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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 8, 2002

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

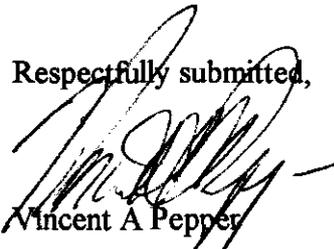
Re: Amendment to Petition for Rule Making

Dear Mr. Caton:

Transmitted herewith on behalf of McPike Communications, Inc. are an original and four copies of its Amendment to Petition for Rulemaking.

Should any questions arise concerning this matter, please contact this office directly.

Respectfully submitted,



Vincent A Pepper

Enclosures

cc: Clay C. Pendarvis,
Chief, Television Branch,
Video Services Division (hand delivery)
John Griffith Johnson, Jr., Esq. (counsel for Larry A. Miller)
George R. Borsari, Jr., Esq. (counsel for Northwest Television, Inc.)
Wray Fitch, III, Esq. (counsel for Walnut Creek Telecasting)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Amendment of Section 73.606(b))
Table of Allotments)
TV Broadcast Stations)
(Lincoln, Nebraska))

MM Docket No. _____
RM- _____

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

AMENDMENT TO PETITION FOR RULE MAKING

McPike Communications, Inc. ("McPike") by its attorneys, and pursuant to §1.420 of the Commission's rules, hereby amends its previously submitted Petition for Rule Making to amend the Table of Allotments for NTSC TV Broadcast Stations to substitute Channel 47 for Channel 45 at Lincoln, Nebraska. McPike submits this amendment in response to the Mass Media Bureau's Public Notice *Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Requests for New NTSC Television Stations on Channels 52-59, DA 02-270* (Released February 6, 2002) ("Public Notice"). In support of this Amendment, McPike submits the following:

1. In 1995, McPike filed an application for a construction permit for a new TV broadcast station on Channel 45, at Lincoln, Nebraska, (File No. BPCT-950630KE). Additional applications requesting the same channel were filed by Northwest Television, Inc. (File No. BPCT-951106KF); Larry A. Miller (File No. BPCT-951106KP); and Walnut Creek Telecasting (File No. BPCT-951107KG). In July of 2000, the four applicants executed a Settlement Agreement and filed a Joint Request for Approval of that Settlement Agreement, requesting the grant of McPike's application and

the dismissal with prejudice of the remaining three applications.¹ McPike was then, and is now, authorized to represent to the FCC that the other three applicants supported the filing of the original Petition for Rule Making and the subsequent proposed amendments to the NTSC TV Table of Allotments.

2. As a result of the Commission's decisions announced in the *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)* Report and Order, the *Public Notice* was issued to open a window filing opportunity to allow persons with certain pending requests for new analog (NTSC) television stations to modify their requests.² More specifically, the *Public Notice* opened a window for the filing of petitions for rule making seeking a new in-core channel for those applicants with pending applications for new full-service NTSC television stations on channel 52-59. The applicants herein come within this eligibility category in that the originally filed applications for new full-service NTSC television stations on Channel 45 at Lincoln, Nebraska, had been the subject of a later filing requesting that they be allowed to specify Channel 53 due to a conflict with a DTV allotment at Omaha, Nebraska on Channel 45.

3. As a result, McPike now asks that the Commission amend the NTSC Table of Allotments to substitute Channel 47 for Channel 45 at Lincoln, Nebraska and then allow McPike to specify operation on Channel 47. The appended Engineering Statement provides technical documentation to support McPike's proposal.³

4. In order to operate in compliance with the Commission's rules on Channel 47, McPike must not interfere with any existing Class A stations. To this end, McPike has entered discussions with Roger E. Harders, licensee of K47FK – a Class A television station with a construction permit

¹ The original Petition for Rule Making was submitted on July 17, 2000 in response to the Mass Media Bureau's Public Notice *Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*, DA 99-2605 (Release November 22, 1999).

² GN Docket No 01-74, *Report and Order*, FCC 01-364 (Released January 18, 2002).

³ See Engineering Statement(attached).

specifying operation on Channel 47.⁴ Harders' presently permitted facilities would be short-spaced by McPike's proposed facilities. However, McPike is pursuing an agreement with Mr. Harders to reimburse him for certain expenses involved with specifying a new channel – Channel 44 or 39 in this instance – and thus removing the short spacing.⁵ Because K47FK will operate from the same facilities, no loss of service is involved. Should McPike come to such an agreement with Mr. Harders, a copy of that agreement will be provided to the Commission upon receipt. The Commission has the authority to approve such an agreement and permit the proposed amendment. However, in the event that no agreement between Mr. Harders and McPike is reached, the Commission should nevertheless modify the outstanding construction permit.⁶ By either means, the specification of an alternate channel of operation for the outstanding construction permit will enable McPike to bring a new full service television station to Lincoln in *addition to* the new service that the Class A station will bring to the community

5. In an earlier case involving the relocation of a Class A station's signal to accommodate the grant of a pending application for a full service television station, the Commission found that such relocation would serve the public interest.⁷ In *Achenar*, the Commission modified the construction permit of a Class A low power television station to specify operations on another frequency so that it did not block the grant of a pending application for a full service NTSC station.⁸ The Commission has previously highlighted the fact that *Achenar* presented unusual circumstances justifying such an

4 See Federal Communications Commission File No. BPTTL-19980601QH

5 See Engineering Statement at 1.

6 At this stage in the negotiations, it has become clear to McPike that Mr. Harders wishes to expand the scope of the discussion well beyond the simple technical issue of specifying a new channel, and into business decisions involving substantial consideration that may well make a quick agreement unlikely, if not outright impossible. McPike, of course, continues the negotiations in good faith and will quickly inform the Commission as to whether any agreement is reached.

7 See Memorandum Opinion and Order, *Applications of Achenar Broadcasting Company and Lindsay Television for Construction Permit for a New UHF station TV Station on Channel 64 at Charlottesville, Virginia*, MM Docket No. 86-440, 15 FCC Rcd 7808 (2002)(“*Achenar*”).

8 Id. at 7816.

action and is reluctant to undertake the same action again.⁹ However, there are substantial similarities – and important differences – that make the present situation as compelling as that faced in *Achenar*.

6. Here, as in *Achenar*, the application for a new full service analog television station has been pending for a very long time- it is now approaching seven years. Likewise, both cases involve modification of a construction permit, rather than interruptions to an operating full-service or low power station, in an effort to allow new service. However, in *Achenar*, the modification resulted in the displacement of an operating translator.¹⁰ In contrast, simple modification of a pending construction permit in this instance will only *add* service. Furthermore, the end result in *Achenar* was an analog station operating in the Upper 700 MHz Band— that is, a station which delays the clearance of that band for its reallocated purposes and must shut down and relocate at the end of the digital transition period.¹¹ In contrast, McPike’s proposal here is for a new station on an *in-core* channel- it need only simply switch over to digital operations at the appropriate time, and impedes no spectrum-clearance efforts by the Commission. Given these circumstances and McPike’s willingness to reimburse the permittee for the reasonable costs of a channel change, it is a winning situation for all involved- the permittee provides its service, McPike obtains its long-awaited construction permit, and the public is served by more stations than before.

7. Alternatively, should the Commission decline to allow or direct amendment of Roger E. Harders’ construction permit, McPike asks that the Commission allow it to specify digital operations on DTV Channel 53. The attached Engineering Statement shows that McPike may operate on this channel from its previously specified site while meeting all spacing and interference requirements.¹² However, McPike stresses that this is a *distant* second-best choice – it would much rather use analog

⁹ See *In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, 16 FCC Rcd 8244 at para. 57 (2001).

¹⁰ See *Achenar* at para 6.

¹¹ *Id.* at para. 14.

¹² See Engineering Statement at 2.

television to serve those who can afford neither the spiraling costs of cable nor the sky-high costs of DTV receivers.

8. In addition, McPike's proposal provides the Commission with an opportunity to help foster the development of emerging national television networks by providing an additional competitive broadcast outlet in Nebraska's capital with which to establish a primary affiliation.¹³ The allotment of Channel 47 to Lincoln would (i) bring a new local television service to the Lincoln area, (ii) promote ownership diversity in the Lincoln television market, and (iii) increase competition in the local advertising market. Indeed, in light of the Commission's relaxation of the local television ownership rules and the increasing consolidation in the broadcast industry, the public interest benefits that would result from McPike's allotment proposal have great importance in today's broadcast environment. Only the simple modification of a pending low power television station construction permit stands in the way of these benefits.

9. In sum, the public interest is obviously served by grant of this amended Petition because it gives effect to the Commission's spectrum clearing goals and expedites new television service at Lincoln, Nebraska.

WHEREFORE, McPike requests that the Commission adopt and release a Notice of Proposed Rule Making, proposing to amend the NTSC TV Table of Allotments, and thereafter adopt and release a Report and Order amending the NTSC TV Table of Allotments as follows:

Community	Present	Proposed
Lincoln, NE	8+, 10+, *12, 45, 51	8+, 10+, *12, 51, 47

¹³ The WB and UPN have explained to the Commission in a variety of proceedings that one of their primary challenges in establishing themselves as a nationwide network has been finding a sufficient number of stations with which to affiliate. *See, e.g.,* Comments of The WB Television Network, *Establishment of a Class A Television Service*, MM Docket No. 00-10 (filed Feb. 10, 2000); Comments and Reply Comments of The Warner Bros. Television Network, *Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (filed Oct. 30, 1995, Nov. 27, 1995).

Should the Commission decline to allow or direct the modification of the Class A construction permit, McPike requests that the Commission adopt and release a Notice of Proposed Rule Making, proposing to amend the DTV Table of Allotments, and thereafter adopt and release a Report and Order amending the DTV Table of Allotments as follows:

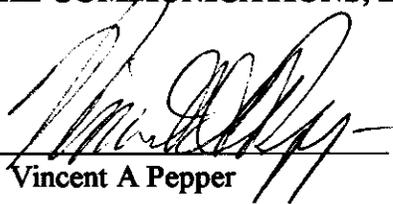
Community	Present	Proposed
Lincoln, NE	25, 31, *40	25, 31, *40, 53

Upon either such allocation, McPike will amend its application to specify the newly allocated channel, and upon grant will undertake construction of the facility.

Respectfully submitted,

MCPIKE COMMUNICATIONS, INC.

By: _____


Vincent A Pepper


Mark Blacknell
Its Attorneys

**WOMBLE CARLYLE SANDRIDGE
& RICE, P.L.L.C.**
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

March 7, 2002

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of MCPIKE COMMUNICATIONS, INC. ("McPike"), Applicant for a new television station in Lincoln, Nebraska, in support of its Petition for Rulemaking to change channel so as to permit a grant of its application.

McPike originally applied for Channel 45, but the Commission allotted that channel for digital use in nearby Omaha, requiring the use of an alternative channel. McPike then proposed operation on Channel 53, but the Commission subsequently barred the analog use of channels outside the core, requiring the instant submission.

Figure 1 is an allocation study showing that, at a proposed allotment site, all separation criteria would be met with an operation on Channel 47, except that there would be a substantial shortage to a Class A LPTV CP, K47FK, Columbus-Fremont, Nebraska. However, essentially the same LPTV facility could operate on either channel 39 or Channel 44, based on a Longley-Rice interference study. Thus, with such a change, a Channel 47 facility would meet all spacing requirements.

With respect to interference to digital facilities, even though the spacing requirement would be met with respect to all such facilities we must also establish that the interference to such stations is less than 0.5 percent. Figure 2 describes the facility that would be specified for the allotment site and Figure 3 provides Longley-Rice interference data. Operating in this fashion would limit interference as required. In addition, this facility would place an 80 dbμ signal over the entirety of Lincoln.

Thus, it is established that Channel 47, operating as specified, would meet all spacing requirements, would provide the required protection to all digital stations, and would serve its city of license as required. In the only instance of potential interference, K47FK can change to another channel to relieve the conflict.

* * *

In the event that the Commission would find reason not to grant the Channel 47 proposal, McPike has an alternative proposal. Attached as Figures 4 and 5 is data showing that, operating from the site previously specified for McPike's Channel 45 proposal, and with 250 kw, nondirectional, at 397 meters AAT, the Commission's *de minimis* interference standards are met.

* * *

It should be noted that substantial portions of the information in this statement have been provided by W. Jeffrey Reynolds, of duTreil, Lundin & Rackley.

I declare under penalty of perjury that the foregoing statement and the attached exhibits are true and correct to the best of my knowledge and belief.



NEIL M. SMITH

March 7, 2002

FIGURE 1

ALLOCATION STUDY
 PROPOSED NTSC
 CHANNEL 47 - LINCOLN, NEBRASKA

PROPOSED ALLOTMENT SITE:
 40-32-53, 97-00-52

Ch.	Closest Allotment(s)	Spacing (km)		
		Req'd.	Prop.	Diff.
32	KBIN-TV, Council Bluffs, IA	119.9	126.6	+6.7
33	NTSC Allotment*, Pawnee City, NE	95.7	88.1	-7.6
39	--			
40	--			
42	KPTM, Omaha, NE	31.4	88.4	+57.0
43	--			
44	--			
45	KMTV-DT, OMAHA, NE	--	118.4	--
46	--			
47	K47FK, Columbus-Fremont, NE	277.0	44.3	-232.7
	KDLT-DT, Sioux Falls, SD	244.6	330.6	+86.0
48	NTSC Allotment, Omaha, NE	87.7	88.4	+0.7
49	K49FP, Columbus, NE	32.0	44.3	+12.3
50	--			
51	Appl., Lincoln, NE	31.4	31.6	+0.2
52	--			
54	NTSC Allotment, Omaha, NE	95.7	117.7	+22.0
55	--			
61	--			
62	--			

* Unused NTSC Allotment – Need Not Protect

SECTION III-C TV Engineering

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

TECH BOX

1. Channel Number: 47

2. Offset: Plus Minus _____ Zero _____

3. Zone: I II III

4. Antenna Location Coordinates: (NAD 27)
40° 32' 53" N S Latitude
97° 00' 52" E W Longitude

5. Antenna Structure Registration Number: _____
 Not applicable FAA Notification Filed with FAA

6. Height of Radiation Center Above Mean Sea Level: 732 meters

7. Overall Tower Height Above Ground Level: 314 meters

8. Height of Radiation Center Above Ground Level: 305 meters

9. Height of Radiation Center Above Average Terrain: 300 meters

10. Maximum Effective Radiated Power (ERP): 5,000 kW

11. Antenna Specifications:

a. Manufacturer <u>Andrew</u>	Model <u>ATW30HS3-HTP5-47H</u>
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b. Electrical Beam Tilt: 0.75 degrees Not Applicable

c. Mechanical Beam Tilt: _____ degrees toward azimuth _____ degrees True Not Applicable

Attach as an Exhibit all data specified in 47 C.F.R. Section 73.685. Exhibit No.
N/A

d. Polarization: Horizontal Circular Elliptical

FIGURE 2-A
PROPOSED OPERATING PARAMETERS
PROPOSED NTSC TELEVISION STATION
CHANNEL 47 - LINCOLN, NEBRASKA
 SMITH AND FISHER

TECH BOX

e. Directional Antenna Relative Field Values: Not applicable (Nondirectional)
 Rotation 55° No rotation

Degree	Value	Degree	Value	Degree	Value	Degree	Value	Degree	Value	Degree	Value
0	1.000	60	0.216	120	0.216	180	1.000	240	0.216	300	0.216
10	0.957	70	0.252	130	0.296	190	0.957	250	0.252	310	0.296
20	0.838	80	0.309	140	0.468	200	0.838	260	0.309	320	0.468
30	0.664	90	0.333	150	0.664	210	0.664	270	0.333	330	0.664
40	0.468	100	0.309	160	0.838	220	0.468	280	0.309	340	0.838
50	0.296	110	0.252	170	0.957	230	0.296	290	0.252	350	0.957
Additional Azimuths											

If a directional antenna is proposed, the requirements of 47 C.F.R. Sections 73.682(a)(14) and 73.685 must be satisfied. **Exhibit required.**

Exhibit No.
N/A

FIGURE 2-B
PROPOSED OPERATING PARAMETERS
PROPOSED NTSC TELEVISION STATION
CHANNEL 47 - LINCOLN, NEBRASKA
 SMITH AND FISHER

FIGURE 3

LONGLEY-RICE INTERFERENCE DATA

PROPOSED NTSC STATION
CHANNEL 47 - LINCOLN, NEBRASKA

<u>Ch.</u>	<u>Allotment</u>	<u>Location</u>	<u>Population</u>		<u>Interference Percentage</u>
			<u>Total</u>	<u>Interference From Proposal</u>	
47	KSMO-DT (Allot.)	Kansas City, MO	1,802,846	1,641	0.09
47	KSMO-DT (CP)	Kansas City, MO	1,802,846	483	0.03
47	KDLT-DT (Allot.)	Sioux Falls, SD	387,387	309	0.08
47	KDLT-DT (CP)	Sioux Falls, SD	387,387	284	0.07

FIGURE 4

ALLOCATION STUDY
 PROPOSED DTV STATION
 CHANNEL 53 - LINCOLN, NEBRASKA

Ch.	Closest Allotment(s)	Spacing (km)		
		Req'd.	Prop.	Diff.
38	--			
39	--			
45	--			
46	--			
48	--			
49	K49FP, Columbus, NE	40.4	42.9	+2.5
50	K50EG, Columbus, NE	24.3	69.3	+45.0
51	Appls., Lincoln, NE	<24.1>96.6	63.7	-32.9
52	--			
53	KQTV-DT, St. Joseph, MO	223.7	232.8	+9.1
54	--			
55	--			
56	--			
57	--			
58	--			
59	--			
60	--			
61	--			
67	--			
68	--			

FIGURE 5

LONGLEY-RICE INTERFERENCE DATA

PROPOSED DTV STATION
CHANNEL 53 - LINCOLN, NEBRASKA

<u>Ch.</u>	<u>Allotment</u>	<u>Location</u>	<u>Population</u>		<u>Interference Percentage</u>
			<u>Total</u>	<u>Interference From Proposal</u>	
51	Appl. 19960724LJ	Lincoln, NE	1,145,681	93	<0.01
51	Appl. 19960724LN	Lincoln, NE	971,958	274	0.03
51	Appl. 19960624KM	Lincoln, NE	300,383	2,320*	0.77*
53	KQTV-DT (Allot.)	St. Joseph, MO	1,511,225	1,881	0.12
53	KQTV-DT (CP)	St. Joseph, MO	259,111	704	0.27

*Calculations based on 1 km cell size