

ORIGINAL

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

In re Application of)	
)	
KM LPTV of Milwaukee, L.L.C.)	File No. BLTVA-20001206ADM
)	
To Convert Low Power)	Facility ID No. 35091
Television Station WMKE-LP,)	
Milwaukee, Wisconsin)	
To Class A Station Status)	
To: Chief, Mass Media Bureau		

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**REPLY TO OPPOSITION TO
MOTION FOR LEAVE TO SUPPLEMENT THE RECORD**

KMLPTV of Milwaukee, L.L.C. ("KM"), licensee of Class A television station WMKE-CA, Milwaukee, Wisconsin ("WMKE"), by its counsel, and pursuant to Section 1.45(c) of the Commission's rules, 47 C.F.R. § 1.45(c), respectfully submits this Reply to the Opposition to Motion for Leave to Supplement the Record (the "Opposition") filed by Milwaukee Area Technical College ("MATC") in the above-captioned proceeding.^{1/} In support of this Reply, KM submits the following:

1. The Motion for Leave to Supplement the Record filed by KM on July 12, 2001 (the "Motion") requested that the Commission accept and consider a Supplement to Oppositions to Petitions for Reconsideration (the "Supplement") that KM also filed on July 12, 2001, the same date as the Motion. The Supplement submitted by KM addresses one issue with respect to MATC,

^{1/} Pursuant to Section 1.45(c), this Reply may be filed within 5 days (excluding weekend and holiday days) after the August 9, 2001 filing date of the Opposition, plus an additional 3 days (excluding weekend and holiday days) since the Opposition was served by mail, see 47 C.F.R. §§ 1.4(g)-(i) and 1.45(c); therefore this Reply is timely-filed by Tuesday, August 21, 2001.

regarding the interference protection that may be required from KM's analog Channel 7 operation of Class A television station WMKE to MATC's digital full power television station WMVS-DT, digital television ("DTV") Channel 8, Milwaukee, Wisconsin ("WMVS-DT"). Specifically, the Supplement responds to MATC's anecdotal suggestion that MATC thinks WMKE may cause actual interference to WMVS-DT.

2. KM points out in the Supplement that Class A television stations such as WMKE are not required to remedy actual interference to full power DTV stations, but even if they were, WMVS-DT's anecdotal statements are not probative or valid. See Supplement at ¶ 18. MATC's Opposition complains that KM did not support its observations with an engineering statement. See Opposition at 3. It seems odd to KM that MATC would complain about KM not providing an engineering statement, considering its own suggestions of interference were anecdotal and KM wished only to point out the lack of relevance and support for MATC's suggestions of interference. Nevertheless, KM did not see any reason to go to the trouble of producing an engineering statement to rebut MATC's claims when the Commission's rules do not require Class A stations such as WMKE to remedy actual interference.

3. The Opposition demonstrates only that MATC still has not figured out that Class A television and low power television ("LPTV") are different services, governed by different sets of Commission rules regarding interference protection and other issues. MATC continues with its tactic of trying to confuse the Commission regarding the issues before it in this proceeding by mixing and matching the Commission's rules governing LPTV stations and applications with statements made by KM that are either misquoted or taken out of context or made when WMKE was an LPTV station, and attempting to apply the results to WMKE as a Class A station.

4. KM has never stated, in the context of the above-captioned Class A application or in any of its pleadings related thereto, that “no actual interference to WMVS-DT’s DTV reception would occur”, see Opposition at 2, for the simple reason that such a showing is not required of Class A television applicants or stations. What KM has stated, in its Class A application and related pleadings, is that WMKE will cause “no interference” to WMVS-DT, as that term has been defined by the Class A statute, as enacted by Congress and as interpreted by the Commission. Again, as KM has set forth repeatedly in its pleadings, the showing of “no interference” that is required of a Class A applicant or station such as WMKE is set forth in Section 73.6013 of the Commission’s rules, 47 C.F.R. § 73.6013.

5. Section 73.6013 requires a showing, using the methods defined in Section 73.623(c)(2)-(4) of the Commission’s rules, 47 C.F.R. § 73.623(c)(2)-(4), “that a Class A TV station [will] not cause a loss of service to 0.5 percent or more of the population predicted to receive service” from a DTV station such as WMVS-DT. Id. KM satisfied that showing, in its Class A application and in studies submitted with its pleadings in this proceeding, in response to suggestions made by MATC. There is no requirement for Class A television stations, once authorized, to resolve any actual interference to DTV stations that may occur. Indeed, the rules state just the opposite, that a Class A station may be authorized and operate even if predicted to cause interference to up to 0.5% of the population within a DTV station’s service contour. Id. That is the law, MATC’s blind refusal to acknowledge Section 73.6013 notwithstanding.

6. Rather than acknowledge Section 73.6013 or present a Longley-Rice study showing that WMKE is predicted to cause interference to 0.5% or more of the population within the service area of WMVS-DT - - which MATC is unable to do - - MATC wants to convince the Commission to apply LPTV rules to WMKE. MATC also suggests that KM to “put its money where its mouth

is” and accept a condition on its Class A license of complying with the LPTV rules regarding remedying actual interference. See Opposition at 3-4. KM did “put its money where its mouth is” and fully complied with the Commission’s LPTV rules, including Section 74.703 regarding remedying actual interference - - when WMKE was an LPTV station. KM spent its money to construct and operate WMKE on its Channel 7 displacement facilities as an LPTV station, knowing that it would be responsible for remedying any actual interference it may cause, but confident that none would occur. In fact, KM received no complaints that WMKE was causing actual interference to any other station during the time that WMKE operated on Channel 7 as an LPTV station, and therefore KM fully complied with Section 74.703 of the Commission’s rules.

7. In contrast, the Class A television rules that govern WMKE and Class A applications do not require KM to accept the type of condition that MATC suggests for WMKE’s primary Class A license, any more than MATC should be required to accept a condition of remedying any actual interference from WMVS-DT to WMKE. MATC should have “put its money where its mouth is” and shown, if it could, that some rule other than Section 73.6013 governs the interference protection required from Class A stations or applicants to DTV stations, or some engineering study that showed that WMKE did not comply with Section 73.6013. MATC didn’t make such legal arguments or engineering showings for the simple reason that it couldn’t, and so MATC has had to resort to clutching at straws, like trying to apply the LPTV rules to a Class A station.

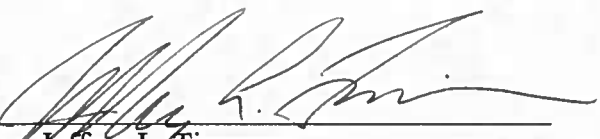
8. Last, KM appreciates that MATC has clarified that its engineering proposal in its DTV application (File No. BPEDT-990429KW, the “MATC DTV Application”) was based on Section 73.622(f)(5) of the Commission’s rules, 47 C.F.R. § 73.622(f)(5), and specifically the provision that allows DTV stations to maximize their service area to the extent of the largest station in their market. See Opposition at 3. KM would not have inquired had MATC stated its reliance

on this provision of Section 73.622(f)(5) anywhere in the MATC DTV Application or any amendment thereto, but MATC did not.

9. Wherefore, the above-premises being considered, KM respectfully requests that the Commission dismiss or deny the Opposition, grant KM's Motion, and accept and consider the Supplement.

Respectfully submitted,

KM LPTV of Milwaukee, L.L.C.

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August 20, 2001

CERTIFICATE OF SERVICE


I, Jeffrey L. Timmons, hereby certify that on this 20th day of August, 2001, copies of the foregoing "Reply to Opposition to Motion for Leave to Supplement the Record" have been served by overnight courier then hand delivery or by U.S. Priority Mail, postage prepaid, upon the following:

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