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RECEIVED

JUN 27 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 27, 2001

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 01-54
RM-9918
Nampa, Idaho

Dear Ms. Salas:

Transmitted herewith, on behalf of State Board of Education, State of Idaho, are an original and four copies of its "Opposition to Motion to Strike" in the above-referenced proceeding, which proposes the substitution of DTV Channel 13 for DTV Channel 44 at Nampa, Idaho.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for
State Board of Education, State of Idaho

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUN 27 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Amendment of Section 73.622(b))	MM Docket 01-54
Table of Allotments,)	RM-9918
Digital Television Broadcast Stations.)	
(Nampa, Idaho))	

Directed to: Chief, Video Services Division

OPPOSITION TO MOTION TO STRIKE

State Board of Education, State of Idaho ("State of Idaho"), licensee of noncommercial educational station KIPT(TV), Twin Falls, Idaho, by its attorneys, hereby respectfully submits its Opposition to the "Motion to Strike" filed by Idaho Independent Television, Inc. ("IIT"), in the above-referenced proceeding on June 13, 2001. With respect thereto, the following is stated:

1. In its Motion to Strike, IIT is requesting that the Commission Strike the "Comments in Response to Reply Comments of Idaho Independent Television" filed by State of Idaho on May 31, 2001 ("Comments in Response"). No such action is warranted, however. While State of Idaho's Comments in Response were submitted outside of the normally expected pleading cycle, a response was necessary in order to correct a misstatement of applicable Commission policy set forth in IIT's Reply Comments. IIT's protestations to the contrary in its Motion to Strike do not support its request but rather only demonstrate that it apparently missed the point of State of Idaho's Comments in Response.

2. In its Motion to Strike, IIT points to the fact that State of Idaho cited to the portion of the Commission's Rules (47 C.F.R. §73.623(c)(2)) which, regardless of the two percent *de*

minimis standard, prohibits DTV changes if another station experiences or would experience interference to ten percent or more of its population. IIT then claims that, since this provision is not directly applicable to this case, State of Idaho's Comments in Response should be stricken. Contrary to IIT's apparent impression, however, State of Idaho did not argue that IIT should have provided information with regard to the cited rule provision. Rather, it is the very *existence* of this rule provision which is the key point, and IIT's failure to acknowledge that existence which constitutes its legal error.

3. IIT stated in its Reply Comments that the Commission's two percent *de minimis* interference standard provides a "bright line" test, beyond which the Commission does not look to assess proposed DTV modifications. This statement is inaccurate, however. The cited rule provision demonstrates quite clearly that the Commission does, in fact, look beyond the *de minimis* interference standard to consider other factors, including the overall interference effects on other stations. Thus, contrary to IIT's claims, a bare finding of less than two percent interference is not entirely dispositive. Rather, the Commission's Rules themselves plainly show that the Commission takes other public interest factors into account, including the goal of preserving existing television service.

4. State of Idaho has demonstrated that IIT's proposal would create a loss of television service in an underserved area. While this service loss does not fit squarely within the provisions of the cited rule section, it does raise the same types of concerns about loss of service that led to the adoption of the cited rule section. The very adoption of the rule provision in question reflects the Commission's determination that it will not accept any new interference, even *de minimis* interference, once its overall concerns about loss of existing service cross a certain threshold.

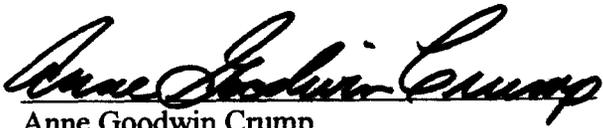
5. Further, the Commission has not yet considered or determined whether the deprivation of over-the-air television in an underserved area would be a factor which would cross that threshold of concern. As set forth in the Engineering Statement submitted with State of Idaho's Comments in this proceeding, IIT's proposed channel change would result in the creation of television "gray area," with a number of persons losing their second primary television service and their only primary noncommercial television service. IIT is once again incorrect in its assertion that the Commission has previously considered and addressed State of Idaho's arguments in this regard. While the Commission has considered a number of other loss of service issues, it has never directly addressed the question of how it should treat a proposal to change a DTV facility which would result in the loss of second television reception service. Obviously, a viewer's loss of the ability to view one of only two television stations is an issue of a different order of magnitude than one involving interference to one of many signals. As State of Idaho has previously demonstrated, the creation of "gray area" is a matter about which the Commission has historically been concerned and which runs contrary to the Communications Act of 1934, as amended. Such "gray area" considerations are especially weighty for a rural area, such as that at issue in this proceeding, where there are few available substitutes for over-the-air broadcast reception. Thus, just as the Commission has acted to prevent an overall loss of service above a certain amount, the Commission also should adopt a policy which would preclude acceptance of a proposal which would create television "gray area" or "white area." This matter has not previously been settled by the Commission but is now before the Commission in this proceeding.

6. In sum, the points raised by State of Idaho in its Comments in Response were far from frivolous and were necessary to correct the record. Specifically, and contrary to IIT's over broad assertions, the Commission does look beyond the *de minimis* interference standard to examine overall interference considerations associated with a DTV proposal in certain circumstances. Moreover, the Commission has never considered or resolved whether the creation of television "gray area" is a factor which should preclude grant of a DTV channel change.

WHEREFORE, the premises considered, State of Idaho respectfully requests that the IIT Motion to Strike be denied.

Respectfully submitted,

STATE BOARD OF EDUCATION,
STATE OF IDAHO

By: 
Anne Goodwin Crump

Its Attorney

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June 27, 2001

CERTIFICATE OF SERVICE

I, Pamela J. Parks, hereby certify that a true and accurate copy of the foregoing
“Opposition To Motion To Strike” was served by first-class mail, postage pre-paid, this 27th day
of June, 2001 to

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