

Before the Federal Communications Commission
Washington, DC 20554

In re Application of)
Connecticut Public Broadcasting, Inc.) File No. 0000036047
To Convert to DTS Operation)

Accepted / Filed

To: The Commission

JUL 12 2019

Federal Communications Commission
Office of the Secretary

**PMCM TV, LLC's
APPLICATION FOR REVIEW**

PMCM TV, LLC ("PMCM") hereby applies to the full Commission for review of the Video Division's June 12, 2019 Letter Order ("Letter Order") granting Connecticut Public Broadcasting, Inc.'s ("CPBI's") application for Distributed Transmission System ("DTS") authority.

QUESTIONS PRESENTED FOR REVIEW

1. Where the Commission's policies expressly require the licensee of a TV station which is seeking to change its reference point to demonstrate that the service area circle resulting from the change will fully encompass the station's authorized service area, did the Division err by granting a change in reference point that failed to encompass the station's authorized service area by a wide margin?
2. Section 73.622(f)(5) provides that a TV station in a market can increase its power so as to match the geographic coverage area of the largest station in the market. Did the Division misinterpret the rule by permitting a station to match the potential service contour established by a construction permit of another station in the market which was never constructed and had expired?
3. Does the grant of the DTS application here undermine the longstanding objectives of Section 307(b) of the Act by permitting a station supposedly licensed to serve Bridgeport, CT to relocate its main transmission site to New York City some 60 miles away?

FACTORS WARRANTING COMMISSION REVIEW

The following factors warrant Commission review of the Division's Letter Order:

1. The action taken conflicts with the Commission's express requirement that changes in reference points may not result in a loss of coverage to a station's existing coverage area.
2. The Letter Order adopts an interpretation that conflicts with both the facial terms of Section 73.622(f)(5) of the rules and its intended purpose of permitting stations to match the "coverage area" of the largest station in the market. The full Commission has not previously had occasion to review the Division's policy on this issue.
3. The Letter Order raises a question of policy which has not been resolved by the full Commission: to what extent may the DTS rules be used to implement the effective reallocation of a station from one community to a much larger one.

PMCM requests that the Commission reverse the Division's action insofar as the action was predicated on the wrong reference point for the DTS operation and was also predicated upon matching the coverage area of a defunct construction permit. The Commission should also delay action on this and other DTS applications that effectively change a station's community of license until it has considered the adverse effect of such applications on long-held tenets of community-based service.

Introduction

The instant application exemplifies the sort of hopscotch movement of a broadcast station from a small town to a much larger community which the Commission has long decried.

Dedication to principles of Section 307(b) of the Act which have traditionally been held as a kind

of sacred trust by the Commission. Ensuring that broadcast facilities are allocated to serve the communities that most need them has been the guiding light of broadcast regulation since the inception of the Commission in the 1930's. Here, by winking its eye at an obvious case of regulatory gamesmanship, the Division permitted a Bridgeport station solemnly devoted by CPBI's charter to serving the needs of southern Connecticut to instead relocate itself to downtown New York and effectively become yet another New York station.

This was accomplished by first filing a bogus application to relocate its transmitter site to Stamford, CT for the sole purpose of securing a reference point nearer to New York City. We do not hesitate to call the application "bogus" because it became clear immediately after the application was granted in December of 2018 that CPBI never had any intention whatsoever of constructing or operating its station from that location. It was just a temporary and insincere procedural stepping stone, which the Division appears to have had no problem overlooking despite the well-settled principle that an application to construct a broadcast station constitutes an implied commitment to build and operate that station. ("[C]onstruction permits for new television stations are granted only to qualified applicants who demonstrate capacity and bona fide intention to construct and render broadcast services in accordance with the Commission's rules, and the Commission in awarding permits relies on the permittee's obligation to proceed with construction and to initiate authorized services promptly and expeditiously.") *Construction Period for Broadcast Stations*, 19 R.R.2d 1578, 23 FCC 2d 274 (1970)

The next step in the process was to file the instant DTS application which abandoned all pretense of serving Bridgeport and set its sights on the bright lights of New York. Along the way, CPBI petitioned to change its community of license to Stamford, a petition which the Division granted despite CPBI's abandonment of Stamford as its transmitter site and its patent

intention to focus on New York. The Commission needs to provide some much needed guidance to the Division to forestall these kind of cynical machinations which make a mockery of the Commission's community of license policies and render the DTS licensing process a potent tool for circumventing those very policies.

A. CPBI's application relied on the wrong reference point

The Commission laid out in its *Report and Order*¹ adopting the DTS rules which reference point is to be used for DTS applications. The Order specifies that the reference point is determined by the allotment established in the Commission Order that created or made final modifications to the post-transition DTV Table and the corresponding facilities for the station's channel assignment. It is undisputed that the reference point so established for station WEDW was at a site somewhat north of Bridgeport, CT – not the reference point used for the instant application which was based on a Stamford site location which has not been constructed or put into operation. The *DTS Order* does provide that

[u]pon the appropriate public interest showing, a station may request a change to its reference point, just as stations have done historically, provided certain criteria are met. Such changes in reference points are subject to a station showing that that the resulting service area circle fully encompasses the station's authorized service area.

Id. The Letter Order did not disagree that CPBI's proposed reference point was not the one determined by the Table of Allotments. Instead, it found that the change in reference point was in the public interest.

¹ *Digital Television Distributed Transmission System Technologies*, 23 FCC Rcd 16731, 16748-9 (2008) (the "*DTS Order*")

There are two problems with this determination. First, CPBI never actually requested a change in its reference point. Its November, 2018 application (File No. 0000034869) simply assumed that the location of its phantom Stamford, CT station would somehow automatically become its reference point. Only after PMCM challenged the validity of the reference point did CPBI offer public interest justifications for the proposed change. But second, and more significantly, neither CPBI nor the Division addressed the single criterion that the *DTS Order* had made an absolute prerequisite to change of a reference point: the change had to fully encompass the station's existing service area. But as indisputably shown by PMCM's engineering showing, the move to Stamford would not cover all of its existing service area; it would in fact leave a large area of central and eastern Connecticut covering more than a million people unserved by either WEDW nor WZME.² It is also worth noting that CPBI's change in transmitter site location/reference point is not a product of the post-incentive auction repacking process. It was simply a garden variety move-in with no special circumstances to justify it. Since the CPBI application failed to satisfy a mandatory prerequisite established by the Commission for changes in a reference point, its unrequested change in reference point should clearly have been denied.

CPBI attempted a curious straddle here. On the one hand it applied for and was granted authority to move its transmitter site from Bridgeport to Stamford with the plain objective of claiming the Stamford reference point for purposes of its DTS application. But on the other hand, as soon as the Stamford application been granted, CPBI abandoned any pretense of relocating to the Stamford site. The Division then relied upon its continued operation from its *Bridgeport* site as demonstrating no loss of service. CPBI cannot have it both ways. Either (i) it

² See Engineering Statement and Figure 1 to PMCM's Informal Objection

was genuinely proposing to move to Stamford in order to get its reference point changed, in which case its reference point could not be changed due to the loss of service to existing service area or (ii) it was only pretending to move Stamford, in which case its reference point again could not be changed.³ Without Stamford as WEDW's reference point, the entire proposed DTS configuration fails and cannot be granted.

B. The Division erroneously permitted CPBI to “match” the previously proposed but later abandoned coverage area of another station in the market

The Commission's rules permit TV stations in any market to increase their power “up to that needed to provide the same geographic coverage area as the largest station within their market.” 47 C.F.R. 73.622(f) this rule obviously promotes fair competition by allowing stations to match the coverage area of their largest competitor. Here however the Division has unaccountably permitted CPBI to “match” a non-existent coverage area, which not only makes no sense but actually defeats the purpose of the rule.

This came about because CPBI's instant application proposed to match the service area proposed in a construction permit application filed by WABC and granted by the Commission several years ago. (File No.BMPCDT-20080620AMV) The licensee, ABC, had not constructed the station authorized by this construction permit at the time the CPBI application was filed. More importantly, while the application was pending, the ABC construction permit *expired*. It would have been questionable in the first place to allow a station to match a

³ The Division noted at footnote 1 that it recently granted CPBI's petition to change its community of license to Stamford. Since the Division indicates that “the Commission evaluates applications based on whether they complied with the rules at the time they were filed,” (*Letter Order* at p.5-6), it presumably did not evaluate the DTS application based on the change in WEDW's community of license that occurred long *after* the application was filed.

coverage area which is authorized but not actually receiving service because there is always the possibility that the station will never be constructed as proposed.⁴ But once the WABC permit expired without being constructed, there was literally nothing to “match.” Yet CPBI and the Division somehow concluded that matching the never built and now permanently never-to-be built coverage area complies with the rule.⁵

It is impossible to see how this interpretation squares either with the plain language of the rule (which explicitly contemplates an actual “coverage area” which could not exist without area actually being “covered”) or with the competitive intent of the rule. In *In re Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd. 5946, 5974-4 (2001), the Commission stated quite clearly that “the ‘largest station’ provision is only triggered when a station in the same market is servicing a larger area than could be covered with the standard maximum power and antenna height specified in Section 73.622(f) of the Rules.” (Emphasis added). Clearly, allowing competing stations in the market to match a potentially larger but actually non-existent coverage area would give them not parity but an *advantage* over the station that proposed but abandoned the unconstructed permit. This makes no sense whatsoever.

⁴ The Letter Order indicates at p.5 that the Media Bureau “routinely” grants applications to match service areas based on construction permits rather than operational coverage areas. The Division cites no full Commission support for this obviously flawed interpretation of the rule which can result in the very situation presented here. In fact, the full Commission’s only declaration on the subject is to the contrary. See *infra*.

⁵ The Division noted that even if PMCM is correct that an expired construction permit cannot be used as a matching reference point, CPBI could have used PMCM’s own construction permit authorization at the World Trade Center as the matching coverage area for the largest station in the market. The problem with this alternative justification is that, first, CPBI has never sought to match PMCM’s authorized coverage area, and, second, PMCM’s coverage area is subject to interference consent agreements with other nearby stations. It would not be a true coverage “match” if the matching station did not have to abide by the same impediments as PMCM, which effectively limit PMCM’s coverage. Moreover, the noise floor experienced by a low band VHF station in an urban environment such as New York City is radically different from that of a similarly situated UHF station, thus making a real world apples to apples comparison of “coverage” as contemplated by 73.622(f) impossible.

Nor would it make any sense for the Commission to ignore the fact that the WABC construction permit has been abandoned because it was extant at the time the CPBI application was filed. The *Letter Order* acknowledges that the WABC construction permit on which CPBI's application depends has expired, but expresses the surprising view that the Commission evaluates applications on the facts which exist when an application is filed, not while it is pending. *Letter Order* at 5-6. PMCM knows of no other circumstance in which the Bureau ignores indisputable facts that would render an application ungrantable just because those facts were not existent at the time the application was filed. The Commission could never make the public interest finding necessary to support the grant of an application if it knew, as was the case here, that the application failed to comply with its own rules at the time it was being acted on.

C. Misuse of the DTS application process undermines the Commission's longstanding commitment to community based service Section 3079b) of the Act

The situation presented here poses a larger issue than the specific facts of this case, but the facts here illustrate perfectly the path that the Commission has perhaps inadvertently started down. PMCM pointed out to the Division that the sleight of hand shuffling of transmitter sites proposed by CPBI in this application mirrors in substance a site change application which was filed by the owners of CPBI's current channel sharee, WZME, back in 2008. At that time, Bridgeport TV station WSAH sought to relocate its transmitter site from the Bridgeport area to the Empire State Building, almost duplicating the vast New York coverage area now proposed under the DTS rules. While the proposed relocation would have been technically permissible under the Commission's rules since WSAH would have maintained the requisite city-grade service to its community of license, the Bureau flatly rejected the proposal. Not only would there be a loss of service to over 2 million people in Connecticut, but the proposed move would have

resulted in “an effective reallocation” of the station to New York City.⁶ Stations are allotted to communities, not DMAs, the Bureau said, and there was no legal or equitable basis for moving the putative Bridgeport station 62 miles to a site occupied by New York stations.

PMCM believes that the Bureau had it exactly right back in 2009. It saw that Bridgeport was small potatoes compared to the audience and revenues which could be garnered from a move to New York. A station’s commitment to its small allotted community of license would necessarily suffer in the face of service to the 22 million or so people in the greater New York market. The Commission has steadfastly opposed “move-ins” whereby stations are authorized to serve smaller communities but then slowly creep or sometimes leapfrog their way to a community or location that effectively serves a much larger metropolitan area. Zealous vigilance against this tempting process has helped to preserve the concept of community-based broadcast service as we still tenuously know it. To now allow stations to use DTS rules to effectively move from a smallish town in Connecticut to the country’s largest market -- one already served by more than 26 TV stations (including 5 non-commercial stations) -- would represent an abandonment of one of the most sacred principles of broadcast regulation. The Commission should review what its DTS rules have wrought and determine whether the extinction of community-based service is really the outcome it desires.

At the same time, the Commission cannot ignore the fact that here the service area of a putatively non-commercial station is being dictated by its commercial sharing partner. CPBI is chartered to serve the broadcast needs of the people Connecticut, yet we now find that it has relocated its center of broadcast operations to New York City, exactly as WZME’s owners attempted to do 10 years ago. WZME got over \$190 million for giving up its spectrum rights in

⁶ Letter of Barbara Kreisman to MTB Bridgeport-NY Licensee, LLC, November 8, 2009. Copy attached.

the incentive auction, with a sizable portion of that going to CPBI in exchange for sharing rights on WEDW. One can only conclude that CPBI would not have turned its back on the citizens of its own state in order to implement a plan that effectuates the long-held desire of WZME's owners to have a New York station unless it was being compensated handsomely for the favor. This therefore raises another question as to whether a channel allocated to non-commercial operations is actually being dominated in its most fundamental particulars by its commercial sharee, thus negating the purpose and value of the non-commercial designation.

For the reasons set forth above, the Commission should reverse the grant of the captioned DTS application.

PMCM TV, LLC

By 

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July 12, 2019

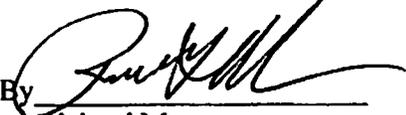
CERTIFICATE OF SERVICE

I, Richard Morena, hereby certify that on July 12, 2019, I caused a copy of the foregoing Application for Review to be served by first class mail, postage prepaid, upon the following:

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November 5, 2009

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Re: WSAH-DT, Bridgeport, Connecticut
File No. BPCDT-20080620ALT
Facility ID No. 70493

Dear Licensee:

This is with respect to the above-referenced application for a minor change in the licensed facility of station WSAH-DT, Bridgeport, Connecticut, filed by MTB Bridgeport-NY Licensee LLC ("MTB Bridgeport").¹ WSAH-DT is currently licensed and operating on channel 42, its post-transition DTV channel, at a site in Seymour, Connecticut, approximately 10 miles north of Bridgeport. In the application, MTB Bridgeport proposes to move the station's transmitter site 62 miles to the Empire State Building in New York, New York, increase effective radiated power and change the station's antenna from non-directional to directional. The proposed move would result in the loss of service to approximately 2.2 million persons who currently receive an over-the-air signal from WSAH-DT.²

It is well-settled that the Commission does not favor reductions in television service. Proposals that would result in a loss of TV service have been considered to be *prima facie* inconsistent with the public interest, and must be supported by a strong showing of countervailing public interest benefits.³

¹ Nave Broadcasting, LLC and Ventana Television, Inc., the licensees of low power television stations in or near New York City, separately objected to grant of the above-referenced application, but subsequently withdrew their objections pursuant to settlement agreements with MTB Bridgeport. WHDH-TV, the licensee of WHDH-DT, Boston, Massachusetts, filed a letter supporting grant of the WSAH-DT application, stating that grant of the application would eliminate any interference between WSAH-DT and WHDH-DT's post-transition digital operation on channel 42.

² WSAH-DT's signal presently serves most of the state of Connecticut and MTB Bridgeport's proposal would eliminate service to the majority of its existing service area in Connecticut. The proposal would result in new service to Westchester County, New York City, western Long Island, and a number of counties in New Jersey that are part of the New York City metropolitan area.

³ See *West Michigan Telecasters, Inc.*, 22 FCC 2d 943 (1970), *recon. denied*, 26 FCC 2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc. v. FCC*, 460 F. 2d 883, 889 (D.C. Cir. 1972) (finding that losses in service are *prima facie* inconsistent with the public interest); *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964) (finding that "once in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting facts are shown which establish that the public generally will be benefited"); *Television Corporation of Michigan v. FCC*, 294 F.2d 730 (1961) (finding that deprivation of service to any group was undesirable, and can be justified only by offsetting factors); *Hall v. FCC*,

"[O]nce a station begins operations, it is obligated to maintain service to its viewing audience absent off-setting public benefits to discontinuing service."⁴ The Commission recently reiterated, in connection with the full-power television industry's transition to digital television, that "[i]t is a priority of the Commission that all Americans continue to receive the television broadcast service that they are accustomed to receiving following the digital transition."⁵ MTB Bridgeport acknowledged in its application, and in a supplemental filing on October 2, 2008, the Commission's traditional concern with granting applications that will result in loss of existing service, but asserts that special circumstances in this case warrants grant of its application.

MTB Bridgeport argues first that no real loss of service will occur because it has entered into a "Multicast Channel Agreement" with LCN Television Corporation, the parent of the licensee of WTNH-DT, New Haven, Connecticut, providing for the broadcast of WSAH-DT's programming on WTNH-DT.⁶ We conclude, however, that a channel lease agreement does not offset the loss of licensed service which would occur if WSAH-DT moved to the Empire State Building. While the channel lease agreement has a sixteen-year term, the agreement may be terminated by the mutual written agreement of the parties or by either party upon twelve months advance written notice.⁷ In addition, the agreement does not require that MTB Bridgeport use the leased channel capacity to rebroadcast WSAH-DT programming; it may also choose to use the channel capacity for "such other lawful purpose as MTB shall elect."⁸ Moreover, in order to avoid an unauthorized transfer of *de facto* control, in violation of section 310(d) of the Communications Act,⁹ the licensee of WTNH-DT must retain control of the station's programming policies, including the right to reject programming.¹⁰

MTB Bridgeport also asserts that the operation of WSAH-DT from the Empire State Building would result in enhanced programming in the region. MTB Bridgeport states that it intends to provide a minimum of six hours daily of Chinese language programming to the substantial and growing Chinese American population within New York City.¹¹ MTB Bridgeport further states that its proposal "will further increase program diversity in the New York City metropolitan area through additional programming directed to Hispanic and/or other ethnic communities, as well as programming for the

237 F.2d 567 (D.C. Cir. 1956) (finding that a curtailment of service is not in the public interest unless outweighed by other factors).

⁴ *KNTV License, Inc.*, 19 FCC Rcd 15479, n.11 (MB 2004).

⁵ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, Notice of Proposed Rulemaking*, 23 FCC Rcd 18534, 18535 (2008).

⁶ MTB Bridgeport states that WTNH-DT's 41 dBu contour completely encompasses WSAH-DT present 38 dBu contour. October 2, 2008 Supplement at 5.

⁷ *Id.* at Exhibit 1, Section 7.

⁸ *Id.* at Section 1(a).

⁹ 47 U.S.C. § 310(d).

¹⁰ See *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713 (1981); *WGPR, Inc.*, 10 FCC Rcd 8140 (1995). In this regard, the agreement specifically provides that the licensee of WTNH-DT retains the absolute right to reject any programming that it deems in its sole discretion to be contrary to the public interest and to preempt programming in order to broadcast a program deemed by the licensee to be of greater national, regional or local interest. October 2, 2008 Supplement, Exhibit 1, Section 4.

¹¹ MTB states that the U.S. Census Bureau estimates that there are 434,617 Chinese living in New York City, and cites to a 2004 Census Profile by the Asian American Federation of New York Census Information Center indicating that more than 60% of Chinese Americans living in New York City have limited proficiency in English. Application, Exhibit 1 at 3. MTB also states that its proposal to bring new Chinese-language programming is supported by a number of organizations in New York City and provides letters of support from these organizations. *Id.* at Exhibit 1, Attachment 3.

majority English-speaking population in Bridgeport and within the station's service area."¹² In determining whether grant of an application would serve the public interest, convenience and necessity, however, "[t]he Commission does not scrutinize or regulate programming formats, nor does it take programming formats into consideration in making its licensing decisions."¹³ In addition, there is no indication that other television broadcast services are inadequate to meet the needs of the Chinese and other foreign language speaking viewers in the New York metropolitan area.¹⁴

MTB also asserts in the application that grant will improve ownership diversity by increasing the overall population served by WSAH-DT from approximately 6 million people to more than 18 million people. MTB Bridgeport is controlled by Multicultural Television Broadcasting, LLC ("MTBL"), a minority and women owned broadcaster controlled by Arthur and Yvonne Liu.¹⁵ MTB Bridgeport explains that minority small-business owners, such as the Lius, experience difficulties in acquiring broadcast properties in large metropolitan areas, and "all too frequently are relegated to operating stations in smaller, outlying communities that often are unable to serve these more populated metropolitan areas due to signal deficiencies and intervening terrain."¹⁶ MTB Bridgeport continues that by filing its application to move to the Empire State Building, it now seeks "the equality denied to minorities, women and the disadvantaged throughout the television industry's history" and the ability "to compete in its television market on a more level playing field."¹⁷

In its October 2, 2008 supplement, MTB Bridgeport further asserts that absent a grant of the application, "the Lius will be forced to divest MTBL's television stations . . ."¹⁸ MTB-Bridgeport explained that in April 2007, MTBL acquired WSAH(TV); KCNS(TV), San Francisco, California; WMFP(TV), Lawrence, Massachusetts; WOAC(TV), Canton, Ohio; and WRAY-TV, Wilson, North Carolina from Scripps Howard Broadcasting Co. for \$170 million, financed in part through loans of over \$100 million from financial institutions. Due to the downturn in the economy, the stations were unable to comply with the covenants or service the interest payments due under the loan agreements, and were negotiating with the lenders in order to avoid a receivership action against the Lius and MTBL. According to MTB-Bridgeport, "the increased equity value of WSAH-DT operating from the Empire State Building would, standing alone (and in combination with the other stations), be sufficient to enable the Lius to refinance the current debt."¹⁹ Commission records show that shortly after MTB Bridgeport made its supplemental filing, MTBL and its television subsidiaries entered into forbearance agreements with their lenders which required MTBL to transfer KCNS(TV), WMFP(TV), WOAC(TV) and WRAY-TV to an irrevocable trust with the lenders as beneficiaries, and that transfer has been completed.²⁰ With respect to WSAH-DT, the forbearance agreement provides that the station be transferred to the trust in the event the Commission does not grant the application to move to the Empire State Building; in the event

¹² *Id.* at Exhibit 1, p. 4.

¹³ *Mayor Maurice A. Brown*, 24 FCC Rcd 7632, 7634 (AD 2009); *see also Oro Spanish Broadcasting, Inc.*, 6 FCC Rcd 4411, 4412 (1991).

¹⁴ WMBC-TV, Newton, New Jersey airs Chinese language programming within New York City. With respect to Spanish language viewers, WXTV-DT, Paterson, New Jersey (UND), WFUT-DT, Newark, New Jersey (TLF) and WNJU-DT, Linden, New Jersey (TEL) all air significant amounts of Spanish language programming.

¹⁵ *See* Application at Exhibit 1; FCC File No. BALCT-20061117AEC. The Lius also control companies which are the licensees of approximately 40 radio stations. *Id.*

¹⁶ Application, Exhibit 1 at 2.

¹⁷ *Id.*

¹⁸ October 2, 2008 Supplement at 17.

¹⁹ *Id.*

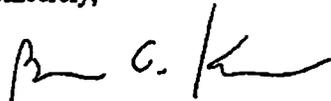
²⁰ *See* File Nos. BTCCT-20081104AEN/AEP/AER/AES, granted January 14, 2009. The stated purpose of the trust is to sell the ownership interests or assets of the stations and apply the sales proceeds to pay the loans.

the Commission were to grant the application, MBT-Bridgeport is required to engage a broker to market the station until such time as the station is sold.

While we are sympathetic to the financial difficulties faced by MBT-Bridgeport, MTBL and the Lius, those difficulties do not justify the effective reallocation of WSAH-DT to New York City and withdrawal of licensed television service to over 2.2 million persons. Stations are allotted to communities, not Nielsen Designated Market Areas, and the fact that WSAH-DT is assigned to the New York City DMA for ratings purposes provides no legal or equitable basis for moving the Bridgeport, Connecticut station 62 miles to a site occupied by stations allotted to New York City or close-in suburbs. Moreover, the Commission "does not guarantee a licensee economic success, nor will it abrogate all of its rules and policies so that a licensee may, at will, move to a market that might be more profitable than the one it originally, voluntarily, applied to serve."²¹

In view of the foregoing, the above-referenced application filed by MTB Bridgeport-NY Licensee LLC for a construction permit for station WSAH-DT is **HEREBY DENIED**.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Charles R. Naftalin, Esq.
Amy S. Mushahwar, Esq.
Lee J. Peltzman, Esq.

²¹ *MS Communications, Inc.*, 22 FCC RCD 2167, 2168 (VD 2007). In those instances when the Commission does take financial hardship into consideration, such as failing station waivers of the Commission's television duopoly rules and authorizing satellite stations, the Commission still requires that the same area be served. *Id.*