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

In the Matter of	)	
	)	
Establishment of a Class A Television Service	)	MM Docket No. 00-10
	)	MM Docket No. 99-292
	)	RM-9260
	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Sonshine Family Television, Inc. ("SFTI"), licensee of full service television broadcast station WBPH, Channel 60, and permittee of DTV station WBPH-DT, Channel 59, both Bethlehem, Pennsylvania, hereby replies to Oppositions to its Petition for Reconsideration of the FCC's *Report and Order* in the above-captioned proceeding, FCC 00-115, released April 4, 2000, and published in the *Federal Register* in summary form May 10, 2000, 65 *Fed. Reg.* 29985 (the "*R&O*"). SFTI's counsel with served with copies of papers styled as "Oppositions to Petition for Reconsideration" by two parties, the Community Broadcasters Association ("CBA") and KM Communications, Inc., et al. ("KM"). The CBA petition makes no specific mention of SFTI's petition and, in fact, states (*CBA Opposition*, p. 1, n.1) that "[t]he points discussed in this Opposition were made primarily by" other petitioners for reconsideration of the *R&O*. This Reply, therefore, is addressed only to the KM Opposition.

As noted in its Petition for Reconsideration, SFTI is in the rare position of having been assigned NTSC and DTV channels that are both outside the so-called "core spectrum" and, therefore,

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will not be in a position to identify a permanent channel for DTV operation until the completion of the transition, currently scheduled for 2006. The *R&O*, as a condition of SFTI's right to "maximize" facilities on its future permanent DTV channel, required WBPH-DT to file a "maximization" application on or before May 1, 2000. However, as described in SFTI's Petition, the filing of such an application for WBPH-DT was problematic, because of the unique characteristics of its authorized antenna system and other constraints presented by substandard spacings between WBPH-DT and a number of other stations. (*SFTI Petition*, p. 6, n.2.) Equally important, SFTI also showed that applying for and constructing maximized DTV facilities on Channel 59 would be of no value in predicting the preclusive effect on possible Class A LPTV stations (if any) of maximized operations on a to-be-determined channel in the core spectrum and amounted to a requirement that SFTI, already obliged to bear the expense of building a "throw away" DTV station on Channel 59, build bigger and more expensive "throw away" facilities as a condition of its right to maximize in the post-transition environment.

KM's response (*KM Opposition*, pp. 5-6) is, essentially, "tough luck." It speculates that SFTI "should be able to find a permanent DTV channel from among [the channels surrendered at the end of the transition by other full-power stations] . . . . that will permit it to maximize its DTV facilities." That outcome, however, is far from assured. Although WBPH and WBPH-DT are assigned to the Philadelphia market, their authorized transmitter location is not near the transmitter locations of most of the Philadelphia market stations and there is no assurance that any of the channels surrendered by any of the other stations in the market will be utilizable at SFTI's current transmitter site, let alone permit maximization of facilities. In fact, the availability of DTV channels for WBPH-DT and the potential for maximization of facilities will be affected not only by the channel selections made by the

Philadelphia market stations but also by stations in a number of adjoining markets. As pointed out in SFTI's Petition (pp. 5-6), "[e]very other full-service television station in the United States, except for WBPH and sixteen other full-service stations [with both NTSC and DTV channel allotments outside the core spectrum], is guaranteed the right at the end of the transition period to operate on a specific channel." SFTI, and other licensees similarly situated, should be entitled to the same guarantee, without the necessity of applying for and building more expensive throw-away DTV stations.

The conclusion reached by the *R&O* is not compelled by the language of the Community Broadcasters Protection Act. As SFTI showed (*Petition*, p. 4), the language of the statute is ambiguous. KM acknowledges the inconsistency between different provisions of the CBPA but also accuses SFTI of a "distorted reading" of the statute (*KM Opposition*, p. 5). SFTI is not proposing any specific reading of the statute, distorted or otherwise. It has argued only that the internal inconsistencies in the statute afford the FCC the opportunity to find a solution that better serves the public interest than the one adopted in the *R&O*.

The public benefit of the result reached in the *R&O*, on this particular issue, is negligible. The presumed benefit to LPTV stations is ephemeral. Enforced construction of maximized facilities on out-of-core channels will not enable the FCC or LPTV licensees to make any prediction of the future effect of in-core maximization by WBPH-DT and other similarly situated full-power stations on LPTV stations. It has no more value than a simple notification requirement, as provided in Section 336(f)(7) of the Act. On the other hand, the substantial additional burdens on full-power, full-service stations that have already been twice-burdened by the FCC's DTV transition plan are very real and

very costly.[1] Moreover, and very inequitably, *R&O*'s so-called balancing of real burdens against ephemeral interests has been struck in favor of LPTV stations which, unlike full-power stations, are under no obligation of any kind to construct interim DTV facilities.

For the foregoing reasons, the *R&O*'s requirement that WBPH-DT and other similarly situated stations file "maximization" applications on or before May 1, 2000, as a condition of a guaranteed right to maximize facilities on a future in-core permanent DTV channel is arbitrary and capricious and SFTI's Petition for Reconsideration should be granted.

Respectfully submitted,

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[1] As noted in SFTI's Petition, p. 7, n. 3, the maximized out-of-core DTV facilities required by the *R&O* may well have an adverse effect on LPTV stations on out-of-core channels.

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing Reply to Opposition to Petitions for Reconsideration to be served this 19th day of July 2000 by first-class United States mail, postage prepaid, on:

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