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August 25, 2008

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VIA HAND DELIVERY

FILED/ACCEPTED

AUG 25 2008

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 12th Street, S.W., Room 4-C224
Washington, D.C. 20554
Attn: Video Division, Media Bureau

Re: Amendment of Section 73.622(i), Digital Television Table of Allotments
(Greenville, North Carolina)
MB Docket No. 08-133, RM-11465
Comments of Capitol Broadcasting Company, Inc.

Dear Ms. Dortch:

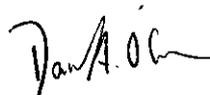
Transmitted herewith, on behalf of Capitol Broadcasting Company, Inc. ("Capitol"), are an original and four (4) copies of its Comments in the above-captioned proceeding.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier.

Should you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP



David A. O'Connor
Counsel for Capitol Broadcasting Company, Inc.

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Before the
Federal Communications Commission
Washington, DC 20554

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AUG 25 2008
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Section 73.622(i),) MB Docket No. 08-133
Digital Television Table of Allotments)
(Greenville, North Carolina)) RM-11465
)
To: Secretary, FCC
For: Chief, Video Division, Media Bureau

COMMENTS OF CAPITOL BROADCASTING COMPANY, INC.

Capitol Broadcasting Company, Inc., (“Capitol”), permittee of post-transition DTV facility WRAL-DT, Channel 48, Raleigh, North Carolina, Facility ID No. 8688 (“WRAL-DT”),¹ by its attorneys and pursuant to 47 C.F.R. § 1.415, hereby files these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.² For the reasons set forth below, Capitol opposes the channel substitution proposed by Esteem Broadcasting of North Carolina, LLC (“Esteem”), permittee of WYDO-DT, Channel 14, Greenville, North Carolina, Facility ID No. 35582 (“WYDO-DT”).

Esteem proposes the substitution of new DTV Channel 47 for the current Channel 14 allotment for WYDO-DT at Greenville, which would place it on a first-adjacent channel to

¹ Capitol is also the licensee of analog station WRAL-TV, Channel 5 and pre-transition digital station WRAL-DT, Channel 53. WRAL-DT intends to commence post-transition DTV operations on Channel 48 at midnight on February 18, 2009.

² See *Amendment of Section 73.622(i) Final DTV Table of Allotments, Television Broadcast Stations. (Greenville, North Carolina)*, Notice of Proposed Rulemaking, DA 08-1588 (rel. July 3, 2008).

WRAL-DT's existing allotment of Channel 48.³ Esteem's proposal should be denied because the proposed new channel assignment does not satisfy the Commission's geographic spacing requirements. In the alternative, Esteem's request should be dismissed or held in abeyance pending resolution of a pending petition for reconsideration concerning how channel substitutions are to be processed by the Commission (*i.e.*, under a geographic spacing and/or interference protection analysis).

I. CONTRARY TO ESTEEM'S CLAIM, THE NEW CHANNEL REQUEST DOES NOT SATISFY THE COMMISSION'S GEOGRAPHIC SPACING REQUIREMENT

Esteem states that its petition for rulemaking "is in full accord with the requirements of Section 73.623 of the Commission's rules with regard to principal community contour coverage, interference protection provided to other DTV stations and to Class A stations and *geographic spacing*."⁴ In fact, Esteem's proposed channel change does not comport with the Commission's rules requiring geographic separation between adjacent DTV channels.⁵ Section 73.623(a) states that "[p]etitions for rule making and applications seeking facilities that will operate at the end of the DTV transition must [] comply with section 73.616." Section 73.616(b) in turn obligates new proposals to meet "the DTV-to-DTV geographic spacing requirements of sections 73.623(d) [sic] with respect to all existing DTV allotments in the post transition DTV Table" Capitol's WRAL-DT allotment of Channel 48 is an "existing DTV allotment[]" for purposes of Section 73.623(d).

³ See *id.*; Esteem Broadcasting of North Carolina, LLC, Petition for Rulemaking, Amendment of Section 76.322(i) Digital Television Table of Allotments (Greenville, North Carolina) (filed June 20, 2008) ("Esteem Petition").

⁴ Esteem Petition at 1 (emphasis supplied, parenthetical omitted).

⁵ Nor did Esteem seek a waiver of the geographic separation requirement.

Under the geographic spacing requirements contained in section 73.623(d), first-adjacent DTV channels must be spaced at a minimum distance of 110 kilometers from one another.⁶ However, as demonstrated in the attached Engineering Statement, the WYDO-DT coordinates are only 108.1 kilometers from the coordinates authorized in the WRAL-DT allotment. As a result, the proposed operation of WYDO-DT at Channel 47 would not meet the geographic spacing requirements and should be denied.

II. AT A MINIMUM, THE PETITION SHOULD BE DISMISSED OR HELD IN ABEYANCE

Alternatively, the Commission should dismiss Esteem's petition or hold it in abeyance pending resolution of a pending petition for reconsideration concerning the technical criteria for evaluating channel substitution requests.⁷ In the *Third Periodic Review Order*, the Commission draws no distinction between petitions to change DTV channels and petitions for a new DTV allotment, but simply states that the geographic spacing requirement is the appropriate standard "for determining the technical acceptability of channel use in evaluating rulemaking petitions seeking new DTV channel allotments."⁸ A petition for reconsideration has been filed requesting that the Commission clarify whether the same processing standard applies to channel substitution requests.⁹ That petition remains pending, and to the extent that the Commission wishes to

⁶ 47 C.F.R. § 73.623(d).

⁷ See Petition for Reconsideration by Cohen, Dippell, and Everist, P.C., Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Dkt. No. 07-91, at 8 (filed Feb. 29, 2008) ("CDE Petition for Reconsideration").

⁸ See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 23 FCC Rcd 2994, 3069 ¶ 161 (2007); See also 47 C.F.R. § 73.623.

⁹ CDE Petition for Reconsideration at 8.

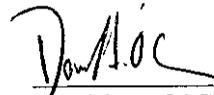
distinguish between petitions to change DTV channels and petitions for a new DTV allotment, it would be premature for the Commission to do so here until that petition is resolved.

In sum, Esteem's claim that it meets geographic spacing requirements is incorrect, and its petition for channel change should be denied on that basis. Alternatively, the Commission should dismiss the Esteem Petition or hold it in abeyance pending resolution of the pending petition for reconsideration seeking clarification of the technical criteria for evaluating proposed channel changes.

Respectfully submitted,

CAPITOL BROADCASTING COMPANY, INC.

By:



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Its Attorneys

August 25, 2008

CERTIFICATE OF SERVICE

I, Paula Lewis, an employee of Wilkinson Barker Knauer, LLP, hereby certify that on August 25, 2008, a copy of the attached "Comments of Capitol Broadcasting Company, Inc." and all exhibits and attachments thereto were delivered via hand delivery and/or overnight mail to the following:

Howard M. Liberman, Esq.
Drinker Biddle and Reath LLP
1500 K Street, NW, Suite 1100
Washington, D.C. 20005
*Counsel for Esteem Broadcasting of North
Carolina, LLC*



Paula Lewis

ENGINEERING STATEMENT
RE MB DOCKET NO. 08-133
RM-11465
NOTICE OF PROPOSED RULEMAKING SECTION 73.622
TO SUBSTITUTE DTV CHANNEL 47 FOR DTV CHANNEL 14
ON BEHALF OF
CAPITOL BROADCASTING COMPANY, INC.
WRAL-DT, RALEIGH, NORTH CAROLINA

AUGUST 2008

COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.

This engineering statement has been prepared on behalf of Capitol Broadcasting, Inc., licensee of WRAL-DT, Raleigh, North Carolina. WRAL-DT has been assigned DTV Channel 48 and has been authorized in the outstanding construction permit (FCC File No. BPCDT-20080319AAE) to operate on Channel 48 with 1000 kW maximum ERP and a height above average terrain of 629 meters.

Esteem Broadcasting of North Carolina, licensee of WYDO-DT, Greenville, North Carolina, requests in a Petition for Rule Making to request DTV Channel 47 in lieu of DTV Channel 14.

Esteem's petition does not include a waiver request. Examination of this filing requests no waiver of the FCC Rules. The WYDO-DT coordinates at:

North Latitude: 35° 26' 42"

West Longitude: 77° 22' 08"

are computed to be a distance of 108.1 km from the authorized/allotted WRAL-DT site at a bearing of N 103.4° E, T. Section 73.623(d) of the FCC Rules requires a minimum distance of 110 km between first-adjacent channel DTV stations. According to Section 73.616(b) of the FCC Rules, "[a] petition to add a new channel to the post-transition DTV Table of Allotments contained in Section 73.622(i) of this subpart will not be accepted unless it meets: the DTV-to-DTV geographic spacing requirements of Section 73.623(d) with respect to all existing DTV allotments in the post-transition DTV Table."

The Commission in Paragraph 161 of the Third Periodic Review of the Commission's Rules and Policies affecting the conversion to digital television states in part, "[a]s proposed, [the FCC] will use geographic spacing requirements as the standards for determining the technical acceptability of channel use in evaluating rule making petitions seeking new DTV channel allotments."

Therefore, in accordance with Section 73.616(b) of the FCC Rules, the proposed operation of WYDO-DT cannot be accepted since it does not meet the DTV-to-DTV geographic spacing

requirements. Exhibit E-1 depicts the relationship between the proposed Channel 47 WYDO-DT site and the authorized WRAL-DT Channel 48 site.

On February 29, 2008, this firm submitted a Petition for Reconsideration to the Third Periodic Review¹ which included, among other topics, the issues raised within the section with heading entitled, *Protection Requirements for Subsequent Channel Change Request to the Seventh Report and Order and Eighth Further Notice.*² The Petition for Reconsideration remains pending.

¹In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07-91.

²Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, Adopted: August 1, 2007 and Released: August 6, 2007.

