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

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FEDERAL COMMUNICATIONS COMMISSION
DEPT. OF TELECOMMUNICATIONS

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

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Independence Television Company ("Independence"), licensee of television station WDRB-TV, NTSC Channel 41 and DTV Channel 49, Louisville, Kentucky, by its attorneys and pursuant to 47 C.F.R. § 1.429(f), hereby opposes the Petition for Reconsideration ("Petition") of the *Memorandum Opinion and Order of the Sixth Report and Order* in MM Docket No. 87-268, FCC 98-24 (released Feb. 23, 1998) ("*DTV Allotment MO&O*"), filed April 20, 1998 by Fant Broadcast Development, L.L.C. ("Fant"). Fant proposes a change to the DTV Table of Allotments with respect to WDRB-DT. Independence wholly supports the Commission's movement toward full implementation of digital television ("DTV") and has developed its business and construction plans that should help facilitate the rapid roll-out of DTV. Accordingly, Independence urges the Commission to dismiss Fant's late-stage request to hinder the transition to digital television.

Fant asks that WDRB-DT be reassigned to Channel 50 and thus permit Channel 49 to be vacant for its own purposes. Even viewed in the most favorable light possible, Fant's request falls fatally short of the threshold adopted by the Commission for its consideration of modifications to the DTV Table. The Commission has stated quite clearly that:

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[W]e will make changes to the DTV Table where such changes have the agreement of all affected broadcasters.... On the other hand, we are generally denying requests by parties to change the DTV allotments of stations licensed to other parties where such parties have not agreed to the proposed change.^{1/}

Independence does not agree to the proposed reassignment of WDRB-DT to Channel 50.

Accordingly, the Commission must deny Fant's requested reassignment of WDRB-DT.

That, of course, presumes Fant's proposal can be viewed in a favorable light. While Independence cannot imagine the circumstances under which its lack of agreement would be insufficient for the Commission to deny the request, it is compelled to note the wholly inadequate basis for Fant's request. Fant wants WDRB-DT cleared off Channel 49 in Louisville, Kentucky in anticipation of somehow gaining approval of its already dismissed Fant's petition for a new allotment on Channel 49 in New Albany, Indiana. The Commission dismissed Fant's petition because the proposed allotment failed to satisfy threshold spacing requirements.^{2/}

Fant is sowing dead seeds on fields of stone. Even if WDRB-DT were reassigned to another channel, the Commission would not circumvent its rules by entertaining a petition for a short-spaced allotment during the spectrum crunch caused by the DTV transition.^{3/} Fant's

^{1/} *DTV Allotment MO&O*, ¶187.

^{2/} See Letter from John A. Karousos, Chief, Allocations Branch, to Vincent Curtis, Counsel, Fant Broadcast Development (Nov. 4, 1996).

^{3/} Fant submitted a petition for reconsideration of the dismissal on December 4, 1996, arguing that the proposed transmitter site's coordinates should be used for determining spacing rather than the center city reference coordinates. Fant would thereby reduce two of the short-spacings to within a range the Commission had approved in the past. Fant, however, was silent as to the resulting magnitude of a third short-spacing to, coincidentally, WDRB. See *Amendment of 73.606(b), TV Table of Allotments, to allot Channel 49 to New Albany, IN*, Petition for Reconsideration of Fant Broadcast Development (Dec. 4, 1996).

basing its essentially contingent request of reassigning WDRB-DT on a dismissed and hopeless allotment petition is so tenuous, Independence questions whether Fant even has standing. The Commission surely cannot be forced to preserve spectrum slots *ad infinitum* for dismissed petitions which cannot meet the barest of requirements. To do so would bring the implementation of digital television to a standstill and subordinate the public interest to speculative and illegitimate requests.

Fant also goes to some length attempting to assert that the Commission was inconsistent in its treatment of Fant's petition for the New Albany allotment by failing to protect it in the DTV Table of Allotments. This cannot be supported. The Commission said it would protect those NTSC applications filed before September 20, 1996 which were *pending*. Fant's petition for a new allotment in New Albany, Indiana was dismissed — not pending. Nowhere did the Commission state that it would protect pending reconsideration requests. The Commission treated Fant in the same manner as it did other parties that requested reconsideration of dismissed petitions.

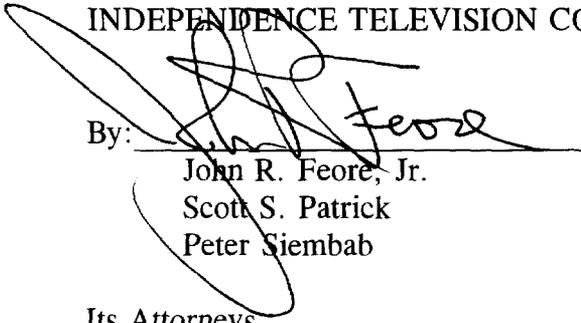
Independence does not oppose efforts by parties to create new allotments and increase broadcast service available to communities, and it agrees with the public interest benefits broadcast services bring and that were promoted in Fant's petition.^{4/} These public interest benefits, of course, are the reasons why the Commission dismissed Fant's petition for a new allotment in the first place — the prevention of loss of service and benefits to viewers of authorized stations which would be short-spaced had the petition been granted. Independence does not agree with the notion that WDRB-DT should be reassigned to another channel so

^{4/} Fant Petition at 5-9.

that its viewers can have their service eliminated.^{5/} Independence has developed DTV plans to bring *additional* service to viewers, and those plans are based upon its current DTV allotment. At this late stage, Fant must have Independence's agreement if it wishes to reassign WDRB-DT's allotment. This it does not have. For this reason — and the others expressed in the foregoing — Independence opposes the request to reassign WDRB-DT to another channel.

Respectfully submitted,

INDEPENDENCE TELEVISION COMPANY

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^{5/} It should be noted that WDRB-TV is one of the three allotments which are short spaced to the site reflected in the dismissed allotment petition. Fant is thus seeking the disruption of both WDRB's NTSC and DTV service. It would be difficult for Fant to generate a more onerous request with respect to WDRB than the one it seeks here on reconsideration.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Opposition to Petition for Reconsideration" was sent by first-class mail, postage prepaid, this 26th day of May, 1998, to the following:

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