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EX PARTE OR LATE FILED

September 22, 1998

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

SEP 22 1998
ORIGINAL

Re: Ex Parte Communications in MM Docket No. 87-268

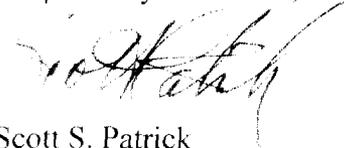
Dear Ms. Salas:

Pursuant to Section 1.1206(a) of the Commission's Rules, notice is hereby given of an *ex parte* communication regarding the above-referenced proceeding. Two copies of this transmittal letter and the attached written presentation are being filed with the Secretary's office.

On September 22, 1998, Werner K. Hartenberger and Scott S. Patrick, on behalf of Cosmos Broadcasting Corporation ("Cosmos"), met with Jane E. Mago, Legal Advisor to Commissioner Powell.

The substance of the presentation concerned WFIE-TV and the issues addressed in the Petitions and Replies filed on behalf of Cosmos in the above-mentioned proceeding and are part of the record. A presentation item is attached.

Respectfully submitted,



Scott S. Patrick
Counsel to Cosmos Broadcasting Corporation

Enclosure

cc (w/): Jane E. Mago, Esq.

No. of Copies rec'd 032
List A B C D E

Cosmos Broadcasting Corporation — WFIE, Evansville, Indiana
Petition for Reconsideration of Its DTV Allotment, filed April 20, 1998
Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service
MM Docket 87-268

Cosmos Broadcasting Corporation ("Cosmos"), licensee of television station WFIE, Evansville, Indiana, received Channel 58 as its DTV allotment. Cosmos identified a vacant allotment, Channel 46, as a preferred substitute and submitted a petition for reconsideration that sought a reallocation. Because channels with lower numbers generally have lower fixed operating costs, Cosmos pursued lower numbered channels for certain of its licensed stations where it identified a viable vacancy. Cosmos acknowledged that the proposed reallocation for WFIE would result in new interference to three stations but that the levels of new interference would be virtually negligible (0.01%, 0.01%, and 0.2% for each station, respectively — significantly less than the interference levels that existed for many other initial allotment assignments). In February 1998, the Commission denied Cosmos' petition on the grounds that the proposed reallocation would "impact and cause interference to other stations." The Commission stated that it generally denied requests by parties to change the DTV allotments of stations where affected parties did not agree to the change.

In April 1998, Cosmos submitted a second petition for reconsideration again asking for a reallocation to Channel 46. The petition reiterated that the proposed reallocation would result in negligible interference. Because the licensee of one of the affected stations is a government-affiliated, non-commercial, public television station with elaborate review procedures, Cosmos faced considerable delay in obtaining formal agreement from all affected stations, and, accordingly, Cosmos halted attempts to obtain an explicit agreement from every station. The three stations, however, were aware of and did not oppose Cosmos' second petition for reallocation of WFIE's DTV channel. Cosmos supported its petition by noting that the reallocation would help clear the non-core spectrum and reduce the effect of adjacent channel problems.

Cosmos is concerned that the Commission may deny the WFIE petition for reconsideration due to the Commission's possible preference that such channel changes be sought through a petition for rule making. Cosmos is seeking reconsideration of an *initial* allotment. The Commission has the authority and discretion to address the merits of WFIE's requested reallocation at this time and avoid the inevitable delay associated with a petition for rule making. The Commission is surely well aware of the tight DTV construction schedule faced by broadcasters. Waiting to address the reallocation request through a petition for rulemaking would deny the public a service Cosmos is eager to provide.

Because of the negligible impact of the proposal, the absence of any opposition by affected stations, the utilization of core spectrum, and the facilitation of the DTV roll-out, the Commission should grant Cosmos' petition for reconsideration to reallocate WFIE-DT to Channel 46.