

Before the
Federal Communications Commission
Washington, D.C. 20554

FILED/ACCEPTED

OCT 26 2007

Federal Communications Commission
Office of the Secretary

In the matter of)

Advanced Television Systems and)
their Impact Upon the Existing)
Television Broadcast Service)

MB Docket No. 87-268

To: The Commission

PETITION FOR RECONSIDERATION

Maranatha Broadcasting Company, Inc. ("MBC"), licensee of digital television station WFMZ-DT, Allentown, Pennsylvania, through counsel and pursuant to Section 1.429 of the Rules, hereby submits this limited petition for reconsideration of the FCC's *Seventh Report and Order* in the above-captioned proceeding, FCC 07-138, released August 6, 2007 (summary published 72 *Fed. Reg.* 54720, September 26, 2007). MBC did not file comments concerning the *Seventh Further Notice of Proposed Rule Making* in this proceeding, FCC-06-160, released October 20, 2006. However, after the release of the *Seventh R&O*, MBC realized that the allotment for WFMZ-DT in Appendix B did not perfectly reflect the facilities actually authorized, constructed and licensed. At a meeting of the Association of Federal Communications Commission Consulting Engineers, several members of the FCC staff were present; they acknowledged the existence of errors in the Post-Transition DTV Table of Allotments and urged stations to bring those errors to the FCC's attention by filing petitions for reconsideration of the *Seventh R&O*. This acknowledgment of errors in the Table, and the staff's invitation of petitions for reconsideration, is sufficient reason to excuse MBC's belated participation in this proceeding.

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Upon recognizing the error in Appendix B, MBC filed *Comments* on August 15, 2007, in MM Docket No. 07-91, the *Third Periodic Review of the Commission's Rules and Policies Concerning te Conversion to Digital Television*, FCC 07-70, released May 18, 2007. A copy of those *Comments* is attached hereto and incorporated by reference.

Appendix B to the *Seventh Report & Order* reflects the following facilities for WFMZ-DT: ERP 500 kW, HAAT 314m. These are the facilities authorized in BMPCDT-20030415ABQ, granted January 5, 2004. Prior to the deadline for filing its initial certification (Form 381), MBC filed a further application (BMPCDT-20060621ACF), proposing to change the ERP to 400 kW and the HAAT to 331 meters; in that application, MBC's consulting engineer provided this description of the application:

The instant application requests a minor change in facilities authorized under BMPCDT-20030415ABQ to decrease the ERP from 500 to 400 kilwatts, increase the RCAMSL by 17 meters from 182 to 199 meters, and to specify a different transmitting antenna which is a PSI Model PSIMPTD-9-DCP-46 directional design with the major lobe remaining oriented to 157 degrees True. All other parameters are unchanged. *This proposed minor change results in no change in the previously authorized azimuth radiation pattern nor any change in coverage for the 41 dBu F(50,90) contour over that authorized in BMPCDT-20003415ABQ . . .*

(Emphasis added.) In other words, the facilities requested in the modification application – which was granted on December 6, 2004 – were, for all practical purposes, “equivalent” to those previously authorized. Subsequently, MBC filed an application for license to cover the facilities authorized in BMPCDT-20030415ACQ; that application, File No. BLCDDT-20060621ACF was granted on August 11, 2006.

Although MBC's initial certification, filed November 5, 2004, certified that it would operate maximized post-transition facilities authorized by BMPCDT-20030415ACQ, those

facilities were, in their coverage and interference aspects, indistinguishable from those the FCC would authorize a month later in BMPCDT-20041029AHC, which MBC would construct, for which it would file a license application in June of 2006, and with which it now operates.

There is no question which facilities are currently reflected in the FCC's data regarding operating digital television stations: Appendix D to the *NPRM* in the *Third Periodic Review* (listing stations the FCC believes are "ready" to commence post-transition operations) references WFMZ-DT's 2006 license application.

The discrepancy between the descriptions of WFMZ-DT in that Appendix D and the current version of the Table of Allotments must, however, be corrected— whether in this proceeding or in the FCC's Report & Order following the *Third Periodic Review* — to avoid possible confusion in the future. Appendix B — the final Table of DTV Allotments — sets the new baseline for received interference; any proposals that might cause additional interference will be subject to whatever limits are established in response to the *Third Periodic Review*. There should be no doubt, no ambiguity as to what that baseline is, for WFMZ-DT or for any other station.¹

(In its *Comments* concerning the *Third Periodic Review*, MBC suggested that the FCC could adopt, in that proceeding, simple administrative procedures for such *pro forma*

¹ The discrepancy could have other administrative consequences. For example, see MBC's *Comments* regarding the *Third Periodic Review*, p. 3 n.1 (responses to Appendix B to the *Third Periodic Review*, a proposed "DTV Transition Status Report," would require additional explanation or clarification, which would complicate evaluation of the form and compilation of data).

corrections in the Table of Allotments short of notice-and-comment rule making.² In the *Seventh Report and Order*, the FCC deferred consideration of such procedures to the *Third Periodic Review* proceeding. *Seventh R&O*, ¶ 29. Given some of the issues that have been raised in the *Third Periodic Review* – for example, lifting the partial freeze on applications – it is imperative for the FCC to complete its corrections to the Table of Allotments at the first opportunity, and the earliest possible date. To that extent, the FCC should reconsider its conclusion in the *Seventh Report and Order* that adoption of administrative procedures for *pro forma* changes in the Table is a matter that can be deferred.)

In fact, in the *Seventh Report and Order*, the FCC made a number of “minor adjustments” in the Table of Allotments, see, e.g., ¶ 35, and it should do so in response to this and other petitions for reconsideration where the facts warrant. Various principles set forth in the *Seventh R&O* support making the requested modification to the WFMZ-DT allotment. The modification will have absolutely no effect on other stations (see, e.g., ¶ 5); no new interference will be caused (compare, ¶¶ 26, 68); it conforms to “all portions of” WFMZ-DT’s license, not selectively to parts of that authorization (¶ 88).³

² *Comments*, p. 3 (noting potential for waste of FCC and licensee resources).

³ See, also, MBC’s *Comments re Third Periodic Review*, p. 3.

For the foregoing reasons, the FCC should grant this Petition for Reconsideration and modify the final Table of DTV Allotments to reflect operation of WFMZ-DT with ERP of 400 kW at an antenna height of 331 meters above average terrain.

Respectfully submitted,

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October 26, 2007

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Third Periodic Review of the)	MB Docket No. 07-91
Commission's Rules and Policies)	
Affecting the Conversion)	
to Digital Television)	

COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.

Maranatha Broadcasting Company, Inc. ("MBC"), permittee of digital television broadcast station WFMZ-DT, Allentown, Pennsylvania, through counsel, hereby responds to the FCC's *Notice of Proposed Rulemaking* in the above-captioned proceeding, FCC 07-70, released May 18, 2007 (the "*NPRM*").

While the matter addressed in these Comments is not among the specific questions posed in the *NPRM*, the purpose of these biennial reviews of the transition to digital television is to allow the FCC to make any necessary adjustments to its rules and policies to facilitate the introduction of digital television services. These Comments, therefore, are appropriate for consideration at this time.

Insofar as WFMZ-DT is concerned, there is an arguable inconsistency between Appendix B to the FCC's recent *Seventh Report and Order* in MB Docket No. 87-268, FCC 07-138, released August 6, 2007, adopting a "final" DTV Table of Allotments, and Appendix D to the *NPRM*, which lists (on the basis of covering license applications) stations – including WFMZ-DT – which the FCC believes are ready to complete the transition to digital television broadcasting. This possible inconsistency, while minor, creates unnecessary ambiguity about

WFMZ-DT's DTV authorization and should be corrected, either in this proceeding or through procedures adopted as a result of this proceeding.

Specifically, Appendix B to the *Seventh Report and Order* – the “final” DTV allotments table – lists WFMZ-DT's authorized power and antenna height as 500 kW, at 314 meters above average terrain. Pursuant to an application to modify WFMZ-TV's construction permit (File No. BMPCDT-20041029, granted December 6, 2004), the FCC authorized WFMZ-DT to operate with 400 kW at 331 meters AAT. This was based on substitution of a PSI Model PSIMPTD-9-DCP-46 antenna for the Dielectric Communications Model TFU-16DSC-R-S380SP antenna proposed in the original construction permit and achieves coverage equivalent to the previously authorized facilities. It was confirmed in the covering license application, BLCDT-200620060621AAU, granted August 11, 2006. Appendix D to the *NPRM* is based on the granted license application (for 400 kW at 331 meters AAT), while Appendix B to the *Seventh Report and Order* reflects the previously authorized facilities.

While the discrepancy has no effect on WFMZ-DT's coverage, it creates an undesirable ambiguity about the conformity of WFMZ-DT's operation with Section 73.622 of the Rules and could cause administrative issues to arise, unnecessarily, in the future.

In the *Seventh Report and Order*, ¶ 143, the FCC initiated a notice-and-comment rulemaking proceeding on a request by WDCA-DT for changes in the Table of Allotments to conform the DTV Table to actual, authorized facilities, even though the proposed change would not result in any impermissible interference. Unlike WFMZ-DT's case, however, the authorized WDCA-DT facilities were for a different transmitter location than the one reflected by the original allotment.

Correction of WFMZ-DT's allotment, unlike the situation posed by WDCA-DT, involves (1) equivalent facilities and (2) no potential consequences for any other stations. Under those circumstances, a notice-and-comment rulemaking proceeding would be wasteful of both MBC's and the FCC's time and resources. Not every change in the rules requires notice-and-comment procedures. See, 5 U.S.C. § 553(b) (3)(B).

MBC therefore requests that the FCC resolve the discrepancy between the Table and WFMZ-DT's authorized facilities in this proceeding. Alternatively, the FCC should provide (and if necessary make appropriate changes in its rules) that stations in WFMZ-DT's circumstances may seek *pro forma* corrections in the Table of Allotments administratively without the necessity to initiate notice-and-comment proceedings.¹

Respectfully submitted,

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August 15, 2007

¹ Conceivably, the FCC could obtain necessary information concerning such changes in the new form it proposes to require DTV licensee/permittees to file concerning the status of each station's transition to digital television broadcasting. Indeed, the language of the proposed form (*NPRM*, Appendix B) could require MBC to explain or clarify a number of its responses in light of the difference between the allotment values and the authorization.