

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

MM Docket No. 87-268

TO: The Commission

**COMMENT ON PETITIONS FOR FURTHER RECONSIDERATION
OF THE MEMORANDUM OPINION AND ORDER ON RECONSIDERATION OF
THE SIXTH REPORT AND ORDER
SUBMITTED BY
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

The Association for Maximum Service Television, Inc. ("MSTV") submits these comments concerning certain petitions seeking further reconsideration of the Commission's Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order ("MO&O on Reconsideration of the Sixth R&O").^{1/} MSTV takes no position on the merits of any of the petitions for further reconsideration. However, we offer these comments to highlight two issues that the Commission should carefully consider.

I. Preservation of LPTV Channels at the Expense of Full-Power Station Coverage

The MO&O on Reconsideration of the Sixth R&O made 66 DTV channel changes in order to reduce the number of low power stations that would be displaced by the

^{1/} Memorandum Opinion and Order, MM Docket No. 87-268, 63 Fed. Reg. 1346 (March 20, 1998).

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introduction of DTV.^{2/} In making these changes, the Commission took pains to reaffirm the primary status of full-power NTSC stations and DTV assignments, the secondary status of low power stations and the preeminent importance of the overall goals of the DTV implementation (namely, full accommodation for NTSC licensees and replication and maximization of NTSC service areas in the DTV environment).^{3/} Consistent with these principles, the Commission asserted that the 66 channel changes "would not affect the operations of full service stations" and that it was possible in all 66 cases to provide "full service stations with an equivalent alternative DTV channel."^{4/} The Commission further indicated that it would consider a full-power replacement channel proposed to preserve or protect a LPTV or translator acceptable only "if [it] would provide the same replication as a station's existing DTV channel and is within 3 channels above or below that channel."^{5/}

Ramar Communications, Inc. ("Ramar"), the licensee of the full-power station KJTV (Lubbock, TX), contends in its petition for further reconsideration that it *was* adversely harmed by one of the channel changes made to benefit LPTV stations.^{6/} Specifically, it

^{2/} MO&O on Reconsideration of the Sixth R&O ¶ 107.

^{3/} See id.

^{4/} Id.

^{5/} Id. ¶ 107 n.75 (emphasis added).

^{6/} See Petition for Reconsideration of Ramar Communications, Inc., MM Docket No. 87-268 (Apr. 20, 1998) at 2. This is precisely the type of petition that the Commission should consider on further reconsideration because it raises issues that could not have been raised earlier in the proceeding since they arose for the first time in the M&O on Reconsideration of the Sixth R&O. It is well established that reconsideration is appropriate where the petitioner failed to raise the matter earlier only if the petitioner shows a material error or omission in the original order, or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters. See 47 C.F.R. § 1.429; WWIZ, Inc., 37 F.C.C. 685, 686 (1964), *aff'd sub. nom.*, Lorain Journal Co. v.

(continued...)

claims that the allotment on reconsideration of DTV Channel 35 to KOBR (Roswell, New Mexico), which had been allotted DTV Channel 38 in the Sixth Report & Order ("Sixth R&O"), resulted in the reduction of Ramar's DTV/NTSC area match from 100% under the DTV Table issued with the Sixth R&O to 94.5% under the DTV Table accompanying the MO&O on Reconsideration of the Sixth R&O. According to Ramar, the KOBR allotment was changed "solely to accommodate an existing" LPTV or translator station.

Although we have not assessed the merits of Ramar's specific contentions, we strongly support the underlying premise of its petition. This premise is that the Commission must allocate DTV channels in accordance with the principles set forth in the DTV proceeding. Throughout the proceeding the Commission has sustained the secondary status of LPTVs and translators and has affirmed that "low power stations must give way to . . . full service DTV stations operated by existing broadcasters under our DTV implementation plan."^{2/} Consistent with its commitment to maintaining the secondary status of LPTVs and translators, the Commission expressly and repeatedly stated that it would not make DTV channel changes to protect low power stations that would harm full-power licensees. MSTV urges the Commission to reexamine the channel changes made to protect low power stations

^{6/}(...continued)

Federal Communications Commission, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

^{2/} MO&O on Reconsideration of the Sixth R&O ¶ 105; see also Sixth Further Notice of Proposed Rulemaking, MM Docket No. 87-268, FCC 96-317, 11 FCC Rcd 10968, ¶¶ 64, 66 (adopted July 25, 1996, released Aug. 14, 1996) (explaining that although the Commission "recognize[d] that the implementation of DTV service and [its] spectrum recovery proposals are likely to have a significant impact on low power stations, [it] believe[d] on balance that the benefits and innovations to be derived from those actions outweigh this impact"). The Commission's decision to maintain the secondary status of LPTVs has withstood judicial challenge. See *Polar Broadcasting, Inc. v. FCC*, No. 92-1597 (D.C. Cir. March 24, 1994).

to ensure that no full-power licensee -- not Ramar and not any other -- suffered a reduction in DTV coverage or an increase in interference to the NTSC service.

II. NTSC Database Error Corrections

The DTV Table issued with the MO&O on Reconsideration of the Sixth R&O was based on the FCC NTSC database as of April 3, 1997. MSTV and other broadcasters alerted the Commission to the fact that there were errors in this database that should be corrected before issuance of the final DTV Table.^{8/} We urged "the Commission promptly to address remaining errors and discrepancies; otherwise, these problems will result in unnecessary requests for DTV channel changes after the reconsideration period."^{9/} Individual licensees suggested specific corrections to the FCC NTSC database, as well.

Maranatha Broadcasting Company, Inc. ("MBC"), in its petition for further reconsideration, states that it was one of these individual licensees.^{10/} It complains that the FCC NTSC database contained erroneous information about the antenna orientation for its station WFMZ-TV (Allentown, PA). MBC insists that it repeatedly brought the database errors to the attention of the Commission. It further contends that, as a result of reliance on

^{8/} See Petition for Clarification and Partial Reconsideration of The Fifth And Sixth Reports And Orders Submitted By The Association For Maximum Service Television, Inc., The Broadcasters Caucus And Other Broadcasters (June 13, 1997) at 16 ("Joint Broadcaster Petition for Reconsideration"); Joint Broadcaster Comments to the Sixth Further Notice of Proposed Rulemaking (Nov. 22, 1996) at 46-47 and Appendix C thereto.

^{9/} Joint Broadcaster Petition for Reconsideration at 16.

^{10/} Further Petition for Reconsideration of Maranatha Broadcasting Company, Inc., MM Docket No. 87-268 (April 20, 1998) at 4 ("MBC Further Petition"). MBC states that it raised this claim in its initial petition for reconsideration. Id. at 3. The MO&O on Reconsideration of the Sixth R&O did not address this specific contention, although the Commission did state that no DTV allotment change was possible without causing harm to other stations. See MO&O on Reconsideration of the Sixth R&O at ¶¶ 562-63. This is the type of petition for further reconsideration that the Commission should consider because it raises an issue of plain mistake. See supra n.6.

this erroneous information, the Commission provided WFMZ-TV and WWAC-TV (Atlantic City, NJ) with DTV allotments (Channel 46 for both stations) that create "one of the worst [co-channel] short-spacings in the new DTV table."^{11/} MBC states that as a result of the short-spacing, WWAC-TV's DTV interference contour will overlap WFMZ-TV's DTV service contour and WFMZ-TV and WWAC-TV will be sharply restricted in their ability to improve their DTV facilities in the future.^{12/}

While MSTV takes no position on whether the Commission should make the specific allotment changes requested by MBC, we agree with MBC that it "was entitled to have the FCC determine its channel allotment on the basis of data which was accurate."^{13/} Perhaps more importantly, we think it critical to the integrity of the DTV Table that DTV channel allotments be made on the basis of accurate database information.^{14/} Therefore, if in fact the Commission's database contained erroneous information concerning the antenna orientation for WFMZ-TV, that information should be corrected and the affected allotments reevaluated in light of the correct information.

^{11/} MBC Further Petition at 3.

^{12/} Id. at 6.

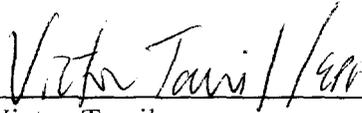
^{13/} Id. at 7.

^{14/} It is also important that this up-to-date database information be made available to licensees as quickly as possible so that DTV applications (particularly those that must assess interference to numerous neighboring licensees) contain accurate engineering data. MSTV has long advocated the use of private DTV coordinating committees to assist both the Commission and licensees in keeping the database accurate and easily accessible.

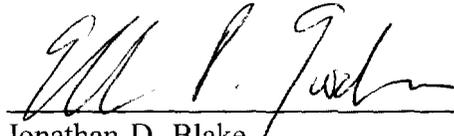
For the reasons stated above, the Commission should give careful consideration to the issues raised in the further petitions for reconsideration filed by Ramar Communications, Inc. and Maranatha Broadcasting Company, Inc.

Respectfully submitted,

ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.



Victor Tawil
Senior Vice President
Association for Maximum
Service Television, Inc.
1776 Massachusetts Avenue, NW
Suite 310
Washington, DC 20036
Phone: (202) 861-0344
Fax: (202) 861-0342



Jonathan D. Blake
Ellen P. Goodman
Mary Newcomer Williams*
Covington & Burling
1201 Pennsylvania Avenue, NW
Post Office Box 7566
Washington, DC 20044-7566
Phone: (202) 662-6000
Fax: (202) 662-6291

Its Attorneys

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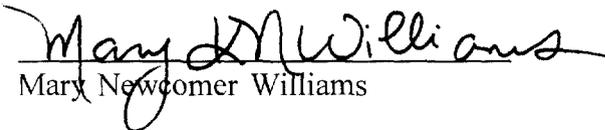
*Member of the Bar of Pennsylvania
Not Admitted to the Bar of the District of Columbia

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comment on Petitions for Further Reconsideration of the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order Submitted by the Association for Maximum Service Television, Inc. has been served by first class mail, postage prepaid, this 26th day of May, 1998 on:

Dennis P. Corbett
Ross Greenberg
Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, DC 20006-1809
Counsel for Ramar Communications, Inc.

J. Geoffrey Bentley, P.C.
Bentley Law Office
P.O. Box 807
Herndon, VA 20172-0807
*Counsel for Maranatha Broadcasting
Company, Inc.*


Mary Newcomer Williams