

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

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In the Matter of

Advanced Television Systems
And Their Impact Upon the
Existing Television Broadcast
Service

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MM Docket No. 87-268

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To: The Commission

**REPLY TO PARTIAL OPPOSITION TO SUPPLEMENT TO PETITION FOR
RECONSIDERATION OF SKINNER BROADCASTING, INC.**

On September 2, 1997, Sherjan Broadcasting Co., Inc. ("Sherjan"), through its attorneys, filed a partial opposition to a Supplement to Petition for Reconsideration, filed August 22, 1997 by Skinner Broadcasting, Inc. ("Skinner"). These comments are being filed in response to that opposition.

1. Skinner is the licensee of LPTV W27AQ, Channel 27, Fort Lauderdale, Florida. Skinner's LPTV/translator facility is the senior (oldest licensed) LPTV/translator facility in the Miami-Fort Lauderdale, Florida market, having received its license on April 25, 1989 (BLTTL-890425IA).

2. Sherjan is the licensee of WJAN-LP (W41BF), Low Power Television (LPTV) Channel 41, Miami, Florida, having been licensed later on March 25, 1994 (BLTTL-940325IA). Sherwin Grossman is a principal in Sherjan and is president of the Community Broadcasters Association (CBA) and has made many trips to Washington to lobby the Commission and its staff on behalf of low power television stations, including his own WJAN-LP, Channel 41, Miami, Florida.

3. Sherjan in its opposition states that there is no justification for selecting Channel 41 for digital use at West Palm Beach, Florida and also that Skinner's supplement is procedurally and substantively defective. Sherjan claims that Skinner's supplement is procedurally defective because it comes too late in this proceeding. It should be noted that Skinner's supplement is

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timely filed and is in line with the filings permitted by FCC Order DA 97-1377, which allowed until August 22, 1997 for filing of supplemental information relating to the previously filed Petition for Reconsideration, filed on June 13, 1997. The Commission states in FCC Order DA 97-1377 that additional time is given after the issuance of OET Bulletin No. 69 to allow parties to provide information regarding specific changes in the digital (DTV) table, released in the 6th Report & Order. The ¹“technical guidance to be provided in OET Bulletin No. 69 is generally intended to be used for the purposes of preparing applications requesting facilities that do not conform to the DTV Table, petitions to amend the DTV Table, applications for new DTV stations, changes in authorized DTV stations, and *the impact of low power TV and TV translator stations on DTV service areas (emphasis added)*”. Thus the information included in the Skinner supplement, filed August 22, 1997, was reliant on the information contained in OET Bulletin No. 69.

4. Sherjan shows in their “Technical Statement” prepared by du Treil, Lundin & Rackley, Inc., attached to their opposition, that the DTV channel substitutions proposed in Skinner’s supplement would indeed meet FCC mileage requirements, but would displace four LPTV stations instead of the current DTV Table, which would displace two LPTV stations. It should be noted that one of the four stations that would be displaced by the Skinner proposal is Skinner’s own W58CA (CP), Port St. Lucie, Florida. Skinner is willing to have this station displaced to spare the senior facility W27AQ, Fort Lauderdale, which serves a substantially larger population and has been authorized longer. Thus Skinner is not asking anyone to live by rules that they would not endure themselves, which is only fair and the whole point of this matter.

5. Section 307(b) of the Communications Act, as amended, which calls for the fair and equitable distribution of channels throughout the nation, was ignored by the Commission in the creation of the current DTV Table, which used a database that did not include any LPTV stations. Sherjan argues that ²Section 307(b) does not incorporate any seniority factor. Skinner contends however that it does relate to the seniority issue directly by use of the terms “fair and equitable”.

¹ See OET Bulletin No. 69.

²See Section 307(b) of the Communications Act of 1934, as amended.

Skinner's premise that any necessary displacement of LPTV and TV translator stations, to make room for DTV allotments, should be based on seniority (protecting first in time facilities) fits squarely with Section 307(b). Indeed, applying the seniority yardstick may be the only "fair and equitable" way to displace any LPTV or TV translator stations, if one accepts the premise that any LPTV or TV translator stations should be displaced at all. Currently you have a situation, where the FCC is asking licensees of LPTV and TV translator stations to accept displacement without any reason whatsoever as to why their channel has to be displaced instead of another, since LPTV and TV translator stations were not even included in the database used to create the DTV Table. This random method of displacing stations, which translates into closing down small businesses by the hundreds across America, is neither fair nor equitable and is way out of line with the requirements imposed on the Commission by Section 307(b).

6. It is imperative that the Commission be able to demonstrate fair and equitable treatment in the LPTV and TV translator displacement issue to avoid the appearance of any impropriety or favoritism. For example, Sherjan's principal Sherwin Grossman, as president of the CBA, has lobbied the Commissioners, the OET staff that prepared the DTV Table and even the Vice President of the United States regarding the issues involved here. It would appear his lobbying efforts were successful since the FCC "draft DTV table" showed Sherjan's Channel 41, Miami, Florida being displaced by DTV Channel 41, given to WTVJ NTSC Channel 6, Miami, Florida **BUT** the final DTV table released as part of the 6th Report & Order, after Grossman's lobbying efforts, shows Sherjan's Channel 41 being spared. This is not to accuse Mr. Grossman of any wrongdoings, but it is a perfect example of why the Commission must take steps to deal with the LPTV/ TV translator displacement issue in the most "fair and equitable" manner available, and that is a sound reason for incorporating the seniority factor. This is totally fair and is quickly discernable from the Commission's database of licensees. The concept is simple and easy to apply, displacing the last licensed facilities, in order, if displacement is necessary in a market. The oldest licensed or authorized facilities (including CPs) would be the last to be displaced. To attempt any other method relating to programming or local origination would waste valuable Commission time and resources, involve long arguments and appeals and delay the implementation of digital television across America. Again, this is a position that the FCC could easily defend and displaced stations could more reasonably accept as a logical reason for displacement, as opposed to the current

DTV table which gives those displaced no reason as to why they have to be displaced and not other LPTV stations in the same or adjacent market.

7. Sherjan argues that Skinner's proposal to allot Channel 58 as a DTV channel in West Palm Beach is marred since it is outside the core band of channels 2-46 or Channels 7-51. It should be noted that several DTV allotments are outside the core band of channels in the present DTV Table put forth by the Commission, e.g., DTV Channel 58 in Orlando, Florida and DTV Channel 59 in St. Petersburg, Florida to name just two and there are many others. Thus Skinner is not asking for anything not already done by the Commission.

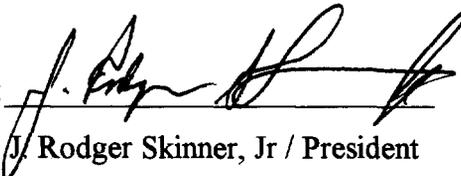
8. While it is a sad affair that any station has to be displaced, it is similar to when a company has to lay off workers. The time honored method of last-hired first-fired is fair and is understood by all parties. To use any method, other than seniority, invites arguments of impropriety and favoritism, something which the Commission surely should wish to avoid.

9. Skinner is prepared to support the CBA's proposed digital TV allotment table, submitted by it on August 22, 1997, if it can be shown to incorporate the seniority rule outlined herein regarding LPTV/TV translator displacements.

10. In light of the foregoing, Skinner respectfully submits that the Sherjan opposition must be rejected as being without merit and providing no workable solution to the issues addressed herein.

Respectfully submitted,

SKINNER BROADCASTING, INC.

By: 
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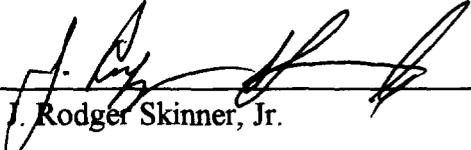
CERTIFICATE OF SERVICE

I, J. Rodger Skinner, Jr., President of Skinner Broadcasting, Inc., do hereby certify that I have on this 11th day of 1997, sent by First Class United States mail, postge prepaid, copies of the foregoing **REPLY TO PARTIAL OPPOSITION TO SUPPLEMENT TO PETITION FOR RECONSIDERATION OF SKINNER BROADCASTING, INC.** to the following:

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