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December 23, 2003 **RECEIVED**

DEC 23 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Honorable Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Attention: Video Division, Media Bureau

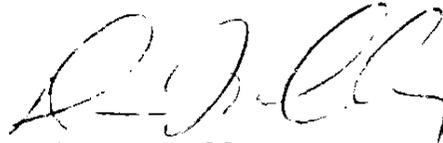
**RE: MM Docket No. 00-180
Opposition to Comments**

Dear Madame Secretary:

Please accept for filing on behalf of our client Caloosa Television Corporation an original and four copies of an "Opposition to Comments of Montclair Communications, Inc. and Waterman Broadcasting Corp. of Florida" relative to the above-referenced settlement agreement.

Should additional information be desired in connection with the above matter, kindly communicate with this office.

Very truly yours,



Dennis J. Kelly

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BEFORE THE
Federal Communications Commission
WASHINGTON, D C 20554

RECEIVED

DEC 23 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 00-180
Table of Allotments,)	RM-9956
Digital Television Broadcast Stations)	
Fort Myers, Florida)	
)	
Applications of)	BPCDT-19991029ADW
Fort Myers Broadcasting Company)	
WINK-DT, Fort Myers, Florida)	
For a Construction Permit)	
)	
Caloosa Television Corporation)	BLTVA-20010712AIK
WBSP-CA, Naples, Florida)	
For a License)	
)	
Caloosa Television Corporation)	BLTVA-20020520AAQ
WBSP-CA, Naples, Florida)	
For a License)	

TO Chief, Video Division
Media Bureau

**OPPOSITION TO
"COMMENTS OF MONTCLAIR COMMUNICATIONS, INC.
AND WATERMAN BROADCASTING CORP. OF FLORIDA
ON
JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Caloosa Television Corporation (Caloosa), by its attorney, hereby respectfully submits its Opposition to the Comments seeking denial of the "Joint Request for Approval of Settlement" in the above-captioned proceedings filed by Montclair Communications, Inc., licensee of WZVN-TV, analog

Channel 26, Naples, Florida, and Waterman Broadcasting Corp. of Florida, licensee of WBBH-TV, analog Channel 20, Fort Myers, Florida, which operates WZVN-TV pursuant to a "Time Brokerage Agreement".

1. The Montclair/Waterman pleading fails to provide any substantive rationale for the denial of said "Joint Request" other than its reference to a "Petition to Deny" against WBSP-CA's "displacement application" to move to analog Channel 7, File No. BPTVA-20030418AAE, and an "Informal Objection" to WINK-DT's above-captioned application for a construction permit to change digital channels from 53 to 9. As the "Joint Request" has been on file for several months, Montclair/Waterman's "late show" comments appear to be nothing more than a cynical attempt to keep a key competitor, Fort Myers Broadcasting Company's WINK-DT, from commencing digital television operations. To date, WINK-DT's digital construction permit has not been granted, while both WZVN-TV and WBBH-TV have constructed their digital stations and received operating licenses for them. WZVN-TV's digital license on Channel 41, BLCDT-20030619AAM, was granted on August 21, 2003. WBBH-TV's digital license on Channel 15, BLCDT-20030620AAA, was also granted on August 21, 2003.

2. Montclair and Waterman have trumped up a bogus argument against Caloosa—that the proposed WBSP-CA operation on analog Channel 7 would interfere with Comcast CATV channel 7, which carries the signal of WZVN-TV. First, such interference has not been proven by Montclair and Waterman, as the nearest CATV household is some six miles from the WBSP-CA transmitter site, and only 79 housing units and a total 2000 Census population of 178 persons are within a four mile radius of the WBSP-CA transmitter site. Furthermore, it has been the ruling case law at the Commission for more than 33 years that alleged interference to a cable television channel by a translator (or today, translator, LPTV and Class A TV) applicant **HAS NEVER BEEN GROUNDS FOR THE DENIAL OF THE APPLICATION.** The law is that a "CATV system must be prepared to make changes in its system in order to reach an accommodation with a translator applicant so that the two systems can co-exist harmoniously". *Doyle J. Todd d/b/a Heart of Texas TV*, 25 FCC 2d 754, ¶4 (1970), *reconsideration denied as to this ground*, 27 FCC 2d 205, ¶4 (1971); see also *Prescott T.V. Booster Club, Inc.*, FCC 70-285 (March 26, 1970).

3. In *Upper Bear River TV Service*, 53 FCC 2d 1039 (1975), the Commission wrote at ¶9:

The Commission has repeatedly held that, because cable television systems and translator systems each provide a valuable public service and supplement one another, they can and must co-exist. E.g., Heart of Texas TV, 25 FCC 2d 754, 20 RR 2d 353, reconsideration denied, 27 FCC 2d 205, 20 RR 2d 1203. This case is an outstanding example of that principle. It is clearly inimical to the public interest to exclude translator operation because a cable television system operates a technically inadequate system. Neither is the public interest served by preservation of such a monopoly in communications. Here, we are not faced with a problem of inability of a cable television system to alter its mode of operation to accommodate a translator system, for it is clear that technical improvements are possible and desirable and there are unused channels which can be used.

The Commission also chastised the petitioner in the **Upper Bear River** case (at ¶6):

Sweetwater's conduct in this proceeding does not reflect that degree of sensitivity to the public interest which we have come to expect of Commission licensees.

4. The Montclair and Waterman pleading is as unconscionably late as it is utterly unfounded. The equitable doctrine of "laches" should apply to require the dismissal of Montclair/Waterman's tardy filings. As the Commission stated in **Upper Bear River TV Service, supra**, the conduct of Montclair and Waterman "does not reflect that degree of sensitivity to the public interest which we have come to expect of Commission licensees".

WHEREFORE, it is respectfully urged that the Commission reject the "Comments" jointly filed by Montclair Communications, Inc. and Waterman Broadcasting Corp. of

Florida **BE DENIED**, and that the Commission proceed to grant the "Joint Request for Approval of Settlement" and all relief requested therein, including grant of all of the above-captioned applications.

Respectfully submitted,

CALOOSA TELEVISION CORPORATION

By 
Dennis J. Kelly
Its Attorney

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December 23, 2003

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing "Opposition to Comments, etc." was served by first-class United States mail, postage prepaid, on this 23rd day of December, 2003 upon each of the following:

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