

ORIGINAL

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

In the Matter of)
)
Amendment of Section 73.622(i))
Post-Transition Table of Allotments,)
Digital Television Broadcast Stations)
(Cleveland, Ohio))

MB Docket No. 11-159
RM-11644

FILED/ACCEPTED

To: Office of the Secretary
Attn: Chief, Video Division
Media Bureau

DEC 12 2011

Federal Communications Commission
Office of the Secretary

REPLY COMMENTS

Community Television of Ohio License, LLC (“Community TV”), licensee of commercial television station WJW(TV), Cleveland Ohio (“WJW”), by its attorneys and pursuant to Section 1.415(c) of the Commission’s rules, 47 C.F.R. § 1.415(c), hereby files these reply comments in response to Winston Broadcasting Network, Inc.’s (“WBNI”)¹ comments (the “Comments”) in opposition to WJW’s petition for rulemaking in the above-captioned proceeding.²

INTRODUCTION

The Petition seeks to remedy demonstrated difficulties with viewer reception of WJW’s VHF DTV Channel 8 by substituting UHF Channel 31. **WBNI admits the Petition satisfies the Commission’s rules governing channel change petitions.** It nonetheless claims that *de minimis* predicted interference to WBNX renders grant of the Petition contrary to the public interest. WBNI’s claims ignore the uniform precedent supporting precisely the type of VHF-to-UHF channel changes

¹ WBNI is licensee of digital television station WBNX-TV, Channel 30, licensed to Akron, Ohio (“WBNX”).

² See Community Television of Ohio License, LLC, Petition for Rulemaking to Amend the DTV Table of Allotments, MB Docket No. 11-159, RM-11644 (filed Jan. 11, 2011) (the “Petition”). See also Supplement to Petition for Rulemaking to Amend the Table of DTV Allotments, MB Docket No. 11-159, RM-11644 (filed Feb. 18, 2011) (the “Supplement”). These reply comments are timely filed in accordance with the dates specified in the Federal Register notice of the NPRM in this proceeding. See Amendment of section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Cleveland, Ohio), Notice of Proposed Rulemaking, MB Docket No. 11-159, RM 11644 (rel. Oct. 11, 2011) (“the “NPRM”), 76 Fed. Reg. 66250 (Oct. 26, 2011).

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proposed in the Petition, interposes minor and frivolous objections to the Petition, and engages in baseless *ad hominem* attacks against WJW, a local Cleveland broadcaster that offers 58 hours of local news every week to the Cleveland-Akron (Canton) DMA. Given that WBNI's Comments are unsupported by any FCC rule or precedent, the Comments can only reasonably be understood as a strike pleading designed to delay grant of the Petition, which has every merit on its side or secure considerations from WJW-TV outlined in WBNI's exhibit to its Comments. WBNI frankly deserves to be sanctioned for this filing, but the Commission should not waste any more of its time or resources on WBNI's Comments. Instead, it should grant the Petition without further delay.

I. THE PREDICTED INTERFERENCE TO WBNX IS WITHIN THE COMMISSION'S RULES AND PROVIDES NO BASIS FOR DENYING THE PETITION.

A. WBNI Concedes That the Petition Meets the Technical Requirements of the Commission's Rules and Its Argument That Interference to WBNX Requires Denial Is Foreclosed By Section 73.616(e) of the Rules.

WBNI concedes that the Petition complies with the technical rules governing channel change requests.³ WBNI nonetheless seeks denial the Petition because WJW's proposed channel allegedly would cause new interference to 2,887 households or 6,999 persons in WBNX's service area – or less than 0.2 percent of the station's service population.⁴ This argument is foreclosed by Section 73.616(e) of the Commission's rules, which establishes a *de minimis* interference threshold of 0.5 percent for new interference caused by proposed DTV operations.⁵ **The interference claimed by WBNI is less than half what the rules permit.** Thus, the Petition complies with the *de minimis* interference requirement with respect to WBNX, and the claimed interference provides no basis for denying the Petition.

Despite this clear FCC rule fixing the amount of permissible interference, WBNI argues that the much smaller amount of interference WBNX would suffer should be considered as part of a larger "public

³ Comments at 7 & Technical Exhibit at 4.

⁴ Comments at 4 & Technical Exhibit at 4; *compare* Comments at 4 & Technical Exhibit at 4 (claiming new interference to 6,999 persons) *with* FCC Coverage Maps for TV Station WBNX, *available at* http://transition.fcc.gov/dtv/markets/maps_current/Cleveland-Akron_OH.pdf (identifying digital service area population for WBNX as 3,703,851).

⁵ 47 C.F.R. § 73.616(e).

interest” inquiry. This claim is flatly contradicted by the FCC’s 2007 decision that it would “allow stations to request modifications to improve their service areas that would cause a small amount of new interference to other stations” and “that the benefits of improving station service in such cases will outweigh the very small amount of additional interference that will be permitted under the 0.5 percent standard.”⁶ The Commission therefore already has explicitly considered and rejected WBNI’s core argument that the Commission should engage in an *ad hoc* “public interest” balancing test in cases of *de minimis* interference.

The relief requested in the Petition unquestionably will improve WJW’s service to the Cleveland market. The reception difficulties associated with VHF channels like WJW’s Channel 8 are well known and the Commission explicitly recognized in 2010 that “VHF channels have certain characteristics that have posed challenges for their use in providing digital television service,” and that “television broadcasters have had some difficulty in ensuring consistent reception of VHF signals.”⁷ To ameliorate these difficulties, the Media Bureau has granted **dozens** of VHF to UHF channel changes identical to that requested by WJW.⁸ In fact, counsel for WBNI obtained a VHF to UHF channel change for Hearst-

⁶ See Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 23 FCC Rcd 2994, 3068 (2007) (“*Third Periodic Review*”). This statement, coupled with the obvious meaning of Section 73.616(e) shows the fallacy of WBNI’s claim that interference to WBNX implicates the Commission’s policy disfavoring loss of service. See Petition at 4 (citing *Hall v. FCC*, 460 F.2d 883, 889 (D.C. Cir. 1972)). The Commission already has determined that *de minimis* interference is acceptable in cases where service can be improved.

⁷ Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, *Notice of Proposed Rulemaking*, 25 FCC Rcd 16498, 16511 ¶ 42 (rel. Nov. 30, 2010).

⁸ See, e.g., *Panama City, Florida*, DA 11-1735, MB Docket No. 11-140 (Med. Bur. rel. Oct. 19, 2011); *Eau Claire, Wisconsin*, 26 FCC Rcd 10326 (Med. Bur. 2011); *El Paso, Texas*, 26 FCC Rcd 9634 (Med. Bur. 2011); *Nashville, Tennessee*, 26 FCC Rcd 7677 (Med. Bur. 2011); *El Paso, Texas*, 26 FCC Rcd 4013 (Med. Bur. 2011); *Oklahoma City, Oklahoma*, 25 FCC Rcd 2276 (Med. Bur. 2010); *Birmingham, Alabama*, 25 FCC Rcd 1970 (Med. Bur. 2010); *High Point, North Carolina*, 24 FCC Rcd 14527 (Med. Bur. 2009); *Columbus, Ohio*, 24 FCC Rcd 14476 (Med. Bur. 2009); *Cincinnati, Ohio*, 24 FCC Rcd 14472 (Med. Bur. 2009); *Lexington, Kentucky*, 24 FCC Rcd 12946 (Med. Bur. 2009); *Fort Myers, Florida*, 24 FCC Rcd 13887 (Med. Bur. 2009); *Jackson and Laurel, Mississippi*, 24 FCC Rcd 12219 (Med. Bur. 2009); *New Orleans, Louisiana*, 24 FCC Rcd 12020 (Med. Bur. 2009); *Flagstaff, Arizona*, 24 FCC Rcd 11892 (Med. Bur. 2009); *Boston, Massachusetts*, 24 FCC Rcd 11890 (Med. Bur. 2009); *Chicago, Illinois*, 24 FCC Rcd 11880 (Med. Bur. 2009); *Fort Worth, Texas*, 24 FCC Rcd 11824 (Med. Bur. 2009); *Biloxi, Mississippi*, 24 FCC Rcd 11745 (Med. Bur. 2009); *Boise, Idaho*, 24 FCC Rcd

Argyle station KMBC-DT, Kansas City, Missouri, based on the same claims of problematic VHF reception that WJW raises in this case.⁹ The Commission granted the petition based on KMBC-DT's showing and must do the same here.

Section 73.616(e) and the other technical rules governing changes to DTV facilities were finalized through notice and comment rulemaking nearly four years ago¹⁰ and have been applied numerous times since to substitute available UHF allotments for unsuitable VHF channels¹¹. WJW is entitled to the same application of those rules to the Petition.¹² In effect, what WBNI is seeking is a change to the rules that would eliminate the *de minimis* interference standard and make the question of acceptable interference a case-by-case determination. WBNI's request comes four years too late for reconsideration of Section 73.616(e) and is misplaced in this proceeding, which only permits the Bureau's straightforward application of rules the Commission has adopted. Such application of the rules can only lead to grant of the Petition.

B. Even If a Public Interest Balancing Were Permitted, Grant of the Petition Is Clearly Warranted.

Even if the Commission's rules and precedents left any room for the public interest balancing WNBI requests (and it most assuredly does not), WBNX's claim that the minor interference it would experience outweighs the public benefit that will be derived from improvement of WJW's service is absurd. WJW is the local FOX affiliate for the Cleveland market. The station is heritage station, with 58 hours of local news every week, and it is among the top-ranked stations in total viewers in the market.

11570 (Med. Bur. 2009); *Spokane, Washington*, 24 FCC Rcd 7405 (Med. Bur. 2009); *Danville, Kentucky*, 24 FCC Rcd 1140 (Med. Bur. 2009).

⁹ *Kansas City, Missouri*, MB Docket No. 08-111, RM-11454, DA 08-2303 (Med. Bur. 2008); see also Amendment of section 73.622(i) Post Transition Table of DTV Allotments (Kansas City, Missouri, Petition for Rulemaking, filed June 16, 2011, at 3-6 (the "KMBC Petition"). In the KMBC Petition, WBNI's counsel explained that "[t]he VHF problem is not merely theoretical . . . [it] is well recognized . . . [and] demonstrated by viewer correspondence." See KMBC Petition at 4 (citing Peter Putnam, *Hey Kids, Time for a Game of Musical Chairs!*, HDTVEXPERT, Oct. 30, 2007 and viewer correspondence complaining about inability to receive KMBC programming). These facts are equally demonstrated in this case.

¹⁰ See *Third Periodic Review*, 23 FCC Rcd at 3067-3073.

¹¹ See n.8, *supra*.

¹² *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

Viewers turn to WJW for breaking news and emergency coverage. A spotty and unreliable over-the-air signal for WJW throughout the Cleveland market seriously compromises viewers' ability to get the information they need when they need it. WBNI trumpets its independence, but neglects to mention that it offers viewers zero local news or public affairs programming. Put bluntly, it really matters if viewers throughout the Cleveland market can't reliably tune into WJW over-the-air; a few WBNX viewers' inability to watch reruns of *The People's Court* and *Frasier* is considerably less important.¹³ WBNI argues that there is no reason to "trade out" viewer complaints received by WJW for new complaints that will be received by WBNX.¹⁴ In reality, the Cleveland market will benefit greatly from that trade.¹⁵

Despite the extensive local service that WJW provides to the Cleveland market and the paucity of WBNX's own local service, WBNI has just the right mixture of gall and stupidity to claim that Community TV has proposed the channel change as merely a "cost-saving measure" or as an effort to "jockey for . . . prime UHF real estate in the event of a spectrum auction and repacking" on behalf of its national corporate parent. The facts unequivocally demonstrate the opposite. If the Petition is granted, WJW's Channel 31 build-out will cost \$225,000 for a rebuild of the current transmitter and an additional \$225,000 for a low-power sold-state backup transmitter.¹⁶ In addition, WJW will incur additional power

¹³ WBNI's nonsensically argues that its alleged services losses are particularly significant because the interference households are located in the "densely populated, primary areas of the market." Comments at 5. A small number of viewers located in the heart of a market is still a small number of viewers. Moreover, the viewers predicted to received interference are not located in the core of WBNX's market. WBNX is an Akron station, and, as WBNX's engineering report shows, and the attached report from WJW's consulting engineer confirms, any anticipated services losses will be to a small part of the Cleveland area or to areas far from WBNX's Akron market. See Technical Statement at 4 & Exhibit 3; see also Declaration of Charles Cooper, attached hereto as Exhibit 1 at ¶ 2 (the "Cooper Declaration").

¹⁴ Comments at 4.

¹⁵ WBNI's other "public interest" argument is equally unavailing. Contrary to WBNI's claims, WJW viewers will not suffer a reduction in service if the proposal is granted. *Id.* at 5. While the station's post-grant service contour may be slightly smaller, few if any viewers on the frontier of WJW's service area now likely are able to receive WJW's weak VHF signal. While the station may lose some theoretical signal coverage area, all the viewers that can actually view the station today will reap the rewards of a stronger, more reliable UHF signal.

¹⁶ See Declaration of John Cifani, Chief Engineer, attached hereto as Exhibit 2 at ¶ 4 (the Cifani Declaration").

costs of \$10,000-\$12,000 per month.¹⁷ WJW proposes to incur these expenses in a highly uncertain economic climate to further improve its already high-quality local service to the Cleveland market. WBNX's accusation that this is merely a ploy to serve WJW's corporate parent is utterly false, offensive and, in light of the substantial costs involved and today's very challenging economy, completely nonsensical.

C. WBNI's Engineering Analysis Provides No Basis for Denying the Petition.

WBNI's engineering arguments against the Petition are equally specious. WBNI's complaint that WJW's proposed first-adjacent channel operations on Channel 31 will cause impermissible interference because the stations are not collocated¹⁸ is simply inconsistent with well-known engineering principles.¹⁹ The FCC's rules account for the interference products resulting from non-located DTV UHF stations operating on adjacent channels within the OET-69 interference prediction methodology. Furthermore, any new DTV allotment is required to meet minimum distance thresholds defined in Section 73.623(d) of the Commission's Rules for adjacent channel stations, which require the stations' transmission facilities to be either less than 24 km or more than 110 km apart.²⁰ The transmission facilities of WBNX and WJW are located only 2.9 km apart, which would be well within the Commission's spacing requirements if WJW were required to abide by this specific rule. The interference results WBNX reports are proof that this spacing arrangement works because WJW is predicted to cause interference to far less than the 0.5 percent of WBNX's service population permitted by the rules.²¹

WBNI's claim that WJW's non-directional antenna pattern creates increased danger of interference due to WBNX's operation of a directional antenna is likewise meritless.²² Stations utilizing

¹⁷ See *id.*

¹⁸ Technical Statement at 2.

¹⁹ Cooper Declaration at ¶ 3.

²⁰ 47 C.F.R. § 76.623(d). See also Cooper Declaration ¶ 3.

²¹ First adjacent channel operations by UHF DTV stations are common. For example, WSTR-TV and WCET(TV) operate on channel 33 and 34 respectively in Cincinnati, Ohio. Those stations are separated by 8 km, but were allocated so as to permit coexistence without creating impermissible predicted interference to one another. See Cooper Declaration ¶ 3.

²² Technical Statement at 2-3; Cooper Declaration ¶ 4.

dissimilar antenna patterns on adjacent channels routinely coexist in the same market.²³ Of course, the antenna patterns used by these stations were accounted for in the FCC's allocation methodology, just as WJW has demonstrated.²⁴ Thus, WBNI's engineering arguments provide no basis for denying the Petition, which fully complies with the Commission's rules.

II. THE EVIDENCE AMPLY SUPPORTS WJW'S CONTENTION THAT THE REQUESTED CHANNEL CHANGE IS NECESSARY TO REMEDY VIEWER RECEPTION PROBLEMS WITH WJW'S VHF SIGNAL.

WBNI next claims that WJW has failed to show its viewers are suffering from difficulties receiving the station's Channel 8 signal.²⁵ The Petition and Supplement thoroughly demonstrated these problems that WJW viewers have had receiving WJW's signal over the air since the close of the DTV transition. WJW presented hundreds of complaints from viewers that lost reception of WJW after the DTV switchover, hard evidence that the station's ratings have suffered in ways that can only be explained by a substantial loss of over-the-air audience, as well as a declaration documenting local signal tests demonstrating that WJW's signal is not viewable in significant portions of its predicted service area.²⁶ The Petition also noted that viewer reception difficulties are exacerbated by the fact that nearly all other full-power stations allotted to Cleveland transmit on UHF channels, making some viewers less inclined to obtain the necessary equipment to resolve VHF viewing issues.²⁷

In response, WBNI offers alternative explanations for WJW's evidence. For example, WBNI argues that WJW's decline in ratings may be explained by "external factors such as programming changes, seasonal viewing cycles, and the change in Nielsen's ratings methodology [to the Local People

²³ Here again, the Cincinnati example described above is applicable because WCET(TV) and WSTR-TV utilize dissimilar antenna patterns. *See* Cooper Declaration ¶ 4.

²⁴ *See* Cooper Declaration ¶ 4.

²⁵ *See* Comments at 7-9.

²⁶ *See* Supplement at 2-3 & Attachments A-C.

²⁷ *See* Petition at 2. The Petition indicated that WJW is the only full-power VHF station in the Cleveland DMA. CBS affiliate WOIO(TV) and independent station WMFD-TV also broadcasts on VHF Channel 10. The other 13 full-power stations in the market broadcast on UHF channels. *See* BIA Investing in Television 2011, Cleveland-Akron Market Overview.

Meter].”²⁸ Next WBNI offers signal test data indicating that WJW’s signal actually could be received off-air at one of the locations WJW had tested.²⁹ Finally, WBNI argues that the viewer complaint data offered by WJW lacked sufficient detail to confirm that viewers could not receive WJW’s signal.³⁰

None of WBNI’s quibbles can overcome the weight of the evidence showing that WJW’s viewers are struggling to receive the station’s over-the-air signal. WJW’s Assistant Chief Engineer Jim Baird reports that he fields at least three calls each week from viewers asking what they can do to dependably receive WJW’s signal over-the-air.³¹ He has logged approximately 775 emails from viewers raising the same complaints since June of 2009. Mr. Baird indicates that the complaints come from the south, east, and west of the station’s transmitter and that they often are from locations only ten miles away.³² While the aggregated data submitted with the Petition was more than sufficient to demonstrate viewer difficulty, Community TV has attached hereto representative samples of viewer emails from the past few months offering their frustration with the quality and reliability of WJW’s over-the-air signal.³³ Ironically, even assuming that WBNI’s alternative signal tests are accurate and valid, the different results they obtained only would further prove WJW’s claim; the inconsistent results – each provided under oath – demonstrate that over-the-air reception of the station’s signal is untenably spotty and unreliable.³⁴ Moreover, while other explanations for the station’s over-the-air ratings decrease may exist, when taken together with the WJW’s other evidence and the well-established DTV VHF reception difficulties recognized by the

²⁸ Comments at 8.

²⁹ See *id.* at 8-9 & Declaration of Dirk Freeman at ¶ 8 (the “Freeman Declaration”).

³⁰ Comments at 9.

³¹ See Declaration of Jim Baird, attached hereto as Exhibit 3 (the “Baird Declaration”).

³² See *id.*

³³ See Exhibit 4.

³⁴ The Freeman Declaration includes at least one major methodological error. Mr. Freeman used a high-gain VHF antenna to measure the signals of two VHF and two UHF signals (including WJW and WBNX) at WBNX’s studio. Freeman Declaration at ¶ 4. From his results, Mr. Freeman concludes that “the High Band VHF Signals at their lower power were at least as resilient as the much stronger UHF signals.” *Id.* This conclusion is not valid because (1) using the specified “Scala High Band VHF antenna” to also compare the signal strengths of UHF stations will bias the signal strength tests in favor of the VHF stations; and (2) the test antenna used by Mr. Freeman has a significantly higher gain than the FCC Planning Factors specifies for calculating VHF DTV service. See *id.* at ¶ 3. It is well-established that for DTV broadcasting over-the-air VHF signals are not as strong or resilient as UHF signals, and Mr. Freeman’s tests in no way call that fact into question. See Cooper Declaration at ¶ 5.

Commission and experienced by stations nationwide – including Hearst station KMBC-DT, according to WBNI’s attorneys – the drop in ratings provides strong support for the explanation that viewers simply cannot receive WJW’s signal over-the-air. Given all the evidence, WBNI fails to raise any doubt that WJW’s over-the-air service will be substantially improved by the switch from a VHF to a UHF channel.

III. THE ALTERNATIVES TO THE PROPOSED CHANNEL CHANGE CITED BY WBNI ARE NOT FEASIBLE.

WBNI next argues that due to the interference it would experience from WJW’s proposed facilities, WJW has a duty to exhaust all other opportunities to improve its signal before seeking the requested channel change.³⁵ Setting aside the question of whether WJW actually has any such duty – and WBNI cites no authority for that proposition – the plain fact is that, as indicated in the Petition, WJW has examined all options for improving service short of a channel change and has found that none are feasible.³⁶

WJW currently operates at its practical maximum available power given its existing non-directional antenna.³⁷ The station could significantly increase power using its current facilities only if it could reach an interference agreements with both WLIO(TV), Lima, Ohio, and WWCP-TV, Johnstown, Pennsylvania. In December 2009, WJW approached WLIO(TV) with a proposal to increase power and a request for that station to consent to the predicted interference. WLIO(TV) unequivocally rejected WJW’s request. Thus, despite WBNI’s imagination, increasing power using current facilities is simply not an option. While former station ownership obtained a construction permit to increase power in conjunction with a new directional antenna that would attenuate the signal in the direction of WLIO(TV) and WWCP-TV, Community TV’s analysis of that solution indicates that any viewership gain realized

³⁵ Comments at 5-6.

³⁶ Petition at 2-3 & Technical Exhibit at 3.

³⁷ See Cifani Declaration at ¶ 2. As noted in the Petition, the slight power increase from 11 kW to 16 kW that could be accomplished would not significantly increase signal coverage or quality in WJW’s service area. See Petition, Technical Exhibit at 3-4.

from the power increase would be more than offset by the loss of viewers in the attenuated areas. Some, but not all, of that loss could be offset by UHF translators in the affected areas.³⁸

This net loss of predicted viewers is unacceptable because even a stronger VHF signal would not solve many of the basic problems with VHF DTV reception. As the Commission is aware, VHF signals do not penetrate buildings as well as UHF signals, so viewers relying on indoor antennas simply cannot receive VHF signals. Within the cities that make up the core of WJW's service population, VHF signals are susceptible to FM harmonic interference, which is difficult for the average viewer to diagnose and remedy. All of these factors taken together make pursuit of increased power on Channel 8 an infeasible endeavor. Either WJW must move to Channel 31 or its viewers throughout its service area must continue to suffer inferior or non-existent over-the-air DTV reception.³⁹

As described above, a move to Channel 31 is not a cost-free proposition for WJW. While the station retains some of the necessary transmission equipment from its pre-transmission operations, the move will entail considerable upfront build-out costs and significant ongoing expense.⁴⁰ Having made a reasonable effort to explore all other options, however, the station is ready to make the necessary investment to improve the station's over-the-air service to the Cleveland market. But WJW can only take this step once the Petition is granted.

IV. WBNI'S PROPOSAL FOR A CONDITIONAL GRANT OF THE APPLICATION SHOULD BE REJECTED.

WBNX's counter proposal of a conditional grant and additional testing going forward is both unwarranted and impractical.⁴¹ WJW has no responsibility to remedy any *de minimis* interference that grant of the Petition may cause. The effort to identify with particularity the few viewers that lose access to WBNX's over-the-air signal therefore would not be a worthwhile cooperative endeavor. This is particularly the case because the number of persons affected is sure to be small and WBNI's own

³⁸ See Cifani Declaration at ¶ 2.

³⁹ See *id.* at ¶ 3.

⁴⁰ See *id.*

⁴¹ Comments at 9-10.

engineering shows that the affected households are all located in a very small geographical area. WBNI is free to evaluate such interference itself and take whatever actions it deems appropriate and economic (such as seeking authorization for a small-area fill-in translator), but there is nothing in the Commission's rules or cases to suggest WJW is required to participate in that process. Moreover, WBNI's counter proposal is entirely impractical because WJW cannot justify the investment required for rebuilt Channel 31 digital facilities if it lacks certainty that it can operate the station permanently on Channel 31. Thus, WBNI's conditional grant proposal, like the rest of its comments, must be rejected.

CONCLUSION

For the foregoing reasons, the Commission should dismiss WBNI's comments and grant the Petition without further delay.

Respectfully submitted,

COMMUNITY TELEVISION OF OHIO LICENSE, LLC

By:



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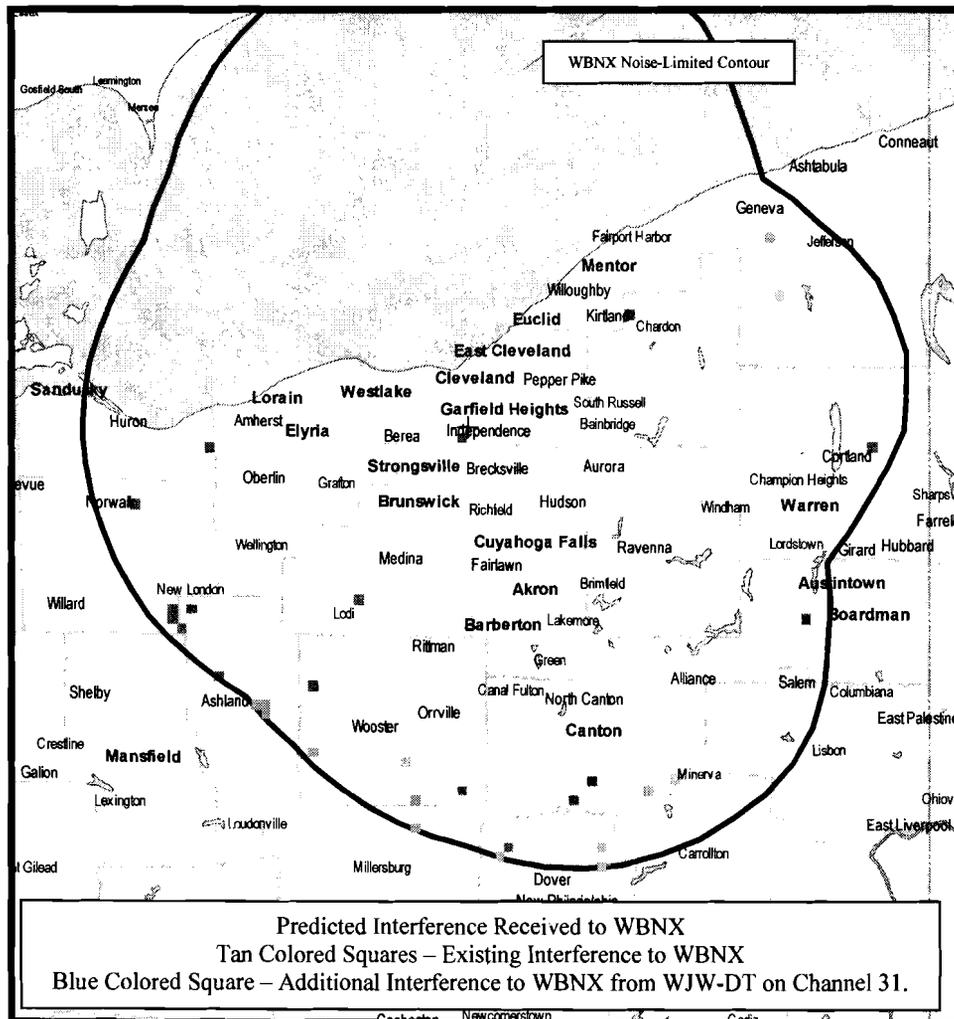
Dated: December 12, 2011

EXHIBIT 1

DECLARATION OF CHARLES A. COOPER, P.E.

1. My name is Charles A. Cooper, P.E., and I am a Principal of the engineering consulting firm of du Treil, Lundin & Rackley, Inc. I have been retained as the consulting engineer in association with the petition for rulemaking (the "Petition") filed by Local Television of Ohio License, LLC ("Local TV") seeking a channel change from DTV channel 8 to channel 31 in the Cleveland-Akron (Canton) Designated Market Area, MB Docket No. 11-159, RM-11644, and I prepared the technical exhibit filed with LocalTV's Petition. I have reviewed the Comments filed by Winston Broadcasting Network, Inc. and the statements of John E. Hidle, P.E., and Dirk Freeman of Blain Media, Inc. (the "Freeman Declaration").

2. I prepared the interference analysis, shown below as Map 1, to demonstrate the areas where digital television station WBNX(TV), Akron, Ohio can be expected to receive interference from WJW and other stations. The analysis was prepared using the Commission's familiar OET-69 interference prediction methodology. My analysis indicates that any anticipated services losses will be to a small part of the Cleveland area or to areas far from WBNX's Akron market.



Map 1. Predicted Received Interference to WBNX.

3. WBNX's assertion that WJW's proposed first-adjacent channel operations on Channel 31 will cause impermissible interference because the stations are not collocated is inconsistent with well-known engineering principles. The FCC's rules account for the interference products resulting from non-collocated DTV UHF stations operating on adjacent channels within the OET-69 interference prediction methodology. Furthermore, any new DTV allotment is required to meet minimum distance thresholds defined in Section 73.623(d) of the Commission's Rules for adjacent channel stations, which require the stations' transmission facilities to be either less than 24 km or more than 110 km apart. The transmission facilities of WBNX and WJW are located only 2.9 km apart, which would be well within the Commission's spacing requirements if WJW were required to abide by this specific rule. The interference results WBNX reports are proof that this spacing arrangement works because WJW is predicted to cause interference to far less than the 0.5 percent of WBNX's service population permitted by the rules. First adjacent channel operations by UHF DTV stations are common. For example, WSTR-TV and WCET(TV) operate on channel 33 and 34 respectively in Cincinnati, Ohio. Those stations are separated by 8 km, but were allocated so as to permit coexistence without creating impermissible predicted interference to one another.

4. WBNX's assertion that WJW's non-directional antenna pattern creates increased danger of interference due to WBNX's operation, which uses a directional antenna pattern, is likewise unfounded. Stations utilizing dissimilar antenna patterns on adjacent channels routinely coexist in the same market. Here again, the Cincinnati example described above is applicable because WCET(TV) and WSTR-TV utilize dissimilar antenna patterns. Of course, the antenna patterns used by these stations were accounted for in the FCC's allocation methodology, just as WJW has demonstrated.

5. I also have reviewed the alternative signal tests included in the Freeman Declaration. My analysis concludes that the Freeman Declaration includes at least one major methodological error. Mr. Freeman used a high-gain VHF antenna to measure the signals of two VHF and two UHF signals (including WJW and WBNX) at WBNX's studio. From his results, Mr. Freeman concludes that "the High Band VHF Signals at their lower power were at least as resilient as the much stronger UHF signals." This conclusion is not valid because (1) using the specified "Scala High Band VHF antenna" to also compare the signal strengths of UHF stations will bias the signal strength tests in favor of the VHF stations; and (2) the test antenna used by Mr. Freeman has a significantly higher gain than the FCC Planning Factors specifies for calculating VHF DTV service. It is well-established that for DTV broadcasting over-the-air VHF signals are not as strong or resilient as UHF signals, and Mr. Freeman's tests in no way call that fact into question.

6. I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, information, and belief, the foregoing is true and correct.


12 DEC 2011
Charles A. Cooper, P.E.
du Treil, Lundin & Rackley, Inc.

Exhibit 2

DECLARATION OF JOHN CIFANI

1. My name is John Cifani, and I am Chief Engineer at digital television station WJW(TV), Cleveland, Ohio. I have reviewed the petition for rulemaking (the "Petition") filed by Local Television of Ohio License, LLC ("Local TV") seeking a channel change from DTV channel 8 to channel 31 in the Cleveland-Akron (Canton) Designated Market Area, MB Docket No. 11-159, RM-11644, the Comments filed by Winston Broadcasting Network, Inc., the technical statement of John E. Hindle, and the foregoing Reply Comments, and I am familiar with the contents thereof.

2. WJW currently operates at its practical maximum available power given its existing non-directional antenna. The station could significantly increase power using its current facilities only if it could reach an interference agreements with both WLIO(TV), Lima, Ohio, and WWCP-TV, Johnstown, Pennsylvania. In December 2009, WJW approached WLIO(TV) with a proposal to increase power and a request for that station to consent to the predicted interference. WLIO(TV) unequivocally rejected WJW's request. Thus, despite WNBI's protests, increasing power using current facilities is simply not an option.

3. While former station ownership obtained a construction permit to increase power in conjunction with a new directional antenna that would attenuate the signal in the direction of WLIO(TV) and WWCP-TV, Community TV's analysis of that solution indicates that any viewership gain realized from the power increase would be more than offset by the loss of viewers in the attenuated areas. Some, but not all, of that loss could be offset by UHF translators in the affected areas. This net loss of predicted viewers is unacceptable because even a stronger VHF signal would not solve many of the basic problems with VHF DTV reception. VHF signals do not penetrate buildings as well as UHF signals, so viewers relying on indoor antennas simply cannot receive VHF signals. Within the cities that make up the core of WJW's service population, VHF signals are susceptible to FM harmonic interference, which is difficult for the average viewer to diagnose and remedy. All of these factors taken together make pursuit of increased power on Channel 8 an infeasible endeavor. Either WJW must move to Channel 31 or its viewers throughout its service area must continue to suffer inferior or non-existent over-the-air DTV reception.

4. A move to Channel 31 is not a cost-free proposition for WJW. While the station retains some of the necessary transmission equipment from its pre-transmission operations, the move will entail considerable upfront build-out costs and significant ongoing expense. If the Petition is granted, WJW's Channel 31 build-out will cost approximately \$225,000 for a rebuild of the current transmitter and an additional \$225,000 for a low-power sold-state backup transmitter. In addition, WJW will incur additional power costs of \$10,000-\$12,000 per month. In addition, the station would need to budget for a new tube at approximately \$35,000 initially and then approximately every four years thereafter, in the event of a failure of a tube.

5. I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, information, and belief, the foregoing is true and correct.

 12/12/2011

John Cifani, Chief Engineer
WJW(TV), Cleveland, Ohio

Exhibit 3

DECLARATION OF JIM BAIRD

1. My name is Jim Baird, and I am Assistant Chief Engineer at digital television station WJW(TV), Cleveland, Ohio. I have reviewed the petition for rulemaking (the "Petition") filed by Local Television of Ohio License, LLC ("Local TV") seeking a channel change from DTV channel 8 to channel 31 in the Cleveland-Akron (Canton) Designated Market Area, MB Docket No. 11-159, RM-11644, the Comments filed by Winston Broadcasting Network, Inc., the technical statement of John E. Hindle, and the foregoing Reply Comments, and I am familiar with the contents thereof.
2. As part of my duties as Assistant Chief Engineer, I field questions from frustrated members of the public regarding reception of WJW's over-the-air signal. I receive at least three telephone calls each week from viewers asking what they can do to dependably receive WJW's signal over-the-air. I have logged approximately 775 emails from viewers raising the same complaints since June of 2009. These complaints come from the south, east, and west of the station's transmitter and that they often are from locations only ten miles away. The emails attached to the reply comments as Exhibit 4 are a representative sample of the emails I receive on a regular basis.
3. I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, information, and belief, the foregoing is true and correct.

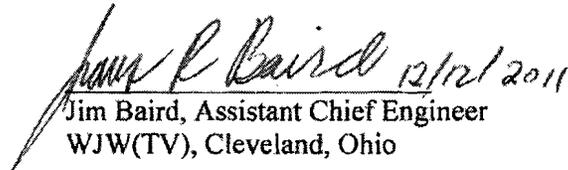
 12/12/2011
Jim Baird, Assistant Chief Engineer
WJW(TV), Cleveland, Ohio

Exhibit 4

**Representative Emails Demonstrating Viewer Inability
to Receive WJW's Over-the-Air Signal**

Baird, Jim

From: Gigante, Suzy
Sent: Monday, November 14, 2011 8:50 AM
To: Baird, Jim; Cifani, John
Subject: FW: WWW Form Submission

-----Original Message-----

From: [redacted]
Sent: Sunday, November 13, 2011 1:22 PM
To: Gigante, Suzy; Toyama, Tomi
Subject: WWW Form Submission

Below is the result of your feedback form. It was submitted by
on Sunday, November 13, 2011 at 12:21:41

name: eugene e street jr

city: akron

state: OH

zip: 44314

phone: 3307539311

comment: why cant i get fox8 on any of my tvs. ive tried 5 different antennas and still no luck. i cant even get it even though im able to get the other local channels. please help. ch8 used to be my favorite channel but i cant even get it now. all my tvs are hd and i even tried the digital convertor box and several different antennas

age: yes

send: Send

From: Baird, Jim
Sent: Wednesday, December 07, 2011 5:03 PM
To: 'Chad Wilson'
Subject: General Digital TV Signal Problems

Greetings Mr. Wilson

Thank you for the email and sorry to hear about your reception problems.

Your analysis is spot-on when trying to understand VHF reception issues. WJW and WOIO are two VHF broadcasters in this market. All the other stations are UHF broadcasters. One of the characteristics of VHF signals are, they bounce or reflect off of objects like buildings, trees, etc., as you are finding out. The metal in the building, also does not help for VHF reception.

Just going on your email, it sounds like your antenna is optimized for UHF. WJW operates from a transmitter in Parma and can be found at 181Mhz. At your distance from the transmitter you should not need an amplifier. One of the best indoor antennas for VHF reception would be old fashioned "rabbit ears". Each element should be about eleven inches long for 181Mhz reception. Being in a building, there is a lot of other sources for interference. The elevators would be an example. A simple "FM trap" filter might help this issue. Using an amplified antenna will make the interference stronger and might prevent you from receiving a marginal signals.

Hope this helps,
Regards,
JIM

JIM BAIRD
ASSISTANT CHIEF ENGINEER
WJW-TV FOX8
CLEVELAND, OH

Hi Jim,

I just figured I would send you an email about signal problems with your station (as well as WOIO). It seems your signal has trouble penetrating my building, while WKYC and WEWS and about 10 other stations come in fine. I thought maybe an amplified antennae would do the trick, but it didn't make a difference. I was able to pick up a signal by hanging the antennae out of the window (we are on the inside of the building with windows to the courtyard), but with the weather turning I will probably not continue that practice. It just seems your signal just does not penetrate the walls as well as the other signals.

*Best,
Chad Wilson*

FYI - I live in the Statler Arms building, Euclid and E. 12th st, downtown, 14th floor

Baird, Jim

From: Gigante, Suzy
Sent: Tuesday, October 04, 2011 8:40 AM
To: Cifani, John; Baird, Jim
Cc: Toyama, Tomi
Subject: FW: DTV Signal

-----Original Message-----

From: ;
Sent: Monday, October 03, 2011 5:50 PM
To: Gigante, Suzy; Toyama, Tomi
Subject: DTV Signal

Below is the result of your feedback form. It was submitted by
_____, on Monday, October 03, 2011 at 16:50:19

name: Matthew Haverman

city: Brunswick

state: OH

zip: 44212

phone: 3302308700

comment: Any news on a power boost for your channel? I've purchased two HDTV antennas in an effort to ditch my cable service and I cannot get WJW or WOIO to come in at all. No problems with WKYC, WEWS, or WUAB.

age: yes

send: Send

Baird, Jim

From: Gigante, Suzy
Sent: Tuesday, September 27, 2011 2:16 PM
To: Baird, Jim; Cifani, John
Cc: Toyama, Tomi
Subject: FW: receiving your station after digital

-----Original Message-----

From:
Sent: Tuesday, September 27, 2011 2:08 PM
To: Gigante, Suzy; Toyama, Tomi
Subject: receiving your station after digital

Below is the result of your feedback form. It was submitted by _____ on Tuesday, September 27, 2011 at 13:08:26

name: David Weick

city: Cuyahoga Falls

state: OH

zip: 44221

phone: 330 701-1070

comment: I have an old TV and converter box. I used to get your station before the switch with no problems, now even with an amplifying antenna I can't get your signal. I have tried moving the antenna but now luck. ANY SUGGESTIONS?

age: yes

send: Send

Baird, Jim

From:
Sent: Wednesday, September 14, 2011 2:13 PM
To: Baird, Jim
Subject: Antenna/Signal

Follow Up Flag: Follow up
Flag Status: Flagged

Hi,

Around this time last year I hooked up an Antenna and tried to pull in Fox, and couldn't (couldn't get WB and a couple others if I remember right). We really gave it a good shot, used the websites that mapped elevation/signal and would calculate exactly where to point the antenna using compass. We even built a couple UHF antenna, reflectors, etc. My brother emailed you and we tried all your tips.

I was just using an UHF antenna and a VHF antenna in the attic of my ranch house. I'm not willing to install a TV on my roof unless I know it can fix the problem 100%. I figure if I can get it to work decent in the attic, that would be the next step. I wasn't even close last time to getting it in, it wasn't like i was on the border between an okay and great signal, I got nothing. I literally could get Detroit stations in better if I aimed the antenna out towards the Detroit towers.

My Address:

Lorain, Ohio 44053

It put the breaks on canceling cable. Has anything major changed in the last year that would make it worth my time to spend an afternoon trying to hook antennas back up? I understood that there used to be an issue with the FCC and a channel across the lake in Canada. My brother was telling me that Canada was changing and it might affect this problem.

Thanks for your help (and for helping my brother in the past, he lives in Amherst and couldn't conquer the issue with an antenna on a third story). I will totally understand not blame you or the station if you say "don't bother, nothing changed", I know it's not your fault.

Eric

Baird, Jim

From: Gigante, Suzy
Sent: Monday, November 14, 2011 8:49 AM
To: Baird, Jim; Cifani, John
Subject: FW: Digital signal

-----Original Message-----

From: [redacted] n]
Sent: Sunday, November 13, 2011 9:43 AM
To: Gigante, Suzy; Toyama, Tomi
Subject: Digital signal

Below is the result of your feedback form. It was submitted by
[redacted] on Sunday, November 13, 2011 at 08:42:30

name: Kim Miller

city: Northfield

state: OH

zip: 44967

phone: 330-908-0839

comment: We are at our wit's end regarding getting your station in clearly with our flat screen tv. Your station and channel 19 do not come in clearly. We get weak signal, no signal, bouncing around all day. We have purchased antennas, boosters, you name it, we've tried it. We've searched the internet for what to do. The FCC website shows we get a strong signal. Any suggestions from you as to what we can do. We do like watching your station. There may be more people out there with this problem. Please advise!

age: yes

send: Send

Baird, Jim

From: Gigante, Suzy
Sent: Monday, November 07, 2011 8:38 AM
To: Cifani, John; Baird, Jim
Cc: Toyama, Tomi
Subject: FW: Signal strength

-----Original Message-----

From:
Sent: Sunday, November 06, 2011 6:57 AM
To: Gigante, Suzy; Toyama, Tomi
Subject: Signal strength

Below is the result of your feedback form. It was submitted by
) on Sunday, November 06, 2011 at 05:57:14

name: Roger Moore

city: Milan

state: OH

zip: 44846

comment: With many people like myself going back to Over the Air reception, with TV antennas, is there any chance FOX 8 can crank up the signal to be as strong as the other major Cleveland channels? I can put my antenna midway between Toledo and Cleveland, and get major networks, but FOX 8 signal is not always strong enough to pull in. Ch 3 is putting out around 868kw, 5 puts out 1000kw and Fox 8 is only at 11kw per my TV FOOL printouts. Thanks!

age: yes

send: Send

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December 2011, I caused a copy of the foregoing Petition to be served on the following:

By Email:

Barbara Kreisman
Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Barbara.Kreisman@fcc.gov

Joyce Bernstein
Video Division
Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Joyce.Bernstein@fcc.gov

By U.S. Mail, Postage Prepaid

Mark J. Prak
Stephen Hartzell
Laura S. Chipman
Brooks, Pierce, McLendon, Humphrey &
Leonard, L.L.P.
Wells Fargo Capitol Center, Suite 1600
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Raleigh, North Carolina 27602



Rayya K. Khalaf