

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 73.622(b),)	MM Docket No. 00-121
Table of Allotments,)	RM 9674
Digital Television Broadcast Stations)	
(Kingston, New York))	
)	
)	

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

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WRNN-TV Associates Limited Partnership (“WRNN”), licensee of WRNN-TV, Kingston, New York (Facility Id. No. 74156), by its attorneys and pursuant to Section 1.115(d) of the Commission’s rules, opposes the Application for Review filed by WKOB Communications, Inc. (“WKOB”), licensee of WKOB-LP, New York, New York (Facility Id. No. 51441) in the above-captioned proceeding. WKOB seeks review of an order of the Media Bureau affirming its prior decision to change WRNN-TV’s digital television allotment from Channel 21 to Channel 48. As demonstrated below, WKOB’s Application for Review presents the same tired and baseless arguments that have been properly rejected by the Media Bureau and the Commission in this and related proceedings. Accordingly, the Commission should promptly deny the Application for Review.

I. Introduction and Summary

In its initial order in this proceeding, the Video Division held that the public interest would be served by modifying WRNN-TV’s DTV allotment to Channel 48. The Division ruled that the change in channel would comply in all respects with the Commission’s technical rules,

provide city grade service to WRNN-TV's community of license, and result in a net increase in interference-free DTV service to almost six million people. Thus, the Bureau held that the change would yield substantial public interest benefits by "increas[ing] digital service to the public in furtherance of the Commission's goals with respect to the establishment of digital television service."¹

In reaching that conclusion, the Division rejected WKOB's argument that, despite its secondary status and obligation to protect full-power DTV service, its displacement construction permit for Channel 48 should have been given protected status with respect to the allotment of Channel 48 at Kingston.² The Division noted that the Commission had recently affirmed the dismissal of WKOB's Statement of Eligibility for Class A status.³ As a result, WKOB was not entitled to protection from the allotment of Channel 48. The Division also rejected WKOB's claim that WRNN's proposal to relocate its DTV transmitter site and to employ a directional antenna raised issues regarding the service areas required to be covered by WRNN's modified facilities.⁴

WKOB then filed a petition for reconsideration and request for stay of the Video

¹ *Amendment of Section 73.622(b) Table of Allotments, Digital Television Broadcast Stations (Kingston, New York)*, 17 FCC Rcd 1485, ¶ 8 (2002) ("Channel 48 Report and Order").

² *Id.* at ¶ 7.

³ The Commission found that WKOB's deviation from the statutory criteria for Class A eligibility was "significant" and was not justified by any "compelling circumstances." Indeed, WKOB had broadcast only three hours per day of programming during the entire period mandated by the Community Broadcasters Protection Act, Pub. L. No. 106-113, 113 Stat. Appendix I at 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f) ("CBPA"), for establishing Class A eligibility (and, for a period of time, had not broadcast at all), which fell "far short" of the statutory requirement. *WKOB Communications, Inc., Certificate of Eligibility for Class A Television Status*, 17 FCC Rcd 1127, ¶ 9 (2002) ("WKOB Class A Order").

⁴ *Channel 48 Report and Order* at ¶ 8.

Division's order, and an informal objection to WRNN-TV's application for a DTV construction permit.⁵ In requesting reversal of the allotment of Channel 48, WKOB accused the Bureau of relying on "erroneous" facts because the facilities specified in WRNN-TV's subsequently filed application for a construction permit differed in certain respects from the allotted facilities, and allegedly would cause in an increase in interference. WKOB also complained that the Bureau "ignored" the impact of the change in channel on WKOB's operations. The Bureau correctly rejected all of WKOB's objections to the allotment of Channel 48.⁶ The Bureau again held that the allotment complied with all technical and coverage rules and, as a result, was not premised on a reduction in interference. Most significantly, the Bureau found that "[t]he gravamen of WKOB's objection is that protection was not afforded to its low power station in the adoption of this rulemaking proposal," and explained, again, that because "WKOB-LP is a secondary service ... [it] is simply not entitled to the level of protection it desires."⁷ The Video Division affirmed that the underlying *Channel 48 Order* had correctly applied Commission precedent to deny WKOB – the licensee of a non-Class A eligible secondary service – protection from WRNN's DTV allotment proposal. Finally, the Video Division rejected WKOB's factual arguments regarding the *Channel 48 Application*, finding them to be irrelevant to the allotment proceeding, and, in any event, legally insignificant.

WKOB now asks the Commission to review the same arguments properly rejected by the Bureau in the previous Channel 48 orders. Critically, WKOB has not asserted, must less

⁵ See FCC File No. BPCDT-20020130AAQ ("*Channel 48 Application*").

⁶ *In the Matter of Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kingston, New York)*, DA 02-1776 (rel. July 29, 2002) ("*Channel 48 Reconsideration Order*"). Concurrently, the Bureau rejected WKOB's motion for stay and its objection to WRNN's application for a DTV construction permit.

⁷ *Id.* at ¶ 6.

demonstrated, that the allotment of DTV Channel 48 violates any Commission rule. Rather, WKOB repeats the mantra that its secondary low power station should be shielded from displacement by the allotment of a channel for full-power digital television. To support this novel result, WKOB again relies on the same distorted recitation of facts and laws that it presented to the Bureau. Thus, WKOB incorrectly claims that the Bureau improperly ignored WKOB's concerns regarding its potential displacement. WKOB also knowingly mischaracterizes the effects of WRNN-TV's proposed construction, ignores directly applicable rules, and turns one of the Commission's most important public policy objectives – the national conversion to digital television service – on its head by seeking unprecedented primary treatment for a historically secondary service.

WKOB points to no instance in which a secondary LPTV station has enjoyed greater rights to spectrum than the primary licensee of that spectrum. Nor does it present any plausible rationale that would remotely justify such a radical departure from the Commission's bedrock principles governing access to, and the use of, DTV spectrum. Accordingly, the allotment of Channel 48 to WRNN was fully consistent with law and policy, and should be promptly affirmed.

II. The Bureau Properly Considered the Impact of the Allotment of Channel 48 on WKOB-LP and, Consistent with Law, Concluded that the Low Power Station Was Secondary and Not Entitled to Protection from Displacement by Full-Power Digital Television Operations

After considering all the arguments WKOB had to offer, the Bureau held in the *Channel 48 Order* and the *Channel 48 Reconsideration Order* that the low power station was, as a matter of law, secondary. Accordingly, it was not entitled to primary status with respect to WRNN-TV's proposed allotment of DTV Channel 48. WKOB claims, however, that despite what the clear language of the orders say, the Bureau unlawfully exceeded its delegated authority by

disregarding a Commission “directive to consider” the potential impact of the Channel 48 allotment to WKOB-LP and “chang[ing]” FCC policy. The Bureau allegedly “compounded” its supposed error by basing its allotment decision on the facilities described in WRNN-TV’s petition for rulemaking, rather than the facilities specified in its subsequently filed application for a DTV construction permit.⁸ To the contrary, the Bureau consistently applied the right facts to the right legal standard in full accord with applicable Commission law and policy and, accordingly, correctly held that WKOB-LP’s secondary low power station was not entitled to protection from the allotment of full-power DTV Channel 48.

While the outcome of the Bureau’s deliberations are obviously not to WKOB’s liking, the orders make crystal clear that the agency properly afforded WKOB the legal status and consideration to which it was entitled throughout this proceeding. From its creation by the Commission in 1982, the low power television service has been a “secondary spectrum priority” service whose members “may not cause objectionable interference to existing full-service stations, and ... must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs.”⁹ As the FCC stated at that time, “it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service,” and therefore cautioned that it would “not take low power stations into account in authorizing full-service stations,” and “urge[d] low power applicants to consider this fact when they select channels.”¹⁰

The Commission has also consistently held that LPTV stations have only secondary

⁸ *WKOB Application for Review, MM Docket No. 00-121* at 4 (Aug. 28, 2002).

⁹ *Report and Order in BC Docket No. 78-253*, 51 RR (P&F) 2d 476, 486 (1982).

¹⁰ *Id.* at n. 23.

status in the DTV implementation scheme.¹¹ As WRNN detailed in numerous submissions in this proceeding, the FCC has expressly held that “it will be necessary to displace a number of LPTV and TV translator operations, especially in the major markets,” to provide the public with the overriding benefits associated with DTV service.¹² In so finding, the Commission recognized that “there is insufficient spectrum available in the broadcast TV bands to factor low power displacement considerations in making DTV allotments.”¹³ Thus, the FCC has generally refused to consider requests from LPTV operators to modify the channels allotted to full-power stations because of the potential adverse impact such changes would have on DTV implementation.¹⁴ The Commission has ruled that, as secondary operations, “low power stations must give way to new operations by primary users of the spectrum”¹⁵ and has specifically noted

¹¹ *Advanced Television Systems*, 12 FCC Rcd 12809, ¶ 81 (1997) (“*Fifth Report and Order*”) (ruling that LPTV and TV translators “retain their secondary status”).

¹² *Advanced Television Systems (Sixth Report and Order)*, 12 FCC Rcd 14588, 14651 (1997) (“*Sixth Report and Order*”); see *Advanced Television Systems (Sixth Further Notice of Proposed Rule Making)*, 11 FCC Rcd 10968, ¶ 65 (1996) (“*Sixth Further Notice of Proposed Rulemaking*”) (“[I]n order to provide DTV allotments for existing full service stations, it likely will be necessary that we require a significant number of low power TV (LPTV) stations and TV translator stations to make changes in their operation, *including the possibility of ceasing operation.*”) (emphasis added).

¹³ *Id.*

¹⁴ *Advanced Television Systems (Second Memorandum Opinion and Order)*, 14 FCC Rcd 1348, 1385 (1998).

¹⁵ *Advanced Television Systems (Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order)*, 13 FCC Rcd 7418, 7461 (1998) (“*Sixth Report and Order Reconsideration*”); see *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, 17 FCC Rcd 1022, ¶ 27 (2002) (“*Channel 52-59 Order*”) (prohibiting LPTV stations from causing harmful interference to stations of primary services – including new licensees in the Channel 52-59 band, stating that “this decision is consistent with the secondary status of LPTV, and will promote the deployment of new services anticipated for the band”).

that a significant number of low power displacements would be required.¹⁶

The Bureau's orders are in full conformity with these holdings. In the *Channel 48 Order*, the Video Division reasoned that, pursuant to the Commission's decision adopting rules for Class A service, "LPTV stations would be treated as primary stations – and their service areas protected – only to the extent that they receive, or are eligible to receive, Class A status."¹⁷

Since the Commission had affirmed the denial of Class A status for WKOB, it was not "entitled to protection against WRNN's digital proposal." Accordingly, as the Bureau affirmed in the *Channel 48 Reconsideration*, WKOB was "simply not entitled to the level of protection it desires."¹⁸ Contrary to WKOB's assertion, this conclusion is neither novel nor inconsistent with

¹⁶ *Advanced Television Systems (Sixth Further Notice of Proposed Rulemaking)*, 11 FCC Rcd 10968, 10994 (1996). To help ameliorate the potential impact on LPTV, the Commission modified a number of its technical rules to provide affected stations with greater operational flexibility. *Sixth Report and Order Reconsideration* at ¶¶ 97-100. The FCC confirmed that by taking these steps, however, it was "not altering the secondary status of low power stations." *Id.* at ¶ 107. To the extent it took actions designed to assist LPTV stations, it did so only in cases in which a change could be made "without impacting either the DTV service of the associated full service stations or [the Commission's] overall DTV implementation goals." *Id.*

¹⁷ *Channel 48 Order* at ¶ 7 (citing *Report and Order, In the Matter of Establishment of a Class A Service*, 15 FCC Rcd 6355, 6370-71 (2000), clarified on recon., FCC 01-123, ¶¶ 8-9 (rel. April 13, 2001)).

¹⁸ *Channel 48 Reconsideration Order* at ¶ 6. As the proceedings regarding WKOB's eligibility for Class A status make clear, the low power station fell woefully short of complying with the statutorily mandated criteria for establishing Class A status. Moreover, there is no evidence that WKOB has ever complied with all Class A eligibility standards at any time since the CBPA was enacted in 1999. See *WRNN Opposition to WKOB Supplement, Certificate of Eligibility for Class A Television Status* at 15-18 (Aug. 1, 2001). Finally, although WKOB notes that it has filed a Petition for Reconsideration of the order affirming the denial of Class A status, this Petition was premised on the claim that the Commission too narrowly construed the CBPA by refusing to grant Class A eligibility on the basis of an alternative "public interest" standard. This argument, in turn, relied exclusively on the then-pending appeal of the Class A rules in *Saga Broadcasting Corp. v. FCC*, Nos. 01-1249, 01-1293 (D.C. Cir. 2001), which was dismissed by the Court of Appeals for the District of Columbia Circuit on April 22, 2002. Accordingly, the principal argument in WKOB's petition for reconsideration has been effectively rendered moot.

In this regard, WKOB falsely claims if its request for Class A status was somehow

any Commission holding. Because WKOB cannot point to anything in the Commission's rules or case law that alters its status as a secondary station, the Bureau did not commit any error in holding that WKOB was not entitled to protection from the allotment of a full-power DTV channel.

Moreover, the Bureau's conclusion was not premised on an "erroneous reading" of the Commission's Class A orders, as WKOB alleges.¹⁹ WKOB accuses the Bureau of not affording "any consideration at all" to the low power station's concerns because it was held to be unqualified for Class A status. The Bureau did nothing of the sort. In light of the Commission's consistent and repeated pronouncements affirming the secondary status of low power television services, the Bureau gave WKOB all the consideration due to it under the law with respect to the proposed allotment of Channel 48. Thus, the Bureau properly considered that WKOB was not entitled to Class A status and, accordingly, was merely a secondary service with no legal *entitlement* to protection from a DTV allotment. The Bureau also considered, as discussed more fully below, other factors offered by WKOB – including the potential for WKOB to be displaced and its payment of money for the Channel 48 construction permit in a Commission auction. Since WRNN's allotment proposal complied in all respects with the Commission's technical rules and "furthered the Commission's goals with respect to the establishment of digital television service," however, the Bureau concluded that none of the concerns expressed by WKOB were sufficient to warrant "deviations from the Commission's rulemaking or DTV

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resuscitated, there would be "no dispute" that, upon the grant of Class A eligibility, WRNN would "have to protect the WKOB-LP Channel 48 facilities." WRNN has shown that even if WKOB-LP were deemed to be Class A eligible, which it could not, it would nevertheless be subject to displacement to clear the way for the introduction of DTV service. *See WRNN Opposition to Petition for Reconsideration, MM Docket No. 00-121 at 6 n.17 (April 15, 2002)*.

¹⁹ WKOB Application for Review at 1, 4-5.

implementation policies *in this case*.”²⁰ Indeed, any other result would have been in direct conflict with the FCC’s policy that “measures to accommodate low power stations would, by their very nature, pose restrictions on [the agency’s] choice of allotments for full service DTV stations.”²¹

Therefore, the Bureau did not fail to provide any consideration to WKOB required under Commission rules, change FCC policy or assume WKOB simply did not exist. Rather, in consideration of WKOB’s secondary status, the substantial benefits of WRNN’s proposal and its compliance with the Commission’s rules, the Bureau correctly determined that the allotment of Channel 48 served the public interest by following precisely the directives established by the Commission governing full-power digital television service. In short, the Bureau correctly ruled that WKOB did not present any facts that justified a substantial departure from Commission law and policy regarding the primary status of full-power DTV service.²²

Finally, WKOB faults the Video Division, as it did in the petition for reconsideration, for allegedly ignoring WRNN’s “construction permit application and instead analyzing the [allotment] proposal based on a theoretical reference point which WRNN never intended to use

²⁰ *Channel 48 Reconsideration Order* at ¶ 6.

²¹ *Sixth Report and Order Reconsideration* at 7462; *see Channel 52-59 Order* at ¶¶ 28, 30 (“Congress has recognized – and the Commission has repeatedly noted – that not all LPTV stations can be guaranteed a certain future due to the emerging DTV service, and we do not think it is advisable to defer the ultimate displacement of LPTV operations to the detriment of new primary service licensees in the band. ... LPTV licensees have been aware of their secondary status throughout the transition.”).

²² As WRNN has demonstrated, WKOB has consistently misstated the law by claiming that a secondary low power station, such as WKOB-LP, may be displaced only if the change is “essential” or “justified by technical necessity.” *See WRNN Opposition to Petition for Reconsideration, MM Docket No. 00-121* at 6 n.17 (April 15, 2002); *see WKOB Application for Review* at 3. WKOB’s claims are unsubstantiated and, in fact, directly contrary to clear statements of law. *See WRNN Opposition* at 6 n.17 (*citing Sixth Report and Order Reconsideration* at ¶¶ 106, 107).

and in fact will not use.”²³ According to WKOB, the facilities specified in WRNN’s construction permit should have been considered in the allotment proceeding, because the actual facilities would allegedly create more interference than the theoretical facilities specified in the rulemaking proceeding.

WKOB’s claims are factually and legally wrong. As shown in detail below, the allegation of increased interference is demonstrably false, and WKOB knows it. WRNN’s authorized facilities will actually reduce the amount of overall interference. Further, the law mandates that a channel change occur through two separate and distinct proceedings – the allotment stage and the application stage. The Commission “generally cannot, in the course of a rulemaking proceeding, evaluate the actual transmitter site that will be specified in applications *not yet filed*.”²⁴ This is because “[t]here is no requirement, or even assurance, that a successful rulemaking proponent will specify in a subsequent application the reference coordinates for a transmitter site proposed in the rulemaking proceeding.”²⁵ WKOB does not cite any authority that limits applicants for DTV service to the precise facilities described in the DTV Table of Allotments. Indeed, the Commission’s rules expressly encourage the maximization of DTV service areas, precisely as WRNN has done here.²⁶ Contrary to WKOB’s allegations, therefore, the Bureau relied upon the correct facts in holding that the allotment of DTV Channel 48 would serve the public interest.

²³ WKOB Application for Review at 4.

²⁴ Caldwell, *College Station and Gause, Texas*, 15 FCC Rcd 3322, ¶ 14.

²⁵ *Id.* At the allotment stage, the FCC “require[s] and consider[s] a theoretical reference site at which [it] may determine that a transmitter could be located in compliance with all Commission technical requirements.” *Id.* Thus, consideration of the actual technical parameters of a proposal at the allotment stage “would be premature.” *Id.*

²⁶ See 47 C.F.R. § 73.623(c).

In sum, there was no fault with the facts or law considered by the Bureau in holding that WKOB was secondary and, as a result, was not entitled to protected status with respect to the allotment of DTV channel 48 at Kingston. As demonstrated next, the allotment not only complies with law but, as the Bureau found, will yield overwhelming public interest benefits.

III. The Video Division Correctly Determined that the Allotment of DTV Channel 48 at Kingston Will Provide Significant Service Improvements in Furtherance of the Commission's Policy of Promoting the Establishment of Digital Service

As noted above, the Bureau held that the allotment of DTV Channel 48 complies with all Commission rules and serves the public interest by enhancing the availability of DTV services. WKOB offers nothing to justify a reversal of the Bureau's conclusions.

It is uncontested that the allotment of Channel 48 will vastly expand the availability of interference-free DTV service in furtherance of the Commission's long-standing objectives of promoting the transition to the next generation of television. As a result of the Bureau's allotment of DTV Channel 48, an additional six million people will gain access to a new digital service.²⁷ Using the facilities specified in WRNN-TV's construction permit, the net increase in interference-free service will be even greater.²⁸

²⁷ It is unclear why or on what basis WKOB claims that the improvements in WRNN's DTV service are somehow "reduced" or "in doubt" merely because WRNN proposes to relocate its transmitter site and employ a directional antenna. Nor is it apparent why WKOB continues to suggest that the channel change constitutes an abandonment of Kingston. *WKOB Application for Review* at 2, 3-4. Commission policy expressly provides DTV licensees with flexibility to relocate and maximize their facilities, consistent with service and coverage requirements, with which WRNN is in full compliance. *Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television (Report and Order and Further Notice of Proposed Rulemaking)*, 16 FCC Rcd 5946 ¶¶ 21, 41 (2001) (rejecting replication requirement and stating that the benefits of flexibility outweigh any concern over the consequences flowing from site moves).

²⁸ WRNN also demonstrated that the allotment of Channel 48 would eliminate interference to noncommercial educational television station WLIW(TV), Garden City, New York, which filed comments in support of WRNN, in light of the assistance that the reduction in interference would provide to that station. *WRNN Petition for Rulemaking, MM Docket No. 00-121* at 5,

Significantly, these benefits will come without any offsetting detriment to the public interest, contrary to WKOB's baseless assertions. For example, WKOB repeats its unsubstantiated claim that the construction of the facilities authorized in WRNN-TV's construction permit will "increase, rather than decrease, interference to other stations."²⁹ To the extent that the Commission even considers this factor in light of the Bureau's holding noted above, the claim is belied by facts well known to WKOB. As WRNN has previously shown, the number of people that are predicted to receive interference from the facilities authorized in the construction permit will be *less* than the number predicted to receive interference from the originally allotted Channel 21 facilities.³⁰ WKOB repeats this false claim even though WRNN pointed out long ago that the error was caused by WKOB's improperly double-counting the

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Technical Statement at 3-4 (Apr. 20, 1998). Further, the service gains would provide the opportunity for WRNN to make its transition to DTV more quickly, which could facilitate its ability to return its spectrum for Channel 62 to the Commission and, thereby, promote the Commission's policy in favor of speeding the introduction of new public safety and wireless services on that spectrum. *See Service Rules for the 746-764 And 776-794 Mhz Bands, and Revisions to Part 27 of the Commission's Rules (First Report and Order)*, 15 FCC Rcd 476, 534 ¶ 145 (2000); *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (Memorandum Opinion and Order and Further Notice of Proposed Rulemaking)*, 15 FCC Rcd 20845, 20860-72, ¶¶ 39-66 (2000); *Service Rules for the 746-764 MHz and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Carriage of the Transmissions of Digital Broadcast Stations, Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (Third Report and Order)*, 16 FCC Rcd 2703, ¶ 13 (2001); *see also* 47 U.S.C. § 337(a) (reallocation of 746-806 MHz band), (b) (assignment of commercial licenses by competitive bidding), and (e) (clearing of incumbent licensees); *id.*, § 309(j)(14)(C) (directive to reclaim and reassign spectrum occupied by analog television licensees); *id.*, § 337(c) (recovery of broadcast licenses for reallocation or reassignment).

²⁹ *WKOB Application for Review* at 2. Quite tellingly, WKOB does not offer a single cite to support its interference claims. WKOB also has never alleged that the allotment of Channel 48 violates any interference criteria. Of course, even if one assumed that the Channel 48 allotment might theoretically increase "interference," the Bureau correctly noted that such "interference" would not necessarily be *prohibited* under the Commission's rules. *Channel 48 Reconsideration Order* at ¶ 5.

³⁰ *WKOB Opposition to Informal Objection*, at 3-4 (Mar. 20, 2002).

interference figures specified in WRNN's application for a construction permit.³¹ The ability for WRNN to achieve its extraordinary service gains without *any* increase in overall interference provides compelling evidence of the public interest benefits of the allotment of DTV Channel 48.

WKOB's most vigorous complaint is that it paid to acquire the Channel 48 construction permit at auction.³² WKOB at least verbally acknowledges that its authorization is secondary, but it refuses to accept the consequences of that status. As the FCC has already held on several occasions, WKOB was clearly on notice that "the channel 48 spectrum being auctioned was secondary in nature."³³ Moreover, written on the face of WKOB's construction permit is the following operational condition:

This authorization is subject to the condition that low power television is a secondary service, and that low power television and television translator stations must not cause interference to the reception of existing or future full service television stations on either allotted NTSC or DTV channels, and must accept interference from such stations.³⁴

WKOB asserts that, in deciding whether to bid for Channel 48 at auction, it was

³¹ *Id.* WKOB offers no explanation for why it insists on distorting such easily verifiable engineering data.

³² WKOB constantly claims that it "bid" a seven-figure sum for the Channel 48 construction permit, but it conveniently omits the fact that the sum it was required to pay the FCC was hundreds of thousands of dollars less than the stated amount. *Public Notice, Closed Broadcast Auction No. 25 Closes; 91 Winning Bidders in the Auction of 118 Broadcast Construction Permits*, DA 99-2153, Attachment A (rel. Oct. 12, 1999).

³³ *WKOB Class A Order* at ¶ 9.

³⁴ FCC File No. BPTTL-JG0601NK. WKOB irrationally claims that, unless the Commission effectively reverses its law and protects the secondary construction permit WKOB acquired at auction, "the value of any LPTV channel" would be "destroy[ed]," and future applicants would refuse to bid for LPTV channels. Contrary to WKOB's hyperbole, affirming the Bureau would merely sustain existing law and policy. Bidders would still need to bear in mind their secondary status when choosing channels, and applicants for full-power DTV authorizations could proceed with their implementation plans without fear that Commission policy would be summarily reversed.

“reasonable for WKOB-LP to rely on established policy.”³⁵ In implementing procedures for competitive bidding, the Commission held that “the secondary nature of LPTV service[] ... would not be altered by the awarding of construction permits for these services by auction.”³⁶ WKOB could not reasonably have expected the Commission to mean anything other than what it said in that proceeding. Accordingly, Commission policy regarding the nature of a secondary authorization acquired at auction could not have been made any clearer to WKOB.

In light of this established policy, WKOB’s expectation that its payment at auction could have had any effect on the secondary status of the Channel 48 spectrum at issue was entirely misplaced. Further, WKOB participated in the auction well before the CBPA was enacted, so it could not have had any expectation that primary status for the station would even be theoretically possible.³⁷ WRNN-TV’s interest in Channel 48 and, therefore, WKOB’s potential for displacement on that frequency, moreover, should have come as no surprise. WKOB filed its application for construction permit in June 1998, and did not participate in an auction until late-1999. WRNN-TV’s petition for rulemaking had been pending before the Commission since April 1998.

Finally, the allegation that the displacement of WKOB-LP threatens the loss of “service to minority populations” is nothing short of astonishing. WKOB has repeatedly referenced its “history of service to the Korean language community” throughout this proceeding and in its unsuccessful bid for Class A status. But WKOB makes no claim that it is actually doing

³⁵ *WKOB Application for Review* at 6.

³⁶ *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 14 FCC Rcd 8724, 8757 (1999).

³⁷ *See WKOB Class A Order* at ¶ 9.

anything to serve a Korean audience. Indeed, WKOB turned the station over to a program broker in *November 2001*.³⁸ In any event, WKOB's program claims are irrelevant to this proceeding, since the Commission has ruled that foreign-language stations are subject to the same legal standard as all other stations for purposes of determining eligibility for protected status.³⁹ WKOB's lack of service is completely in keeping with the station's history of repeatedly breaking promises to the Commission that service to the public would soon be improved.⁴⁰

IV. Conclusion

In sum, the Application for Review represents the latest attempt by WKOB to prevent WRNN from fulfilling its responsibility to provide a new DTV service to the public. From the very beginning, WKOB has presented frivolous arguments and has misstated both the factual record in this case and the legal principles that govern it. WKOB offers nothing to undermine the valid conclusions reached in the *Channel 48 Reconsideration Order* and the underlying *Channel 48 Order*. Accordingly, the Commission should promptly affirm the Bureau's holding

³⁸ Even prior to November 2001, WKOB's alleged service to the Korean community was extremely limited. WKOB began broadcasting only three hours per day of programming directed toward the Korean community in September 1999 after Paxson Communications, Inc. decided not to renew its time brokerage agreement with WKOB-LP, which expired in August 1999. See *WRNN Opposition to WKOB Supplement, Certificate of Eligibility for Class A Television Status* at 7-8, 14-15 (Aug. 1, 2001). Then, in 2001, WKOB entered into agreements to sell the station license and, pending consummation of that transaction, to allow the purchaser to broker the station's broadcast time. See FCC File No. BALTTL-20011106ABQ.

³⁹ See *WKOB Class A Order* at ¶ 9.

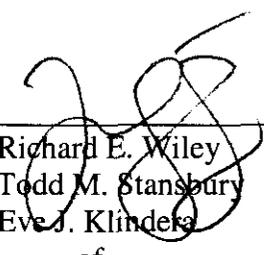
⁴⁰ *WKOB Supplement, Certificate of Eligibility for Class A Television Status* at 2 (promising to increase the broadcast schedule by July 12, 2001) (June 29, 2001); *WKOB Application for Review, Certificate of Eligibility for Class A Television Status* at 2 (Nov. 29, 2000) (WKOB is "seriously applying itself to meet all Class A operating requirements"); *WKOB Petition for Reconsideration, Certificate of Eligibility for Class A Television Status* at 2 (July 7, 2000) (same); *WKOB Statement of Eligibility*, Exhibit 1 (Jan. 28, 2000) (citing September 17, 1999 letter noting that WKOB had "hoped to return to full-time programming by Oct. 1, 1999").

that the allotment of DTV Channel 48 to Kingston serves the public interest and deny the Application for Review.

Respectfully submitted,

WRNN-TV ASSOCIATES LIMITED
PARTNERSHIP

By: _____


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Dated: September 13, 2002

CERTIFICATE OF SERVICE

I, Eve J. Klindera, hereby certify that on this 13th day of September, 2002, I caused copies of the foregoing **Opposition to Application for Review** to be sent via postage pre-paid first-class mail delivery to the following:

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