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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MM Docket No. 01-128
Table of Allotments,	)	RM-10133
Digital Television Broadcast Stations.	)	
(Charleston, South Carolina)	)	

To: The Chief, Video Services Division

REPLY COMMENTS OF WCSC, INC.

WCSC, Inc. ("WCSC"), the licensee of television station WCSC-TV, Charleston, South Carolina, by its attorneys and pursuant to the Commission's *Notice of Proposed Rule Making*, DA 01-1465 (June 25, 2001) (the "*NPRM*"), hereby submits its reply comments in the captioned rule making proceeding. As discussed in detail below, the substitution of DTV Channel 47 for Channel 52 at Charleston, South Carolina would serve the public interest, and that substitution should be made expeditiously. With regard to applications for new NTSC stations on Channel 47 at Columbia, South Carolina, the Commission should take an approach advocated by all parties: notify the Columbia applicants that any Columbia Channel 47 authorization will be conditioned on acceptance of interference from WCSC's DTV operation on Channel 47 at Charleston. There is no merit, however, to the contention of two commenters that the Columbia applicants are entitled to protection from the DTV channel substitution at Charleston.

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Background

The *NPRM* was issued in response to a Petition for Rulemaking filed by WCSC on May 1, 2000. As requested by WCSC, the *NPRM* proposes to substitute Channel 47 for Channel 52 at Charleston as the DTV channel for WCSC-TV.

Just prior to the *NPRM*'s issuance, WCSC filed a Petition for Partial Rescission or Clarification of Auction Public Notice, and for Expedited Processing of Rule Making Petition (the "Petition") relative to this proceeding and a 1996 "freeze waiver" application (File No. BPCT-19960722KG) (the "Fant Application") filed by Fant Broadcast Development, L.L.C. ("Fant") for a new NTSC television station on Channel 47 at Columbia, South Carolina. The Petition expressed WCSC's concern that the Fant Application – which had recently been placed on an auction public notice that opened a window for the filing of mutually exclusive applications[1] – might erroneously be delaying the issuance of an NPRM in this proceeding because of interference predicted to occur to the Fant proposal from WCSC's DTV operation on Channel 47 at Charleston. WCSC showed in the Petition that there was no reason to delay issuing its requested NPRM because, under the Commission's rules and policies for the DTV transition, the Fant Application and any other NTSC applications for Channel 47 at Columbia are secondary to WCSC's DTV channel change at Charleston. The Commission released the *NPRM* five days later.

In its Petition, WCSC proposed either of two possible remedies to address Fant and other applicants for NTSC Channel 47 at Columbia. First, WCSC established that, if

[1] *Public Notice*, "Auction Filing Window For New Analog Television Stations, Auction No. 82," DA 01-1300 (May 25, 2001) (the "*Auction 82 Notice*").

a technical conflict precluded grant of both proposals, the conflict must be resolved by deeming the Fant Application unacceptable for filing and removing it from the *Auction 82 Notice*. As an alternative to permit the authorization of a new NTSC television station at Columbia, however, WCSC suggested that the Commission give notice to Fant and other applicants for the Columbia channel that the prevailing applicant will take its construction permit (and subsequent license) subject to acceptance of any interference from WCSC's DTV operation on Channel 47 at Charleston. In a response to WCSC's Petition filed on July 20, 2001, Fant advocated this latter alternative and specifically expressed its willingness to accept such a condition on a grant of its Columbia application. In a reply filed on July 31, 2001, WCSC agreed that, given Fant's willingness to accept such a conditional grant and its support of a public notice advising all other applicants for NTSC Channel 47 at Columbia that any authorization for the channel will be similarly conditioned, the matter may be resolved expeditiously and amicably without the need to reject any applications for the Columbia station.

WCSC filed timely comments in support of the instant *NPRM*. Comments on the *NPRM* also were filed by Fant and by two other applicants in the now-closed filing window for NTSC Channel 47 at Columbia: Grant Video Inc. ("Grant") and Pappas Telecasting Companies ("Pappas"). Fant, Grant and Pappas all indicate support for the notification and conditional grant alternative proposed by WCSC for the Columbia applicants. See Fant Comments at 1; Grant Comments at 10; Pappas Comments at 2-3. Fant and Grant, however, take the additional step of arguing that the Fant Application should be protected from WCSC's DTV channel change proposal. As shown in the Petition and discussed again below, this contention is untenable.

Discussion

Grant is the only commenter to make more than a cursory attempt to substantiate the notion that the Fant Application should be protected against the WCSC proposal. Grant's argument seems based upon two premises: (1) that the Fant Application was "accepted for filing" in the *Auction 82 Notice*; and (2) that WCSC's allotment change proposal does not constitute a "DTV expansion application" and therefore is not subject to the priority system established by the Commission's January 2001 DTV biennial review order.[2]

In the first place, it is far from clear that either of Grant's two premises can withstand scrutiny. The *Auction 82 Notice* nowhere purports to accept the Fant Application for filing. It does not indicate any disposition by the agency of Fant's request for waiver of the DTV freeze. Indeed, as Grant grudgingly concedes, the Commission's CDBS shows the Fant Application only as "tendered for filing." See Grant Comments at 4 n. 5. Grant's reliance on the language of the *Sixth Further Notice* in the DTV proceeding, which predates the Commission's use of auctions to award broadcast licenses from among mutually exclusive applicants, hardly suffices to overcome the total lack of any indication that the Commission has accepted the Fant Application for filing.[3]

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[2] See *Report and Order and Further Notice of Proposed Rule Making*, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 01-24 (January 19, 2001) ("*Biennial Review Order*").

[3] See Grant Comments at 3-4 (citing *Sixth Further Notice of Proposed Rule Making*, *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, MM Docket No. 87-268, 11 FCC Rcd 10968, 10992 (1996) ("*Sixth Further Notice*")). The language from the *Sixth Further Notice* on which Grant so heavily relies

Moreover, it is entirely reasonable for the Commission to treat WCSC's DTV channel change proposal as a "DTV expansion application" for purposes of the priority system established in the *Biennial Review Order*.[4] The Commission's orders in the DTV biennial review proceeding use the term "DTV expansion applications" to denote applications *other than* so-called "checklist" applications, "which *conform to their allotment* and accordingly are subject to streamlined processing that allows them to be granted without analysis of predicted interference."[5] While WCSC's proposal specifies the same reference facilities as its Channel 52 allotment and seeks the same application antenna height as its Channel 52 construction permit, the proposal by definition does not conform to the station's original DTV allotment and, solely by virtue of the proposed

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does no more than reflect the Commission procedures for processing television applications that existed in 1996. Under the old procedures, applicants filed long-form FCC Form 301 applications with complete engineering proposals that first underwent a technical acceptability review and were subjected to petitions to deny and mutually exclusive applications at the point of acceptance for filing. The NTSC applicants for Channel 47 at Columbia, however, are governed by the Commission's new auction procedures. The applicants filing in the recent window were required only to file an FCC Form 175, without the need to provide anything in the way of a technical proposal. Only *after* the auction will the winning bidder file an FCC Form 301 application, which only then will receive a complete processing review and be subject to petitions to deny. Fant itself will be entitled to amend its 1996 long form application, presumably to make wholesale changes to its technical proposal if it so desires, if it is the winning bidder. Given the new procedures that govern the applications for Columbia, it is entirely logical that the Commission has not accepted the Fant Application for filing.

[4] Simultaneously with its May 1, 2000, petition for rulemaking to change its DTV allotment, WCSC filed an FCC Form 301 application for a construction permit to implement WCSC-DT's operation on Channel 47. See File No. BPCDT-20000501ADT.

[5] See, e.g., *Notice of Proposed Rule Making, Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 00-83, ¶¶ 41-42 (March 8, 2000) ("*Biennial Review NPRM*") (emphasis added).

change in channel, requires additional interference analysis beyond that afforded to a "checklist" application. It is therefore properly considered a "DTV expansion application" to which the *Biennial Review Order*'s priority system is applicable.[6]

Grant's arguments are immaterial in the end, however, for Grant loses its case even if it were correct on both prongs of its argument. Grant cites no authority for the proposition that an NTSC freeze-waiver application – whether or not accepted for filing – is protected against subsequent proposals to amend the DTV Table of Allotments (regardless of whether such proposals are technically considered "DTV expansion applications"). Indeed, the contrary is true. As stated by the Commission and quoted by WCSC in its Petition:

> We have determined and reiterated several times that the future of television is DTV. . . . Applications for new NTSC stations in the areas subject to the TV freeze and rule making petitions to add new NTSC channels were not protected or otherwise accommodated in the development of the initial DTV table of allotments *or subsequent amendments to that initial table.*[7]

The policy could not be clearer. NTSC freeze waiver applicants were not taken into account in development of the DTV Table and are unprotected against later changes

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[6] It is undisputed by Grant that the Fant Application is not (and was not on May 1, 2000) within any of the three categories of NTSC applications protected from after-filed DTV expansion applications under the *Biennial Review NPRM*. See Grant Comments at 5-6.

[7] *Biennial Review NPRM*, ¶ 49 (emphasis added). See also *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, FCC 98-315, ¶ 38 (December 18, 1998) ("We did not . . . consider applications within the freeze areas to be pending and did not protect such applications by avoiding the creation of DTV allotments that would conflict with the new NTSC stations they propose.").

to the Table. In short, there is no basis for a finding that the Fant Application is entitled to interference protection from WCSC's proposal.

Conclusion

A change in WCSC's DTV allotment from Channel 52 to Channel 47 will permit WCSC to operate digitally on a core channel and facilitate collocation of Charleston DTV stations, thus furthering the efficient and expeditious transition to DTV.[8] As to NTSC applicants for Channel 47 at Columbia, there is a solution to which all parties have agreed: the Commission should give notice to the Columbia applicants that any authorization for the facility will be conditioned on acceptance of any and all interference from WCSC's DTV operations on Channel 47 at Charleston. The Commission should adopt this solution and reject the notion that any Columbia application has interference protection from the WCSC proposal.

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[8] Grant's suggestion that the Commission "weigh[] the public interest benefits that would result" from the respective WCSC and Fant proposals (Grant Comments at 8) is groundless and warrants little comment. WCSC does not dispute that there is public interest benefit to be gained from institution of new NTSC television service at Columbia. The Commission's rules and policies for the DTV transition, however, reflect a weighing of relative public interest benefits that has already occurred through many years of DTV rule making proceedings. Those rules and policies unambiguously reflect the primacy of the DTV Table over NTSC freeze waiver proposals, and nothing in them calls for a further subjective weighing of public interest benefits in an individual case. In any event, as noted above, all parties have agreed to a solution by which the public can realize the benefits of *both* the Charleston DTV channel change and a new NTSC television service at Columbia.

Respectfully submitted,

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August 24, 2001

CERTIFICATE OF SERVICE

I, Claudia L. Cartagena, a secretary in the law firm of Wiley, Rein & Fielding, hereby certify that on this 24th day of August, 2001, I caused copies of the foregoing "Reply Comments of WCSC, Inc." to be mailed via first-class, postage prepaid mail to the following:

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