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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

MM Docket No. 00-121 /  
RM-9674

To: Chief, Video Services Division  
Mass Media Bureau

**REPLY TO OPPOSITION MOTION FOR STAY**

1. WKOB Communications, Inc. ("WKOB"), licensee of WKOB-LP, New York, New York (Facility ID 51441) (the "Station"), hereby replies to the opposition filed by WRNN-TV Associated Limited Partnership ("WRNN") to WKOB's request to stay the effectiveness of the Report and Order in the above-captioned proceeding changing the digital television ("DTV") allotment for WRNN-TV, Kingston, New York, from Channel 21 to Channel 48.

2. Notwithstanding WRNN's rhetoric and disdain for low power television, the fact remains that WKOB will suffer the greater irreparable harm if a stay is not granted, because WKOB-LP will be displaced from both its existing and its displacement channel purchased at auction. Furthermore, WKOB's stay request complies with the four part judicial test.

3. It is not surprising that WRNN alleges WKOB's petition for reconsideration is not likely to prevail on the merits, as WRNN is the party that filed for the allotment change, and it

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obviously wants to win. However, as shown by WKOB in its stay request, the Bureau failed to follow the policy of the full Commission of attempting to prevent unnecessary, adverse impact on low power television when allotting digital channels. WRNN has failed to show why the channel change to 48 was essential to its ability to provide digital service, other than its desire to move south to become a New York City station.

4. In its opposition, WRNN selectively quotes precedent to achieve a result that misses the mark. While the Commission did observe that certain low power operations would be adversely affected by the transition to DTV, WRNN ignores the Commission's clear position that it was concerned "about the impact of DTV implementation on low power services, especially the impact with regard to LPTV stations, and believe[s] it is desirable to take certain steps to minimize the impact on those stations."<sup>1</sup> The DTV allotment change in Kingston is exactly the kind of action that concerned the Commission -- namely, a channel change not justified by technical necessity, resulting in not a reduction but an increase in interference. The Commission specifically did not adopt the absolute priority for full power DTV allotments that was the basis for the Report and Order in this proceeding. Therefore, WKOB remains confident that it is likely to prevail on the merits.

5. Nevertheless, because assessing the merits of a proceeding before an actual decision is made is often difficult, the Commission has noted it will reduce the weight placed on the merits factor if its assessment of the other factors is favorable.<sup>2</sup> The second factor -- the irreparable harm

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<sup>1</sup> See *Advanced Television Systems (Sixth Report and Order)*, 12 FCC Rcd 14588, 14562-63 (1997).

<sup>2</sup> See, e.g., *Brunson Communications, Inc.*, 15 FCC Rcd 12,883 (CSB 2000).

that will occur if the channel change is not stayed -- is not in dispute. WKOB's service is seriously threatened if it is displaced from both Channel 53 and Channel 48. In contrast, Channel 21 remains available to WRNN.<sup>3</sup> Contrary to WRNN's assertions, WKOB did understand its secondary status when it bid at auction for Channel 48; but it viewed that secondary status in light of the then promulgated Commission policy, which included not displacing low power television stations unless necessary. The Bureau cannot say "we told you so" about the auction and then change the policy of the Commission afterwards.

6. WRNN's claim of harm to itself if a stay is issued does not ring true. In fact, the harm will far greater if WRNN is construct on Channel 48 and is later forced to return to Channel 21 if WKOB ultimately prevails on reconsideration or review. WKOB currently provides an over-the-air broadcast to numerous people within its Grade B contour. Therefore, it is wholly within the public interest to prevent an undue an unnecessary termination of this established broadcast voice while the Commission deliberates over the above-referenced petition for reconsideration.

7. WRNN erroneously relies on a previous Commission decision stating that a channel allotment change will not automatically be stayed upon the filing of a petition for reconsideration. The reason that WKOB filed a petition for stay along with its reconsideration petition is that it realized that a stay would not be automatic. Thus WKOB asked for a stay and justified its request

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<sup>3</sup> WRNN's footnote indicating that Channel 21 is no longer available to it is incorrect. If the Report and Order is stayed, Channel 21 will remain allotted to Kingston. Also, if the Report and Order is reconsidered and overturned, the Channel 21 allotment will be restored. In sum, deletion of Channel 21 is not yet a final order.

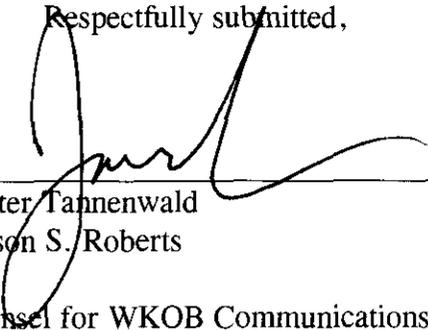
under the relevant four factors. WKOB followed the Commission's policy. It is not treating this matter lightly but rather is fighting for its very existence.

8. For the reasons stated above, WKOB respectfully repeats its request that the Bureau stay the change in the DTV Table of Allotments substituting Channel 48 for Channel 21 at Kingston, New, York, pending a final disposition of the rule making proceeding.

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Respectfully submitted,



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