

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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 ) MM Docket No. 87-268  
Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION**

Milwaukee Area Technical College District Board (MATC) 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. MATC 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. MATC, which is the licensee of public television Stations WMVS and WMVT, Milwaukee, Wisconsin, filed reconsideration pleadings in these proceedings. MATC's Station WMVS operates on NTSC Channel 10 and has been allotted DTV Channel 8 at 9.9 kW. Its Station WMVT operates on NTSC Channel 36, and has been allotted DTV Channel 35 at 59.6 kW. On June 10, 1994, well before the adoption of the initial DTV Table, MATC filed an application for modification of the facilities of Station WMVT to include relocation to a new tower owned by MATC, with 343 meter HAAT and a directional ERP of 4,770 kW (File No. BPET940610KE). That application remains

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pending at the Commission. However, the parameters proposed in that modification application were not considered by the Commission when pairing DTV Channel 35 with NTSC Channel 36.

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 requests for specific request for relief regarding such 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. MATC 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. MATC's modification application for Station WMVT was filed June 10, 1994, nearly three years in advance of the date the Commission utilized for its engineering database for the DTV Table. Its modification application was in full technical compliance with the Commission's rules. Under normal Commission processing, grant of such an application should have occurred in 1994 or 1995. Therefore, just like NTSC applications for new facilities, it would be "equitable to accommodate" the desire by applicants such as MATC for modification of their NTSC facilities. Memo O & O II, par. 12.

6. Moreover, for MATC as for new NTSC applicants, "NTSC is a technology of the past". MATC is, like NTSC applicants for new facilities, seeking to "evolve to digital operation". MATC is of course extremely interested in securing a grant of its NTSC application for relocation and a power increase. Early and favorable action upon that application would substantially improve MATC's NTSC operations on Station WMVT. In this connection, it should be noted that MATC has a pending Public Telecommunications Facilities Program (PTFP) application regarding these modifications, filed during the current round which had a closing date of February 12, 1998. Commission processing of Station WMTV's NTSC application should coordinate those processing steps with PTFP. However, another significant aim of this pending application for Station WMVT 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 35. 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 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. MATC urges the Commission, upon reconsideration,

to apply to applications for pending NTSC modification applications (including MATC's application) the same rationale and policy determination reached with respect to applications for pending NTSC applications for new facilities.

Respectfully submitted,

MILWAUKEE AREA TECHNICAL COLLEGE  
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April 20, 1998