

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

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

**TWIN CITIES PUBLIC TELEVISION, INC.’S
REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION**

Twin Cities Public Television, Inc. (“TPT”), licensee of noncommercial educational television Station KTCI-TV/DT, St. Paul, Minnesota, hereby files its Reply to the Opposition filed by State of Wisconsin -- Educational Communications Board (“WECB”) to TPT’s Petition for Reconsideration (“Petition”) of the Commission’s decision¹ in the above-captioned proceeding. In that decision, the Commission denied TPT’s request to modify the DTV Table of Allotments to specify the antenna and antenna height TPT will use after February 17, 2009. WECB’s Opposition misstates TPT’s request for relief and the applicable interference standard. It also ignores the significant public interest harm that would result if TPT’s petition is not granted. TPT’s Petition seeks merely to assure that Station KTCI-DT will be able to continue serving its city of license post-transition with a reliable DTV signal that replicates the service area of its pre-transition DTV facilities. WECB would deny TPT that ability and deprive the

¹ *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, MB Docket No. 87-268, FCC 07-138, ¶¶ 83-88 (rel. Aug. 6, 2007) (“7th Report and Order”).

residents of the Twin Cities area the variety of high-quality programming described in TPT's Petition.

BACKGROUND

In its *Seventh Further Notice of Proposed Rule Making* in this proceeding,² the Commission proposed a final DTV Table of Allotments ("Appendix B"), specifying the post-transition DTV channels to be assigned to each station, the ERP, the HAAT, the latitude and longitude of the antenna site and the antenna to be employed. In response to the Commission's request for comment on the proposed final DTV Table, TPT filed comments advising the Commission that the data for Station KTCI-DT was inaccurate and advised the Commission that the antenna pattern of the antenna listed in that Appendix was different than the pattern of the antenna TPT intended to use. TPT requested that the Commission correct the final Appendix B to specify the proper antenna and the correct HAAT. In its *7th Report and Order*, the Commission denied TPT's request, along with that of several other licensees. The Commission concluded that TPT's request could be accomplished through the application process.³

In response to the *7th Report and Order*, TPT filed its Petition, requesting that the Commission change Station KTCI's Appendix B facilities to reflect the correct antenna pattern and HAAT that Station KTCI will use after the transition. TPT explained that forcing it to wait until it could file an application for its post-transition facilities would undermine the Commission's goal of assuring continued DTV service post-transition because the facilities specified in Appendix B will preclude Station KTCI-DT from replicating its current DTV service area. Specifically, TPT noted that because of the difference in antenna patterns between the

² *In re Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Further Notice of Proposed Rule Making, 21 FCC Rcd 12,100 (2006) ("*7th Further Notice*").

Channel 16 antenna and Channel 26 antenna, Station KTCI-DT will be forced to operate with an ERP of 12 kW on Channel 26 if the Commission applies the current freeze on television applications to applications filed to implement the new DTV Table, as the Commission proposed in both the 7th *Report and Order*⁴ and its Notice of Proposed Rulemaking in the Third Periodic DTV Review proceeding.⁵ TPT also argued that allowing Station KTCI-DT to operate with an ERP of 63.1 kW at the correct antenna height and with the Station KMSP-DT Channel 26 antenna is consistent with the Commission’s standard applicable to the channel election and final table process because TPT’s proposal will not cause any impermissible “additional interference.”

On December 3, 2007, WECB filed an Opposition to TPT’s Petition. WECB asserts that TPT’s request should not be granted because it would result in “new” interference to Station WHWC-DT, Menomonie, Wisconsin, Channel 27. WECB claims that the amount of interference pre-transition caused by Station KMSP-DT, Channel 26, to Station WHWC-DT, Channel 27 is “irrelevant” and TPT’s proposal violates the 0.1% standard. WECB’s opposition should be rejected, and the Commission should grant TPT’s Petition.

ARGUMENT

A. Grant of TPT’s Petition Will Only Allow Station KTCI-DT to Replicate its Pre-Transition Service Area

WECB’s Opposition asserts that TPT is seeking to operate with the pre-transition facilities of Station KMSP-DT and characterizes the problem TPT faces as a “strategic error” which TPT seeks to correct at WECB’s expense. Nothing can be further from the truth.

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³ 7th *Report and Order*, ¶ 83.

⁴ *Id.* ¶¶ 83, 87.

⁵ *In re Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, MB Docket No. 07-91, FCC 07-70, ¶¶ 92-93 (rel. May 18, 2008) (“3rd Periodic DTV Review”).

First, TPT is not asking for the facilities employed by Station KMSP-DT pre-transition. Station KMSP-DT operates with an ERP of 691 kW. While TPT plans to use the Station KMSP-DT pre-transition antenna, it has requested authority to operate with an ERP of only 63.1 kW, less than 10% of Station KMSP-DT's ERP of 691 kW. Second, the problem facing TPT is not the result of an effort to piggy-back on the Station KMSP-DT facilities, as WECEB's "strategic error" claim implies. Rather, TPT is simply seeking to replicate the existing DTV service area of Station KTCI-DT after the end of the transition using the facilities it intended to employ when it elected replication in its FCC Form 381 and selected Channel 26 pursuant to a Negotiated Channel Agreement.

As TPT argued in its comments filed in response to the 7th *Further Notice*, in its petition for reconsideration of the 7th *Report and Order*, and in its comments filed in response to the 3rd *Periodic DTV Review*, TPT was not aware when it certified replication and, later, elected operation on Channel 26 post-transition that the Commission would assign Station KTCI-DT an antenna pattern for its post-transition channel based on its pre-transition channel and antenna. Further, when the Commission approved TPT's Channel 26 election pursuant to a Negotiated Channel Agreement, the Commission did not make it clear that it would subject Station KTCI-DT's operation on Channel 26 to the Channel 16 antenna pattern *and* the ongoing filing freeze such that, in order to operate on its assigned channel, Station KTCI-DT's service area and power level would be significantly smaller than its pre-transition DTV operations. To the contrary, TPT assumed that the Commission would, as it has stated throughout this proceeding,⁶ allow

⁶ *E.g., In re Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd. 18279, ¶ 37 (2004) ("2nd DTV Periodic Review Order") (stating Commission goal in evaluating channel elections to "preserve the service areas of those stations that constructed and are operating in accordance with the DTV buildout schedules"; *id.* ¶ 31 (stating Commission goal in channel election process to "recognize industry expectations by protecting existing service and respecting investments already made")

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Station KTCI-DT to replicate its existing DTV service area, regardless of the channel selected. As a result, TPT entered a Negotiated Channel Agreement without concern for the antenna pattern of the antenna it planned to use on that channel.⁷

As the Commission is well aware, TPT is not the only licensee in a similar position. Dozens of other stations have sought similar relief from the Commission's decision in the 7th *Report and Order*.⁸ Like TPT, these stations plan to use antennas with different antenna patterns than the one specified in Appendix B after the transition and now seek relief to avoid a loss of significant viewership after February 17, 2009.⁹ In TPT's case, it is attempting to assure that it can continue to serve post-transition approximately 92,000 viewers living in twenty local communities around the Twin Cities area that currently receive Station KTCI-DT with the array of diverse programming which TPT plans to offer post-transition, as outlined in its Petition.¹⁰ However, WECB would have the Commission ignore this situation and deny TPT any relief

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and to "ensure to the extent possible that final channel allotments accommodate replicated and maximized service areas").

⁷ Moreover, as explained in the Engineering Statement attached in support of its Petition, using the Channel 26 antenna served valid engineering considerations and freed-up space on the tower for other users. *See* TPT Petition, Engineering Statement of Kessler and Gehman Associates at 1.

⁸ *See* Josh Wein, *Dozens of Broadcasters Seek Changes to DTV Table of Allotments*, COMMUNICATIONS DAILY, Oct. 31, 2007; *see also, e.g.*, Univision Communications Inc., Petition for Partial Reconsideration, MM Docket No. 87-268 (filed Oct. 26, 2007) (seeking reconsideration of the Appendix B facilities for six stations to allow these stations to utilize existing analog antennas); Walt Disney Company, Petition for Reconsideration, MB Docket No. 87-268 (filed Oct. 26, 2007) (requesting reconsideration of the "theoretical antenna patterns" specified in Appendix B that restrict certain stations from being able to build post-transition DTV facilities that replicate their existing analog contour).

⁹ *See, e.g.*, Engineering Supplement to Petition for Partial Reconsideration of Arkansas Educational Television Commission, MM Docket No. 87-268 (filed Nov. 9, 2007) (seeking modification of the Appendix B facilities to use antennas with different antenna patterns than those specified in Appendix B).

¹⁰ *See* TPT Petition at 5.

from the confusion surrounding the Commission's procedures, even though those results so clearly are contrary to the Commission's goals throughout the transition.

B. Grant of TPT's Petition Will Not Cause Impermissible Interference to Station WHWC-DT

Contrary to WECB's claims, TPT's petition is consistent with the Commission's interference standard applied to requests filed in response to the 7th *Further Notice*. The standard for processing channel elections and creating the final DTV table of allotments was first adopted in the Commission's 2nd *DTV Periodic Review Order*. In that decision, the Commission said that “[a]n interference conflict exists when it is determined that more than tolerable interference exists (*i.e.*, in this context 0.1 percent in addition to existing interference).”¹¹ The Commission further explained that it “will define new interference as interference beyond that caused by NTSC and DTV operations, as described by the table of station information, in evaluating new interference to post-transition TV operations.”¹²

In the 7th *Further Notice*, the Commission again made clear that it would evaluate requests to change a station's proposed Appendix B facilities based on the 0.1% standard adopted in the *Second DTV Periodic Review Order*. The Commission reiterated that, for purposes of this standard, “[n]ew interference to post-transition DTV operations was defined as interference beyond that caused by *existing* analog and DTV operations, as set forth in the certification database information.”¹³ Again in the 7th *Report and Order*, the Commission stated that it granted requests for changes to Appendix B facilities where such requests “do not create *new* post-transition interference to a TCD of more than 0.1 percent.”¹⁴

¹¹ 2nd *DTV Periodic Review Order* ¶ 56.

¹² *Id.* ¶ 37.

¹³ 7th *Further Notice*, ¶ 21 (emphasis added).

¹⁴ 7th *Report and Order* ¶ 26 (emphasis added).

As TPT demonstrated in the Engineering Statement of Kessler and Gehman Associates, Inc. that was attached to its Petition, TPT's request does not create *new* post-transition interference to Station WHWC-DT, Channel 27. Rather, Station WHWC-DT, Channel 27 currently receives 22.5% interference from Station KMSP-DT, Channel 26. TPT's proposal, which seeks to use the same antenna and antenna pattern as Station KMSP-DT but with less than 10% of the power, would decrease from 22.5% to 14.9% the amount of interference that Station WHWC-DT, Channel 27 receives from "existing analog and DTV operations." Accordingly, grant of TPT's Petition is consistent with the Commission's articulation of the 0.1 percent standard, and WECB's complaint should be rejected.

CONCLUSION

For the reasons set forth above and in TPT's previous filings, TPT urges the Commission to reconsider its denial of TPT's request to correct Appendix B and specify that Station KTCI-DT's post-transition antenna will be the Channel 26 antenna currently employed by Station KMSP-DT, Antenna Id. 29226, correct the HAAT, and retain the ERP of 63.1 kW or such other ERP as will permit Station KTCI-DT to replicate its current noise limited service contour. Contrary to WECB's arguments, these limitations on the service area of Station KTCI-DT post-transition are not the result of any "strategic error," but stem from a lack of notice that a station selecting a different channel post-transition would be limited to the service area of an antenna with an antenna pattern derived from their pre-transition antenna.

Grant of TPT's request would permit TPT to replicate its current DTV service area without causing any new additional interference to any other station and would further the Commission's repeated objective to "preserve the service areas of those stations that constructed

and are operating in accordance with the DTV buildout schedules”¹⁵ and “ensure to the extent possible that final channel allotments accommodate replicated and maximized service areas.”¹⁶ Grant of that request will also advance the Commission’s “goal to finalize DTV channels and facilities as expeditiously as possible to provide stations with the certainty they need to complete their digital build out, consistent with the interference and other standards set forth in the 7th *Further Notice*.”¹⁷

Respectfully submitted,

/s/Theodore D. Frank
Theodore D. Frank
Maureen R. Jeffreys
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004
Counsel for Twin Cities Public Television, Inc.

December 13, 2007

¹⁵ 2nd *DTV Periodic Review* ¶ 37.

¹⁶ *Id.* ¶ 31; see also 7th *Further Notice*, ¶ 14.

¹⁷ 7th *Report and Order*, ¶ 3.

Certificate Of Service

I, Maureen R. Jeffreys, hereby certify that I have on this 13th day of December, 2007, caused to be served the attached Petition For Reconsideration Of Twin Cities Public Television, Inc. on the following by email and U.S. first class mail, postage prepaid:

Margaret L. Miller
Dow Lohnes PLLC
1200 New Hampshire Ave, N.W, Suite 800
Washington, DC 20036

Monica Desai, Esq.
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mary Beth Murphy, Esq.
Division Chief, Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Eloise Gore, Esq.
Deputy Division Chief, Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Gordon Godfrey
Video Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ms. Nazifa Sawez
Video Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Nam P. Pham
Office of Engineering & Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

/s/ Maureen R. Jeffreys
Maureen R. Jeffreys