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

In the Matter of )  
)  
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 (Mail Stop 1800E1)

**REPLY OF WKOB COMMUNICATIONS, INC.**

1. WKOB Communications, Inc. ("WKOB") petitioned for reconsideration of the *Report and Order* in the above-captioned proceeding on March 6, 2002. WRNN-TV Associates Limited Partnership ("WRNN") filed its Opposition on April 15, 2002. This is WKOB's Reply to WRNN's Opposition.

2. First, WRNN argues that the technical parameters of its digital television ("DTV") implementation application should be ignored in evaluating its rule making proposal. While traditional allotment rule making proceedings have often been structured around theoretical reference points and hypothetical facilities, the applicable policies and procedures were developed in the context of FM radio and analog TV broadcast proposals that were based on fixed mileage separation requirements. Today's DTV proceedings are very different. Because of the need to use spectrum more efficiently to provide for a second channel for most operating television stations, the Commission has had to take actual interference predictions into account in allotting DTV channels. Once the analysis proceeds beyond merely applying fixed mileage separations, it is irrational to ignore how a proposal will actually be implemented. But that is what WRNN asks the Commission to do here. It wants the Commission to judge the channel

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substitution based on a reduction of interference that will not occur, because the facilities underlying the analysis are not real and will never be built. When specific technical parameters become a critical aspect of an allotment proposal, then a proponent's implementation plans are clearly more important than its imaginary proposal. To conclude otherwise is arbitrary and capricious.

3. It is more than arbitrary and capricious; it is statutorily unlawful under Section 553(b) of the Administrative Procedure Act,<sup>1/</sup> which requires fair notice to the public and an opportunity to comment before a rule change may be adopted. In this proceeding, the Commission advanced a specific proposal for WRNN in the Notice of Proposed Rule Making. As noted above, DTV allotments are based on interference; and other stations that might be affected by the proposal evaluated it as it was offered, not as WRNN ultimately applied to implement it. Had a commenter fearing interference to its own planned facilities opposed the proposal, or even filed a counterproposal, on the ground that WRNN might apply for something different from what was proposed, the Commission would have responded that it was approving only what was proposed, not something else. Then, when WRNN turned around and applied for more power at an entirely different site, with substantially different signal coverage and additional interference impact, the rejected commenter would be left out in the cold, unable to advance its own counterproposal against WRNN's, because WRNN's application would be cut-off on a first-come, first-served basis.<sup>2/</sup> In other words, even if, as a general rule, the Commission is not limited to accepting or rejecting the exact wording of a rule making proposal, in this particular situation the substantial deviation from the proposal had seriously

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1/ 5 U.S.C. Sec. 553(b).

2/ See Section 73.623(h)(2) of the Commission's Rules.

detrimental implications to other interested parties that poisoned the notice given to the public and rendered the rule change unlawful.<sup>3/</sup>

4. WRNN also argues that WKOB miscalculated the amount of interference that will be caused by its implementation proposal. WRNN offers a couple of different ways to count the numbers; but the bottom line is that even under WRNN's approaches, there will be no significant or meaningful reduction in interference. Therefore, there is no reason to change WRNN's allotment other than to allow the station to move near to New York City -- an objective that has no public interest value to the station's community of license. In stark contrast, there is a high, life-and-death, cost to WKOB that cannot be justified in light of the lack of significant public benefit. WRNN's private preference cannot be equated with the public interest.

5. Finally, WRNN repeats arguments that WKOB-LP is secondary and has no rights of any kind. This issue has been well-framed: the question is how the Media Bureau's allotment decision in this case can be reconciled with the policy of the full Commission not to destroy low power television service where it is not necessary to establish DTV service.<sup>4/</sup> The answer is that it cannot be reconciled at all.

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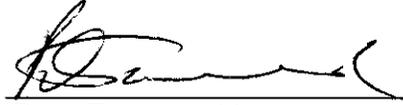
3/ Indeed, some other parties may have been misled into not filing a counterproposal at all because they thought that WRNN's proposal would not affect their plans. The way that WRNN would have it, no one would be able to evaluate the preclusive impact of a DTV proposal at the Notice of Proposed Rule Making stage, which certainly does not meet any reasonable standard of fair notice.

4/ The argument at footnote 17 of WRNN's Opposition that WKOB will still have no rights if it is granted Class A status is simply wrong. The Community Broadcasters Protection Act (47 U.S.C. Sec. 336(f)) allows displacement of a Class A station only where there are "technical problems" that would otherwise preclude the establishment of digital operation by a full power station. WRNN has never made a showing of technical problems that comes anywhere near the level required by the statute.

6. A rational, real-life approach to this case leads inexorably to the conclusion that Channel 21 is suitable and is the preferred allotment for WRNN-DT and that the substitution of Channel 48 is not in the public interest and is not lawful. Therefore, the Bureau should reconsider and withdraw the allotment change.

Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., N.W., Suite 200  
Washington, DC 20036-3101  
Tel. 202-728-0400/202-777-3977 (direct)  
Fax 202-728-0354

Respectfully submitted,



Peter Tannenwald  
Jason S. Roberts

April 22, 2002

#### CERTIFICATE OF SERVICE

I, Stephani Anderson, do hereby certify that I have, this 22nd day of April, 2002, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Reply of WKOB Communications, Inc." to the following:

Todd M. Stansbury, Esq.  
Wiley, Rein & Fielding  
1776 K St., N.W.  
Washington, DC 20006  
Counsel for WRNN-TV Associates Limited Partnership

Terrel L. Cass, President and General Manager  
Long Island Educational Television Council, Inc.  
P.O. Box 21  
Plainview, NY 11803

  
Stephani Anderson