

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

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JUN 17 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.622(b) of)	MM Docket No. 02-82
the Commission's Rules,)	RM-10408
DTV Table of Allotments)	
(Burlington, Vermont))	

To: Chief, Video Division

COMMENTS OF
MT. MANSFIELD TELEVISION, INC.

Mt. Mansfield Television, Inc. ("Mt. Mansfield"), the licensee of WCAX-TV, Burlington, Vermont, respectfully submits the following comments pursuant to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

Mt. Mansfield does not object to the proposal of C-22 FCC Licensee Subsidiary, LLC ("C-22") to substitute DTV channel 13 for WVNY-TV's assigned DTV channel 16. Rather, Mt. Mansfield focuses here on the procedure for promptly obtaining -- for C-22 and for other Burlington area television licensees whose DTV facilities will be collocated with those of C-22 - the necessary "concurrence from the Canadian government" for such facilities. Notice ¶ 3. As Mt. Mansfield has previously noted, this is a question that warrants the Commission's immediate attention, given its significant potential (here and in many other border areas) for frustrating the Commission's goal of accelerating nationwide DTV deployment.

As noted below, Mt. Mansfield speaks from experience. Over 40 years ago, failure to address these issues with respect to analog service led to many years of unnecessary delay in bringing Mt. Mansfield's full power analog service to viewers in an area whose rugged terrain

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makes such service particularly important. The Commission should take special care to ensure that these problems of Canadian coordination are not repeated with DTV.

I. C-22's PROPOSAL UNDERSCORES THE NEED FOR EXPEDITING CANADIAN APPROVALS OF U.S. DTV CHANNEL AND FACILITIES CHANGES.

C-22's proposal involves the substitution of a new channel for one that has already been approved under the Commission's Letter of Understanding ("LOU") with Canada, which governs DTV operation on both sides of the U.S.-Canada border.^{1/} C-22 has accompanied its request with an interference analysis based on the principles of the LOU, and contends that its proposal "meets the 2% interference criteria outlined in Section 5 of the LOU."^{2/}

The LOU, however, has neither firm standards nor clear timetables for Canadian response. Under the LOU, such a 2% showing will "generally be deemed acceptable," so long as "the cumulative interference . . . is not excessive."^{3/} And although the LOU sets a deadline of 45 days for Canada to respond to a notification by the Commission of the C-22 proposal,^{4/} once Canada determines to respond to it there are no further deadlines for resolving the matter.

This is not just a potential problem for C-22. The uncertainty surrounding the timing and outcome of this Canadian approval process threatens to impede the progress of all five commercial and non-commercial television licensees in this market, including Mt. Mansfield. As these stations have collectively advised the Commission, all of them seek to locate their DTV facilities atop the same mountain, which is the highest peak in Vermont.^{5/} The State of Vermont -- which has both its own telecommunications facilities at this same site and substantial

^{1/} Letter of Understanding Between the Federal Communications Commission of the United States of America and Industry Canada Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border (Sept. 22, 2000) ("LOU").

^{2/} Technical Statement in Support of C-22 Petition at 5.

^{3/} LOU at 4.

^{4/} *Id.* at 3.

^{5/} See Letter to Roy J. Stewart, Chief, Mass Media Bureau (Oct. 2, 2001). A copy of this letter is attached hereto.

environmental concerns about development there^d -- has insisted that the location of new digital facilities on the mountaintop, including the multiplexing of antennas, be achieved with the minimum number of antennas and towers. Thus, these five licensees have been working together to develop a plan for DTV facilities on Mt. Mansfield that would meet the State's requirements, and those of state environmental laws. It is proving extremely difficult to fashion such a plan, however, in the absence of definitive determinations about frequencies, power and directional antenna requirements for C-22 and each of the other television stations in the market.

Indeed, the actual and potential delays facing the television licensees in the Burlington-Plattsburgh market associated with the LOU do not stop with C-22's situation. At least three of the four other television licensees in the market are currently facing, or will face, Canadian coordination issues in the process of deploying DTV. At least two of them now have pending applications for DTV construction permits that have been delayed as a result of Canadian coordination requirements under the LOU.^z Mt. Mansfield expects soon to be in a similar situation. Although its current DTV allotment (channel 53) has been accepted by the Canadian government in the LOU, the Commission has required Mt. Mansfield ultimately to migrate its DTV service to an in-core channel. Its analog channel (channel 3) now appears to be unsuitable for that purpose, because of the very high likelihood that the effect of impulse noise, skywave propagation and other technical interference issues will fatally degrade reception. As a result, Mt. Mansfield will need to identify a new in-core channel for DTV during the transition, and seek Canadian approval for it. As with C-22's pending proposal, that effort will have no

^d See *id.* at 2.

^z See Letter from Clay Pendarvis, Chief, Television Branch, to Hearst-Argyle Stations, Inc. (Oct. 9, 2001); Letter from Clay Pendarvis, Chief, Television Branch, to Vermont ETV, Inc. (May 18, 2001).

guarantee of success,[§] much less of prompt action by Canadian authorities. Notwithstanding Mt. Mansfield's efforts to secure changes to the initial draft of the LOU to facilitate such changes where necessary to comply with Commission channel change requirements,[¶] the LOU commits Canadian regulators only to make "reasonable efforts" to accommodate such changes, "to the extent possible."[¶]

Mt. Mansfield has particular reason to be concerned about the need for Commission attention to this threat to its DTV deployment schedule. The current situation has all of the disquieting hallmarks of the dilemma Mt. Mansfield faced in seeking to provide full power analog service over 40 years ago. Although Mt. Mansfield went on the air in September 1954 at 17 kw, it was authorized at 37.6 kw. In 1959, when it sought permission to increase to full power facilities, the Commission advised Mt. Mansfield that the Working Arrangement of 1954 had been negotiated on the basis of the station's existing (rather than authorized) facilities. Accordingly, Mt. Mansfield was unable to provide full power service to viewers in Vermont and the surrounding areas until six years later -- and only after Senator George Aiken obtained a resolution of the issue through U.S.-Canada interparliamentary meetings. (See the attached copies of the pertinent correspondence.) This prior experience is instructive with respect to the nature of the problems the Commission now faces again.

[§] Mt. Mansfield has encountered considerable difficulty in identifying a DTV channel to substitute for channel 53 that comports with Canadian coordination requirements. At this point, it has performed analyses of all channels from 14 to 35, with discouraging results: fourteen of those channels produce massive interference to existing Canadian allotments (both analog and digital), and each of the remaining channels would require at least some change to U.S. or Canadian allotments (either analog or digital). Nor does low channel VHF provide a solution, because of the Canadian allocation scheme just across the border.

[¶] See Letter to Donald Abelson from William R. Richardson, Jr. (Feb. 25, 2000).

[¶] LOU at 4.

II. TO FULFILL THE PROMISE OF PROMPT DTV DEPLOYMENT, THE COMMISSION MUST TAKE CONCRETE STEPS TO EXPEDITE THE CANADIAN COORDINATION PROCESS.

The Commission has acknowledged the complexities surrounding international coordination on DTV deployment.^{11/} Indeed, throughout the DTV implementation proceedings, Mt. Mansfield and other television licensees have emphasized the importance for rapid DTV deployment of prompt resolution of such issues. In 1995, Mt. Mansfield filed comments urging that the Commission “not propose any table of allotments until it has determined that the U.S. ATV system will not conflict with Canada’s plans for ATV.”^{12/} A year later, in response to the Commission’s initial proposed DTV Table of Allotments, Mt. Mansfield emphasized that “Canadian coordination is critical to the ability of stations . . . to replicate their coverage.”^{13/} After a proposed DTV Table was adopted, Mt. Mansfield urged that the Commission “promptly finalize coordinated tables to govern the allocation of frequencies within the U.S.-Canada border area, so that border area broadcasters can design and construct their DTV facilities with some certainty that coordination will not disrupt or later require changes in coverage.”^{14/} And in 2000, Mt. Mansfield urged the Commission to seek revision of its proposed LOU with Canada to “clarify . . . the right of . . . U.S. stations [assigned temporary out-of-core channels] to migrate

^{11/} See, e.g., *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 ¶ 139 (1998) (international coordination issues “are complex matters that require careful study and planning by parties on both sides of the negotiations”).

^{12/} *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Comments of Mt. Mansfield Television, Inc., MM Dkt 87-268, 8-9 (Nov. 20, 1995).

^{13/} *Id.*, Comments of Mt. Mansfield Television, Inc., MM Dkt 87-268, 2 (Nov. 22, 1996).

^{14/} *Id.*, Petition for Reconsideration of Mt. Mansfield Television, Inc., MM Dkt 87-268 (June 13, 1997) (emphasis in original). See also *id.*, Comments of Mt. Mansfield Television, Inc. in Support of *Ex Parte* Submission of MSTV, MM Dkt 87-268, 2-3 (Dec. 17, 1997) (emphasizing importance of “prompt action on Canadian coordination”).

their DTV service to their analog channel,” or to other channels in light of “the possibility that low band VHF channels may ultimately prove unsuitable for DTV service.”^{15/}

As Chairman Powell has emphasized, swift deployment of DTV throughout the United States is an important national priority.^{16/} Unfortunately, international coordination issues continue to present a major obstacle to that goal.^{17/} In a recent survey, GAO reported that 13.3% of currently operating DTV stations had encountered issues during build out that required coordination with Canada or Mexico, and 11.1% of stations still transitioning to DTV have encountered such issues.^{18/} Some such issues are, of course, unavoidable in border areas. The real problem, however, is that once these issues arise, they are not quickly resolved: in the GAO study, 50% of current DTV stations reported that resolution of international coordination issues took longer than they expected^{19/}; of the “transitioning” stations requiring international coordination, only 33.3% report that such coordination issues have been resolved and 72.8% of those report that resolution took longer than expected.^{20/} These delays, and the uncertainty they produce, significantly hinder border area broadcasters in their DTV planning -- both in the Burlington-Plattsburgh market and elsewhere.

These difficulties suggest that Canadian regulators may not share the Commission’s priority in implementing DTV promptly. In part, this may reflect the slower pace of DTV

^{15/} Letter to Donald Abelson from William R. Richardson, Jr. (Feb. 25, 2000).

^{16/} Communications Daily, vol. 22, issue 69 (April 10, 2002).

^{17/} The Commission’s “commitment to the rapid build out of a nationwide DTV system” is clear. *Remedial Steps for Failure to Comply With Digital Television Construction Schedule, Requests for Extension of the October 5, 2001, Digital Television Construction Deadline*, Order and Notice of Proposed Rulemaking, MM Dkt. 02-113, FCC 02-150 ¶ 16 (May 24, 2002).

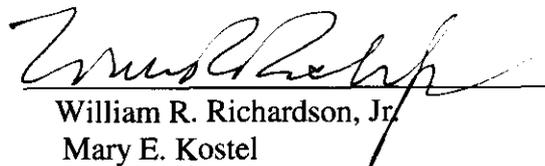
^{18/} *Many Broadcasters Will Not Meet May 2002 Digital Television Deadline*, Report to the Ranking Minority Member, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives 46, 55 (General Accounting Office April 2002). The GAO defined “current DTV stations” as “commercial stations that had gone on the air with a digital signal as of September 2001,” and “transitioning stations” as “commercial stations that were still in the process of building their DTV stations as of September 2001.” *Id.* at 3-4.

^{19/} *Id.* at 47.

^{20/} *Id.* at 56-57.

deployment on the Canadian side. Whatever the reasons, this problem is now clearly a substantial threat to the Commission's goal of accelerated DTV deployment in the United States -- just as it was for full deployment of analog facilities over 40 years ago. Mt. Mansfield therefore urges the Commission to address and resolve promptly the uncertainty and delays resulting from coordination issues with Canada, if necessary by acting in conjunction with the Executive Branch to identify for Canadian regulators the importance of this DTV implementation program to the U.S. economy. A speedier and more predictable Canadian process will translate directly into swifter DTV deployment in communities along the U.S.-Canada border, and in turn further the Commission's goal of DTV deployment nationwide.

Respectfully submitted,



William R. Richardson, Jr.
Mary E. Kostel

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June 17, 2002

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October 2, 2001

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Federal Communication Commission
Bureau/Office

BY HAND

Roy J. Stewart
Chief, Mass Media Bureau
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

**Re: C-22 FCC Licensee Subsidiary, LLC
WVNY-DT, Burlington, VT
Facility ID # 11259
File No. BPCDT-19991027ACA**

**Hearst-Argyle Stations, Inc.
WPTZ-DT, North Pole, NY
Facility ID # 57476
File No. BPCDT-19991020ACA**

**Mt. Mansfield Television, Inc.
WCAX-DT, Burlington, VT
Facility ID # 46728
File No. BPCDT-19991028AFC**

**Smith Broadcasting Group of Vermont, LLC
WFFF-DT, Burlington, VT
Facility ID # 10132
File No. BPCDT-19991029ABX**

**Vermont ETV, Inc.
WETK-DT, Burlington, VT
Facility # 69944
File No. BPEDT-20000427ACS**

Dear Mr. Stewart:

The purpose of this letter is to alert the Bureau staff to the substantial delays that the above referenced licensees ("the DTV Applicants") operating in the Burlington-Plattsburgh DMA have encountered since at least 1996, and can be expected to continue to face over at least the next two years, in obtaining the Vermont state land use approval required for their proposed use of a common site, Mt. Mansfield, for their DTV facilities. While the DTV Applicants are not currently seeking an extension of time of their May

2002 and May 2003 construction deadlines, it now appears certain that this state approval process will require an extension even of noncommercial station WETK's May 2003 deadline. Thus, in the event that the Commission does not extend the DTV deadline for small market stations more generally, the DTV Applicants intend to seek an extension pursuant to the provisions of Section 73.624(d)(3) of the Commission's rules. As the Commission has recognized in similar circumstances, where permittees have been "unable to secure local zoning approval to install their DTV facilities" and are taking "reasonable steps" to resolve the matter, such an extension is warranted. *Requests for Further Extension of the November 1, 2000, Digital Television Construction Deadline*, Order, FCC 01-011 ¶ 9 (April 5, 2001).

The Nature of Vermont's State Land Use Regulation
Applicable to the Mt. Mansfield Site

For many years, WVNY, WCAX and WETK have operated their analog facilities on Mt. Mansfield together with other communications users, including radio stations and providers of two-way communications services. WVNY leases a site on property owned by the Mt. Mansfield Company; all other users operate from a site on the "nose" of the mountain, owned by the University of Vermont. All five of the DTV Applicants also propose to locate their DTV facilities on Mt. Mansfield. For two reasons, however, these proposed DTV facilities have triggered extremely close scrutiny by the State of Vermont.¹

First, Mt. Mansfield is the tallest peak in the State of Vermont. Thus, as Vermont's District Five Environmental Commission (the "District Commission") has concluded, the site upon which these five stations propose to locate additional transmission facilities "has a widespread impact on the scenic beauty of a large area of the state" and "is the home of an abundance of rare and irreplaceable natural areas and necessary wildlife habitats." While acknowledging that "[t]he state's highest peak is also a critical site for the location of statewide communications and broadcasting equipment," the District Commission has consistently emphasized the State's concerns about "the unique and special status of the state's highest mountain."²

Second, these environmental concerns are addressed in an unusually comprehensive state environmental permitting process, known as "Act 250." See 10 V.S.A. §§ 6001 *et seq.* Enacted in 1969, Act 250 was designed to protect Vermont's environmental resources, and to preserve lands that have special values to the public. *Southview Assocs. v. Bongartz*, 980 F.2d 84, 89 (2d Cir. 1992), *cert. denied*, 507 U.S. 987 (1993). As Senator Patrick Leahy noted in connection with a March 1998 public meeting held in the State with FCC Chairman Kennard concerning tower sitings, "Vermont's Act 250 carefully balances the interests of development with our state's other interests, including our environment, health issues, resource conservation and the protection of

¹ We note that the same land use restrictions outlined in this letter also apply to WFFF's pending proposal to locate its analog facilities atop Mt. Mansfield.

² *Atlantic Cellular Company, L.P.*, File No. 5L0711-6 (Feb. 14, 1996), at 4-5.

Vermont's natural beauty" -- the "backbone" of which "is our Green Mountains surrounded by magnificent views and valleys, rivers, and streams, and lakes."^{3/}

Act 250 imposes substantial obligations on Mt. Mansfield communications users. It applies to all of the DTV proposals for the mountain top, since they involve "construction of improvements for commercial . . . use above the elevation of 2500 feet." 10 V.S.A. § 6001(3). Any person proposing such construction must first obtain a land use permit from the appropriate district commission. *Id.* §§ 6081(a), 6083(a). The District Commission must evaluate an application for such a permit based on consideration of ten criteria established by statute, which include the project's potential impact on water supply, water and air pollution, soil erosion, traffic safety, and scenic or natural beauty, including any impact on wildlife habitat and endangered species. *Id.* § 6086(a). The District Commission's decision is appealable by any interested party to the State Environmental Board ("State Board"), whose decision, in turn, is appealable to the State Supreme Court. *Id.* §§ 6089(a)(1), (b).

In connection with previous construction on Mt. Mansfield, and in light of the State's special concerns about this environmentally sensitive area, prior Act 250 processes have imposed two additional requirements on users at this particular site that have had a direct effect upon the schedule for DTV construction:

First, in 1980, as a condition of its approval of the current long range plan for future telecommunications development on Mt. Mansfield, the State Board required the creation of a governing organization that would have authority to implement that plan.^{4/} This requirement led to the creation in 1981 of the Mt. Mansfield Colocation Association ("Association"). It is comprised of six members: the two landowners at the site (the University of Vermont and the Mt. Mansfield Company), and the four users that lease property directly from one of these two owners. These include three of the DTV Applicants -- WVNY, WCAX and WETK -- and the State of Vermont acting for the Vermont State Police, which operates public safety facilities located at the same site. Under the terms of its bylaws and the existing long range plan, the Association generally operates by majority vote, with two exceptions relevant here. Each of the two landowners may veto new facilities on its land, and any member may veto the terms of any master plan for the site.

Second, in 1996 the District Commission directed the Association to adopt a new Master Plan for its review. This requirement arose from the District Commission's recognition of "major changes in regulation and technology which are expected in the near future,"^{5/} the most important of which have been the FCC's deployment plan for DTV and its grant of a construction permit for a new analog station, WFFF-TV. The District Commission then cautioned that "we expect that the Master Plan will be available for review either prior to or concurrent with any application which proposes a

^{3/} Statement in Public Meeting on Tower Sitings in Vermont with FCC Chairman Kennard, Hardwick, Vermont, March 9, 1998, at 1-2. Mt. Mansfield is part of the Green Mountains.

^{4/} *University of Vermont and State Agricultural College, Declaratory Ruling #116* (June 25, 1980).

^{5/} *Atlantic Cellular Co., Case No. 5L0711-6* (Feb. 14, 1996), at 6.

new tower structure, a new building or an expansion of an existing tower or building.”^{6/} Deployment of DTV on Mt. Mansfield will require new towers in order to accommodate DTV antennas, because the current towers are barely adequate for current facilities and the Commission’s current RF regulations will require higher towers. Thus, a new Master Plan must be adopted by the Association and submitted to the District Commission before the Commission will consider proposals for DTV facilities on Mt. Mansfield.

The History of Efforts by the DTV Applicants To Comply with Act 250 Requirements

Although the current members of the Association (including WVNY, WCAX and WETK), in conjunction with WPTZ and WFFF, have now spent six years in diligent efforts to develop a Master Plan that will be acceptable to all Association members, a plan has not yet been adopted. As early as September 1995, the Association voted to begin preparation of a mutually agreeable Master Plan -- even before the adoption of the District Commission’s requirement that it submit such a plan. In December 1995, it drafted a Request for Proposal to solicit bids from consulting engineering firms for a three-phase study leading to such a plan. This RFP received final approval in April 1996, and in July 1996 the Association selected a team headed by Hammett & Edison, which includes Vermont architects, landscape architects, naturalists, and structural engineers so as to address all of the relevant Act 250 criteria. By the fall of 1996, this team had presented various preliminary options, the Association had winnowed those down to three, and it had proceeded to seek the necessary input from environmental organizations and town planners concerning these alternatives. In April 1997, Hammett & Edison delivered a Phase I report.

At this point, however, the State of Vermont determined to require further study. Because of the unique environmental issues concerning Mt. Mansfield described above, the Governor of Vermont determined that responsibility for the State’s future planning on this project should be vested in the Agency of Natural Resources and that the Governor’s Council of Environmental Advisors should assist in developing a plan for his approval. As a member of the Association (through the Vermont State Police), the State had the ability to insist upon these requirements. Moreover, the University of Vermont, one of the two Association landowner members, has made clear that it will not accept a plan that does not meet with the State’s approval.

In the summer of 1997, shortly after the Governor’s intervention in the Association’s planning process, the Association agreed to pay for the services of a consulting engineering firm to advise the State in order to expedite that process. However, the State did not select such a firm until the summer of 1999. In February 2000, the State determined that the Master Plan should require relocation of WVNY’s recently reconstructed analog facilities to a new tower closer to the other communications facilities on the “nose” of Mt. Mansfield, along with the new towers required to accommodate all five broadcasters’ DTV facilities.

^{6/} *Id.*

Since that time, the DTV Applicants have been in continuing negotiations with the State in efforts to obtain agreement on a Master Plan that will accommodate the State's interests and concerns, while addressing the broadcast needs of all such users in an efficient manner. Following the State's insistence on an "all-nose" solution, the Association retained a consulting firm to study the feasibility of such a solution, and submitted to the State the consultant's report that relocation of WVNY's newly reconstructed analog facilities would be financially unworkable. The State has now indicated that it will require an independent review of the consultant's report, to include scrutiny of the DTV Applicants' collective financial data. The Governor's Council of Environmental Advisors will also have a role in considering the environmental implications of any proposed Master Plan, which will require additional time and possible negotiations. Agreement with the State on these questions will be a prerequisite to the finalization of the Master Plan required under prior Act 250 decisions.

The DTV Applicants believe that further negotiation with the State will ultimately lead to a Master Plan that can receive the required unanimous approval of Association members. While it is difficult to predict how long the State's decisionmaking processes will take, the DTV Applicants have received indications that the State hopes to finalize its position on the Master Plan by the end of this year.

Additional Steps That Will Be Required After Adoption of a Master Plan

Following adoption of a Master Plan by the Association, several additional hurdles must be cleared before filing an Act 250 application.

First, the State and the University of Vermont have now required that there be a single non-profit entity to serve as the future tenant at the Mt. Mansfield site. Forming this entity will be a difficult and complex undertaking requiring at least four to six months after it is clear that the Association can adopt the Master Plan, and could take longer depending on the need for debt financing, particularly if state-guaranteed financing is required.

After the tenant association is successfully formed, it must enter into negotiations with the University for a long-term lease. Those negotiations will involve senior officers of the University, almost certainly with the participation of key members of the Board of Trustees in order to ensure the required Board approval. These negotiations are likely to take at least three to four months.

Concurrent with the formation of the tenant association and its lease negotiations with the University, the Colocation Association will prepare an application for submission to the District Commission under Act 250. A team of experts, including lawyers, architects, landscape architects, structural engineers, planners, and environmental specialists, will prepare the application, which must address each of the ten factors identified in Act 250. Anticipated time for preparation of the entire application is two to three months.

Based on past experience, the Act 250 review process before the District Commission can be expected to take at least six months and as much as a year, depending on what issues are raised by any persons opposing the application. An appeal of the District Commission's decision to the State Board by any party in interest can take as long as a year. Appeals of State Board decisions to the Vermont Supreme Court -- although rare -- typically take at least a year and a half.

While the Act 250 review process is proceeding, the DTV Applicants must also seek approval of their proposed DTV facilities from local government entities. Act 250 requires a finding that a proposed project conforms to town and regional plans. See 10 V.S.A. § 6086(a)(10). The applicants will also be required to obtain zoning approval from the Town of Stowe's Zoning Board of Adjustment.

In short, the DTV Applicants anticipate that for these reasons, despite their diligence in seeking Act 250 approval over the past six years, they will not even be able to begin construction until approximately June 2003 at the earliest. Moreover, construction in Vermont, at this altitude, will be subject to substantial weather constraints: the construction season on Mt. Mansfield begins, depending on the winter's snow cover, from mid-May to early June and extends to mid-October. In addition, Mt. Mansfield is a major breeding site for Bicknell's Thrush, a rare and protected bird. We anticipate that limitations on construction during the early summer to protect breeding birds may require the DTV facilities to be built over two seasons.

As noted above, these developments will require the DTV Applicants to seek extensions of their DTV construction deadlines in the event that more generic relief for small market stations is not granted. We hope the foregoing information has been helpful in alerting you to this issue, and we would be happy to meet with your staff to discuss any questions they may have in connection with it.

Respectfully submitted,


Gregory L. Masters *wae*

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cc: **Barbara Kreisman, Chief, Video Services Division**
John Morgan, Assistant Chief, Video Services Division
Clay Pendarvis, Chief, Television Branch

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January 15, 1964

Editing Page

Honorable E. William Henry, Chairman
Federal Communications Commission
Washington 25, D. C.

Dear Bill:

We are having the Canada--United States
Interparliamentary meetings now and yesterday I
took up the matter of the desire of WCAZ-TV to
increase its power with one of the top Canadians.
He was very interested in our problem and indicated
he would take the matter up immediately.

Last night I attended a Reception at the Canadian
Embassy for this group and he told me that both he and
the Ambassador were working on it.

This is to keep you posted and I expect should
help.

With personal best wishes,

Sincerely yours,

GEORGE D. AIKEN

GDA:eg

JUN 16 '02 04:51PM WCAK

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FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

January 29, 1964

IN REPLY REFER TO:

Mr. F. G. Nixon
Director, Telecommunications
Department of Transport
Ottawa, Ontario, Canada

Dear Mr. Nixon:

Confirming our telephone conversation of Friday, January 24, I would again stress my interest in arriving at some arrangement under which WCAK-TV, Burlington, Vermont, may be permitted to achieve the moderate increase in power which its licensee has proposed.

From the standpoint of our domestic service, this is a meritorious proposal. WCAK-TV is located in a sparsely settled and under served area in the New England States. The extensive coverage afforded by the mountain location of this station is needed to reach the scattered population. Wide area service is also desirable in order for the station to have a sound economic base.

The details of this proposal are contained in our letters of June 17 and September 6, 1963. As you may be aware, the Department of Transport indicated in a letter dated July 20, 1963, that it would not object to an increase in effective radiated power of WCAK-TV to 60 kilowatts, as compared to the 37.6 kilowatts now proposed. However, the licensee did not immediately file an application proposing this increase, and the intervention of the Working Arrangement, without provision for such power, and the subsequent assignment of the Mt. Laurier station, precluded the improvement in facilities the Burlington station might otherwise have enjoyed.

I quite understand that since the existing antenna of WCAK-TV exceeds a height of 2000 feet above average terrain, the maximum parameters specified in the Canadian/U.S. Working Arrangement are exceeded, and any increase in power must be negotiated. In this instance, the 3 db increase would place the station at about the maximum power permitted with a 2000' antenna. There is some question whether, at the distance involved, the adverse effect on your Mt. Laurier station resulting from the excess of antenna height above this limit will be appreciable.

JUN 16 '02 04:52PM WCRX

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In the event we are not able to resolve this matter by letter, in accordance with 5(b) of the Working Arrangement I would suggest a meeting between members of our respective staffs, to explore the basis for a possible accommodation.

Sincerely,

E. William Henry
Chairman

TELECOMMUNICATIONS AND
ELECTRONICS BRANCH



DEPARTMENT OF TRANSPORT

YOUR FILE NO. _____
OUR FILE NO. 5874-1 (RBE)

OTTAWA, February 7, 1964.

Dear Mr. Henry:

I wish to acknowledge receipt of your letter of January 29, 1964, expressing a strong interest in arriving at some arrangement under which WCAI-TV Burlington, Vermont may be permitted to increase its power from 18.2 Kw to 37.6 Kw.

In the light of your comments, we are giving further consideration to this proposal for the Burlington station. Special studies are presently being conducted in the Department to evaluate the effect of the proposed radiation in the critical sector towards the co-channel assignment at Mont Laurier, Quebec in accordance with the provisions of the Working Arrangement under the Canadian-USA Television Agreement.

This matter is being given very close attention and we are looking forward to discussing it with the Commission staff in due course. We expect to be in further communication with the Commission during the first week of March.

Yours truly,

Harold J. Williamson
(P.G. Nixon)
Director,
Telecommunications and
Electronics Branch.

E. WILLIAM HENRY

FEB 12 1964

RECEIVED
OFFICE OF

E. William Henry, Esq.,
Chairman,
Federal Communications Commission,
WASHINGTON 25, D.C.,
U. S. A.

Feb 17 1964
Sent Charles L.
and [unclear]
[unclear]

VERMONT UNION
TELEGRAM
COPY

March 25, 1964

FCC

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Honorable E. William Henry
Federal Communications Commission
Washington 25, D. C.

Dear Bill:

I received the following wire this morning from
Maurice Bourget, Speaker of the Senate, Ottawa, Canada:

"THE PROBLEM WCAZ-TV CHANNEL 3 VERMONT STOP HAVE BEEN
IN TOUCH WITH SENIOR OFFICERS CANADIAN DEPARTMENT OF TRANSPORT
STOP ARRANGEMENTS HAVE BEEN MADE FOR ENGINEERING REPRESENTATIVES
OF FEDERAL COMMUNICATION COMMISSION TO VISIT OTTAWA TOMORROW
TO DISCUSS TECHNICAL PROBLEMS STOP ANY FINAL DECISIONS WILL
OF COURSE REQUIRE CONSULTATION WITH OTHER GOVERNMENT AGENCIES
STOP HAVE BEEN ASSURED THAT ENTIRE PROBLEM WILL BE FULLY
EXPLORED STOP WILL KEEP YOU INFORMED OF FURTHER DEVELOPMENTS
IN OUR COURSE STOP WARMEST REGARDS."

Best regards.

Sincerely yours,

GEORGE D. AIKEN

GDA:ed

2527

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(mh)

SPEAKER OF THE SENATE



PRÉSIDENT DU SÉNAT

Ottawa, Ontario,
5th November, 1964.

Dear Senator Aiken:

I suppose that you are aware of the latest development regarding television station WCAV-TV in Burlington, Vermont. In case you are not, I enclose, herewith, letters that I have received from the Minister of Transport and our Director of Telecommunications and Electronics Branch. Needless to say, I was so happy that they could do something for our good friend the senior Senator of Vermont.

I hope that you will be able to take a little rest before your next session and be in good shape for our next meeting, here, in Ottawa.

With best regards from Margot and myself, I remain

Yours sincerely,

Maurice

The Honourable George D. Aiken,
United States Senate,
Washington, D.C.,
U. S. A.

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OFFICE OF
THE MINISTER OF TRANSPORT
OTTAWA, CANADA

November 4, 1964.

The Honourable Maurice Bourget,
Speaker of the Senate,
The Senate,
Ottawa, Ontario.

Dear Senator Bourget:

You may recall that last January a problem of an objection by Canada to a proposed power increase for television station WCAX-TV in Burlington, Vermont, was raised by Senator George D. Aiken of Vermont during the opening session of the Senatorial U.S.A.-Canada Joint Committee meeting in Washington and Senator Aiken left with you a memorandum of representations on this subject prepared by the U.S.A. station. This was brought to our attention by the Department of External Affairs and subsequently I received a copy of your telegram to Senator Aiken of March 24, 1964, in which he was assured of the full exploration of the problem and that he would be informed of further developments in due course.

After a prolonged period of negotiations between the Federal Communications Commission and the Department of Transport, the Department has agreed to the proposed power increase for WCAX-TV. A copy of a letter to the Commission in this regard is attached for your information.

Yours sincerely,

Alistair Fraser,
Executive Assistant.

Att.

JUN 16 '62 04:54PM WCRX

COPYFROM ORIGINAL IN THE UNIVERSITY
OF VERMONT LIBRARY. MAY NOT BE
REPRODUCED WITHOUT PERMISSION 5874-2 (SRB)
5874-1Hunter Building,
Ottawa, Ontario,
October 30, 1964.Mr. William E. Henry,
Chairman,
Federal Communications Commission,
Washington, D.C. 20554.

Dear Mr. Henry:

This refers to your outstanding proposal for an increase in power from 18.2 to 37.6 kilowatts for television station WCAX-TV Burlington, Vermont, on Channel 3 with an effective antenna height of 2730 feet; the latest correspondence on this subject being your letter of June 3, 1964. This Administration had objected to the proposal because of inadequate protection to the unlimited allocation of Channel 3 to Mont Laurier, Quebec, assigned to CEFT-2, pursuant to the Working Arrangement under the Canadian-U.S.A. Television Agreement. The Commission in turn initiated negotiations for consideration of the power increase as a special case under the Arrangement.

In the course of negotiations the Commission forwarded supporting material indicating the adverse effects of the climatic conditions at the WCAX-TV Mt. Mansfield site if a directional antenna were used to protect Mont Laurier. It was explained, moreover, that the use of a directional antenna with the required engineering tolerances would, in fact, reduce the station service in northern Vermont.

On evaluating all factors, we have reconsidered the objection to the power increase and I am now happy to say that this Administration agrees to an omnidirectional operation with an effective radiated power of 37.6 kilowatts and effective antenna height of 2730 feet for WCAX-TV Burlington on Channel 3 at its present location on Mt. Mansfield as a special case under the Working Arrangement.

This case is illustrative of the advantages of the provision in the Working Arrangement for negotiations to establish acceptability of proposed allocations which are not within a specific formula of the Arrangement.

In conclusion, I would like to express our appreciation of the co-operation extended by the Commission and its staff throughout the negotiations.

Yours truly,

(F. G. Nixon),
Director,
Telecommunications and
Electronics Branch.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON 25, D. C.

IN REPLY REFER TO:

8850

The Honorable George D. Aiken
United States Senate
Washington, D. C. 20510

Dear Senator Aiken:

As your office was advised last week by telephone, the Commission has been advised by the Department of Transport of Canada that it has reconsidered and withdrawn its opposition to the application of Television Station WCAK-TV, Burlington, Vermont, for an increase in power. The application will be granted shortly, and its implementation should result in improved television reception to the State of Vermont.

That this application may now be granted is in no small part due to your intercession with your Canadian colleagues. I would like to take this opportunity to express my deep appreciation and that of the Commission for your interest.

Yours sincerely,



E. William Henry
Chairman

CERTIFICATE OF SERVICE

I, William R. Richardson, Jr., do hereby certify that on this 17th day of June, 2002, I caused true and correct copies of the foregoing Comments of Mt. Mansfield Television, Inc., to be served by facsimile upon the following parties:

Barbara Kreisman
Federal Communications Commission
445 12th Street, SW
Room 2-A666
Washington, DC 20554

Pamela Blumenthal
Federal Communications Commission
445 12th Street, SW
Room 2-A762
Washington, DC 20554

Gregory L. Masters
Wiley, Rein & Fielding LLP
1776 K Street, N.W.
Washington, DC 20006


William R. Richardson, Jr.