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

In the Matter of	)	
	)	WWLP Broadcasting, LLC
Negotiated Channel Election Arrangements	)	WGBH Educational Foundation
	)	App. File No. 20050210AFE
	)	
Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television	)	MB Docket No. 03-15

To: Chief, Media Bureau

REPLY OF MT. MANSFIELD TELEVISION, INC.
TO OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to 47 C.F.R. § 1.106(h) of the Commission's rules, Mt. Mansfield Television, Inc., the permittee of WCAX-DT, Burlington, VT ("Mt. Mansfield"), respectfully submits this reply to the opposition to Mt. Mansfield's petition for reconsideration filed by WGBH Educational Foundation ("WGBH"), the licensee of stations WGBY-DT, Springfield, MA; WGBH-DT, Boston, MA; and WGBX-DT, Boston, MA.

WGBH does not object to Mt. Mansfield's post-transition use of channel 22 to replace its out-of-core DTV channel 53. However, WGBH argues that the Commission's rules require Mt. Mansfield to "reduce its proposed operating parameters" on channel 22, in order to bring its interference to WGBY-DT within the 0.1% standard prescribed by the

Commission. The short answer is that Mt. Mansfield has already done so, and that WGBH provides no engineering statement disputing that showing.

As the Bureau is aware, in order to enable the International Bureau to obtain approval from Industry Canada for Mt. Mansfield's replacement of its out-of-core DTV channel with channel 22, Mt. Mansfield agreed to reduce power to 443 kw (or, in the event an Ottawa station later increases its power on DTV channel 22, to 550 kw). By doing so, Mt. Mansfield has also eliminated any cognizable interference to WGBY-DT. As demonstrated in the engineering statement attached to Mt. Mansfield's petition,[1] Commission policy supports calculation of such interference by reference to actual terrain and beam tilt, given the proposed location of WCAX-DT atop the highest peak in Vermont and the unusually rugged terrain in this area.[2] WGBH has not provided any contrary showing. The resulting 0.04% effect (or 0.06%, in the event Canadian changes require an increase to 550 kw) is clearly *de minimis.*

But even if the actual interference effects of Mt. Mansfield's use of DTV channel 22 were overstated in the way suggested by WGBH, the effects would still be miniscule – 0.16% (or, using 550 kw, 0.19%). And WGBH's assertions that this miniscule effect would nevertheless "retroactively" deprive these relatively few WGBY-DT viewers of

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[1] *See* Engineering Statement of Robert D. Weller at 2-3 & n. 8 (July 8, 2005) ("Initial Weller Statement").

[2] An application may use "actual transmitting antenna elevation patterns rather than the generic pattern," when it "would improve the accuracy of the analysis and would make a critical difference." Report and Order and Further Notice of Proposed Rule Making, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946, 5971, 5972 ¶¶ 64, 66 (2001). That standard is undoubtedly satisfied here where the use of actual terrain and beam tilt factors reduces the predicted interference levels to below the 0.1% threshold.

"the DTV service to which they have been accustomed since 2000" (Opp. 1-2) are overblown.

First, there is nothing "retroactive" about the Bureau's efforts to finalize the DTV Table of Allotments in light of the difficult task of finding alternative in-core channels for all those stations – including *both* WGBY-DT and WCAX-DT – that have out-of-core DTV allotments and cannot revert to their analog channels.[3] The Commission has repeatedly made clear that because of the need to accommodate the often incompatible needs of many stations in highly congested areas, neither negotiated channel arrangements nor any other "tentative" elections "guarantee final allotments."[4] And among the policies to be applied in doing so is the need to "accor[d] great weight" to international coordination arrangements "in determining final assignments."[5] WGBH would accord *no* weight to such arrangements, or to Mt. Mansfield's diligent efforts to reach them as soon

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[3] WGBY-DT has been assigned DTV channel 58; WCAX-DT, channel 53. WGBY-TV's analog channel 57 is out-of-core. Opp. 4 & n.11. WCAX-TV's analog channel 3 is incompatible with co-channel DTV assignments in Ontario and Quebec under the Letter of Understanding with Industry Canada. *See* Initial Weller Statement at 3. As the Commission has recognized, as a low VHF channel it is also subject to substantial technical obstacles for DTV use. *See* Report and Order, *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18306 ¶ 63 & n.129 (2004) ("*Second Periodic Review*").

[4] *See* Petition for Reconsideration at 2 & n.3 (quoting "DTV Channel Election Issues – Negotiated Channel Arrangements, DA 05-273 at 1 (rel. Feb. 1, 2005) and the *Second Periodic Review* at 18297-98 ¶ 45). Contrary to WGBH's suggestion (Opposition 2 n.2), the Bureau's order at issue here is consistent with this Commission determination to make only "tentative" designations at this time. Report and Order, *Negotiated Channel Election Arrangements*, MB Docket No. 03-15, DA 05-1619 at ¶ 4 (rel. June 8, 2005).

[5] *See* Petition for Reconsideration at 3 & n.5 (quoting *Second Periodic Review* at 18294-95 ¶ 39 & n.77).

as possible following release of available channels in the February 2005 first election round.

Second, WGBH advances no principled reason why it – but not Mt. Mansfield – should be entitled to DTV replication of its analog signal. In fact, as demonstrated in the attached supplemental engineering statement, the *de minimis* interference that would be caused by WCAX-DT includes areas where viewers can also receive WGBH's Boston station. That flagship station carries substantially the same programs that WGBH broadcasts on WGBY.[6] Thus, even if the Bureau could accept WGBH's interference calculations – which it cannot – the actual number of persons who would lose access to the digital programming of the WGBH stations may still be less than 0.1%.

In contrast, as the Commission is aware, in order to secure approval by Industry Canada of its relocation to in-core DTV channel 22 so as to bring DTV service to Vermont viewers as quickly as possible, Mt. Mansfield was required to accept a substantial reduction of power for WCAX-DT.[7] While the power levels agreed to by Industry Canada provide for replication of Mt. Mansfield's *predicted analog contour*, they are not robust enough to avoid significant loss of interference-free DTV service. As noted in the attached supplemental engineering statement, even operating at 550 kw, Mt. Mansfield's DTV operation on channel 22 would provide interference-free service *to over 45,000 fewer*

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[6] *Compare* www.wgby.org/schedule/index.html *with* www.wgbh.org/schedules/daytv.

[7] Mt. Mansfield is unaware as to whether WGBH has sought or obtained such Canadian approval, which also applies to WGBY-DT's change to DTV channel 22 as well. Absent any such required approval, WGBH's proposal should certainly receive no priority simply for being premature.

people than receive its analog signal.[8] In light of these factors, there would be no basis for the further reductions demanded by WGBH even if the Bureau were able to depart from the Commission's established policies governing calculation of the 0.1% standard.[9]

For the foregoing reasons, and those set forth in Mt. Mansfield's petition for reconsideration, the Commission should condition its tentative acceptance of WGBY-DT's

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[8] Thus, WGBH is wrong in suggesting that Mt. Mansfield's contingent right under the letter to Industry Canada to increase power to 550 kw would "increas[e] WCAX's service area well beyond replication coverage." Opp. 6. Indeed, that contingent right was designed to accommodate the fact that increased power on the same channel by CBOFT in Ottawa would not even permit replication of Mt. Mansfield's *predicted contour* absent an increase of power from 443 kw.

[9] WGBH points out that WGBY-DT has provided DTV service (on another channel) for five years, to which its viewers "have . . . become accustomed." Opp. 6. As noted above some of those few viewers who might be affected by the digital signal of WCAX-DT also can obtain service from WGBH-DT. Even if there are some small number of current viewers of the WGBY digital signal who would lose service, that factor would have to be weighed against the viewers who have been accustomed for some 50 years to receiving service from Mt. Mansfield – the long-time leading news service in the Burlington-Plattsburgh market – and who would lose that service under the approach suggested by WGBH.

use of channel 22 on agreement to the parameters for use of that channel by WCAX-DT as set forth in the International Bureau's June 2005 letter to Industry Canada.[10]

Respectfully submitted,

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July 25, 2005

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[10] The Bureau's public notice of March 11, 2005 (DA 05-655) in this proceeding noted that it "supersede[d]" its earlier notice of March 1, 2005 (DA 05-519). As WGBH points out, that later notice did disclose the channel on which WGBH proposed to operate WGBY-DT after the transition. That fact certainly does not deprive Mt. Mansfield of "standing" (Opp. 2-3).

Nor has Mt. Mansfield been dilatory, either in addressing its need for a new in-core DTV channel or in bringing this matter to the Bureau's attention. It has done both well in advance of any notice of proposed rulemaking finalizing post-transition DTV allotments, and in advance of the Round Two election that WGBH itself suggests would be the time for addressing this question (*see* Opp. 5 & n.15). It was not until June 2005 that the Commission departed from its prior policy to calculate its 0.1% threshold based on predicted rather than interference-free service, which for the first time raised even the possibility that both stations might not be able to operate on channel 22. Initial Weller Statement at 1-2. And it was not until June 2005 that Mt. Mansfield received confirmation that channel 22 was the DTV channel that Industry Canada would find acceptable; indeed, well after the comment period on the public notice of the negotiated channel agreement, Industry Canada was suggesting that Mt. Mansfield use DTV channel 20 instead. Had Mt. Mansfield raised its objections any earlier, WGBH no doubt would have dismissed them as speculative. Thus, the Commission must view Mt. Mansfield's petition as timely.

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Mt. Mansfield Television, Inc., licensee of Station WCAX-TV, Channels N03 and D53, Burlington, Vermont, to provide an engineering statement in support of its Reply to the Opposition of WGBH Educational Foundation to the Petition for Reconsideration of Mt. Mansfield Television, Inc.

Background

The licensee of WGBY-TV,[1] NTSC Channel 57 and DTV Channel 58, Springfield, Massachusetts, entered into a Negotiated Channel Agreement ("NCA") with the licensee of TV Station WWLP, NTSC Channel 22 and DTV Channel 11, whereby WWLP-DT would remain on Channel D11 and WGBY-TV would shift DTV operations to Channel D22 at the end of the DTV transition. The Commission approved the NCA on June 8, 2005, tentatively allotting Channel D22 to WGBY-DT at the end of the transition.[2]

In parallel, the licensee of WCAX-TV, NTSC Channel 3 and DTV Channel 53, following a number of discussions with FCC staff over a period of several years, as well as extensive informal negotiations with Industry Canada, submitted to International Bureau a proposal to operate its post-transition DTV facility on Channel D22. International Bureau transmitted this proposal to Industry Canada.[3]

On July 8, 2005, the licensee of WCAX-TV filed a Petition for Reconsideration of the Commission's tentative approval of the WGBY-TV–WWLP NCA. The engineering statement filed with that Petition concluded that, "the proposed operation of WCAX-DT at 443 kW or 550 kW ERP on Channel D22 complies with the FCC's 0.1% allowance for new interference."[4]

Some of the Areas Covered by WGBY-TV Are Also Covered by WGBH-TV

It has been reported that most of the programming on WGBY-TV, Springfield, Massachusetts, is also broadcast by co-owned Station WGBH-TV, Boston. Both stations are licensed to WGBH Educational Foundation. Therefore, overlaps between the coverage of WGBY-TV and WGBH-TV may be relevant. OET-69 calculations show that many of the areas where interference to WGBY-TV is predicted from WCAX-TV are predicted to be served by WGBH-TV.

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1 The stations in this report all have six-letter callsigns (ending in -TV). Except as specifically noted, however, all of the facilities referenced in this report are DTV.

2 MM Docket 03-15, "Negotiated Channel Election Arrangements," Report and Order, Released June 8, 2005.

3 June 16, 2005, letter to P. Vaccani. Initial proposed facilities: N44-31-32.6, W072-48-55.1 (NAD83), 1269.4 m AMSL, 443 kilowatts ERP, non-directional, 1.25° electrical beam tilt, Dielectric, Type TUP-O4/C4SP-10/40H-2-R. WCAX-DT is entitled to increase its ERP to 550 kW under certain conditions.

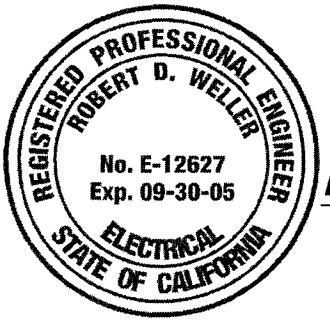
4 Based upon terrain-sensitive interference calculations using the OET-69 method that included the actual antenna elevation pattern for the proposed WCAX-DT antenna and terrain extracted at intervals of 10 points per kilometer.

The DTV service contours of both stations were projected in accordance with Section 73.625(b) of the Rules. OET-69 calculations were conducted within those contours to determine the terrain-limited and interference-limited service areas of both WGBY-TV and WGBH-TV. Those calculations show that most of the areas of predicted interference to WGBY-TV by WCAX-TV are inside the DTV service contour of WGBH-TV. Also, many of those areas of predicted interference to WGBY-TV are predicted to receive interference-free service (based upon OET-69) from WGBH-TV.[5]

WCAX-TV Proposed DTV Operation at 443 or 550 kW Does Not Replicate Authorized DTV or Analog Coverage

The Commission published a Table of Station Assignment and Service Information,[6] which specifies the replication coverage of NTSC and DTV facilities. The lesser of the two population values is the interference-free population that a station is obligated to cover on its post-transition channel. For WCAX-TV, the coverage requirement is its Channel D53 allotment of 599,276 persons (2000 U.S. Census). The predicted interference-free coverage[7] of WCAX-TV on Channel D22 at 443 kilowatts ERP is 566,651 persons, which is 32,625 persons short of replication of its DTV allotment. Similarly, the predicted interference-free coverage of WCAX-TV on Channel D22 at 550 kilowatts ERP is 580,953 persons, which is still 18,323 persons short of such replication.

According to the Table of Station Assignment and Service Information, the interference-free coverage of WCAX-TV's NTSC operation is 625,991 persons. Even at 550 kW, the proposed interference-free coverage of WCAX-TV's proposed DTV operation would be 45,038 persons less than its NTSC replication coverage. From the foregoing analysis, it is my professional opinion that WCAX-TV will be unable to fully replicate at either 443 kilowatts or 550 kilowatts ERP on Channel D22, which is the only channel that Industry Canada and the FCC have been able to coordinate for use by WCAX-TV.



/s/ Robert D. Weller
Robert D. Weller, P.E.

July 25, 2005

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5 It is difficult to quantify the precise population in interference areas involving more than one station. Because of the way that the OET-69 method constructs its grid of calculation cells, they are not congruent for stations at different locations. However, graphical comparison shows that a substantial number of the WGBY-TV interference cells are surrounded by interference-free cells for WGBH-TV.

6 Public Notice DA 04-3922, Table II.

7 This prediction is based upon reasonable assumptions concerning the operation of other nearby stations after the transition.

CERTIFICATE OF SERVICE

I, William R. Richardson, Jr., do hereby certify that I have on this 25th day of July, 2005, caused to be served true and correct copies of the foregoing "Reply of Mt. Mansfield Television, Inc., to Opposition to Petition for Reconsideration" by hand delivery or electronic mail and first-class mail, on the following persons:

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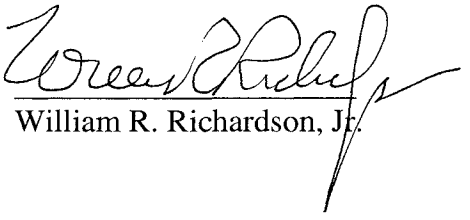

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