

¹¹ Fair Market Value of W27AQ, for example, is between One Million and Three Million Dollars. Skinner received an offer to purchase the station for Three Million Dollars just prior to the release of the DTV table of allotments in the 6th R&O, which of course has now been withdrawn. Therefore, solely by virtue of the 6th R&O, Skinner has been deprived of a

received from the auction of the channel 60-69 spectrum. If such revenues are insufficient to adequately reimburse all permanently-displaced Low Power and TV Translator licensees, the full-service stations whose simulcast operations actually displace secondary service operators should individually reimburse those stations they have actually displaced, in the same fashion as FM stations which are benefitted by channel changes must pay the expenses of the burdened FM licensee.

VI. CONCLUSION

24. For the reasons set forth above, Skinner Broadcasting, Inc., hereby petitions the Commission for reconsideration of its Sixth Report and Order issued in this proceeding. The Commission should reconsider the methodology used in instituting the DTV Table of Allotments; it should conduct a reasonable Regulatory Flexibility Act analysis, and it must review, pursuant to Section 307(b) of the Communications Act of 1934, as amended, the impact of its decision on the communities which will lose LPTV or TV translator service. Furthermore, the Commission should hold in abeyance the implementation of the analog-to-digital conversion, particularly the dual-channel simulcasting provisions, until a reasonable system has been implemented for reimbursing, or otherwise reaccommodating unavoidably-displaced Low Power and TV Translator Stations.

Therefore, the foregoing considered, Skinner Broadcasting, Inc. respectfully requests that

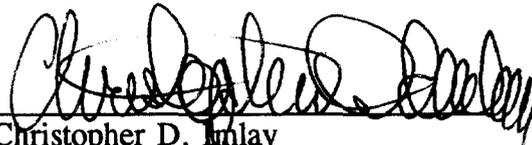
substantial opportunity.

the Commission reconsider and revisit the determinations made in the 6th R&O in this proceeding regarding LPTV and TV translator stations.

Respectfully submitted,

SKINNER BROADCASTING, INC.

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June 13, 1997

ENGINEERING STATEMENT
IN SUPPORT OF THE
PETITION FOR RECONSIDERATION OF THE
SIXTH REPORT AND ORDER IN MM DOCKET NO. 87-268
ON THE BEHALF OF
SKINNER BROADCASTING, INC.

June 4, 1997

Skinner Broadcasting, Inc.
Fort Lauderdale, Florida

Engineering Statement
in Support of the
Petition for Reconsideration of the
Sixth Report and Order in MM Docket No. 87-268
on the Behalf of
Skinner Broadcasting, Inc.

The firm of Moffet, Larson and Johnson, Inc. (MLJ) has been retained by Skinner Broadcasting, Inc. (Skinner) to make engineering studies in support of the Skinner Petition for Reconsideration filed in response to the Sixth Report and Order in MM Docket No. 87-268 (Sixth Report) which was released on April 21, 1997. Skinner operates Low Power Television Station (LPTV) W27AQ in Fort Lauderdale, Florida. In the Sixth Report the Commission has assigned a digital television (DTV) channel to each television station, which potentially would double the number of television stations. Under the rules as adopted LPTV stations would not be permitted to interfere with the service of the new DTV stations or the present analog NTSC stations. LPTV stations are required to modify operation, by changing channel for example, or cease operation. Our studies indicate that the criteria and procedures used by the Commission for the assignment of channels and facilities has resulted in the allocation of channels and facilities that would preclude Skinner from appropriate modifications. That is, Skinner could not modify the operation of W27AQ to avoid interference to present analog and new television stations. Thus, it appears LPTV station W27AQ will be required to cease operation.

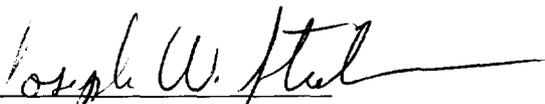
Under the Commission's new rules station WXEL-TV is assigned channel 27 for DTV operation. The WXEL-TV transmitting site is 41.3 kilometers from the W27AQ site. In addition, channel 28 is assigned to WFLX at West Palm Beach; WFLX is also 41.3 kilometers from the W27AQ site. The predicted coverage of the DTV stations would cover the W27AQ transmitting site if they were operated with the facilities included in the Sixth Report. Thus, W27AQ would interfere with either of these DTV stations if they operated as assigned and Skinner would be forced to modify W27AQ..

A series of studies were conducted to determine a plan to modify W27AQ. At the present W27AQ site only by changing channel can interference be avoided. However, the studies show that there is no channel available for use at the W27AQ site. Table 1 lists each television channel, the precluding station and the distance from W27AQ. The table shows that there is no channel available at the present W27AQ site. The W27AQ site is within the predicted coverage contours of stations that would receive interference. This includes LPTV station W58BU; the protected contour (74 dBu) of W58BU overlaps the W27AQ site.

Skinner Broadcasting, Inc.
Fort Lauderdale, Florida

In addition, studies were conducted at alternate sites such as in the Miami antenna farm and a new tower to be built in the vicinity of the WPEC(TV) and WXEL-TV. These studies were based upon the data developed in the original study summarized in Table 1. In all cases it is evident that even considering the relaxed LPTV translator rules as adopted in MM Docket No. 87-268, no channel is available. In all cases wavier of the rules would be required and it is evident that we could not conclude that interference would not be caused to television service. For example, operation on channel 57 is limited by picture image interference to WXEL-TV. A study of near colocation with WXEL-TV was conducted although such operation would require wavier of the rules. However, it was concluded that interference to WXEL-TV would be a problem.

The undersigned certifies that this statement and the attached figure were prepared by him or under his supervision.



Joseph W. Stielper
Senior Engineer

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Table 1
LPTV Channel Study
at W27AQ Site

TV Channel	Station	Location	Distance (km)	Comment
2	WPBT	Miami, FL	32.2	
3				Adjacent WPTV
4	WFOR-TV	Miami, FL	31.8	
5	WPTV	West Palm Beach, FL	41.6	
6	WTVJ	Miami, FL	85.3	Adjacent WPTV
7	WSVN	Miami, FL	31.9	
8	WSVN*	Miami, FL	31.9	
9				Adjacent WSVN, WPLG
10	WPLG	Miami, FL	31.6	
11				Adjacent WPLG
12				Adjacent WPEC
13	WPEC	West Palm Beach, FL	41.3	
14				Land mobile - Miami
15				Land mobile - Miami
16				Adjacent WLRN-TV
17	WLRN-TV	Miami, FL	32.5	
18	WLRN-TV*	Miami, FL	32.5	
19	WPBT*	Miami, FL	32.5	
20	WDZL	Miami, FL	31.8	
21	WCTD*	Miami, FL	64.4	Adjacent WDZL
22				Adjacent WLTV
23	WLTV	Miami, FL	31.8	
24	WLTV*	Miami, FL	32.5	
25				Adjacent WLTV*
26				Adjacent WXEL-TV
27	WXEL-TV*	West Palm Beach, FL	41.3	
28	WFLX*	West Palm Beach, FL	41.3	
29	WFLX	West Palm Beach, FL	41.3	
30	WTVJ*	Miami, FL	85.3	Adjacent WFLX, WPPB-TV
31	WPPB-TV	Boca Raton, FL	27.6	
32	WBFS-TV*	Miami, FL	31.5	
33	WBFS-TV	Miami, FL	31.5	
34				Adjacent WBFS-TV
35	WCTD	Miami, FL	64.4	
36	WHBI*	Lake Worth, FL	55.0	Picture image WPPB-TV
37				Radio Astronomy
38				Adjacent WDZL*
39	WDZL*	Miami, FL	31.8	
40				Adjacent WDZL*
41				Adjacent WXEL-TV
42	WXEL-TV	West Palm Beach, FL	41.3	
43				Adjacent WXEL-TV

* Indicates DTV channel

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Table 1 (Continued)
LPTV Channel Study
at W27AQ Site

TV Channel	Station	Location	Distance (km)	Comment
44	WPPB-TV*	Boca Raton, FL	27.6	
45	WHFT	Miami, FL	27.6	
46	WHFT*	Miami, FL	27.6	
47				Adjacent WHFT* , WYHS*
48	WYHS*	Hollywood, FL	31.5	
49				Adjacent WYHS*
50				Adjacent WSCV
51	WSCV	Fort Lauderdale, FL	31.5	
52	WSCV*	Fort Lauderdale, FL	31.5	
53				Adjacent WSCV*
54				Adjacent WPTV*
55	WPTV*	West Palm Beach, FL	41.6	
56				Adjacent WPTV*
57				Picture Image WXEL-TV
58	W58BU	Hallandale, FL	28.9	Too close to protect
59	New	Stuart, FL	88.5	
60				Adjacent WFGC
61	WFGC	Palm Beach, FL	60.1	
62				Adjacent WFGC
63	WPBB	Boca Raton, FL	27.6	
64				Adjacent WPBB
65				Sound Image WSCV
66				Adjacent WHBI
67	WHBI	Lake Worth, FL	55.0	
68				Adjacent WYHS
69	WYHS	Hollywood, FL	31.5	

* Indicates DTV Channel