

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

In the Matter of)
)
Advanced Television Systems) MB Docket No. 87-268
And Their Impact Upon the Existing)
Television Broadcast Service)
)

To: The Commission

PETITION FOR LEAVE AND RECONSIDERATION

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November 20, 2007

PETITION FOR LEAVE AND RECONSIDERATION

Mountain TV, L.L.C. ("Mountain TV"), the licensee of WQCW(TV) and WQCW-DT, Portsmouth, Ohio, by and through its undersigned attorneys, hereby respectfully files this Petition for Leave and Reconsideration in the above-captioned proceeding. Specifically, Mountain TV hereby requests that the Commission reconsider the technical facility it assigned to WQCW-DT in Appendix B of the final digital table of allotments ("DTV TOA") in connection with the Commission's decision in *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking, 22 FCC Rcd 15581 (2007) ("*Seventh Report and Order*").

I. REQUEST FOR LEAVE

Notwithstanding that the deadline for filing formal petitions for reconsideration of the *Seventh Report and Order* has now passed, it is respectfully requested that the Commission grant Mountain TV leave to file the instant request for reconsideration. Mountain TV recently acquired WQCW, and, as discussed in more detail below, Mountain TV recently discovered a discrepancy in the DTV TOA Appendix B data which was the direct result of a mistake apparently made by the station's former owner in connection with its FCC 381 Pre-Election Certification Form. This mistake has resulted in the DTV TOA Appendix B data containing an antenna HAAT that is 121 meters lower than that in WQCW-DT's current DTV license (the ERP is the same for both facilities). The station has been operating pursuant to its current DTV license for more than a year, and the instant filing requests that the Commission modify the DTV TOA Appendix B data to reflect WQCW-DT's current license. As explained below and in

Exhibit A, the requested modification complies with the Commission's current 0.1 percent interference standard.

While it is unclear what effect, if any, the discrepancy between WQCW-DT's license and the DTV TOA Appendix B data might have on WQCW-DT's post-transition DTV authorization, for the reasons discussed below, any negative effect would be contrary to the public interest and the DTV transition in general. As such, Mountain TV respectfully requests the Commission to accept and consider the instant request for reconsideration. Indeed, acceptance and consideration of the instant filing would be consistent with the Commission's treatment of other late-filed requests for changes to the DTV TOA Appendix B data in this proceeding.¹

II. REQUEST FOR RECONSIDERATION

Mountain TV hereby requests that the Commission reconsider the technical facility it assigned to WQCW-DT in Appendix B. Specifically, Mountain TV requests that the Commission change the data in Appendix B for WQCW-DT's Channel 17 operation to specify WQCW-DT's currently licensed DTV facility as follows:

Current TOA Data for WQCW-DT (Replication)	Requested TOA Data for WQCW-DT (Licensed)
237 meters HAAT	358 meters HAAT
50 kW ERP	50 kW ERP

The requested change is necessitated by a mistake apparently made by the former licensee of WQCW-DT in connection with the station's 2004 FCC 381 Pre-Election Certification Form. In short, the former licensee certified to WQCW-DT's smaller replication facility despite

¹ See *Seventh Report and Order*, ¶ 141.

having construction permit authority for a larger facility pursuant to which WQCW-DT is now licensed.

The history of WQCW-DT's DTV authorization is as follows: In 1998, in the Commission's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in this same proceeding, WQCW-DT was allotted Channel 17 with 50 kW ERP and an antenna location at 237 meters HAAT.² Subsequently, on September 20, 1999, the Commission granted a license to the station for its NTSC operation at 358 meters HAAT,³ and on June 28, 2001, the Commission granted a DTV construction permit to WQCW-DT also for 358 meters HAAT but otherwise consistent with the station's 1998 allotment (i.e., 50 kW ERP from the station's NTSC tower site).⁴ Despite having a DTV construction permit for 358 meters HAAT, in 2004, in its FCC 381 Pre-Election Certification Form, the former licensee of the station certified to replication facilities instead of its authorized construction permit facilities.⁵ On August 31, 2006, the Commission granted WQCW-DT's current DTV license for 50 kW ERP and 358 meters HAAT.⁶ Notwithstanding WQCW-DT's current license for 358 meters HAAT and due to the former licensee's certification to replication facilities, the new DTV TOA Appendix B data specifies 237 meters HAAT.⁷

² See *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 15 FCC Rcd 7418 (1998), Appendix B, p. B-29.

³ See FCC File No. BLCT-19981116KI.

⁴ See FCC File No. BPCDT-19991029AHD.

⁵ See FCC File No. BCERCT-20041103ABS. While in hindsight it appears the former licensee's certification was a mistake, that mistake is understandable given that at the time of the certification the station's NTSC facility was authorized for 358 meters HAAT.

⁶ See FCC File No. BLCDT-20060630AFJ.

⁷ See *Seventh Report and Order*, Appendix B.

In the *Seventh Report and Order*, the Commission changed the DTV TOA Appendix B data for stations to reflect larger operating facilities that were already authorized.⁸ The Commission recognized that it would be “unnecessary and unfair to require these already operational facilities to reduce service.”⁹ The Commission further stated that “as these stations are already providing service at the requested parameters, it is in the public interest to allow them to continue to do so.”¹⁰ Such changes were permitted in situations both where the requested change complied with the Commission’s 0.1 percent interference standard¹¹ and where the change did not comply with the interference standard.¹²

As WQCW-DT is already licensed for a facility that is larger than the facility specified in the new DTV TOA Appendix B, WQCW-DT’s situation is no different than that of the stations granted relief in the *Seventh Report and Order*. Indeed, as discussed below and in the attached Engineering Statement in Exhibit A, the instant request complies with the Commission’s 0.1 percent interference standard. As such, fundamental precepts of administrative law require the Commission to extend similar relief to WQCW-DT.¹³

Because WQCW-DT is already operating pursuant to its licensed facility with 358 meters HAAT, it would be contrary to public interest not to permit it to continue to do so. While it is unclear whether the current discrepancy between the DTV TOA Appendix B data and WQCW-DT’s licensed facility would actually result WQCW-DT having to reduce service at the

⁸ See *id.*, ¶¶ 38-57.

⁹ See *id.*, ¶ 47.

¹⁰ See *id.*

¹¹ See *id.*, ¶¶ 38-45.

¹² See *id.*, ¶¶ 46-57.

¹³ See *Burlington Northern and Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) (“Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.”); *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (same).

end of the DTV transition, such a result would be nonsensical. Indeed, the entire DTV transition would be completely undermined if the Commission's DTV TOA Appendix B data required Mountain TV to ultimately disenfranchise viewers who currently receive WQCW-DT.

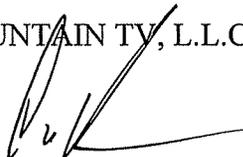
In addition, there are no countervailing public interest considerations that would favor a reduction in WQCW-DT's service area. WQCW-DT has had authorization for 358 meters HAAT since its construction permit was granted in 2001 and has been licensed for 358 meters HAAT since August 31, 2006. All potentially affected stations were already considered in the construction permit and license application process. Finally, as discussed earlier, continued operation with WQCW-DT's currently licensed facility following the DTV transition will not exceed the 0.1 percent interference standard used by the Commission in the establishment of the new DTV TOA.

* * * * *

For the reasons set forth above, the Commission should reconsider the WQCW-DT allotment in the DTV TOA and Appendix B and instead specify WQCW-DT's currently licensed facility with 358 meters HAAT for the WQCW-DT post-transition digital facility.

Respectfully submitted,

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November 20, 2007

EXHIBIT A

**Engineering Statement
(attached)**

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of Mountain TV, L.L.C. ("Mountain TV"), licensee of WQCW-DT, Channel 17 in Portsmouth, Ohio, in support of its Petition for Leave and Reconsideration with respect to the Commission's decision, *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking, 22 FCC Rcd 15581 (2007) ("*Seventh Report and Order*"). Specifically, Mountain TV requests that the Commission reconsider the technical facility it assigned to WQCW-DT in Appendix B of the final digital table of allotments.

In the above-referenced appendix, the FCC assigned WQCW-DT post-transition use of digital Channel 17 with an effective antenna height of 237 meters above the surrounding terrain. WQCW-DT presently operates with a height above average terrain of 358 meters and, as a result, the licensee requests that the Commission make this change in the technical parameters assigned to WQCW-DT in Appendix B of the post-transition digital table of allotments.

In support of this request, we have conducted an interference study with regard to all full-power post-transition DTV facilities, as well as authorized Class A low power television stations. In our evaluation, we have relied upon the V-Soft Communications "Probe III" computer program, which has been found generally to mimic the FCC's

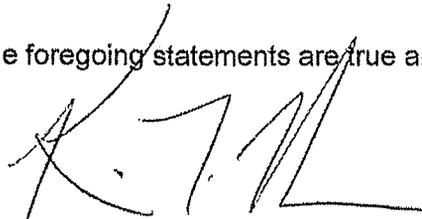
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program. In conducting our studies, we employed a cell size of 1.0 kilometers and an increment spacing of 0.1 kilometer along each radial. In addition, we utilized the 2000 U. S. Census to count population within cells. Changes in interference caused by proposed WQCW-DT to stations and allotments of concern are listed in the following tabulation.

<u>Call Sign</u>	<u>City, State</u>	<u>Channel</u>	<u>Coverage Population</u>	<u>Interference Population From WQCW-DT</u>	<u>%</u>
WFXR-DT Post-Transition	Roanoke, VA	17	1,177,312	421	<0.1

As shown, the proposed WQCW-DT facility would not contribute more than 0.1% Interference to the service population of any transition DTV facility or Class A LPTV station. Therefore, this proposal meets the FCC's interference standards with respect to changes to the DTV Table of Allotments.

I declare, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge and belief.



KEVIN T. FISHER

November 20, 2007