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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 00-138
Table of Allotments,)	RM-9896
Digital Television Broadcast Stations.)	
(Boca Raton, Florida))	

Directed to: Chief, Video Services Division

SUPPLEMENTAL COMMENTS

Comes now, Guenter Marksteiner ("Marksteiner"), by his attorneys, and respectfully submits these Supplemental Comments in connection with the above-captioned proceeding. In support thereof, the following is stated:

1. Previously, Sherjan Broadcasting Co., Inc., the licensee of Class A station WJAN-CA, Miami, Florida, filed comments in this proceeding opposing the proposal to change the DTV allotment for WPPB-TV from DTV Channel *44 to DTV Channel *40. The basis of Sherjan's objection was that the technical showing supporting this channel change was flawed since it relied upon the procedures established in OET Bulletin 69. To that end, Sherjan questioned the suitability of its OET Bulletin 69 procedures to demonstrate protection to Class A and LPTV stations, suggesting that this analysis underestimates interference.¹

2. Although Sherjan has not withdrawn this claim, it has recently filed an application to

¹ Both Marksteiner and the School Board of Broward County (the current license of WPPB-TV) responded to this unwarranted claim.

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increase the power of WJAN-CA from 150 kw to 500 kw (File No. BPTTA-20010116-AGG).²

To support the waiver necessary for FCC approval, Sherjan submitted an engineering study relying upon the OET Bulletin 69 techniques to show compliance vis a vis LPTV station W46CI.

3. It appears that Sherjan has changed its views regarding the use of OET Bulletin 69. The Commission should strike Sherjan's previous objections and complete the processing of the subject rulemaking.

WHEREFORE, the premises considered, Marksteiner requests that Sherjan Broadcasting Co., Inc.'s Opposition be rejected and that the substitution of DTV Channel *40 for DTV Channel *44 be adopted as set forth in the *Notice of Proposed Rule Making*, DA 00-1797, released August 18, 2000, in the instant proceeding.

Respectfully submitted,

GUENTER MARKSTEINER

By:



Frank R. Jazzo
Vincent J. Curtis, Jr.
Anne Goodwin Crump

His Attorneys

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Arlington, Virginia 22209
(703) 812-0400

April 13, 2001

² Attached hereto are Comments filed by Marksteiner directed to the WJAN-CA modification application.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Application of)	
)	
SHERJAN BROADCASTING CO., INC.)	File No. BPTTA-20010116 AGG
Station WJAN-CA)	
(Miami, Florida))	
For a Construction Permit To Change Power)	

Directed to: Chief, Video Services Division

COMMENTS

Comes now Guenter Marksteiner (“Marksteiner”), by his attorneys, and respectfully submits his Comments directed to the above-captioned application. In support, the following is stated:

1. Sherjan Broadcasting Co., Inc. (Sherjan) seeks by application and waiver authority to modify its current Class A authorization to increase power beyond that authorized in the rules. To make the showing that this proposal will not cause interference to LPTV station W46CI, Sherjan has utilized OET Bulletin 69. As reflected in the attached engineering statement, this proposal, if based upon OET Bulletin 69, would not show interference outside of the Commission’s limits.

2. The importance of Sherjan’s position is that it runs totally contrary to its arguments opposing the rulemaking proposal to substitute DTV Channel *40 for DTV Channel *44 by Station WPPB-TV, Boca Raton, Florida (MM Docket No. 00-138, RM-9896). There, Sherjan claimed that the procedure set forth in OET Bulletin 69 could not be used to show protection to

Class A or LPTV stations. Notwithstanding its earlier position against the Boca Raton rulemaking, Sherjan now rests its request for waiver to increase power from 150 kw to 500 kw on OET Bulletin 69.

3. It is submitted that the Commission demands complete integrity from its licensees in dealing with it. Here, Sherjan has relied upon the procedure set forth in OET Bulletin 69 to show that acceptable interference would occur with LPTV Station W46CI. Yet, Sherjan opposed the Channel *44/*40 rulemaking arguing that the same OET Bulletin 69 procedure should not be used due to higher protected signal levels provided to Class A and LPTV stations. This objection has not been withdrawn. Sherjan must reconcile its apparently contradictory positions. It is evident, at the least, before the Commission continues the processing of the instant application, it must require Sherjan to withdraw its objection in the Channel *44/*40 rulemaking.

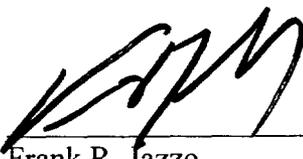
WHEREFORE, based upon the foregoing, Marksteiner respectfully requests that the Commission take action as requested above.

Respectfully submitted,

GUENTER MARKSTEINER

April 13, 2001

By:



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ENGINEERING STATEMENT

prepared for

Guenter Marksteiner

This engineering statement has been prepared on behalf of *Guenter Marksteiner* ("*Marksteiner*"), regarding the pending application filed by *Sherjan Broadcasting Company* ("*Sherjan*"), licensee of WJAN-CA, Channel 41, Miami, Florida. *Sherjan* has tendered an application (file number BPTTA-20010116AGG) to modify the WJAN-CA facility.

Use of OET Bulletin 69 to Demonstrate Lack of Interference

By way of background, *Marksteiner* has supplied reply comments and supplemental reply comments regarding a Notice of Proposed Rulemaking, Mass Media Docket 00-138,¹ in response to comments in that proceeding filed by *Sherjan*. That docket proposes to change the paired digital television (DTV) assignment for WPPB-TV (NTSC Channel 63, Boca Raton, Florida) from DTV Channel 44 to DTV Channel 40. *Marksteiner's* comments for the WPPB-DT channel change were supported with the results of an OET Bulletin 69² study, which showed that any interference caused by WPPB-DT Channel 40 to WJAN-CA would not exceed the level of interference specified by Commission policy.

In its Supplemental Reply Comments in MM Docket 00-138, *Sherjan* criticized the use of OET Bulletin 69 to show protection to WJAN-CA. *Sherjan* claimed that, due to higher protected signal levels provided to Class A and LPTV stations and since highly directional receive antennas are less commonly used for reception of a Class A or LPTV station, OET Bulletin 69 techniques may underestimate the extent of any interference.

Sherjan's pending application to modify WJAN-CA requests a substantial increase in effective radiated power (ERP) and use of a different directional antenna pattern. WJAN-CA is licensed with 101 kW ERP, and its proposal specifies 500 kW ERP. *Sherjan* requests a waiver of

¹See *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida)*, MM Docket No. 00-138, RM 9896, released August 18, 2000.

²"OET Bulletin 69," as referenced herein, refers to the Commission's Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, July 2, 1997.

ENGINEERING STATEMENT

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§73.6007 of the Commission's Rules, which limits the maximum ERP for a UHF Class A television station to 150 kW.

The proposed WJAN-CA facility would increase the area predicted to receive interference to stations WBZL(TV) (NTSC Ch. 39, Miami, FL), WXEL-TV (NTSC Ch. 42, West Palm Beach, CA), and W46CI (APP, Ch. 41, Fort Pierce, FL), using the standard protection methodology as specified in §73.6011 and §73.6012. *Sherjan's* application supplies the results of an OET Bulletin 69 interference analysis with respect to these stations (which claims that any interference caused will meet Commission limits) and requests a waiver of the Commission's Rules on that basis.

One of the stations for which *Sherjan* requests a waiver on the basis of OET Bulletin 69 is W46CI, a Low Power Television (LPTV) station. The protected contour level and other general allocation requirements when a LPTV station must be protected are the same as those for a Class A station. *Sherjan's* supplemental reply comments in MM Docket 00-138 question the suitability of the use of OET Bulletin 69 techniques to show the protection of Class A / LPTV stations, and suggests that such techniques will underestimate interference. Now, *Sherjan's* application to modify WJAN-CA is supported the same type of OET Bulletin 69 exhibit that were of concern in *Sherjan's* supplemental reply comments.

Since *Sherjan's* application to modify WJAN-CA relies on the use of OET Bulletin 69 techniques to demonstrate protection to other facilities, then *Sherjan* must now have been convinced that such techniques are appropriate. Accordingly, the proposed WPPB-DT Channel 40 allotment as specified in MM Docket 00-138, which has been shown to meet the Commission's interference requirements to the licensed WJAN-CA facility under OET Bulletin 69, should no longer be a concern to *Sherjan*.

ENGINEERING STATEMENT

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Impact to WJAN-CA Proposal by WPPB-DT Rulemaking

The proposed WJAN-CA 500 kW facility was evaluated with respect to interference that may be caused by the WPPB-DT proposed Channel 40 allotment. An OET Bulletin 69³ study showed that WPPB-DT Channel 40 would cause unique interference (i.e., interference not “masked” by existing interference from other stations) to the proposed WJAN-CA involving 9,375 persons, which is 0.44 percent of the 2,143,934 persons within the proposed WJAN-CA 74 dB μ service contour. WPPB-DT’s contribution of 0.44 percent of unique interference does not exceed the Commission’s 0.5 percent rounding tolerance for DTV proposals to Class A television stations. Thus, the WPPB-DT Channel 40 channel change would not create interference to the proposed WJAN-CA facility in excess of the Commission’s limits.

As mentioned previously, the WJAN-CA proposal requests a waiver of §73.6007 of the Commission’s Rules, in that the proposed 500 kW ERP exceeds the 150 kW maximum ERP for a UHF Class A television station. Should the proposed WJAN-CA ERP be reduced to 150 kW to comply with §73.6007, an OET Bulletin 69 analysis shows that the WPPB-DT Channel 40 facility would not cause any interference to WJAN-CA, even when “masking” of interference from other stations is not considered.

Thus, use of OET Bulletin 69 shows that any predicted interference to the proposed WJAN-CA is within the Commission’s tolerance for DTV to Class A television station interference.

Certification

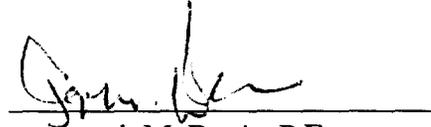
The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of *Cavell, Mertz & Davis, Inc.*, is a Registered Professional Engineer in

³The implementation of OET-69 for this study followed the guidelines of OET-69 as specified therein, except that a nominal cell size of 1 km was used. The Longley-Rice computer program input data, following the guidelines established under OET-69, includes a location variability of 50%, a time availability of 10%, a situation variability of 50%, horizontal polarization, 0.005 S/m conductivity, a climate constant of 15, an assumption of a continental temperate climate zone, and a receive antenna height of 10 meters. The service area for the involved analog Class A facility is that area predicted to receive signal levels of at least 74 dB μ using the Longley-Rice methodology, and within the 74 dB μ F(50,50) service contour distance. Comparisons of various results of this computer program to the Commission’s implementation of OET-69 show good correlation.

ENGINEERING STATEMENT

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Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering Technology, and has submitted numerous engineering exhibits to various local governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that entity.

A handwritten signature in black ink, appearing to read "Joseph M. Davis", is written over a horizontal line.

Joseph M. Davis, P.E.

March 13, 2001

Cavell, Mertz & Davis, Inc.
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Fairfax, VA 22030
(703) 591-0110

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and accurate copy of the foregoing Comments was served by first-class mail, postage pre-paid, this 16th day of April, 2001 to:

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Irwin Campbell & Tannenwald, P.C.
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Washington, DC 20036-3101
Counsel for Sherjan Broadcasting Co., Inc.

A handwritten signature in cursive script, reading "Pamela Sacko", is written over a horizontal line.

CERTIFICATE OF SERVICE

I, Pamela Parks, hereby certify that a true and accurate copy of the foregoing
“Supplemental Comments” was served by first-class mail, postage pre-paid, this 16th day of
April, 2001 to

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