

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In the Matter of)
)
THIRD PERIODIC REVIEW OF) MB Docket No. 07-91
THE COMMISSION'S RULES AND)
POLICIES AFFECTING THE)
CONVERSION TO DIGITAL)
TELEVISION)

TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: The Commission

**PETITION FOR RECONSIDERATION
OF REPORT AND ORDER FCC 07-228**

W. Russell Withers, Jr., licensee of Television Broadcast Station WDHS, Iron Mountain, Michigan ("Withers" or "WDHS"), by its attorney, pursuant to Section 405 of the Communications Act of 1934, as amended, as well as the FCC's Rules, hereby respectfully files this Petition for Reconsideration of the **Report and Order** in the above-entitled proceeding, FCC 07-228, published in the Federal Register on January 30, 2008, 73 Fed. Reg. 5633. In support whereof, the following is shown:

1. This petition is filed out of an abundance of caution, in order to protect Withers' legal position in

another DTV proceeding currently pending before the Commission. Withers hereby incorporates by reference herein his "Petition for Reconsideration" filed June 18, 2007 relative to the denial of a request for waiver of the "use it or lose it" policy. This petition is unopposed.

2. In particular, Withers seeks reconsideration of paragraphs 59-61 of FCC 07-228. WDHS is one of the few stations denied a waiver of the "use it or lose it" deadline. If Withers is denied the opportunity to build out WDHS-DT's facility as allowed by the Seventh Report and Order¹, the public in the rural areas of the western Upper Peninsula of Michigan and northeast Wisconsin will be the loser, as many of them will be unable to see WDHS-DT's post-transition facility at low power. Withers has demonstrated in its earlier filings the unequal and unfair treatment accorded it, as similarly situated stations were granted a waiver of the "use it or lose it" waiver, while WDHS was denied such a waiver.

3. Withers requests that the Commission process and grant its construction permit application for a post-transition station on Channel 8 at Iron Mountain, Michigan up to the maximum facilities allowed by the Seventh Report and Order. If it is truly the goal of the Commission to afford the American viewing public the same viewing

opportunities in the digital television future as they now enjoy with analog television, then the Commission cannot be in a position of denying a broadcaster that is ready, willing and able to provide post-transition service that replicates its analog service the ability to provide that service. Withers is ready to provide replicative digital service on Channel 8 in Iron Mountain on and after February 17, 2009, if given the opportunity to do so.

¹Channel 8, 3.2 kW at 190 meters at Millie Hill in Iron Mountain, MI, serving some 112,000 people.

WHEREFORE, W. Russell Withers, Jr. urges that this Petition for Reconsideration **BE GRANTED** and that WDHS-DT, Iron Mountain, Michigan, be allowed the relief requested herein.

Respectfully submitted,

W. RUSSELL WITHERS, JR.

By 
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His Attorney

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DATED AND FILED: February 28, 2008