

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

**ORIGINAL**

In the Matter of )  
 )  
Amendment of Section 73.622(b), )  
Table of Allotments, )  
Digital Television Broadcast Stations. )  
(Boca Raton, Florida) )

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**MM Docket No. 00-138**  
**RM-9896**

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**MAY 22 2002**

**FEDERAL COMMUNICATIONS COMMISSION**  
**OFFICE OF THE SECRETARY**

To: Chief, Video Division  
Media Bureau

**PETITION FOR RECONSIDERATION**

1. Sherjan Broadcasting Co., Inc. ("Sherjan") hereby petitions for reconsideration of the Report and Order ("Boca R&O") in the above-captioned proceeding.<sup>1/</sup> The Boca R&O allotted DTV Channel \*40 to Boca Raton based on an erroneous reading of the Commission's Rules, and the Media Bureau's decision was contrary to an explicit prior decision of the full Commission.

2. The premise of the Boca R&O was that the interference that a station on DTV Channel \*40 at Boca Raton would cause to Sherjan's Class A Station WJAN-CA, Miami, Florida (Facility ID 60165) was acceptable because interference would be caused to less than 2% of the population served by WJAN-CA, and any level less than 2% must be accepted by WJAN-CA.<sup>2/</sup> However, the Commission previously explicitly decided that the 2% threshold does not apply to the protection of Class A stations. Instead, when OET Bulletin 69-type studies are relied on, as is the case here, the only leeway for causing interference is based on a rounding

<sup>1/</sup> *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida), DA-02-893 (M. Bur.), released April 22, 2002.*

<sup>2/</sup> Boca R&O at par. 5.

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tolerance of 0.5%. As the Boca R&O found that the DTV Channel \*40 at Boca Raton would cause interference to 1.03% of the service population of WJAN-CA,<sup>3/</sup> the proposal must fail.

3. In stating that WJAN-CA must accept interference to up to 2% of its service population, the Boca R&O relied on two authorities: (a) Section 73.623(c)(2) of the Rules and (b) the Report and Order in MM Docket No. 00-10.<sup>4/</sup> However, both of these authorities require the opposite conclusion.

4. While Section 73.623(c)(2) does refer to interference to 2% of a station's service population, it refers only to "stations" generally and does not address the unique situation of Class A stations, which are protected by a specific statute<sup>5/</sup> that the Commission may not waive. The more pertinent rule section is 73.623(c)(5), which focuses explicitly on the impact of DTV proposals on Class A TV stations and states that a DTV proposal "will not be accepted if it is predicted to cause *interference* to a Class A TV station." [*emphasis added*] There is no 2% exception in this section.

5. The two rule sub-sections are not inconsistent, as one is general, and the other is specific. The Commission made clear which sub-section applies when it explicitly addressed the issue of interference to Class A stations in the same Class A R&O cited in the Boca R&O. It appears that the Boca R&O relied on Paragraph 71 of the Class A R&O, which refers to Section 73.623(c)(2) as the basis for DTV protection of Class A service contours. Section 73.623(c)(2) includes some provisions that are relevant to protection of Class A stations. However, in

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<sup>3/</sup> *Id.* at fn. 6.

<sup>4/</sup> *Establishment of a Class A Television Service*, 15 FCC Rcd 6355 (2000) ("Class A R&O").

<sup>5/</sup> The Community Broadcasters Protection Act of 1999, codified in Section 336(f) of the Communications Act.

Paragraph 74 of the Class A R&O, the Commission specifically carved out the 2% interference exception and made it inapplicable to interference to Class A stations, at least where, as in the instant case, the proposal is acceptable only because it relies on an OET-69 showing. Paragraph 74 observes that 2% *de minimis* interference is tolerable because it normally occurs at the relatively unimportant fringe of a full power station's service area; but because Class A stations are protected to only the equivalent of their Grade A contour rather than their Grade B contour, interference occurs closer to the heart of the Class A station's service area and so is deemed unfair and will not be tolerated:

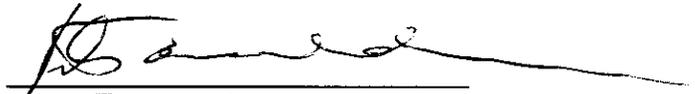
74. LPTV and TV translator applicants currently are permitted to support requests for waiver of certain interference protection rules on the basis of D/U ratio protection for co-located stations on 1st and 14th adjacent channels, terrain shielding and Longley-Rice terrain dependent propagation and OET 69-type methods. We are not adopting protection standards for Class A service based on these methods. However, we agree with AFCCE and other commenters that we should permit use of available means of interference analysis to support requests to waive the Class A contour protection requirements. We will permit waiver requests to be supported by interference analysis based on OET Bulletin 69, D/U ratios, terrain shielding and other considerations. With regard to OET Bulletin 69 studies, ***we will not permit a de minimis interference allowance.*** Interference among full-service stations that is *de minimis* usually occurs in the outer reaches of a station's service area between the NTSC Grade A and Grade B contours. Analog and digital Class A stations will not receive interference protection to the Grade B contour. Their protected service contours will be similar in extent to an NTSC station's Grade A contour, which is not nearly as vulnerable to *de minimis* service population reductions. Class A service areas will be smaller and to a greater extent more interference-limited than those of full-service stations. The viewing audience beyond the Class A LPTV service contour is unprotected, and ***we believe it would be unfair to subject Class A stations to additional reductions in service population.*** For these reasons we will not at this time apply a *de minimis* interference allowance to the protection of Class A stations. ***Where analysis is based on OET Bulletin 69 methods, we will allow a "service population" rounding tolerance of 0.5%,*** which is also allowed for NTSC applicants protecting DTV service. We will permit OET 69-type studies to take into account reductions in a Class A service population due to predicted interference from existing full-service, LPTV and TV translator stations (the "masking" of service) and, on this basis, applicants may demonstrate that their proposed facilities would not result in additional interference within the protected contours of Class A stations. [*emphasis added*]

6. The excerpt quoted above is exactly on point in this case and is decisive. The Boca Raton proposal would cause interference to 1.03% of WJAN-CA's service population. As that level is more than double the permitted 0.5%, it is impermissible.<sup>6/</sup>

7. For the foregoing reasons, the Boca R&O must be reconsidered, and the allotment of DTV Channel \*40 at Boca Raton must be rescinded.

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Respectfully submitted,

  
Peter Tannenwald

May 22, 2002

Counsel for Sherjan  
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<sup>6/</sup> As the Class A R&O is a decision of the full Commission, the Media Bureau has no authority to disregard or to reconsider it. *Federal-State Joint Board on Universal Service*, Order on Reconsideration in CC Docket 96-45, DA 02-427 (CCB, rel. Feb. 27, 2002), at par. 7.

**CERTIFICATE OF SERVICE**

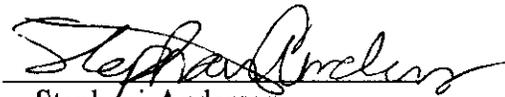
I, Stephani Anderson, do hereby certify that I have, this 22nd day of May, 2002, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Petition for Reconsideration" to the following:

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