

Petition for Reconsideration
K03ID-D Flagstaff
LMS File No. 0000059359

One Ministries, Inc. (OMI) requests reconsideration of the dismissal of its minor modification file for K03ID-D, LMS file number 0000059359 based on additional information not previously considered by the Commission.

The Commission states that a similar waiver request for KCSO-LD was granted in error and without Video Division staff ruling on the merits of the waiver requests. The Commission further states that “such an erroneous action would not change the Commission’s rules or the outcome in this case. It is a well settled principle of administrative law that the fact that an agency made an error in one instance does not require the agency to repeat the error.”

The Commission was not forthcoming to give the full facts behind the grant of waivers for KCSO-LD that deviate from the rules. Furthermore, other waivers to other LPTV stations have been granted to exceed the 30-mile rule. So common were such waivers that OMI has been granted such a waiver for KQRO-LD. It would be helpful if the FCC could be forthcoming and list all such waivers that have been granted rather than stating that the error was only one instance.

The granting of waivers for KCSO-LD span nearly a decade. Over five years before it was allowed to move 43.2 miles, on November 10, 2010, KCSO was granted a waiver to operate at four times the maximum operating power at the time. KCSO-LD was further granted STAs to operate at 5 kW instead of authorized 3 kW maximum power six months before it was granted the minor modification to move 43.2 miles. Amazingly, even after being allowed to move 43.2 miles, KCSO-LD was granted six STAs from the period October 24, 2017 to September 16, 2020. This was clearly not a single error by the FCC.

In writing its decision the FCC fails to acknowledge its own failings and changing policy for low band VHF and its misunderstanding of the technology while holding OMI to a higher standard. The Commission writes, “OMI should have considered such factors as the location of its proposed Station, its choice of a low VHF operating channel, and the Station’s “economic viability” before it applied for the facility.” Nevertheless, around the same time period that OMI filed for K03ID-D, the Commission was quick grant power increases to the few full power TV stations that were operating on the low VHF band such as WPVI in Philadelphia. The Commission was also quick to give relief to full power stations seeking to move from VHF to UHF channels. Furthermore, the Commission so much missed the mark on predicting low band VHF LPTV operation that it subsequently changed its rules to increase the maximum power level by a factor of ten. It would have been impossible for OMI to have understood the economic viability when initially filing for the permit for K03ID-D if the FCC with all of its resources did not understand the technology. In 2010 there very few low VHF LPTV digital stations, and for this reason the FCC was willing to work with stations like KCSO-LD to assist them. The FCC did find sufficient facts to allow KCSO-LD to move to cover more population. Those same facts exist today in a similar manner for K03ID-D.

The FCC notes that OMI waited until September 2018 to request a new site for K03ID-D. However, OMI had waited until after the repacking of the TV bands to discover if K03ID-D was still able to operate on

channel 3 before proposing the move to the new tower. Low band VHF channels were assigned to full power stations post repack (i.e., KRCB). Nevertheless, the FCC fails to note that it held up the processing of the application for K03ID-D for three years. Furthermore, the FCC has a history of unfairly holding up the processing of applications for OMI for years. As an example, OMI has emailed and called the FCC dozens of times over the past twenty months pleading for help to resolve post-repack interference within KKPM-CD's service contour. A technical solution was filed May 7, 2020 by OMI to resolve the interference issue, but similarly it remains pending. The FCC staff has refused to call back or schedule a phone conference to discuss the interference problems to KKPM-CD. OMI requests to be treated fairly like other applicants. The same treated afforded KCSO-LD should be afforded K03ID-D.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Leitch", written over a horizontal line.

Keith Leitch
President and Engineer, One Ministries, Inc.