

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

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|---------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Promoting Diversification of |) | MB Docket No. 07-294 |
| Ownership In the Broadcasting |) | |
| Services |) | |
| |) | |
| 2006 Quadrennial Regulatory |) | MB Docket No. 06-121 |
| Review - Review of the |) | |
| Commission's Broadcast |) | |
| Ownership Rules and Other Rules |) | |
| Adopted Pursuant to Section 202 |) | |
| of the Telecommunications Act |) | |
| of 1996 |) | |
| |) | |
| 2002 Biennial Regulatory Review |) | MB Docket No. 02-277 |
| - Review of the Commission's |) | |
| Broadcast Ownership Rules and |) | |
| Other Rules Adopted Pursuant to |) | |
| Section 202 of the |) | |
| Telecommunications Act of 1996 |) | |
| |) | |
| Cross-Ownership of Broadcast |) | MM Docket No. 01-235 |
| Stations and Newspapers |) | |
| |) | |
| Rules and Policies Concerning |) | MM Docket No. 01-317 |
| Multiple Ownership of Radio |) | |
| Broadcast Stations in Local |) | |
| Markets |) | |
| |) | |
| Definition of Radio Markets |) | MM Docket No. 00-244 |
| |) | |
| Ways to Further Section 257 |) | MB Docket No. 04-228 |
| Mandate and To Build on Earlier |) | |
| Studies |) | |

TO: Honorable Marlene H. Dortch
Secretary of the Commission

COMMENTS OF WITHERS BROADCASTING COMPANY OF WEST VIRGINIA

Withers Broadcasting Company of West Virginia (WBC-WV), licensee of WDTV(TV) and permittee of WDTV-DT, Weston, West Virginia ("Station WDTV"), by its attorney, hereby respectfully submits its Comments in the above-captioned proceeding. In support whereof, the following is shown:

1. WBC-WV limits its comments to the issues relative to the proposal to reallocate Television Channels 5 and 6 from use by television stations to use by FM Broadcast Stations presented in the **Report and Order and Third Further Notice of Proposed Rulemaking**, FCC 07-217, released March 5, 2008 (the "NPRM"), at paragraph 100.

2. Station WDTV currently operates on analog channel 5 (76-82 MHz) and on digital channel 6 (82-88 MHz), and, in the post-transition era, will be operating on digital channel 5. Station WDTV is one of 21 television stations nationwide that will be operating on either channel 5 or channel 6 after February 17, 2009. A listing of all such stations is attached as Exhibit A.

3. The rulemaking proceedings involving the transition from analog to digital television broadcasting have been going on for almost a decade. Television broadcasters such as Withers have made decisions and bought equipment based upon the outcome of those proceedings. The proponents for FM broadcasting in the 76-88 MHz portion of the spectrum should have been participating in these

proceedings from "the get go". They have no rights vis a vis the 21 television licensees to operate on digital channels 5 or 6 in the post-transition era.

4. There is no proposal before the Commission at present as to substitute channels for the affected 21 television licensees. For example, WPVI-TV, Channel 6, Philadelphia, Pennsylvania, has no channel to move to. If the Mullaney proposal is adopted, WPVI-TV, the long-time ABC affiliate in the Philadelphia market, will be forced off the air. This is a classic Section 316 problem; see 47 U.S.C. §316. WPVI-TV has statutory license rights, just as the other 20 Channel 5 and 6 licensees have statutory license rights. They can't be trampled upon. If this was a garden variety FM or TV channel allocation rulemaking case, the very late Mullaney proposal to reserve 76-88 MHz for FM broadcasting only would be dismissed as untimely filed.

5. Furthermore, there is no proposal to pay the expenses of the affected 21 television licensees to move to new channels, were any to exist, as would otherwise be required by the Commission case law, as expressed in precedents such as *FM Table of Assignments, Circleville, Ohio et al*, 8 FCC 2d 159 (1967).

6. Therefore, without the assurance of available alternate channels, and without any plan of expense reimbursement for the substantial expense to relocate to new

channels, the proposal to reserve the 76-88 MHz portion of the spectrum for FM Broadcasting only is a non-starter.

7. Before the Commission allocates the 76-88 MHz band to FM radio broadcasting, it ought to first offer space in this portion of the spectrum to Class A and low power television stations currently operating on Channels 53 through 69, who would be forced off the air at some point after the digital transition is complete and the spectrum auctions have been completed.

7. After such a migration has been completed, WBC-WV would not object to a proposal which would allow a "mixed use" of the 76-88 MHz band; which would respect the license rights of the 21 stations which have been assigned either Channel 5 or Channel 6 in the post-transition era, and allow FM Broadcasting in the 76-88 MHz band in those areas where existing digital television allocations will not be interfered with.

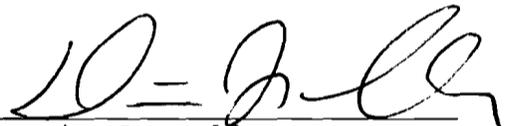
8. We would note that the television spacing rules for analog broadcasting, 47 C.F.R. §73.610(b), offers a fair compromise. In Zone I, the co-channel spacing is 272.7 km (169.5 miles); in Zone II, the co-channel spacing is 304.9 km (189.5 miles); and in Zone III, the co-channel spacing is 353.2 km (219.5 miles). In all zones, the adjacent-channel spacing is 95.7 km (59.5 miles). In the case of WDTV, this would mean that no proposal for an FM station between 76.1

MHz and 81.9 MHz could have its transmitter site within 272.7 km of the WDTV-DT authorized post-transition transmitter site; and no proposal between 82.1 MHz and 82.7 MHz could have its transmitter site within 95.7 km of the WDTV-DT authorized post transition transmitter site. Further, the Commission would have to enact some kind of "go-no go" interference standard, like there is on the books for FM translator operation, that any FM station that operates in the 72-88 MHz band that causes any kind of interference to a licensed digital television station would have to sign off the air until the interference issue is resolved to the satisfaction of the affected television broadcaster.

Respectfully submitted,

**WITHERS BROADCASTING COMPANY
OF WEST VIRGINIA**

By


Dennis J. Kelly
Its Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
Telephone: 888-322-5291

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EXHIBIT A

POST-TRANSITION CHANNEL 5 DIGITAL TV STATIONS:

1. KYES-TV, Anchorage, AK, FIN 21488
2. WOI-TV, Ames, IA, FIN 8661
3. WBKP, Calumet, MI, FIN 76001
4. WGVK, Kalamazoo, MI, FIN 24783
5. KXLF-TV, Butte, MT, FIN 35959
6. KHAS-TV, Hastings, NE, FIN 48003
7. WLMB, Toledo, OH, FIN 17076
8. KOBI, Medford, OR, FIN 8260
9. WMC-TV, Memphis, TN, FIN 19184
10. WTVF, Nashville, TN, FIN 36504
11. KCWX, Fredericksburg, TX, FIN 24316
12. WCYB-TV, Bristol, VA, FIN 2455
13. WDTV, Weston, WV, FIN 70592

POST-TRANSITION CHANNEL 6 DIGITAL TV STATIONS:

1. WEDY, New Haven, CT, FIN 13595
2. WABW-TV, Pelham, GA, FIN 23917
3. WCES-TV, Wrens, GA, FIN 23937
4. KBSD-TV, Ensign, KS, FIN 66414
5. KTVM, Butte, MT, FIN 18066
6. WRGB, Schenectady, NY, FIN 73942
7. WPVI-TV, Philadelphia, PA, FIN 8616
8. KPTW, Casper, WY, FIN 82575