

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In re)
)
Amendment of Section 73.622(b),)
Table of Allotments)
Digital Television Broadcast Stations)
(Kingston, New York)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 00-121
RM-9674

To: Chief, Video Services Division
Mass Media Bureau

MOTION FOR STAY

WKOB Communications, Inc. ("WKOB"), licensee of WKOB-LP, New York, New York (Facility ID 51441) (the "Station"), hereby moves for a stay of the effective date of the Commission's decision granting the change in the digital television allotment for WRNN-TV, Kingston, New York (Facility ID 74156) from Channel 21 to Channel 48, DA 02-169, released January 25, 2002, 67 FR 5070. WKOB filed for a Petition for Reconsideration of this decision on March 6, 2002. If the effectiveness of the decision is not stayed, and WRNN-TV is granted a construction permit to operate on Channel 48, WKOB will lose its displacement channel and will essentially be forced out of business. In contrast, WRNN-TV has Channel 21 available for DTV service, so it is not precluded from commencing digital operation if it chooses to do so.

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ARGUMENT

1. WKOB Meets the Commission requirements necessary for the grant of a motion for stay. To support a motion for stay, a petitioner must demonstrate the following: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other parties will not be unduly harmed if a stay is granted; and (4) the public interest favors granting a stay. *See, e.g., Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F. 2d 921 (925) (D.C. Cir. 1958). While prevailing on the merits is an important element, the Commission may reduce the amount of its weight it places on such success based on the assessment of the other factors. *See, Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 842, 843-844 (D. C. Cir. 1977); *Brunson Communications, Inc.*, 15 FCC Rcd 12,883 (CSB 2000).

2. WKOB is likely to prevail on the merits of its petition for reconsideration. It has shown the Mass Media Bureau erred in summarily dismissing WKOB's status as a low power television station¹ and by ignoring the Commission's announced policy of ensuring that digital station allotment changes do not have an unnecessary adverse impact on low power operations. This decision was made by the Bureau without referring the matter to the full Commission and without the full statement of reasons for a change of mind that is required by the court case cited by WKOB in its reconsideration petition.² Further, as spelled out in WKOB's Petition for

¹ In addition to the above-referenced proceeding, WKOB is also contesting the Commission's determination that WKOB is not eligible for Class A status, *see Petition for Reconsideration* filed by WKOB in FCC 01-375 (filed on February 8, 2002), which if reversed would afford even greater protection to WKOB's operations.

² *See Fox Television Stations, Inc. v. FCC*, Case No. 00-1222, D.C. Cir., decided February 19, 2002.

Reconsideration, the Commission relied on facts regarding interference reduction to support its decision, which facts were shown to be erroneous when WRNN-TV filed its subsequent implementation application for a construction permit and increased power so as to cause more rather than less interference.

3. If a stay is not granted, and the channel reallocation stands, WKOB will face the most irreparable harm – namely, being forced to take WKOB-LP off the air and being put out of business. The more than \$800,000 that WKOB paid to the FCC at the auction to receive the ability to operate on Channel 48 would be lost.

4. No significant harm would result to WRNN-TV as a result of this stay. While WRNN-TV will not be able to construct immediately on Channel 48, it will not be put out of business, as it will retain its NTSC Channel 62. It will also continue to have access to Channel 21 for digital operation, as now provided in the DTV Table of Allotments. No other parties will be able to apply for or cause interference to Channel 48 pending the outcome of this proceeding.

5. Finally, the public interest would be served by the stay. It will preserve the *status quo* pending disposition of WKOB's reconsideration petition and will allow for the continued operation of WKOB, which provides unique and local ethnic programming that would otherwise be unavailable in New York City. Therefore, WKOB has shown that it fully meets the four requisite factors needed for the Commission to grant a stay.

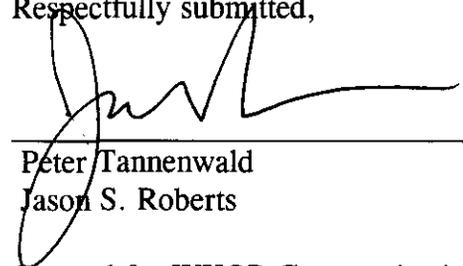
CONCLUSION

For the reasons stated herein , WKOB respectfully requests a stay in the Commission's decision to amend the DTV Table of Allotments to substitute Channel 48 for Channel 21 in Kingston, New, York, pending a final disposition of the proceeding..

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March 7, 2002

Respectfully submitted,



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Counsel for WKOB Communications, Inc.

CERTIFICATE OF SERVICE

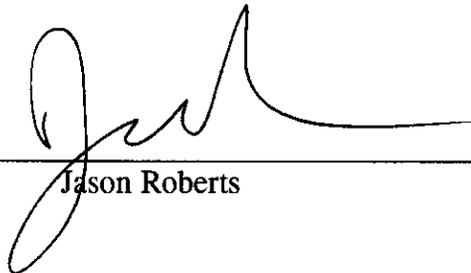
I, Jason Roberts, hereby certify that on this 7th day of March 2002, a copy of the foregoing "Motion for Stay" has been served by first-class United States mail, postage prepaid, upon the following:

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In addition, copies of the foregoing "Motion for Stay", in Microsoft Word Format, have been served by electronic mail upon the following Mass Media Bureau Staff:

Barbara A. Kriesman, Esq. (bkreisma@fcc.gov)
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Jason Roberts