

ORIGINAL

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

RECEIVED
JUN 13 1997
Federal Communications Commission
Office of Secretary

MM Docket No. 87-268

In the Matter of)
)
Advanced Television Systems and Their Impact)
upon the Existing Television Broadcast Service)
)
)
)
)
_____)

DOCKET FILE COPY ORIGINAL

To: The Commission

PETITION FOR CLARIFICATION OF JOHN C. ANDERSON

John C. Anderson, acting pursuant to Section 1.106 of the Commission's rules, hereby petitions for partial clarification of the Sixth Report and Order, FCC 97-115 (April 21, 1997) (the "DTV Order") to clarify the status of pending applications for new NTSC facilities. In support, the following is stated:

1. In the Sixth Further Notice of Proposed Rulemaking in this proceeding, 11 FCC Rcd 10968 (1996) (the "Sixth Further Notice"), the Commission proposed to eliminate all vacant NTSC allotments to facilitate development of the DTV Table. DTV Order, ¶ 103. Consistent with that proposal, the Commission stated that it would no longer accept any applications for new NTSC stations filed more than 30 days after the Sixth Further Notice was published in the Federal Register (September 20, 1996). Id. ¶ 104. The Commission also stated that if an application was filed prior to September 20,

No. of Copies rec'd 024
List A B C D E

1996, the Commission would employ its regular notice and cut-off procedures and would, accordingly, "allow additional competing applications to be filed after the end of this filing opportunity." *Id.*

2. In the DTV Order, the Commission stated that "[c]onsistent with our policy stated in the Sixth Further Notice with regard to pending applications . . . we will maintain and protect those vacant NTSC allotments that are the subject of pending applications and will avoid creating DTV allotments that would conflict with proposed new NTSC allotments." *Id.* ¶ 104. The Commission did not, however, provide DTV allotments for NTSC allotments that are the subject of pending applications to ensure that each of the NTSC allotments will have a paired DTV channel.

3. On October 1, 1996, John C. Anderson filed an application for a construction permit for a new commercial television station to operate on Channel 9 in Walla Walla, Washington. Mr. Anderson's application was filed in response to a filing window opened by a competing application that was filed prior to the September 20, 1996 cut-off date for new NTSC applications. Several other parties also timely filed mutually exclusive applications.

4. In light of the opinion of the United States Court of Appeals for the District of Columbia in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993), the Commission, since February 25, 1994, has held in abeyance the adjudication of hearing proceedings involving mutually exclusive proposals for broadcast facilities. See Public Notice, "FCC

Freezes Comparative Proceedings," 9 FCC Rcd 1055 (1994). Mr. Anderson's application and the competing applications are subject to that freeze and thus remain pending.

5. According to informal discussions with Commission staff, it is Mr. Anderson's understanding that once pending applications filed before the September 20, 1996 cut-off are acted on, the granted applications will receive a DTV allotment. As mentioned above, however, the DTV Order is silent on this point. Mr. Anderson thus requests that the Commission clarify the DTV Order to make clear that, once pending applications for new NTSC stations are granted, the applicant will receive a DTV allotment for that station.

WHEREFORE, in view of the foregoing, it is respectfully requested that the Commission clarify the DTV Order as requested above.

Respectfully submitted,

DICKSTEIN SHAPIRO MORIN &
OSHINSKY, LLP
2101 L Street, N.W.
Washington, DC 20037
(202) 828-2265

Attorneys for John C. Anderson

By: Christopher T. McGowan
Lewis J. Paper
Christopher T. McGowan