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July 13, 2006

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Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

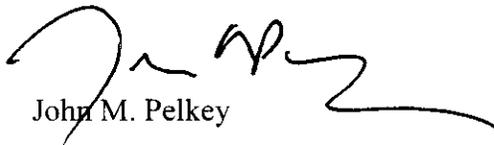
Re: **Motion for Stay**
Amendment of Section 73.622(b)
Table of Allotments
Digital Television Broadcast Station
(Johnstown and Jeannette, Pennsylvania)
MB Docket No. 05-52
RM-10300

Dear Ms. Dortch:

Transmitted herewith on behalf of Larry L. Schrecongost, licensee of WLLS, Indiana, Pennsylvania, are an original and four copies of his Motion for Stay in the above-referenced matter.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,


John M. Pelkey

Enclosures
JMP:yg

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.622(b),)
Table of Allotments)
Digital Television Broadcast Station)
(Johnstown and Jeannette, Pennsylvania))

MB Docket No. 05-52
RM-10300

To: **Office of the Secretary**
Attn: **Chief, Video Division**
Media Bureau

Motion for Stay

Larry L. Schrecongost, licensee of Class A Television Station WLLS, Indiana, Pennsylvania, ("WLLS"), hereby moves the Commission to stay the effect of the *Report and Order* issued in *Johnstown and Jeannette, Pennsylvania*, 21 FCC Rcd. 1350 (2006) (the "*Report and Order*"), until the decision in that rule making, which is currently the subject of a timely-filed Petition for Reconsideration filed by WLLS, becomes final. In support of this Motion WLLS states as follows:

In the *Report and Order*, the Commission Staff granted a petition for rule making whereby Pittsburgh Television Station WPCW Inc. ("CBS"),¹ licensee of WPCW-DT,² seeks to change the digital allocation for WPCW-DT from Channel 30 to Channel 49, which is the channel on which WLLS has operated for nearly a decade. That rule making also established reference coordinates for WPCW-DT that are much closer to WLLS than the reference coordinates previously established for WPCW-DT – with the result that the effect of the rule

¹ The licensee of WPCW-DT has gone by several different names since this rule making began. CBS Corporation is the ultimate owner of the current licensee of WPCW-DT. As a result, the short-hand term "CBS" will be used throughout this pleading to refer to the licensee of WPCW-DT.

² WPCW-DT is the current call sign of the station that is the subject of the *Report and Order* and, as a result, the station will be referred to by that call sign in this Motion.

making would be to permit WPCW-DT to cause ruinous interference to WLLS, a Class A television station providing service to Indiana, Pennsylvania, and the surrounding area.

Because WLLS is a Class A station, however, the Community Broadcasters Protection Act of 1999 (the "CBPA")³ entitles WLLS to protection from interference by WPCW-DT unless certain prerequisites are met. Specifically, the Commission is legally prohibited from taking action that would result in interference to WLLS unless (1) WPCW-DT is experiencing "technical problems," (2) CBS filed a bona fide maximization application for WPCW-DT by the statutorily-prescribed date of May 1, 2000, and (3) CBS complied with all applicable Commission rules regarding the construction of digital television facilities.

Inasmuch as none of these three prerequisites were met, the CBPA forbade the Commission from granting the WPCW-DT proposal. As a result, WLLS filed a Petition for Reconsideration of the February 15 *Report and Order* in which WLLS explained that the Commission action was prohibited by the CBPA. A copy of that Petition for Reconsideration is attached hereto.

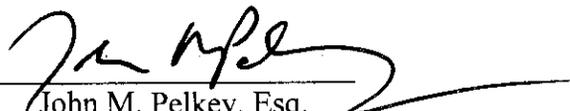
Unlike the case with the more garden variety allocation rule makings in which the CBPA does not come into play, the *Report and Order* issued in the present case did not result in an order requiring WLLS to change channel and, in point of fact, no Order to Show Cause was issued with respect to WLLS. On the other hand, WLLS is directly affected by any action granting the WPCW-DT facilities modification application filed pursuant to that *Report and Order* inasmuch as the commencement of operation of those facilities would cause overwhelming interference to WLLS. As a result, WLLS requested the Commission Staff to stay any action on that application until WLLS's Petition for Reconsideration has been ruled upon and the *Report and Order* becomes final. A copy of that Motion for Stay is also attached hereto.

³ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 - 1501A-598 (1999), codified at 47 U.S.C. § 336(f).

CBS has now opposed WLLS's request that processing of the facilities modification application be stayed while WLLS's Petition for Reconsideration is being considered. In opposing WLLS's request, CBS has argued that the Commission staff should not stay processing of the pending application because the *Report and Order*, although now the subject of a timely-filed Petition for Reconsideration and thus not final, is now effective. To obviate CBS's concerns in this regard, WLLS is hereby, out of an abundance of caution, submitting in this rule making proceeding the Motion for Stay that it has filed with respect to the WPCW-DT facilities modification application and is hereby asking that, for the reasons set forth in that Motion for Stay, the effect of the *Report and Order* be stayed pending final action on its Petition for Reconsideration of the *Report and Order*.⁴

Respectfully submitted,

LARRY L. SCHRECONGOST

By: 
John M. Pelkey, Esq.

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Washington, DC 20007
(202) 965-7880
Date: July 13, 2006

⁴ In opposing WLLS's motion requesting a stay of action on the WPCW-DT facilities modification application, CBS appears to claim that the Commission is without authority to stay the effect of the rule making once the rule making has become effective. The Commission's rules, however, do not prescribe any date by which a motion for stay must be filed. The staff always has it within its discretion to stay the effect of an action taken pursuant to delegated authority under Section 1.102(b)(2) of the Commission's rules, just as the Commission itself has the ability to stay the effect of any action once an application for review is filed under Sections 1.102(b)(3). In fact, the Commission may stay a Staff or Commission action even if no application for review or request for stay is filed. See 47 CFR § 1.102(b)(3). WLLS could seek a stay of staff action granting the facilities modification application or denying the Petition for Reconsideration and could seek a stay of any Commission action denying an Application for Review. Moreover, the federal court of appeals has full authority to stay Commission action upon the submission of a petition for review. Thus, WLLS's suggestion that the Commission defer action on the facilities modification application, whether that occurs by the grant of the instant Motion for Stay or the Motion for Stay filed directly with respect to the facilities modification application, is a suggestion that can be acted upon by the Staff, the Commission itself or the court. There simply is no merit to the suggestion that, once Commission action becomes effective, it can no longer be stayed. As a form of equitable relief, it can be invoked at any time prior to finality.

Attachment A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: **Office of the Secretary**

Petition for Reconsideration

John M. Pelkey
Garvey Schubert Barer
1000 Potomac Street, N.W.
Fifth Floor, Flour Mill Building
Washington, D.C. 20007

Date: March 24, 2006

Summary

In a *Report and Order*, released February 15, 2006, the Commission adopted a proposal advanced by Viacom Television Stations Group of Pittsburgh, Inc., licensee of WNPA-TV, to force Class A television station WLLS to cease operations so that Viacom can establish WNPA's digital facility more than 35 miles from its paired NTSC facility. Because WLLS is a Class A station, however, the Community Broadcasters Protection Act of 1999 (the "CBPA") requires the Commission to treat WLLS as a "primary" station entitled to protection from interference from other stations, including full-service television stations such as WNPA. To explain its failure to abide by the CBPA's clear mandate, the Commission initially claims that its action in the *February 15 Report and Order* merely remedies an administrative oversight caused by the Commission's failure in an earlier rule making proceeding to specify Jeannette as WNPA-DT's community of license. This explanation does not justify the Commission's action in the *February 15 Report and Order*, however, for the *February 15 Report and Order* does far more than change WNPA-DT's community of license. It also changes WNPA's digital channel and moves WNPA's digital reference coordinates by some 35 miles. By way of purported justification for these additional actions, the Commission makes reference in the *February 15 Report and Order* to a provision of the CBPA that permits the Commission to take action to resolve "technical problems" in such a way as to permit a full-service station to (1) replicate its NTSC facilities with its digital facilities and (2) maximize its digital facilities, if the full-service station timely notified the Commission of its intent to file an application to maximize its digital facilities and actually filed such an application by the statutory deadline of May 1, 2000. As will be shown below, however, the *February 15 Report and Order's* reliance on the "technical problems" exception is misplaced. First, there is no technical problem in this case. Operating from its

currently allocated DTV site on its currently-allocated DTV channel, WNPA, contrary to the Commission's claim, would not cause interference to any other station. The interference problem arises only because of the Commission's decision in the *February 15 Report and Order* to move WNPA's reference coordinates. Because such a "technical problem" can be manufactured with respect to virtually any Class A station in the country, the upshot of the *February 15 Report and Order* is to gut the protections that Congress had intended to provide to Class A stations when it passed the CBPA. In short, the purported technical problem at issue in this case is non-existent and thus incapable of supporting the Commission's use of the "technical problems" exception to the CBPA. Moreover, the "technical problems" exception can only be invoked if the proponent timely filed its statutorily-required maximization application. WNPA, however, failed to meet the May 1, 2000 statutory deadline for the submission of its maximization application and thus forfeited its right to seek relief under the technical problems exception. Finally, the *February 15 Report and Order's* claim that WLLS has other channels available to it is both irrelevant, inasmuch as Viacom has failed to make the requisite commitment to reimburse WLLS for the costs incurred by it in changing channels, and incorrect, inasmuch as the two channels that Viacom claims are available for use by WLLS are not in fact capable of being used by a Part 74 station such as WLLS.

Table of Contents

	Page
Summary.....	ii
Petition for Reconsideration.....	1
I. The Commission’s <i>February 15 Report and Order</i> Does Far More than Correct an Oversight.....	3
II. The Commission’s Reliance on the CBPA’s Exception Dealing with “Technical Problems” is Misplaced.....	6
A. The “Technical Problem” Cited by the <i>February 15 Report and Order</i> Arises Solely Because of the <i>February 15 Report and Order</i> ; The Technical Problem is Simply an Exercise in Bootstrapping.....	8
B. WNPA Never Filed the Statutorily Required Maximization Application.....	10
III. The Commission’s Presumption that WLLS can Avoid Going Dark by Changing Channels is Incorrect and Premised Upon an Outdated Engineering Study by Viacom.....	11
Conclusion.....	12

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: **Office of the Secretary**

Petition for Reconsideration

Larry L. Schrecongost ("Schrecongost"), licensee of Class A television station WLLS, Indiana, Pennsylvania, hereby petitions the Commission for reconsideration of its *Report and Order*, released February 15, 2006 (the "*February 15 Report and Order*"), in the above-referenced proceeding.¹ In the *February 15 Report and Order*, the Commission adopted a proposal advanced by Viacom Television Stations Group of Pittsburgh, Inc. ("Viacom"), licensee of WNPA-TV, to force WLLS to cease operations so that Viacom can establish WNPA's digital facilities more than 35 miles from WNPA's paired NTSC facilities -- at a site obviously calculated to permit Viacom to move WNPA-DT into Pittsburgh. Because WLLS is, as the *February 15 Report and Order* acknowledges, a Class A television station, the Community Broadcasters Protection Act of 1999 (the "CBPA")² forecloses the Commission from granting Viacom's proposal inasmuch as the CBPA treats Class A stations as "primary" stations entitled to protection from interference from other stations, including full-service television stations such as

¹ A summary of the *February 15 Report and Order* was published in the Federal Register on February 22, 2006, 71 Fed. Reg. 8986. This Petition for Reconsideration is thus timely filed. See 47 C.F.R. §1.429(d).

² Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 - 1501A-598 (1999), codified at 47 U.S.C. § 336(f).

WNPA. The *February 15 Report and Order* cites three bases in alleged support of the Commission's conclusion that it is free to circumvent the CBPA and force WLLS to cease operation so that Viacom can improve its move-in operation into Pittsburgh. First, it alleges that its action simply corrects an administrative oversight in the Commission's 1997 decision changing WNPA's community of license from Johnstown to Jeannette. Second, it relies upon a provision in the CBPA which permits the Commission to take action resulting in interference to Class A stations if such action is necessary to deal with certain technical problems with respect to which the proponent had filed a so-called "maximization application" by the statutory deadline of May 1, 2000. Third, apparently in an attempt to balance the equities, the Commission, without having performed its own independent engineering analysis, relies upon Viacom's claim that WLLS need not go dark because there are two other channels to which it can move.

As will be demonstrated below, none of these three claims can survive scrutiny. First, the *February 15 Report and Order* does far more than just correct an administrative oversight. It authorizes a transmitter relocation of some 35 miles that directly affects numerous other stations including, of course, WLLS. Second, the CBPA's exception relating to changes needed to correct technical problems does not apply to WNPA because (1) the only "technical problem" is one that arises because of the Commission's decision in this very proceeding to permit WNPA to relocate from a site at which it is co-located with first-adjacent WWCP-DT to a site 35 miles away and (2) WNPA failed to file the requisite maximization application (or any digital facilities application, for that matter) by the statutory deadline, with the result that it cannot invoke the CBPA's exception allowing changes needed to resolve technical problems. Finally, by failing to perform its own analysis of the availability of alternative channels for use by WLLS, the *February 15 Report and Order* failed to recognize that Viacom's study was based on an outdated

methodology. Because none of the three bases for the Commission's decision to deprive the viewers of Indiana, Pennsylvania, of service can withstand scrutiny, the Commission is statutorily required to reverse the *February 15 Report and Order* and require WNPA to finally apply for, and construct, digital facilities on Channel 30 so that the residents of Jeannette can finally receive the digital service of which Viacom has deprived them for many years.

I. The Commission's February 15 Report and Order Does Far More than Correct an "Oversight."

By *Report and Order* issued on July 18, 1997,³ the Commission changed WNPA's community of license from Johnstown, Pennsylvania, to Jeannette, Pennsylvania (the "*1997 Report and Order*"). In its *February 15 Report and Order* for which reconsideration is hereby sought, the Commission acknowledges that it erred in the *1997 Report and Order* by not changing the community of license associated with WNPA's digital allocation from Johnstown to Jeannette.⁴ Inasmuch as the *1997 Report and Order* allotting WNPA's NTSC authorization to Jeannette was not issued until after the issuance of the Commission's *Sixth Report and Order* in MM Docket No. 87-268 in which the Commission adopted its DTV Table of Allotments,⁵ the Commission's error in failing to specify Jeannette as the community associated with WNPA's digital allotment did not become apparent until the Commission's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268 ("*Reconsideration Order*").⁶ That *Reconsideration Order* was not released until February 23, 1998. In that *Reconsideration Order*, the Commission continued to reflect that WNPA's community of license for its paired channel was Johnstown, rather than Jeanette.

³ *Johnstown and Jeannette, Pennsylvania*, 12 FCC Rcd 10300 (1997).

⁴ *February 15 Report and Order* at para. 4.

⁵ 12 FCC Rcd 14588 (1997).

⁶ 13 FCC Rcd 7418 (1998).

It was clear in the *Reconsideration Order*, however, that the digital channel that was paired with WNPA's analog Channel 19 was DTV Channel 30. Thus, appendix B to the *Reconsideration Order* specifies that the allocation at Johnstown, Pennsylvania, paired analog Channel 19 with DTV Channel 30, and assuming a DTV power of 162.1 kw and an antenna HAAT of 325 meters, achieves a DTV/NTSC area match of 97.4%, which was one of the closer matches achieved in the DTV Table of Allocations. Moreover, the Appendix also reveals that the coordinates used by the Commission for the Channel 30 facilities are precisely the same coordinates specified by the Commission for Channel 19 in the *1997 Report and Order*. Indeed, the Commission was required to continue to pair Channel 30 with Channel 19 and to use the coordinates specified in the *1997 Report and Order* for two reasons. First, as the Commission explained in its *1997 Report and Order*, the 1997 rule making was able to circumvent the freeze on rule makings that was then in effect precisely because WNPA's proposal would "have no impact on the draft DTV allotment table because the proposal does not result in a new allotment but merely the re-allotment of an existing allotment with no change in transmitter site."⁷ Second, as the Commission made clear at the time that it adopted the DTV Table of Allotments, the locations that would be used for purposes of designing the DTV Table would be the current NTSC transmitter sites.⁸

Thus, with respect to WNPA, the Commission, upon the issuance of the *Reconsideration Order* in MM Docket No. 87-268, correctly paired digital Channel 30 with analog Channel 19, correctly calculated the coverage that would be achieved by Channel 30 using the NTSC transmitter site and further determined that the DTV coverage that would be achieved from that transmitter site using the facilities purposed by the Commission would permit the WNPA DTV

⁷ *1997 Report and Order* at 10301.

⁸ 12 FCC Rcd at 14634.

facilities to cover 97.4% of the area encompassed by the NTSC facilities operating on Channel 19. Thus, the only error in the *Reconsideration Order* was the error in mis-designating the community of license. WNPA did not even see fit to seek further reconsideration of the *Reconsideration Order* so as to correct this error. All that needed to be done to correct this error was simply to specify "Jeannette" as the community of license in lieu of "Johnstown." No other changes needed to be made to the DTV Table of Allotments.

Nevertheless, in its *February 15 Report and Order*, the Commission claims that, in adopting WNPA's proposal to allocate Channel 49 to Jeannette, it is simply acting upon a "request to correct the Commission's administrative error in not assigning WNPA-TV's paired digital channel to Jeannette when the Commission changed the station's community of license." The *February 15 Report and Order* thus implies that all that is involved is a simple correction of an administrative oversight. That is simply not the case. WNPA did not merely ask the Commission to fix the DTV Table of Allotments to make it clear that WNPA's community of license is Jeannette. Rather, it both requested that WNPA's digital channel be changed from Channel 30 to Channel 49 and that the reference coordinates used for the digital allocation be moved to a location some 35 miles from WNPA's NTSC transmitter site, a site from which the Commission had found WNPA would be able to provide city grade service over Jeannette. If WNPA had sought such relief in the context of the 1997 rule making, that proposal would have been unacceptable because it would have violated the fundamental requirement, acknowledged in the *1997 Report and Order*, that rule makings not result in an impact on the DTV Table of Allotments. Thus, the *February 15 Report and Order* does not merely correct an administrative error, but also provides Viacom with a significant competitive advantage by permitting it to

move many miles from its NTSC transmitter site – to the detriment of Class A WLLS and its viewers.

II. The Commission's Reliance on the CBPA's Exception Dealing with "Technical Problems" is Misplaced.

At paragraph 5 of the *February 15 Report and Order*, the Commission claims that “[b]y Schrecongost’s own admission,” the Commission’s *Report and Order in Establishment of a Class A Television Service* (the “*Class A Report and Order*”)⁹ provides flexibility to licensees with initial paired channels to resolve “technical problems or maximize their digital operations.” In fact, the Schrecongost comments did not so cavalierly concede that the Commission would be free to ignore the protections afforded to Class A licensees by the CBPA. Rather, the Schrecongost Comments merely acknowledged that the Commission’s *Report and Order* in the Class A rulemaking did provide for some flexibility with respect to DTV facilities to correct unforeseen technical problems. Contrary to the impression fostered by the *February 15 Report and Order*, however, this “technical problems” exception to the protections afforded Class A stations by the CBPA is carefully circumscribed by the CBPA itself, the *Class A Report and Order*, and the Commission’s rules.

The CBPA is codified at Section 336(f) of the Communications Act. It provides that Class A low power television stations are to be given “primary status as a television broadcaster.” This means that, as a general proposition, the Commission cannot grant an application for a full service station if the grant of that application would result in the full service station causing interference to the Class A station. The one exception briefly touched upon by the *February 15 Report and Order* arises in the event that “technical problems arise requiring an

⁹ *Establishment of a Class A Television Service*, 15 FCC Rcd 6355 (2000).

engineering solution to a full-power station's allotted parameters or channel assignment." 47 U.S.C. 336(f)(1)(D). If such technical problems arise, then the Commission may make such modifications as are necessary (i) to ensure replication of the full-power digital television station's service area and (ii) to permit maximization of the full-power digital television station's service area. Significantly, however, the Commission may make such modifications only if the full service station "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." *Id.* This statutory prerequisite to Commission action was explicitly recognized by the Commission in the *Class A Report and Order*. Thus, at paragraph 51 of the *Class A Report and Order*, the Commission explained:

Section (f)(1)(D) [of the CBPA] requires that, to be entitled to protection by Class A applicants, DTV stations must file an application for maximization or a notice of intent to seek maximization by December 31, 1999, and file a bona fide application for maximization by May 1, 2000.

Similarly, at paragraph 56, the Commission states:

The CBPA also recognizes and preserves the right of full-service television broadcasters to maximize their digital television service area, but balances this right against the provision of stability to Class A applicants and licensees. Sections (f)(1)(D) and (f)(7)(A) of the CBPA require Class A applicants to protect stations seeking to maximize power, if such stations have filed an application for maximization or a notice of intent to seek maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000.

This requirement is reflected in the Commission's rules, which clearly stipulate that:

A DTV station application that proposes to expand the DTV station's allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A

TV Station. . . . This paragraph applies to all DTV applications filed after May 1, 2000, and to DTV applications filed between December 31, 1999 and April 30, 2000 unless the DTV station licensee or permittee notified the Commission of its intent to "maximize" by December 31, 1999.¹⁰

Moreover, as an indication of just how necessary it was for DTV applicants to file the statutorily-required maximization application by May 1, 2000, the Commission held in the *Class A Report and Order* that even stations on non-core channels that would eventually be moving to a core channel could only preserve their right to maximization if they filed, by May 1, 2000, a maximization application for the non-core channel that eventually would be abandoned.¹¹

Thus, for the Commission to be able to rely upon the "technical problems" exception to the CBPA, two prerequisites must be met. First, a technical problem must exist. Second, a "bona fide" maximization application must have been filed by the DTV station by May 1, 2000. In the present case, neither prerequisite has been met. There is no technical problem and WNPA, according to the Commission's CDBS database, has never filed any DTV application, much less a maximization application. As a result, the Commission was statutorily prohibited from granting Viacom's proposal.

A. The "Technical Problem" Cited by the February 15 Report and Order Arises Solely Because of the February 15 Report and Order; The Technical Problem is Simply an Exercise in Bootstrapping.

The Commission claims in the *February 15 Report and Order* that WNPA's operation on Channel 30 in Jeannette would cause "impermissible interference to Station WWCP-DT, Channel 29 in Johnstown."¹² That conclusion appears to stem from the Commission's misunderstanding as to the nature of the two sites involved. Contrary to the Commission's apparent belief, the Channel 30 WNPA site is not a "Johnstown" site while the Channel 49 site is

¹⁰ 47 C.F.R. Sec. 73.623(c)(5).

¹¹ 15 FCC Rcd at 6379.

¹² *February 15 Report and Order* at para.5.

a "Jeannette" site. Rather both the Channel 30 site and the Channel 49 site are "Jeannette" sites. The Channel 30 site is close enough to both communities that it was able to be used to serve both Johnstown and Jeannette and, in fact, the Channel 30 site is the NTSC site that WNPA has been using to serve Jeannette for nearly a decade. From that site, WNPA is able to place a city-grade contour over Jeannette, a fact that was essential to the Commission's 1997 decision to permit WNPA to change its community of license from Johnstown to Jeannette.

The Channel 29 and Channel 30 facilities were purposely designed to be co-located to prevent first-adjacent interference from arising. Co-location of facilities is frequently used in the case of first adjacent DTV stations pursuant to the well-established principle that such co-location minimizes the possibility of such interference arising. Indeed, WNPA sought to use that very technique in the present case inasmuch as its proposed Channel 49 facility would be co-located with WPCB-DT, which operates on first adjacent Channel 50. Thus, the WNPA proposal seeks to go from one first adjacent co-location situation to another first adjacent co-location situation – fatally undercutting the claim that there is a "technical problem" that permits the Commission to ignore WLLS's rights as a Class A station.¹³ Indeed, the only way that a first adjacent technical problem would arise is if WNPA were to operate on Channel 30 from the proposed Channel 49 site some 35 miles away from the present Channel 30 site. No one in this proceeding has advanced such a proposal, however. By insisting that interference would arise from WNPA's operation on Channel 30 at the proposed Channel 49 site, however, the Commission has manufactured a "technical problem" out of thin air. It is the classic case of the parricide pleading for mercy because he is an orphan and it is safe to say that any full service station in the country could fabricate a similar situation wherein its proposed facilities would

¹³ In point of fact, WWCP-DT, which is the station operating on Channel 29, has requested that it be permitted to relocate its DTV operations to Channel 8, which would moot the question of a first adjacency arising between WWCP-DT and WNPA operating on Channel 30. See BFRCT-20050815ABA

receive or cause interference to facilitate a move-in to an area served by a given Class A station. The manufacturing of such a "technical problem" would amount to nothing more than a charade, however, permitting the "technical problem" exception in the CBPA to swallow the general rule providing for treatment of Class A stations as "primary" stations. Because no "technical problem" exists in the present case, there is no valid basis for denying WLLS the primary status to which it is entitled by the CBPA.

B. WNPA Never Filed the Statutorily-Required Maximization Application.

WNPA never filed a maximization application for its DTV facilities. Viacom has made an independent business decision to only pursue a DTV operation on Channel 49. In fact, according to the Commission's CDBS, WNPA never even filed any DTV application for its Channel 30 facilities. WNPA, however, was required by the very terms of the CBPA, the *Class A Report and Order* and Section 73.623(c)(5) of the Commission's rules to file an application for maximized facilities for Channel 30, even if earnestly hoped that its proposal to move to Channel 49 would be granted. Having failed to file the requisite application for maximized facilities, WNPA cannot invoke the "technical problems" exception to the CBPA. Thus, even if there were "technical problems" with a Channel 30 operation at its current Jeannette site, WNPA would not be entitled to cause ruinous interference to WLLS in the name of seeking replication or maximization.

In point of fact, from its allocated Channel 30 DTV facilities as reaffirmed in the *Reconsideration Order*, WNPA would be able to achieve 97.4% replication of its NTSC signal. Replication was virtually achieved. By failing to file a maximization application because it had made the business decision to only pursue a Channel 49 DTV operation, WNPA took the risk that it would not have the ability to subsequently file an application in the name of maximization.

Unfortunately for Viacom, the CBPA intervened and Viacom, which did not even reference WLLS in any of its engineering studies in alleged support of its rule making proposal, simply missed the deadline. That deadline expired nearly six years ago and it is now too late for Viacom to remedy its error.

III. The Commission's Presumption that WLLS can Avoid Going Dark by Changing Channels is Incorrect and Premised Upon an Outdated Engineering Study by Viacom.

Finally, the *Report and Order's* apparent attempt to balance the equities by claiming that WLLS can change channel and thus avoid going dark is incorrect. As is explained in the attached Statement by Communications Consultant Robert W. Fisher, WLLS is precluded from changing channels for two reasons. In both cases, the errors stem from the Commission's reliance, without apparently having performed a study of its own, on Viacom's assertion that WLLS can move to either Channel 31 or 36. The first error arises from Viacom's assumption that up to .5% interference is permitted in the case of a low power station. It is not. Part 74 stations are not permitted to cause any interference to any protected station. Even if an application proposing interference were to sneak through the Commission unnoticed, the low power station would construct those facilities at its peril inasmuch as it would be required to either correct any interference that it caused or would be forced off the air. The second error is of even greater significance. The Viacom study was based on an older FCC standard for Longley-Rice analysis. Using the Commission's current standard for Longley-Rice analysis, Mr. Fisher has studied the possible relocation of WLLS not only to Channels 31 and 36, which were the two channels proposed by Viacom, but Channel 30 also. Channel 30, of course, is the channel that would be vacated by WNPA. In the case of all three channels, the proposed operation of WLLS fails the Commission's current criteria. In short, there is no channel to which WLLS can relocate its current operations, with the result that the nearly 15,000 residents of Indiana, Pennsylvania, will

be deprived of their only local visual transmission service¹⁴ and the more than 70,000 people in the WLLS coverage area would lose reception service.¹⁵

Conclusion

This is simply not a case in which there is a so-called "technical problem" requiring intervention by the Commission. But, even if it were, the move-in proponent has not filed the statutorily-required maximization application for WNPA. The "technical problem" exception to the CBPA simply does not apply. Under such circumstances, the CBPA mandates that WLLS is to be afforded primary status and receive protection accordingly. By permitting WNPA to change digital channels and move 35 miles from its current co-located DTV Jeannette site to another co-located DTV Jeanette site to facilitate the business decision Viacom has made, the Commission has all but ordered that WLLS cease operations. Such a result is directly contrary to the explicit language and the intent of the CBPA. As a primary station, WLLS cannot be forced off the air in such a fashion. It cannot be forced to change channel unless Viacom finds a channel that WLLS can actually use and then reimburses WLLS for its expenses in effectuating such a channel change. Viacom has neither found an alternative channel for WLLS nor offered to reimburse WLLS for the expenses that it would incur in moving to such a channel as a result of the actions contemplated by the *February 15 Report and Order*. WLLS is not being afforded the rights as a primary station to which it is entitled under the CBPA. The CBPA was specifically designed to avoid situations in which the Goliaths of the television world would be able to crush the low power Davids. By siding with Viacom and permitting it to place WWLS out of business

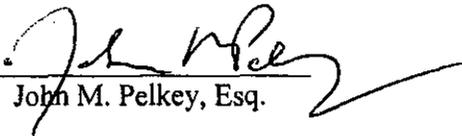
¹⁴ Even using standard 307(b) analysis, the retention of WLLS as Indiana's sole television service would be preferred over WNPA's mere expansion of service to the Pittsburgh market inasmuch as WLLS is providing first local television service to Indiana. Provision of such first local service meets the second television allotment priority, whereas the provision of additional service to a well-served area at best meets the fifth priority. *See Greeley, Colorado*, 19 FCC Red 13615 n.1 (2004).

¹⁵ Communications Consultant Robert W. Fisher has calculated the population within the WLLS service area as being 71,943 people.

solely that it can effectuate a move-in, the Commission has taken the slingshot out of the hands of the low power Davids, leaving them defenseless against Goliath's onslaughts. Having no authority to ignore the clear mandate of the CBPA, the Commission must reverse its earlier action and deny Viacom's rule making proposal.

Respectfully submitted,

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Date: March 24, 2006

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Third Coast Broadcasting

Indiana, Pennsylvania Channel Search Results.

In opposition to the engineering exhibit of the Reply Comments of WNPA, on behalf of WLLS-CA, the following supporting analyses are submitted to clarify the previously stated unavailability of channels in the Indiana, Pennsylvania area.

As previously filed¹, the proposed channel change of WNPA-DT from their assigned channel 30 to channel 49 would cause incurable interference to the facilities of WLLS-CA, a protected class A facility. Such interference would cause WLLS-CA to either change channels or go off the air. Previous analyses were done which indicated that there were no alternative channels available in Indiana, PA, which would provide suitable coverage to replace the lost facilities of WLLS-CA. In the reply comments of WNPA, it was asserted that there were 2 channels available for use, and that WLLS-CA could not only operate on these channels, but could also increase power output and improve coverage.

Although it was presented by WNPA that both proposals passed their limited Longley - Rice analysis and caused no more than 0.5% increase in interference to the protected stations, both of the facilities proposed scenarios which would have increased the NTSC interference within contours of the protected stations and in areas near the WLLS-CA tower location². This scenario would be likely to cause actual interference to the reception of over the air signals of protected NTSC stations. Such actual interference is prohibited by FCC rules.

The WNPA filing errs in two areas. The first error is in the presumption that up to 0.5% interference is permitted to be created by a part 74 station. In the case of a part 73 ("full-power") station, a certain amount of interference may be caused to other stations as a "de-minimis" amount of interference. This interference may be caused by a number of different mechanisms which include loss of contour, intermodulation or image interference near the proponent's tower site, or a number of other reasons, and such interference must be accepted by the affected station. The cause of the interference, whether incorrectly indicated by the analysis program accuracy limits or as a result of actual interference is really quite irrelevant; it is permitted to a de-minimis level.

Under the part 74 rules, LPTV and Class A stations are held to a tighter standard. They are not permitted to cause any interference to any protected LPTV, Class A, or full-power station. The concession to permit a Longley-Rice analysis which creates an indication of

1 Reference Third Coast Technical Exhibit, March 24, 2005

2 Known as "donut hole" interference. Permitted for part 73 stations but not for part 74. See: FCC 98-23 MO&O on Recon. of the Fifth R&O, ¶ 183.

up to 0.5% "interference"³ is based on a permissible "rounding allowance" of the program and is not based on interference. Although actual interference would show to "pass" a part 74 Longley-Rice analysis⁴ and no further analysis would be presumed to be done by the Commission, it would be very risky to propose the construction of a facility which would be likely to cause actual interference. In the event of actual interference, the part 74 licensee would have to either cure the interference on a house by house basis or go off the air.

The second error in the WNPA filing concerns their application of the Longley-Rice program to show that the presented channels are available. If WLLS-CA were to accept the suggested channels with their inherent interference risk, it would be their responsibility to file an acceptable displacement application with the Commission to replace their facilities. Such an application is not possible. According to the current standards for part 74 applications, neither channel meets acceptability standards for an application at the current facilities.

As a method of reviewing the channel availability in Indiana, PA, an analysis was done on the WNPA vacated channel 30, the only free adjacent channel, channel 31, and on the WNPA suggested channel 36. This analysis was done using the current FCC standard for Longley-Rice analysis⁵ using a replacement scenario for WLLS-CA. In all cases, the channels failed to pass the "rounding error" acceptability threshold for protected stations. The least of these interferences were WGPT channel 36 in Oakland, MD at 1% interference and the highest was 27.2% interference to WBPA-LP, Pittsburgh, PA. Relevant analysis results are attached as exhibits⁶. Neither of the channels proposed by WNPA is useful as a replacement for the impacted WLLS-CA facilities and it is likely that the grant of the channel 49 move-in application proposed by WNPA would force WLLS-CA off the air.

Submitted March 23, 2006



Robert W. Fisher
Communications Consultant

- 3 2% between Class A and secondary service stations.
- 4 It is possible to skew the Longley-Rice results by intentionally picking protected stations which have very large population coverage areas and creating intentional localized interference within the protected areas. Even though the interference results would indicate thousands of additional persons lost to interference, as in the instant case, the overall ratio would be low, because of the size of the station's large coverage. It may pass Longley-Rice, but still cause impermissible interference.
- 5 The analysis was done with the current FCC "dlptv_process.f" FORTRAN program and was run natively on a Sun Microsystems UltraSparc 3 SunBlade 100 workstation.
- 6 The full dlptv program output is available on request. The interference analysis results exceeded 100 pages and were edited for the relevant data.

Mar 23, 06 3:09		ch30_fin.res		Page 1/4	

Analysis of Interference to Affected Station 12					
Analysis of current record					
Channel	Call	City/State	Application Ref. No.		
30	WBPA-LP	PITTSBURGH PA	BLTTL	-20060103AFK	
Stations Potentially Affecting This Station					
Chan	Call	City/State	Dist(km)	Status	Application Ref. No.
23	WATM-TV	ALTOONA PA	133.4	LIC	BLCT -19990311KG
26	WQEX-DT	PITTSBURGH PA	7.1	PLN	DTVPLN -DTVP0651
28	WLYJ-DT	CLARKSBURG WV	135.5	PLN	DTVPLN -DTVP0734
29	WWCP-DT	JOHNSTOWN PA	81.4	PLN	DTVPLN -DTVP0761
29	WWCP-TV	JOHNSTOWN PA	81.4	LIC	BLCDT -20050606AIE
29	WIIC-LP	PITTSBURGH PA	7.1	LIC	BLTTL -19981230JB
30	WSKA	CORNING NY	306.4	CP MOD	BMPREDT -20040413AAJ
30	WSKA	CORNING NY	319.9	CP	BPET -19960126KE
30	WBNX-TV	AKRON OH	171.9	APP	BPCDT -19991029AFM
30	WBNX-DT	AKRON OH	171.9	PLN	DTVPLN -DTVP0796
30	WRGT-TV	DAYTON OH	370.0	CP	BPCDT -19991101ADJ
30	WRGT-DT	DAYTON OH	370.0	PLN	DTVPLN -DTVP0797
30	WHCP	PORTSMOUTH OH	323.8	LIC	BLCT -19981116KI
30	WGTE-TV	TOLEDO OH	313.7	LIC	BMLET -19971204LC
30	WGCB-TV	RED LION PA	299.0	LIC	BLCDT -20050615AAB
30	WGCB-DT	RED LION PA	299.0	PLN	DTVPLN -DTVP0800
30	WTVT	GOLDVEIN VA	303.1	LIC	BLEDT -20031230AAR
30	WTVT-DT	GOLDVEIN VA	303.2	PLN	DTVPLN -DTVP0806
30	WSLS-DT	ROANOKE VA	366.3	PLN	DTVPLN -DTVP0807
30	WSLS-TV	ROANOKE VA	366.2	CP MOD	BMPCDT -20050329ACK
31	WWBP-LP	FREEDOM PA	29.4	LIC	BLTTL -20040909ABD
32	WTAJ-DT	ALTOONA PA	133.6	PLN	DTVPLN -DTVP0876
32	WTAJ-TV	ALTOONA PA	133.6	LIC	BLCDT -20051018ACE
32	WTRF-DT	WHEELING WV	78.5	PLN	DTVPLN -DTVP0890
32	WTRF-TV	WHEELING WV	78.5	CP	BPCDT -19991028ADC
33	WNPB-TV	MORGANTOWN WV	91.4	LIC	BLEDT -20040108AKW
33	WNPB-DT	MORGANTOWN WV	91.4	PLN	DTVPLN -DTVP0923
34	WJAC-TV	JOHNSTOWN PA	88.9	LIC	BLCDT -20051123AKN
34	WJAC-DT	JOHNSTOWN PA	88.8	PLN	DTVPLN -DTVP0952

Thursday March 23, 2006

Mar 23, 06 3:09		ch30_fin.res		Page 2/4	
38	WQED-DT	PITTSBURGH PA	7.1	PLN	DTVPLN -DTVP1065
44	WOUC-TV	CAMBRIDGE OH	116.4	LIC	BLET -20050427AAE
45	WNEO	ALLIAMCE OH	87.9	LIC	BMLET -19891204KE
30	WLLS-LP	INDIANA PA	69.7	LIC	BLTTL -19961230JA
Total scenarios = 4					
Result key: 41					
Scenario 1 Affected station 12					
Before Analysis					
Results for: 30N PA PITTSBURGH BLTTL 20060103AFK LIC					
			POPULATION	AREA (sq km)	
	within Noise Limited Contour		946662	849.4	
	not affected by terrain losses		877422	765.2	
	lost to WTSC IX		60502	36.1	
	lost to additional IX by ATV		0	0.0	
	lost to all IX		60502	36.1	
Potential Interfering Stations Included in above Scenario 1					
29N PA	PITTSBURGH	BLTTL	19981230JB	LIC	
29A PA	JOHNSTOWN	DTVPLN	DTVP0761	PLN	
After Analysis					
Results for: 30N PA PITTSBURGH BLTTL 20060103AFK LIC					
			POPULATION	AREA (sq km)	
	within Noise Limited Contour		946662	849.4	
	not affected by terrain losses		877422	765.2	
	lost to WTSC IX		318052	324.5	
	lost to additional IX by ATV		0	0.0	
	lost to all IX		318052	324.5	
Potential Interfering Stations Included in above Scenario 1					
29N PA	PITTSBURGH	BLTTL	19981230JB	LIC	
29A PA	JOHNSTOWN	DTVPLN	DTVP0761	PLN	
30N PA	INDIANA	BLTTL	19961230JA	LIC	
The following station failed the de minimis interference criteria.					
30N PA	INDIANA	BLTTL	19961230JA		
ERP	21.30 kW	HAAT	238.0 m	RCAMSL	585.0 m
Antenna CDB 00000000024168					
Due to interference to the following station and scenario: 1					
30N PA	PITTSBURGH	BLTTL	20060103AFK		
ERP	8.50 kW	HAAT	242.0 m	RCAMSL	491.0 m
Antenna CDB 00000000016996					
Percent Service lost without proposal: 6.4 to BLTTL 20060103AFK					
Percent Service lost with proposal: 33.6 to BLTTL 20060103AFK					
Result key: 42					
Scenario 2 Affected station 12					
Before Analysis					
Results for: 30N PA PITTSBURGH BLTTL 20060103AFK LIC					
			POPULATION	AREA (sq km)	
	within Noise Limited Contour		946662	849.4	
	not affected by terrain losses		877422	765.2	
	lost to WTSC IX		60502	36.1	
	lost to additional IX by ATV		0	0.0	

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