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

Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Amendment of Section 73.622 (b),	)	MB Docket No. 05-52
Table of Allotments,	)	RM-10300
Digital Television Broadcast Stations.	)	
Johnstown and Jeannette, Pennsylvania	)	

**OPPOSITION OF PITTSBURGH TELEVISION STATION WPCW INC. TO  
PETITION FOR RECONSIDERATION**

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April 27, 2006

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**TABLE OF CONTENTS**

	<u>Page</u>
SUMMARY .....	i-ii
PRELIMINARY STATEMENT.....	1
FACTUAL BACKGROUND.....	4
ARGUMENT	
A.    Licensee’s Petition for Rulemaking, Filed Before the Community Broadcaster’s Protection Act Was Even Adopted, Clearly Has Priority Over Class A Television Station WLLS-LP .....	9
1.    Maximization .....	9
2.    Rulemaking .....	12
B.    The Availability of an Alternate Channel to Which WLLS-CA Can Migrate Is Irrelevant to Its Secondary Status; In Any Event, the Alternatives Proposed By Licensee Are Viable .....	13
CONCLUSION.....	16

## SUMMARY

Pittsburgh Television Station WPCW Inc. (formerly Viacom Television Stations Group of Pittsburgh Inc., and referred to herein as “Licensee”) hereby respectfully submits its opposition to a petition for reconsideration of the Commission’s Report and Order in the above docket filed by Larry L. Schrecongost, licensee of Class A television station WLLS-LP, Indiana, Pennsylvania (“Petitioner”). The *Report and Order* amended the DTV Table of Allotments to substitute Channel 49 for Channel 30 as the digital frequency of WNPA, Jeannette, Pennsylvania, and reallocated DTV channel 49 from Johnstown, Pennsylvania to Jeannette.

Petitioner contends, as it did in comments filed in opposition to the Notice of Proposed Rulemaking herein, that changing WNPA’s digital allotment to Channel 49 violates the interference protection to WLLS mandated by the Community Broadcasters Protection Act (“CBPA” or the “Act”). This argument rests on two unsupportable premises.

The first involves a misunderstanding of the circumstances in which Licensee’s petition for a change in WNPA’s digital allotment is entitled to priority over WLLS. According to Petitioner, such priority exists only if (a) Licensee’s rulemaking petition is viewed as a timely-filed “maximization” application under the Act and (b) its grant is necessary to solve “technical problems.” In this regard, Petitioner contends that, because Licensee’s request to maximize the facilities of WNPA involved a channel change -- and was therefore necessarily made in the form of a petition for rulemaking as opposed to a Form 301 application for modification of construction permit -- it falls outside the Act’s express grant of priority to timely-filed requests to increase the facilities of authorized,

full power DTV stations. Such a pedantic emphasis on form over substance is at odds with the Commission's recognition that the term "maximization" should be afforded a "broad interpretation . . . consistent with the CBPA's emphasis on protecting the digital transition."

Moreover, Petitioner is simply wrong in claiming that the Act affords priority to a timely-filed DTV maximization application only if its grant is necessary for "technical" reasons. The Commission has expressly held to the contrary.

In any event, whether or not Licensee's request for a change in WNPA's digital frequency is technically viewed as a maximization application, it clearly has priority over WLLS. The Report and Order by which the Commission established a Class A television service makes clear that *any* pending channel-change petition from a party already holding a DTV authorization has priority over a subsequently filed application for Class A status. Licensee's original channel change petition was filed three months before Petitioner sought Class A designation for WLLS, a fact that is plainly dispositive.

Petitioner's other objection to the *Report and Order* is likewise merely an attempt to avoid the decisive significance of WNPA's prior-filed channel change application. Seizing on the Commission's observation in the *Report and Order* that there are at least two channels to which WLLS could move to remain on the air, Petitioner argues that these channels are in fact unsuitable. While that assertion is mistaken, it is without decisional significance. The Class A television service remains a *secondary* one, and where the Act does not provide interference protection, full power stations have priority, even if a displaced Class A station has to go off the air.

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Pittsburgh Television Station WPCW Inc. (formerly Viacom Television Stations Group of Pittsburgh Inc., and referred to herein as "Licensee") hereby respectfully submits its opposition to a petition for reconsideration of the Commission's Report and Order in the above docket<sup>1</sup> filed by Larry L. Schrecongost, licensee of Class A television station WLLS-LP, Indiana, Pennsylvania ("Petitioner"). The *Report and Order* amended the DTV Table of Allotments to substitute Channel 49 for Channel 30 as the digital frequency of WNPA,<sup>2</sup> Jeannette, Pennsylvania, and reallocated DTV channel 49 from Johnstown, Pennsylvania to Jeannette.

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<sup>1</sup> *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Johnstown and Jeanette, Pennsylvania)*, MB Docket No. 05-52, 21 FCC Rcd 1350 (released February 15, 2006) (the "*Report and Order*").

<sup>2</sup> Since the issuance of the *Report and Order*, WNPA's call letters have been changed to WPCW. For purposes of convenience, however, it will be referred to herein as WNPA.

We also note that on December 31, 2005, Viacom Inc. ("Old Viacom"), the ultimate owner of Licensee, effected a corporate reorganization in which its name was changed to CBS Corporation, and certain other businesses owned by Old Viacom were spun off into an independent, publicly traded corporation, which was given the Viacom name ("New Viacom").

Petitioner contends, as it did in comments filed in opposition to the Notice of Proposed Rulemaking (“*NPRM*”) herein, that changing WNPA’s digital allotment to Channel 49 violates the interference protection to WLLS mandated by the Community Broadcasters Protection Act (“*CBPA*” or the “*Act*”).<sup>3</sup> As we will show, this argument rests on two unsupportable premises.

The first involves a misunderstanding of the circumstances in which Licensee’s petition for a change in WNPA’s digital allotment is entitled to priority over WLLS, and may therefore displace that station. According to Petitioner, such priority exists only if (a) Licensee’s rulemaking petition is viewed as a timely-filed “maximization” application under the Act and (b) its grant is necessary to solve “technical problems.” In this regard, Petitioner contends that, because Licensee’s request to maximize the facilities of WNPA involved a channel change -- and was therefore necessarily made in the form of a petition for rulemaking as opposed to a Form 301 application for modification of construction

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<sup>3</sup> Petitioner also recycles, albeit in slightly different form, a wholly frivolous argument he originally made in opposing the *NPRM*. Petitioner now effectively concedes -- after having first argued the contrary -- that the Commission was not required to make new “public interest” findings in order to amend the Table of Allotments to correct an administrative error that resulted in WNPA’s paired NTSC and DTV frequencies being allocated to different communities. Nonetheless, Petitioner *still* contends that the Commission was precluded from doing anything beyond correcting this error in response to Licensee’s further rulemaking petitions, because such action would impermissibly “result in an impact on the DTV Table.” Petition at 5. Of course, any change in a station’s frequency, transmitting site or other facilities will have an “impact” on the Table of Allotments in the sense that it will change it; the relevant question, however, is whether that change will cause new interference, beyond what the Commission considers to be *de minimis*, to other DTV or NTSC allotments. Accepting Petitioner’s position would mean that the DTV Table of Allotments, unlike its NTSC counterpart, would be effectively immutable. The Commission plainly did not intend such a result, and Petitioner has cited no authority suggesting the contrary.

permit -- it falls outside the Act's express grant of priority to timely-filed requests to increase the facilities of authorized, full power DTV stations. Such an overly rigid emphasis on form is at odds with the Commission's recognition that the term "maximization" should be afforded a "broad interpretation . . . consistent with the CBPA's emphasis on protecting the digital transition."<sup>4</sup> It must accordingly be rejected.

Moreover, Petitioner is simply wrong in claiming that the Act affords priority to a timely-filed DTV maximization application only if its grant is necessary for "technical" reasons. The Commission has expressly held to the contrary, noting that Class A stations are required to protect all DTV stations seeking to maximize their facilities "*regardless of the existence of "technical problems."*"<sup>5</sup>

In any event, whether or not Licensee's request for a change in WNPA's digital frequency is technically viewed as a maximization application, it clearly has priority over WLLS. Thus, the Report and Order by which the Commission established a Class A television service<sup>6</sup> makes clear that *any* pending channel-change petition from a party already holding a DTV authorization has priority over a subsequently filed application for Class A status. As will appear below, Licensee's original channel change petition was filed three months before Petitioner sought Class A designation for WLLS. Despite Petitioner's studious avoidance of this fact, it is plainly dispositive.

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<sup>4</sup> *Report and Order, In the Matter of Establishment of a Class A Television Service, MM Docket No. 00-10, 15 FCC Rcd 6355, 6377 (2000) ("Class A Report and Order").*

<sup>5</sup> *Id.*

<sup>6</sup> *Class A Report and Order, supra* note 4.

Petitioner's other objection to the *Report and Order* is likewise merely an attempt to avoid the decisive significance of WNPA's prior-filed channel change application. Seizing on the Commission's observation in the *Report and Order* that there are at least two channels to which WLLS could move to remain on the air, Petitioner argues that these channels are in fact unsuitable. As we will show, that assertion is mistaken; a displacement application to operate on either of these channels would be fully compliant with the FCC's rules. More to the point, however, the Class A television service remains a *secondary* one, notwithstanding the greater degree of interference protection that such stations enjoy in the circumstances specified by the Act. Where the Act does not provide such protection, full power stations have priority, and it is of no decisional significance that a displaced Class A station may have to go off the air.

### **FACTUAL BACKGROUND**

In 1996, Venture Technologies Group, Inc., ("Venture") the prior licensee of WNPA,<sup>7</sup> filed a petition for proposed rule making to change the station's allotment on Channel 19 from Johnstown to Jeannette, Pennsylvania. Venture argued that the Johnstown-Altoona market was economically depressed and could not support a fifth television broadcast station. In ultimately adopting the proposed reallocation, the Commission found that it would serve the public interest by "provid[ing] [Jeannette] with its first local television broadcast service."<sup>8</sup>

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<sup>7</sup> The station's call letters at the time were WTWB-TV.

<sup>8</sup> See, *Report and Order, Johnstown and Jeannette, Pennsylvania*, MM Docket No. 97-96, 12 FCC Rcd 10300 (1997) ("*Johnstown/Jeannette R&O*").

In view of this finding, the Commission amended the Table of Allotments to reallocate NTSC Channel 19 from Johnstown to Jeannette. However, the subsequently-released DTV Table of Allotments was not updated in light of this amendment. Thus, the DTV Table did not reflect the reassignment of Channel 19 – for which Channel 30 was the paired digital allotment – from Johnstown to Jeannette.

On August 25, 1999, Licensee – which by that time owned the station<sup>9</sup> – filed a Petition for Rulemaking to amend the DTV Table of Allotments to substitute Channel 49 for Channel 30 as the station’s DTV frequency.<sup>10</sup> After noting that the DTV Table of Allotments had not been updated to reflect the change in WNPA’s community of license, the petition set forth the reasons for the requested channel change. The petition explained that, because of its co-location with the first adjacent allotment of WWCP-DT on Channel 29, WNPA could not move its transmitting site from its existing location – approximately 42 kilometers from Jeannette with significant intervening terrain – to one closer to its community of license. The petition urged that a channel change would eliminate this obstacle to improved service to Jeannette, and demonstrated that the proposed WNPA facilities would not create new interference to any station in excess of the Commission’s *de minimis* standard.

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<sup>9</sup> Licensee was at the time known as Paramount Stations Group of Pittsburgh Inc., which became Viacom Stations Group of Pittsburgh Inc. That corporation is now known as Pittsburgh Television Station WPCW Inc. Notwithstanding a change in ultimate ownership, the licensee entities are the same, and are being referred to herein simply as “Licensee.”

<sup>10</sup> See, *Petition for Rulemaking and Request for Expedited Action of Paramount Stations Group of Pittsburgh Inc.*, filed August 25, 1999.

On November 29, 1999, the Community Broadcasters Protection Act<sup>11</sup> was signed into law. The Act provided, *inter alia*, that low power television stations certifying their eligibility for Class A status within 60 days of the statute's adoption would be afforded certain interference protection against full power stations, as of the certification date, if a timely application for Class A designation were ultimately approved by the Commission.

However, the Act expressly stated that

If, after granting certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station's allotted parameters *or channel assignment* in the digital television Table of Allotments, the Commission shall make such modifications as necessary —

....

(ii) to permit maximization of a full-power digital television applicant's service area . . . if such applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000.<sup>12</sup>

Licensee subsequently filed a timely notice of intent to maximize the digital facilities of WNPA.<sup>13</sup> On May 1, 2000, it filed an Amended Petition for Rulemaking ("Amended Petition") to request "maximized facilities for WNPA-DT, which entail height above average terrain of 210 meters and a **maximized power level of 230kW effective radiated power.**"<sup>14</sup> (Emphasis in the original).

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<sup>11</sup> 47 U.S.C. § 336 (f).

<sup>12</sup> 47 U.S.C. § 336(f) (1) (D) (emphasis added).

<sup>13</sup> See, <http://www.fcc.gov/mb/video/files/dtvmax.html>.

<sup>14</sup> *Amended Petition for Rulemaking and Request for Expedited Action of Paramount Stations Group of Pittsburgh Inc.*, filed May 1, 2000, at 2.

Licensee's petitions to change WNPA's digital channel from 30 to 49 were reflected in the Commission's publicly-accessible engineering data base. The data base included such an entry on July 10, 2001, the day before WLLS-LP filed its application to convert its facilities to Class A status.<sup>15</sup>

As part of that application, and despite the availability in the Commission's data base of the entry described above, WLLS certified that its application complied with Section 73.6013 of the Commission's rules concerning interference protection of DTV stations. Section 73.6013 states:

Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments . . . , by authorized DTV stations and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999.

Approximately one month later, on August 14, 2001, Licensee filed a further amendment to its rulemaking petition which, *inter alia*, specified a new proposed transmitting site (the "Further Amended Petition").<sup>16</sup> Thereafter, on October 23, 2001, the Commission released a Notice of Proposed Rulemaking proposing to adopt the requested channel change.<sup>17</sup> That rulemaking, however, was never completed, apparently

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<sup>15</sup> Archival data base records maintained at the offices of Cavell, Mertz & Davis, Inc. In addition, a copy of the Commission's former TV engineering data base for December 30, 1999, also reflects the pendency of the WNPA-DT channel-change petition.

<sup>16</sup> *Amended Petition for Rulemaking and Request for Expedited Action of Paramount Stations Group of Pittsburgh Inc.*, filed August 14, 2001.

<sup>17</sup> *See, Notice of Proposed Rulemaking, In the Matter of Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations.* (Jeannette,

because the Federal Register declined to publish it, which in turn was due to the earlier error that had caused the Federal Register to fail to publish the change in allotment from Johnstown to Jeannette.<sup>18</sup> After these technical difficulties were worked out, the Commission released the Notice of Proposed Rulemaking in the instant proceeding, again proposing the substitution of Channel 49 for Channel 30.

Petitioner filed comments in opposition to the proposal, arguing that WNPA's proposed digital operation on Channel 49 would completely encompass the coverage area of WLLS-CA, thus effectively displacing WLLS contrary to the provisions of the CPBA. In this regard, Petitioner contended that, while the Act did make provision for timely-filed maximization applications by existing DTV broadcasters notwithstanding interference to a Class A station, such applications could be granted only when necessary to solve "technical problems."<sup>19</sup>

On February 15, 2006, the Commission released the *Report and Order* adopting the proposed change to the DTV Table. In so doing, it rejected Petitioner's arguments, finding that the CPBA did not protect WLLS from the proposed digital operation of WNPA on Channel 49. Rather, the Commission held, its *Class A Report and Order* allowed licensees "with initial paired channels to resolve[ ] technical problems *or* maximize their digital operations" by making changes in their allotted facilities, without

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*Pennsylvania*), 16 FCC Rcd 18746 (2001). This rulemaking was superseded by the instant proceeding.

<sup>18</sup> The above is based on an explanation given by Television Branch personnel to Licensee's representatives in response to queries as to the status of the rulemaking.

<sup>19</sup> See, Comments of Larry L. Schrecongost in Opposition to Notice of Proposed Rulemaking, MM Docket No. 05-52, at 7 (filed April 4, 2005) ("*Petitioner's Comments*").

an obligation to protect Class A stations.<sup>20</sup> Additionally, the Commission observed that “[a]lthough WLLS-CA will be displaced on channel 49, it need not go off the air,” noting that Licensee had “identified at least two available channels on which WWLS-CA may continue broadcasting.”

### ARGUMENT

A. **LICENSEE’S PETITION FOR RULEMAKING, FILED BEFORE THE COMMUNITY BROADCASTER’S PROTECTION ACT WAS EVEN ADOPTED, CLEARLY HAS PRIORITY OVER CLASS A TELEVISION STATION WLLS-LP.**

Whether viewed as a timely application for maximization of WNPA’s digital facilities, or merely as a rulemaking petition by an existing DTV licensee that was pending before adoption of the Community Broadcaster’s Protection Act, it is clear that WNPA has priority over, and may properly displace, Class A station WLLS.<sup>21</sup>

1. **Maximization**

As noted above, the Community Broadcaster’s Protection Act expressly provides that, even after granting certification of eligibility for a Class A license, “the Commission *shall* make such modifications as necessary” in order “to permit maximization of a full-

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<sup>20</sup> *Report and Order, supra*, 21 FCC Rcd 1350 (emphasis added).

<sup>21</sup> The facilities proposed in Licensee’s original petition for rulemaking, which was pending as of the adoption of the CPBA, would have displaced the WLLS-LP operation on Channel 49. The same is true of its first Amended Petition, filed by Licensee on May 1, 2000, for the purpose of “maximizing” WNPA’s digital facilities. *See, Reply Comments of Television Stations Group of Pittsburgh Inc.*, MB Docket No. 05-52, at Exhibit A, Engineering Statement of Joseph M. Davis, pp. 3-4. It is therefore of no consequence that the operation proposed in the Further Amended Petition would increase interference to WLLS-LP even further. Since WLLS would have suffered displacement as a result of the facilities proposed in both the original Petition and the Amended Petition – both of which have clear priority over the Class A station – any further increase in interference caused by the Further Amended Petition is purely theoretical.

power digital television applicant's service area."<sup>22</sup> This provision is clearly applicable to the instant case, since Licensee timely filed a notice of intent to maximize WNPA-DT's facilities, and an amendment to its then-pending rulemaking petition specifying a "maximized power level of 230kW effective radiated power."

Attempting to avoid the dispositive effect of the above provision, Petitioner asserts that it applies only when necessary to solve "technical problems." The Commission has expressly held otherwise. Thus, in its *Class A Report and Order*, the Commission considered whether the reference to "technical problems" in Section (f) (1) (D) of the Act<sup>23</sup> applied to maximization applications, and concluded it did not. The Commission stated:

[T]he statutory language is ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. . . . Although Section (f) (1) (D) appears to tie replication and maximization to resolution of technical problems, Section (f) (7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements . . . without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section (f) (1) (D) to technical problems, we continue to believe it is more consistent with the statutory schemes both for Class A LPTV service and for digital full-service broadcasting to require Class A applicants to protect all stations seeking to replicate or maximize DTV power . . . *regardless of the existence of "technical problems."*<sup>24</sup>

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<sup>22</sup> 47 U.S.C. § 336(f) (D) (ii) (emphasis added).

<sup>23</sup> *Id.*

<sup>24</sup> *Class A Report and Order, supra*, 15 FCC Rcd at 6377 (footnote omitted) (emphasis added).

Petitioner also argues that the Amended Petition for Rulemaking filed by Licensee on May 1, 2000, which sought “maximized facilities for WNPA-DT . . . entail[ing] height above average terrain of 210 meters and **a maximized power level of 230kW effective radiated power,**” cannot properly be regarded as a maximization application because WNPA did not have, and had not yet applied for, a construction permit on a frequency on which it did not want to construct. A more pointlessly formalistic approach is difficult to imagine.

The purpose of the CPBA in requiring DTV licensees planning to expand their facilities to file a notice of such intent by December 31, 1999, and a bona fide maximization application by May 1, 2000, was to provide applicants for Class A certification notice of the parameters of the facilities within which they could expect interference protection. That purpose was completely served by the Amended Petition for Rulemaking filed by Licensee on May 1, 2000, which was duly listed in the Commission’s publicly accessible data base.

WLLS-LP was obligated to protect the contemplated maximization of WNPA-DT; instead, Petitioner incorrectly certified that his application complied with the Commission’s rules regarding interference to digital stations.<sup>25</sup> If Petitioner was unaware of Licensee’s intent to expand its digital coverage area, he has only his lack of diligence to blame.

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<sup>25</sup> The operation proposed in WLLS-LP application was predicted to cause 2.14 percent interference to the “maximized” WNPA-DT facilities contemplated by the *Amended Petition*, filed on May 1, 2000. See, *Reply Comments of Viacom Television Stations Group of Pittsburgh Inc.*, MB Docket No. 05-52, at Exhibit A, Engineering Statement of Joseph M. Davis, at 3.

In the *Class A Report and Order*, the Commission recognized that “[a] broad interpretation of the term maximization is consistent with the CBPA’s emphasis on protecting the digital transition.”<sup>26</sup> The rigid formalism urged on the Commission by Petitioner is the diametric opposite of such a broad approach. It should not be accepted.<sup>27</sup>

## 2. **Rulemaking**

Even were the Commission not to view Licensee’s Amended Petition as a maximization application, it is nonetheless clear that a DTV rulemaking petition filed by a party already holding a DTV authorization, and pending at the time of the adoption of the CBPA, is entitled to priority over a Class A station.

In the *Class A Report and Order*, the Commission set forth the standards it would apply when a petition for a change in the DTV Table of Allotments conflicted with a Class A station or applicant. The Commission stated that “[i]n a new DTV allotment rule making, we will require protection of Class A stations.” The Commission then immediately explained what it would consider a “new” DTV allotment rulemaking: “We

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<sup>26</sup> *Class A Report and Order*, *supra*, 15 FCC Rcd at 6377.

<sup>27</sup> Notably, Licensee has in no way been dilatory with respect to construction of WNPA’s digital facilities. Almost seven years ago, it filed a Petition for Rulemaking seeking a change in its digital allotment that it urged would permit significantly improved service to its community of license. The Commission found sufficient merit in Licensee’s several petitions to twice issue NPRMs proposing that the suggested amendments to the DTV Table of Allotments be adopted.

The fact that the proposal was not acted on until February of this year is attributable first to administrative errors by the Commission, and then to the delay occasioned by the need for the Commission to consider and decide on Petitioner’s objections to the *NPRM*. In these circumstances, it would be perverse to hold that Licensee could preserve WNPA’s ability to maximize facilities only by obtaining a construction permit for, and then building, facilities that the Commission itself recognized might not provide the best practicable service to Licensee’s community.

will not require Class A applicants to protect pending allotment proposals from *new DTV entrants, that is, petitioners who do not already have a DTV authorization.*<sup>28</sup> The plain meaning of the above is that the Commission *will* require the protection of already-pending channel change petitions filed by parties who *do* have a DTV authorization.

It cannot be contended that, since WNPA-DT lacked a construction permit for specified facilities, it did not hold “a DTV authorization.” In the *Fifth Report and Order*, the Commission explained its licensing scheme for DTV:

The statute directs us to limit initial eligibility for DTV licenses to persons that, as of the date of the issuance of the licenses, are licensed to operate a television broadcast station or hold a permit to construct such a station, or both. As the statute contemplates, we hereby issue a *license* to all eligible licensees and permittees . . . We conclude that it more effectively effectuates the congressional scheme to implement the statute through a three-phased process, *with the first phase consisting of the initial DTV license*, rather than through our conventional procedure.<sup>29</sup>

It is absolutely clear, therefore, that as licensee of WNPA-DT, Licensee was not “a new DTV entrant,” whose pending allotment proposals a Class A station would not be required to protect; rather, it was the holder of a DTV authorization, whose pending channel change petitions would have priority over Class A stations.

**B. THE AVAILABILITY OF AN ALTERNATE CHANNEL TO WHICH WLLS-CA CAN MIGRATE IS IRRELEVANT TO ITS SECONDARY STATUS; IN ANY EVENT, THE ALTERNATIVES PROPOSED BY LICENSEE ARE VIABLE.**

In its *Report and Order*, the Commission noted that “[a]lthough WLLS-CA will be displaced on channel 49, it need not go off the air,” since Licensee had “identified at least two available channels on which WWLS-CA may continue broadcasting.”

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<sup>28</sup> *Class A Report and Order, supra*, 15 FCC Rcd at 6376.

<sup>29</sup> *Fifth Report and Order, supra*, 12 FCC Rcd at 12838 (emphasis added).

Petitioner now argues that the two potential substitute channels identified by Licensee and the Commission are in fact not suitable, because operation on either would cause prohibited interference to other stations. The short answer to this contention is that the absence of a substitute channel to which WLLS could move its operations is irrelevant to the essential fact of its secondary status under the facts here presented. Neither Licensee nor the Commission is obligated to find for Petitioner an alternate channel to which WLLS can migrate, and Licensee is certainly not obligated to pay for the move.<sup>30</sup>

In fact, however, as shown by the Engineering Statement of Joseph M. Davis, attached hereto as Exhibit A, a WLLS operation on either of these alternate channels would fully comply with the FCC's rules. A number of possible engineering solutions are available, all of which would actually *increase* WLLS's interference free service area over that of the station's current operation.

While alleging that Licensee's engineering analysis is infected with error, it is the Petitioner that contains several glaring misstatements of the Commission's rules and policies. For example, Petitioner asserts that the Commission does not allow a 0.5 percent rounding allowance when using Longley-Rice analysis to evaluate interference that may be caused by a Class A facility change. This is simply wrong. In the *Class A Report and Order*, the Commission stated:

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<sup>30</sup> See, Petition at iii: "[The] claim that WLLS has other channels available to it is . . . irrelevant, inasmuch as [Licensee] has failed to make the requisite commitment to reimburse WLLS for the costs incurred by it in changing channels."

Where analysis is based on OET Bulletin 69 methods, we will allow a “service population” rounding tolerance of 0.5%, which is also allowed for NTSC applicants protecting DTV service.<sup>31</sup>

Further, with respect to the Channel 36 operation originally described in Licensee’s *Reply Comments*, Petitioner submits a “Statement by Communications Consultant,” which provides portions of an OET Bulletin 69 analysis that appear to imply that the interference to WGPT(TV) (Ch. 36, Oakland, MD) would exceed 0.5 percent. However, those results do not indicate the analysis cell or step size which was employed in the computer analysis. As the Engineering Statement submitted with Licensee’s *Reply Comments* made clear, its analysis of the Channel 36 operation that it discussed was based on a 1 km cell size analysis, which is a finer resolution than the standard 2 km cell size.<sup>32</sup> The Commission has expressly stated that a finer resolution may be employed at the request of the proponent.<sup>33</sup>

In view of the above, we respectfully reiterate that two substitute channels are available to Petitioner for the continued operation of WLLS. Thus the amendments to the Table of Allotments adopted by the *Report and Order* need “place WWLS out of business” only if Petitioner fails to avail itself of the FCC’s liberal displacement procedures, which are designed precisely for situations such as this.<sup>34</sup>

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<sup>31</sup> *Class A Report and Order, supra*, 15 FCC Rcd at 6386.

<sup>32</sup> *See, Reply Comments of Television Stations Group of Pittsburgh Inc.*, MB Docket No. 05-52, Engineering Statement of Joseph M. Davis, at Exhibit A, Table 1.

<sup>33</sup> *Public Notice, Additional Application Processing Guidelines for Digital Television (DTV)* (released August 10, 1998).

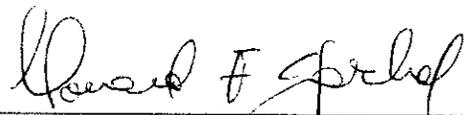
<sup>34</sup> Petitioner notes that it would have to construct facilities on a substitute channel “at its peril” since it would be required to correct any actual interference that resulted from WLLS’s operation on a replacement channel. Petition at 11. Although Petitioner would indeed have to correct any instances of actual

**CONCLUSION**

For the reasons set forth above, the Petition is without merit and should be denied.

Respectfully submitted,

**PITTSBURGH TELEVISION STATION  
WPCW INC.**

By:   
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interference that occurred, given the small degree of interference predicted by Licensee's Longley-Rice analysis, the burden of responding to actual complaints should not be prohibitive. In any event, here again Petitioner misses the essential point; WLLS is a station in a secondary service, and the lack of a perfect – or any – solution to its displacement cannot affect WNPA's priority.