

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 87-268

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

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Detroit Educational Television Foundation (Foundation), through its attorneys, hereby files this petition for partial reconsideration of the Memorandum Opinion and Order on reconsideration of the Fifth Report and Order (Memo O & O I) and the Memorandum Opinion and Order on reconsideration of the Sixth Report and Order (Memo O & O II) in the above-captioned DTV proceedings. The Foundation urges the Commission to remedy the disparity and inequity in its treatment of NTSC applications for new and for modified facilities pending as of April 3, 1997. In support thereof, the following is shown:

1. The Foundation, which is the licensee of public television Station WTVS, Detroit, Michigan, has filed pleadings in these proceedings. The Foundation's Station WTVS operates on Channel 56 and has been allotted DTV facilities on Channel 43 at 50 kW. On February 5, 1996, well before the adoption of the initial DTV Table, Station WTVS filed a minor application to increase the power of Station WTVS to 5000 kW (FCC File No. BPET-960205KF). That application remains pending at the Commission. However, the parameters proposed in that modification application were not considered by the Commission when pairing DTV Channel 43 with NTSC Channel 56.

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2. In its Memo O & O II, par. 136, the Commission refused requests that it should process all pending NTSC modification applications and grant them with full DTV replication of the requested NTSC facilities. In response to specific requests for relief regarding pending modification applications, the Commission observed that

service replication of DTV allotments is based on the facilities licensed as of April 3, 1997, the date of adoption of the Sixth Report and Order. Requests for modification of NTSC facilities that were pending on that date are not taken into account in the DTV allotment process for the purposes of service replication.

3. In contrast, in Memo O & O I, pars. 10-13, the Commission determined that applications for new NTSC facilities which were pending as of April 3, 1997 would be granted, with permittees afforded the additional benefit of choosing whether to construct as a digital station or as an analog station with conversion to DTV on that channel. The Commission explained that initial eligibility was limited to existing licensees and permittees as of April 3, 1997. No decision had been made as to assignment of DTV channels to applicants with pending NTSC applications. In support of its decision to permit participation by these NTSC applicants in the conversion to DTV, the Commission stated that these "parties did nothing to delay the processing of their applications and make themselves ineligible for initial DTV licenses." Under such circumstances, "it would be equitable to accommodate their desire . . ." (Id. at par. 12). The Commission noted also that "NTSC is a technology of the past that will cease to exist." In the Commission's words,

authorizing new analog stations that cannot evolve to digital operation would have significant public interest costs. It could limit the ability of the analog broadcaster to serve its viewers as well as it otherwise might; it could put the licensee at a competitive disadvantage vis-a-vis its emerging digital competitors.....

Furthermore, "allowing the transition to DTV would allow broadcasters to better serve their viewers on a local scale, and it could help facilitate the overall conversion from analog to digital broadcasting across the country." (Id., at par. 13) .

4. The Foundation submits that the treatment accorded by the Commission to NTSC applications for modification of facilities pending as of April 3, 1997 and NTSC applications for new facilities pending as of April 3, 1997 is disparate and unfair. The NTSC applications pending as of April 3, 1997, whether for new facilities or for modification of facilities, should be treated similarly, in order to achieve an even-handed and objective basis for Commission processing of these two groups of applications.

5. For instance, like the NTSC applicants for new facilities, the NTSC applicants for modification of facilities "themselves did nothing to delay the processing of their applications" and thus make themselves ineligible to establish a modified authorization for service replication. The Foundation's minor modification application was filed on February 5, 1996, fourteen months in advance of the April 3, 1997 date the Commission utilized for its engineering database for the DTV Table. The Foundation's modification application was in full technical compliance with the Commission's rules. Under normal Commission processing, grant of such an application should have occurred by middle to late 1996. Therefore, just like NTSC applications for new facilities, it would be "equitable to accommodate" the desire by applicants such as the Foundation for modification of their NTSC facilities. Memo O & O II, par. 12.

6. Moreover, for the Foundation as for new NTSC applicants, "NTSC is a technology of the past". The Foundation is, like NTSC applicants for new facilities, seeking to "evolve to digital operation". The Foundation does of course have an

interest in the processing and grant of its power increase application for its NTSC Station WTVS for the transitional period. Nonetheless, another substantial aim has been to increase power in order to augment its engineering database for determination of appropriate service replication for its DTV facilities of the future on DTV Channel 43. Any decision by the Commission limiting pending NTSC modification applications to analog service, like any comparable Commission decision limiting pending NTSC applications for new facilities to analog service, would be contrary to the public interest. As the Commission itself has noted, such limitations to analog service would restrain "the ability of the analog broadcaster to serve its viewers as well as it otherwise might." Likewise "it could put the licensee at a competitive disadvantage vis-a-vis its emerging digital competitors". Memo O & O II, par. 13. The same rationale which serves to justify the Commission's policy determinations regarding the treatment of pending applications for new NTSC facilities filed as of April 3, 1997 also applies in full to the treatment which should be accorded to pending applications for modified NTSC facilities filed as of April 3, 1997. The Foundation urges the Commission, upon reconsideration, to apply to applications for pending NTSC modification applications (including the Foundation's pending application) the same rationale and policy determination reached with respect to applications for pending NTSC applications for new facilities.

7. In particular, the Foundation is extremely concerned about the limitations upon its service to the public as it enters the digital age. Its DTV Channel 43 allotment already contains serious deficiencies, in view of the fact that it fails to replicate the existing service area of Station WTVS. Rather, operations on DTV Channel 43 would

serve only 91.1% of the current service afforded by Station WTVS — one of the most dramatic illustrations of non-compliance with replication principles by a public broadcast station in the entire country. Commission consideration of the Foundation's pending modification application in the context of this major service replication deficiency should effectively resolve this problem and will allow Station WTVS to provide an effective and competitive signal to its viewers and supporters in the Detroit metropolitan area.

Respectfully submitted,

DETROIT EDUCATIONAL TELEVISION
FOUNDATION

By: 
Robert A. Woods

SCHWARTZ, WOODS & MILLER
1350 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036-1717

202/833-1700

Its Attorneys

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