

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

In the Matter of:) MB Docket No. 87-268
)
Advanced Television Systems and)
Their Impact Upon the Existing)
Television Broadcast Service)
)
)
To: Office of the Secretary, FCC)

OPPOSITION TO PETITION FOR RECONSIDERATION

State of Wisconsin – Educational Communications Board (“WECB”), licensee of noncommercial educational television Station WHWC-TV/DT, Menomonie, Wisconsin (“WHWC-DT”), by its counsel and pursuant to Section 1.429 of the FCC’s rules, opposes the Petition for Reconsideration filed by Twin Cities Public Television, Inc. (“TPT”) requesting to modify the DTV Table of Allotments (the “DTV Table”) with respect to the proposed technical facilities for Station KTCI-TV/DT, St. Paul Minnesota (“KTCI-DT”).

The Petition must be denied because TPT’s requested modification for KTCI-DT will cause substantial (14.9%) prohibited interference to WHWC-DT. Moreover, the Petition wrongly mischaracterizes the situation as an improvement in existing interference. Finally, TPT should not be allowed to use the DTV Table to shift the burden of TPT’s strategic error (namely, TPT’s incorrect assumption that it inherited KMSP-DT’s replication facilities) to WECB, by doing an end-run around the Commission’s established interference standards for the DTV transition. For these reasons, the Commission should promptly dismiss or deny the Petition.

Background

WECB and WHWC-DT

WECB is a Wisconsin state agency with a statutory mandate to provide public broadcasting programs and services. Thus, WECB is a long-standing, respected and statewide public broadcaster. WHWC-DT is one of five (5) noncommercial educational television stations licensed to WECB. WHWC-DT is licensed on DTV Channel 27 with post-transition facilities as specified in the DTV Table.

History of KTCI-DT's DTV Technical Facilities

On November 5, 2004, TPT filed a Form 381 Pre-Election Certification for KTCI-DT pursuant to the multi-step channel election process adopted by the Commission in its *Second DTV Periodic Review Report and Order*¹, certifying that it would operate KTCI-DT based on the station's allotted replication facilities for DTV Channel 16. Subsequently, on February 10, 2005, TPT filed a Form 382 First Round Election Form, in which TPT informed the Commission that it had entered into a Negotiated Channel Election Arrangement ("NCA") with Fox Television Stations, Inc., licensee of KMSP-TV/DT ("KMSP-DT"), Minneapolis, Minnesota, and elected Channel 26 for KTCI-DT's DTV operation.

In connection with the NCA approval, the FCC noted that the channel elected by TPT was not predicted to cause impermissible interference to another station.² The FCC had

¹ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 04-192 (released Sept. 7, 2004).

² *Negotiated Channel Election Arrangements*, Report and Order, DA 05-1619 (released June 8, 2005).

previously stated that NCAs would be rejected if they proposed a significant level of interference or adversely impacted the interests of another station.³

On October 10, 2006, the Commission adopted its *Seventh Further Notice of Proposed Rule Making*, which proposed a final DTV Table of Allotments (the “DTV Table”) that specified the post-transition DTV channels and technical facilities for each station, including KTCI-DT.⁴ Pursuant to TPT’s certification to the Commission and its channel election, the technical facilities proposed in the DTV Table for KTCI-DT replicated its pre-transition technical facilities. In response, TPT filed comments with the Commission requesting that KTCI-DT’s proposed technical facilities be modified to specify the pre-transition technical facilities for KMSP-DT, including changing the location and height of the proposed antenna for KTCI-DT to that of KMSP-DT.

The Commission denied TPT’s request in its *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making*.⁵ In doing so, the Commission noted that requests such as TPT’s “are not for modification of the coverage area as defined by the [DTV Table] to match authorized or licensed coverage,” but are instead prompted by the inability of stations like KTCI-DT to serve their licensed coverage areas due to differences in technical facilities.⁶ Accordingly, the Commission concluded that such requests should be made in an application to construct or modify post-transition facilities “filed consistent with the procedures and standards for such

³ *DTV Channel Election Issues – Proposed Negotiated Channel Election Arrangements and Procedures for Filing Associated Pleadings*, DA 05-519 (Mar. 1, 2005).

⁴ *In re Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Further Notice of Proposed Rule Making, FCC 06-150 (released Oct. 20, 2006).

⁵ *In re Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, FCC 07-138, ¶¶ 83-88 (released Aug. 6, 2007) (hereinafter “*Seventh Report and Order*”).

⁶ *Id.* at ¶ 83.

applications adopted in the Third DTV Periodic Review proceeding⁷, including compliance with the filing freeze and interference standard.”⁸

TPT now seeks reconsideration of the FCC’s denial of its request, claiming hardship.

Argument

The Petition should be dismissed or denied because it proposes vastly more interference than the FCC standards permit for DTV interference. The Petition simply ignores the fact that TPT’s requested modification to the proposed technical facilities for KTCI-DT would result in a substantial amount of prohibited interference to WHWC-DT, and instead claims that TPT’s proposal improves interference to WHWC-DT. Finally, the Commission should not allow TPT to shift the burden of its own strategic error – TPT’s choice of DTV Channel 26 for post-transition facilities – to WECB or WECB viewers.

I. TPT’s Requested Modifications to KTCI-DT’s Proposed Facilities Would Result in Substantial and Prohibited Interference to WHWC-DT.

TPT’s own engineering statement attached to its Petition shows that the requested modification to KTCI-DT’s proposed technical facilities would result in substantial interference to WHWC-DT. Specifically, TPT’s requested modification would result in total interference to 14.91 percent of the population within the WHWC-DT coverage area (123,893 persons) and unique interference to 14.88 percent of that population (123,656 persons).⁹ This post-transition interference to WHWC-DT is vastly greater than the 0.1 percent limit adopted by the Commission in its *Second DTV Periodic Report and Order* and applied in the *Seventh Report*

⁷ *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rule Making, FCC 07-70 (released May 18, 2007).

⁸ See *Seventh Report and Order* at ¶ 83.

⁹ Exhibit 5 of Engineering Statement attached to Petition at 1.

and Order.¹⁰ Indeed, the Commission in its *Seventh Report and Order* denied requested changes to the DTV Table where, as here, “the requested change would result in interference that would exceed the 0.1 percent interference standard adopted in the *Second DTV Periodic Report and Order* and the affected station has not agreed to accept this interference.”¹¹ Thus, absent the consent of WHWC-DT, TPT’s petition cannot be granted because its requested modification would create substantial prohibited interference to WHWC-DT.

II. TPT Has Not Obtained WECB’s Consent to the Prohibited Interference to WHWC-DT.

TPT has not obtained the required consent of WECB to the new post-transition interference to WHWC-DT that would result from TPT’s requested modification. Instead, TPT mischaracterizes this interference as a “reduction” in the interference to WHWC-DT, arguing that its requested modification would “reduce the interference currently received by [WHWC-DT] from [KMSP-DT].”¹² TPT’s argument, however, is fatally flawed because it ignores a basic fact – KTCI-DT is not KMSP-DT. KTCI-DT is not entitled to “step into” KMSP-DT’s shoes. Indeed, TPT certified to the Commission that it would replicate KTCI-DT’s allocated facilities for digital operation – not those of KMSP-DT.

Consequently, the difference between the amount of interference caused to WHWC-DT by KMSP-DT’s current digital facilities on one hand, and the requested modification to KTCI-DT’s proposed digital facilities on the other, is simply irrelevant. By contrast, the increase in interference from TPT’s requested modification for KTCI-DT in the DTV Table is dispositive,

¹⁰ See *Second DTV Periodic Report and Order* at 20 n. 97; *Seventh Report and Order* at ¶ 26 (requests are granted when they do not create new post-transition interference to a tentative channel designation of more than 0.1 percent).

¹¹ See *Seventh Report and Order* at ¶¶ 68-71 (denying three requests where proposed changes would cause new interference of 1.16 percent, 0.19 percent, and 0.16 percent, respectively).

¹² Petition at 6.

because it is way over the 0.1 percent standard. TPT's requested modification to the DTV Table simply cannot be granted.

III. TPT Should Not be Allowed to Burden WECB With TPT's Own Strategic Error

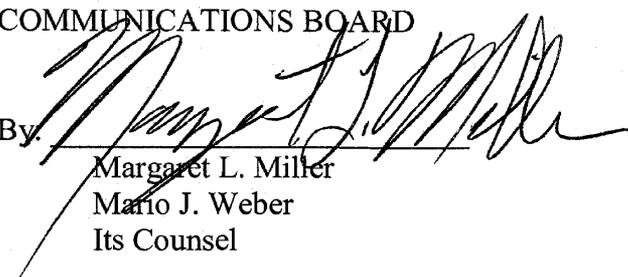
At bottom, the Petition is an inappropriate attempt by TPT to shift the burden of its strategic miscalculation – its election of DTV Channel 26 for the digital operation of KTCI-DT pursuant to an NCA and based on its replicated facilities for DTV Channel 16 – to WECB, at the cost of interference to 123,656 persons that WHWC-DT is entitled to serve. The hardships described in the Petition are of TPT's own making, and should not be allowed to cause DTV interference to 123,656 persons.

Conclusion

The Commission correctly denied TPT's request to modify the proposed technical facilities for KTCI-DT in the DTV Table. TPT's request for modification creates substantial prohibited interference to WHWC-DT and TPT presents no reasonable basis for reconsideration, particularly given the vastly increased interference to WHWC-DT. For these reasons, we request prompt dismissal and denial of TPT's Petition.

Respectfully submitted,

STATE OF WISCONSIN – EDUCATIONAL
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November 28, 2007

CERTIFICATE OF SERVICE

I, Sue Fischer, hereby certify that a copy of the foregoing "Opposition to Petition for Reconsideration" was served on November 28, 2007, by first class United States mail, postage prepaid, upon the following:

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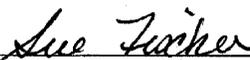
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