

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

In re:

WWAZ License, LLC

Petition For Rulemaking to Amend
DTV Table Of Allotments for
(Fond du Lac, Wisconsin)

MB Docket No. 09-115

RM-11543

FILED/ACCEPTED

AUG - 3 2009

Federal Communications Commission
Office of the Secretary

To: The Secretary

Attn: Chief, Video Division
Media Bureau

REPLY COMMENTS

WWAZ License, LLC ("WWAZ"), by and through its attorneys, and pursuant to Section 1.415 and 1.420 of the Commission's rules, 47 C.F.R. §1.415, 1.420 (2009), hereby submits these Reply Comments relating to its Petition for Rulemaking (the "Petition") to amend the DTV Table of Allotments (47 C.F.R. § 73.622(i)) to change the post-transition, DTV channel assignment of Station WWAZ-DT, Fond du Lac, Wisconsin (the "Station") to Channel 5, and to make related changes to the Station's technical parameters. The Commission released a Notice of Proposed Rulemaking on June 29, 2009 (the "NPRM"),¹ and WWAZ submitted comments in support of the Petition on July 9, 2009.

On July 24, 2009, comments were filed by Grand Valley State University ("GVSU"), opposing the change in channel and associated modifications to the Station's technical parameters. However, as discussed in more detail below, GVSU has failed to raise substantive issues of fact that would preclude the grant of the Petition. In particular, GVSU's Comments failed to show that the Petition violates the Commission's rules in any respect, nor did GVSU present any facts that would undermine the substantial public interest benefits arising from the proposed change. Therefore, WWAZ urges the expeditious grant of the Petition.

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¹ DTV Table Of Allotments, 47 C.F.R. Section 73.622(I), Fond du Lac, Wisconsin. Notice of Proposed Rulemaking, DA 09-1490 (rel. June 29, 2009); See also 74 FED REG 32856 (July 9, 2009).

ORIGINAL

DISCUSSION

GVSU raised three arguments against the grant of the Petition. First, GVSU alleged that WWAZ was not eligible for use of the replacement TV translators pursuant to the Commission's rules. Second, GVSU argues that the proposed changes violates the Commission's technical rules. Finally, GVSU urges denial of the Petition based on its speculation that the proposed facilities may cause interference to its station in Michigan due to "tropospheric ducting." As demonstrated below, GVSU's arguments fail to demonstrate that the Petition should be denied in light of the substantial public interest benefits arising from its grant.

A. The Proposed Use of Replacement TV Translators Comply with the Commission's Rules.

GVSU argues that the proposed use of two replacement TV translators do not comply with the Commission's rules relating to this service. By selectively citing language in the recently-issued Report and Order in the proceeding, GVSU concludes that WWAZ's proposal was not contemplated by the Commission when adopting the rules.² A thorough review, however, of the Commission's Report and Order conclusively demonstrates that the proposed use of the TV translators is precisely what the Commission had in mind when adopting its rules.

As noted in the Petition, the Station's operation on DTV Channel 44 is substantially hindered by the adjacent channel allocation of Channel 43 at Mayville, Wisconsin. The presence of the adjacent channel allocation requires the parties to operate their DTV facilities from towers in the same area, to avoid interference. However, the tower on which the Station's DTV antenna was to be located would not support the additional weight, and thus, a new site and a new DTV channel was necessary.

The Commission adopted rules to permit replacement digital TV translators to address situations such as that faced by WWAZ. Specifically, the FCC focused on the potential difficulties that full-power

² *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, Report and Order, 24 FCC Rcd 5931 (2009).

television licensees would face with the DTV Transition, including “technical complexities, and, in some cases, relocation of the facility.” *Id.*, ¶ 2. The Commission required parties seeking such facilities to limit the TV translators’ service to those areas that would lose service which previously received analog service from the corresponding station. *Id.*, ¶ 18. Thus, the Commission was determined to limit the technical parameters of the replacement TV translators to only those areas that would lose service arising from the necessary changes to the digital full-power television station.

Well documented in the Petition, the Supplement to the Petition for Rulemaking filed on February 29, 2009, and the Further Supplement to the Petition for Rulemaking filed on June 16, 2009, is the fact that the replacement TV Translators will provide service to those areas that were predicated to lose service by the proposed facilities. Since the post-transition DTV facility for the Station could not be located at the authorized site due to tower-loading issues, the proposed replacement TV translators were designed to provide fill-in service to those areas which previously received analog service from the Station, but would lose digital service as a result of the proposed modifications. The Commission had previously authorized the early termination of the Station’s analog service area in July 2008 (DA 08-1569), so the overall impact of the change in the Station’s transmitter site necessitated by the adjacent-channel allocation at Mayville, Wisconsin, is minimal.

As such, WWAZ’s proposed use of the replacement TV translators falls within the circumstances in which the Commission specifically contemplated when creating the replacement TV translator service. GVSU has failed to provide any basis for its conclusion that the petition should be denied based on its proposal to utilize replacement TV translators to provide service those areas that previously received analog service from the Station.

B. The Proposed Facility Complies with all Applicable Commission Rules.

GVSU further argues that the proposed facilities would not comply with the Commission's rules relating to the maximum power level for Zone 1 DTV facilities, and to the design of the directional antenna pattern. Such concerns are misplaced.

First, while GVSU argues that Section 73.622(f)(6)(ii) of the Commission's rules preclude the grant of the Petition, GVSU has conveniently ignored the fact that this rule does not restrict power levels in excess of those specified in that section of the rules so long as the proposed facilities do not exceed the largest station in the DMA. In the Petition, as amended, WWAZ demonstrated that the proposed facility complies with Section 73.622(f)(2) with respect to Station WMVS-DT, Channel 8, Milwaukee.

Similarly, as shown in the attached Engineering Statement, the proposed facilities do not exceed the facilities of the largest station in the Green Bay DMA, Station WBAY-DT, Channel 23, Green Bay. In particular, the area within the noise-limited contour of WBAY-DT on Channel 23 in Green Bay is 35,831 square kilometers, whereas the area within the noise-limited contour for the Station's proposed facilities is 31,795 square kilometers. Therefore, there is no basis for GVSU's concern that the proposed facility does not comply with Section 73.622(f) of the Commission's rules.

Additionally, GVSU argues that WWAZ's proposed antenna would exceed the maximum-to-minimum ratio permitted for VHF directional antennas permitted in Section 73.685(e) of the Commission's rules. However, this argument is inapposite. Specifically, Section 73.685(e) only applies to NTSC directional proposals, not DTV directional proposals. As the Commission has stated, "Section 73.625(c) is the correct rule section for DTV directional proposals which contains no constraint on maximum-to-minimum ratios for directional antennas used for DTV operations."³ Thus, it is clear that the proposed facility complies with all applicable technical requirements under the Commission's rules.

³ *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Chattanooga, Tennessee)*, 16 FCC Rcd 3121, 3122, nt. 2 (2001).

C. GVSU's Speculative Claims Regarding Ducting Do Not Serve As Basis for Denial of Petition.

Finally, armed only with a reference to the Wikipedia website, which can be edited by any member of the public,⁴ GVSU argues that the Petition must be denied based on its speculative claim that the proposed facilities would create interference to WGVK(TV), Kalamazoo, Michigan. However, as with its other arguments, GVSU's ducting concerns do not serve as a basis for the denial of the Petition.

On at least three recent occasions, the Commission has been faced with oppositions to modifications of digital television facilities based on concerns relating to "ducting". In each case, the Commission decided that such claims were speculative at best, and could not serve as the basis for the denial of the requested changes.

For example, in the *Honolulu R&O*, the Commission was faced with similar allegations, also lacking specificity and technical support, which claimed that a proposed change in the DTV Channel for Station KALO would cause ducting interference to an adjacent-channel facility.⁵ In rejecting the opposition, the Commission stated that "interference claims due to a potential ducting effect was not sufficient to set aside an allotment proposal since such consideration would undermine the validity of the rules and standards with respect to all allocation matters involving communities along the coastline."⁶ Instead, the Commission determined that the proposal conformed to all technical standards, and "in the absence of any specific technical information" to the contrary, the Petition was granted. *Id.*

Furthermore, in the *Corpus Christi R&O*, the Commission also declined to deny a channel change request based on ducting concerns. In particular, the Commission stated that "ducting is a weather-related

⁴ See <http://en.wikipedia.org/wiki/Wikipedia:About> ("Wikipedia is written collaboratively by volunteers from all around the world. Anyone with internet access can make changes to Wikipedia articles... Visitors do not need specialized qualifications to contribute.").

⁵ *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Honolulu, Hawaii)*, 19 FCC Rcd 23,604 (MB 2003) (the "*Honolulu R&O*").

⁶ *Id.* at 23,605 (citing *San Clemente, California*, 50 FR 8226, *rev. denied*, 2 FCC Rcd 2514 (1987) and *Ventura, California*, 2 FCC Rcd 5882 (1987), *recon.* 7 FCC Rcd 5601 (1992)).

phenomenon and may be highly variable in both direction and intensity.”⁷ However, in the absence of “persuasive or probative” evidence that the “ducting [was] likely to occur” in that case, the Commission denied the opposition. *Id.*

Finally, in *Copeland*, the Commission granted an application for a new construction permit authorization, and rejected claims of ducting that were made “in the absence of a proven interference problem” and were “pure speculation without technical support.”⁸ Instead, the Commission determined that the proposal “comple[d] fully with the Commission’s technical rules including the interference protection requirements.” *Id.*

Based upon the foregoing, it is abundantly clear that the Commission will reject speculative claims of ducting, and grant those proposals that comply with the Commission’s technical rules. The only evidence provided by GVSU is a link to a Wikipedia website in which the phenomenon of ducting is discussed. GVSU did not show that the proposed facility would cause interference to Station WGVK, and GVSU’s passing reference to anecdotal information relating to interference complaints involving completely different technical facilities cannot serve as the basis for the denial of the Petition given the highly variable phenomenon.

CONCLUSION

GVSC has utterly failed to articulate any cognizable basis for the denial of the Petition. The proposed use of replacement TV translator facilities falls soundly within the stated purpose for which the new radio service was created; the proposal fully complies with all technical rules; and GVSC has failed to provide any persuasive or probative evidence that the proposed facilities will cause interference to Station WGVK.

⁷ *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Corpus Christi, Texas)*, 18 FCC Rcd 23,949, 23,951 (MB 2003) (the “*Corpus Christi R&O*”).

⁸ *Copeland Channel 21, LLC*, 20 FCC Rcd 9977, 9980 (MB 2005) (“*Copeland*”).

Therefore, WWAZ License, LLC, respectfully requests that the Commission expeditiously grant the Petition for Rulemaking.

Respectfully submitted,

WWAZ LICENSE, LLC

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July 30, 2009

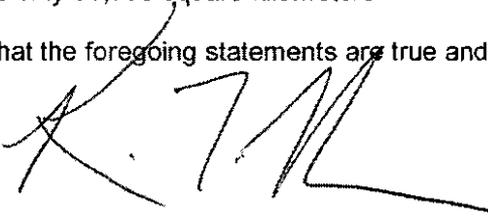
EXHIBIT A

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of WWAZ LICENSE, LLC, licensee of Television Station WWAZ-DT in Fond du Lac, Wisconsin, in support of this supplement to its Petition for Rulemaking (BPRM-20080619ALY) to move the facility to the Milwaukee antenna farm and operate on Channel 5. The purpose of this supplement is to provide information with respect to the coverage of proposed WWAZ-DT in relation to that of the largest station in the Green Bay market, the DMA to which WWAZ-DT is presently assigned.

While the proposed effective radiated power of 25 kw exceeds that allowable in Section 73.622(f)(6)(ii) of the Commission's Rules, the coverage of the proposed facility does not exceed that of the largest station in the market (WBAY-DT, Channel 23 in Green Bay, Wisconsin), as allowed in Section 73.622(f)(5) of the Rules. The area within the authorized WBAY-DT noise-limited service contour is 35,831 square kilometers, whereas the area within the proposed WWAZ-DT 28 dBu service contour is only 31,796 square kilometers.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.



KEVIN T. FISHER

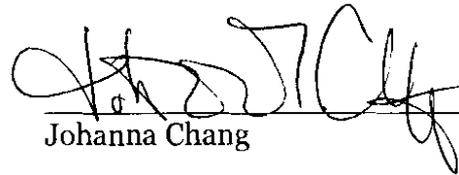
July 30, 2009

Certificate of Service

I, Johanna Chang, hereby certify that on this 3rd day of August, 2009, I caused a copy of the foregoing "Reply Comments" to be served via U.S. mail, postage prepaid, or by hand delivery upon the following persons:

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