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May 1, 2002

BY HAND

Marlene Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

RECEIVED

MAY - 1 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Eve J. Klindera
202.719.7404
eklinder@wrf.com

**Re: Joint Request for Approval of Agreement
WLMB(TV), Toledo, Ohio (Facility Id. No. 17076)
FCC File No. BPCDT-19991027ADB
WGVK(TV), Kalamazoo, Michigan (Facility Id. No. 24783)
FCC File No. BPCDT-20000214AAP**

Dear Ms. Dortch:

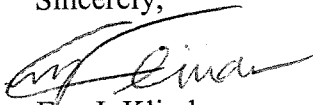
On behalf of Dominion Broadcasting, Inc. ("Dominion"), licensee of WLMB(TV), Toledo, Ohio, and Grand Valley State University ("Grand Valley"), licensee of WGVK(TV), Kalamazoo, Michigan, we hereby file an original and four copies of a Joint Request for Approval of Agreement ("Joint Request") regarding the above-referenced applications for digital television construction permits.

This Joint Request is being filed in accordance with the Media Bureau's Public Notice of March 1, 2002, which directed applicants with pending DTV applications that have been determined to be mutually exclusive to resolve the mutual exclusivity by engineering amendment and/or settlement. Public Notice, Mutually Exclusive DTV Applications, DA 02-461 (rel. Mar. 1, 2002) ("DTV Public Notice"). As contemplated by the DTV Public Notice, Dominion and Grand Valley have reached an agreement that, in conjunction with engineering amendments, resolves the mutual exclusivity between their pending DTV construction permit applications. Dominion and Grand Valley are electronically filing their respective engineering amendments, as permitted by the DTV Public Notice.

Marlene Dortch
May 1, 2002
Page 2

Please stamp and return the enclosed copy designated for that purpose. Should there be any questions concerning this filing, please contact the undersigned (counsel for Dominion), or Mark Van Bergh at 202.775.7983 (counsel for Grand Valley).

Sincerely,



Eve J. Klindera

cc: John Morgan (FCC/*By Hand*)

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

In the Matter of Applications of)	
)	
Dominion Broadcasting, Inc.)	File No. BPCDT-19991027ADB
Licensee of WLMB(TV), Toledo, OH)	
for a DTV Construction Permit)	
)	
and)	
)	
Grand Valley State University)	File No. BPCDT-20000214AAP
Licensee of WGVK(TV), Kalamazoo, MI)	
for a DTV Construction Permit)	

To: The Chief, Video Services Division

JOINT REQUEST FOR APPROVAL OF AGREEMENT

Dominion Broadcasting, Inc. ("Dominion"), licensee of WLMB, Toledo, Ohio (Facility Id. No. 17076), and Grand Valley State University ("Grand Valley"), licensee of WGVK, Kalamazoo, Michigan (Facility Id. No. 24783), hereby jointly petition the Commission pursuant to Section 73.3525 of the Commission's rules¹ to approve the interference acceptance agreement attached hereto as EXHIBIT A between Dominion and Grand Valley to facilitate the grant of both parties' pending DTV applications.²

The WLMB Application and the WGVK Application comprise MX Group # 1.³ The parties have agreed to amend their respective applications to specify comparable facilities and

¹ 47 C.F.R. § 73.3525 (2000).

² See FCC File No. BPCDT-19991027ADB (the "WLMB Application"); FCC File No. BPCDT-20000214AAP (the "WGVK Application").

³ See Public Notice, Mutually Exclusive DTV Applications, DA 02-461 (rel. Mar. 1, 2002) ("DTV Public Notice").

have agreed to accept any interference that may result from the other's proposed facility to their respective DTV service areas, as set forth in the attached agreement.

The parties recognize that the grant of their respective DTV applications would result in predicted interference that is in excess of the FCC's permissible limit for *de minimis* interference. Engineering calculations indicate that WLMB's maximized DTV facility would result in predicted interference to only 2.2% of the population to be served by WGVK's amended DTV facility. Similarly, WGVK's amended DTV facility would result in predicted interference to only 5.3% of the population to be served by WLMB's maximized DTV facility. However, in both cases the interference would occur in areas that would not receive DTV service from the WLMB and WGVK facilities proposed in Dominion's and Grand Valley's applications before the amendments contemplated in the agreement.

Approval of the interference acceptance agreement would serve the public interest by significantly increasing the populations served by both WLMB-DT and WGVK-DT and allowing the expeditious authorization of both facilities. Specifically, the WLMB maximized facility would provide interference-free service to an additional 634,000 persons, a 65% increase over the station's allotment reference facilities. The WGVK maximized facility would provide interference-free service to an additional 1,328,000 persons, an increase of 388% over the station's allotment reference facilities. The parties believe that the public interest benefits of expanding the WLMB-DT and WGVK-DT service areas and facilitating the prompt construction of two more DTV facilities far outweigh the small amount of interference in presently unserved areas that is predicted to occur from the operation of both amended DTV facilities.

Appended hereto as EXHIBIT B are declarations of each of the applicants, made pursuant to Section 73.3525(a)(1)-(2), (4) and (6)⁴ of the Commission's rules, 47 C.F.R. 73.3525(a), confirming that each applicant: (a) did not file its respective application for the purpose of entering into or carrying out a settlement agreement; and (b) has neither paid nor promised (or been paid or promised) any consideration to any party for entering into agreements, or for the dismissal of its application, except as set forth in the attached agreement.

Dominion and Grand Valley respectfully request that the Commission accept this agreement and grant both parties' DTV maximization applications, as amended.

Respectfully submitted,

DOMINION BROADCASTING, INC.

By: 

Richard J. Bodorff

Gregory L. Masters

Eve J. Klindera

of

Wiley, Rein & Fielding

1776 K Street, N.W.

Washington, D.C. 20006

(202) 719-7000

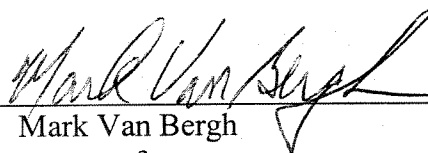
Its Attorneys

May 1, 2002

⁴ In the DTV Public Notice, the Commission stated that it would waive any of its rules, including section 73.3525(a)(3), which prohibit the receipt of money or consideration in excess of legitimate and prudent expenses in exchange for the dismissal of an application. See DTV Public Notice at 1. The waiver of section 73.3525(a)(3) renders moot Section 73.3525(a)(5).

GRAND VALLEY STATE UNIVERSITY

By:



Mark Van Bergh

of

Arter & Hadden LLP

1801 K Street, NW

Third Floor L Street

Washington, DC 20006

(202) 775-7983

Its Attorneys

May 1, 2002

EXHIBIT A

DOMINION BROADCASTING, INC.
26693 Eckel Road • P.O. Box 908
Perrysburg, OH 43552
Phone: 419.874.8862
Fax: 419.874.8867
wlmb@glasscity.net



Chairman
Larry D. Whatley
Vice Chairman
Ronald L. Mighell
Secretary & Treasurer
Jamey R. Schmitz

March 28, 2002

VIA OVERNIGHT DELIVERY

Mr. Michael Walenta
General Manager
WGVU & WGVK(TV)
301 W. Fulton
Grand Rapids, MI 49504

Dear Mr. Walenta:

This letter sets forth an agreement between Dominion Broadcasting, Inc. ("Dominion"), the licensee of WLMB, Toledo, Ohio (NTSC Channel 40 and DTV Channel 5), Facility Id. No. 17076, and Grand Valley State University ("Grand Valley"), the licensee of WGVK, Kalamazoo, Michigan (NTSC Channel 52 and DTV Channel 5), Facility Id. No. 24783.

Both Dominion and Grand Valley (each a "party" or collectively the "parties") have maximization applications pending before the Federal Communications Commission ("FCC") to increase the service areas of their respective digital television ("DTV") facilities (such applications will be referred to respectively as the "WLMB Application" and the "WGVK Application"). The pending WLMB Application would cause interference to the pending WGVK Application in excess of the FCC's *de minimis* limits, making the applications mutually exclusive under FCC policy. Therefore, the parties hereby agree to amend their respective applications to specify comparable facilities and agree to accept any interference that may result to their respective DTV service areas to resolve the mutual exclusivity between their applications and allow the FCC to grant both applications, as amended. The parties agree that they will file the referenced amendments with the FCC reasonably contemporaneously with the execution of this agreement, but no later than ten (10) days thereafter, and to provide each other with a copy of their amendment as filed with the FCC.

The WLMB Application (FCC File No. BPCDT-19991027ADB), as amended, will specify operation at geographic coordinates 41° 44' 41" North Latitude, 84° 1' 6" West Longitude with a maximum effective radiated power of 10 kilowatts, a height above average terrain of 155 meters, and the directional antenna pattern that WLMB has previously provided to WGVK (or its engineering consultant) and which is specified in the amendment WLMB will file pursuant to this Agreement (the "WLMB Maximized Facility"). The WGVK Application (FCC File No. BPEDT-20000214AAP), as amended, will specify operation at geographic coordinates 42° 18' 23" North Latitude, 85° 39' 25" West Longitude with an effective radiated power of 10 kilowatts, a height above average terrain of 174 meters, and an omni-directional antenna pattern (the "WGVK Maximized Facility").

The parties recognize that the grant of their respective maximization applications would result in predicted interference in areas not previously within either stations' predicted DTV service area that is in excess of the FCC's permissible limit for *de minimis* interference. However, there are substantial public interest benefits that will result from the grant of their respective applications in the form of significant increases in the populations served by both WLMB-DT and WGVK-DT. Specifically, the WLMB Maximized Facility would provide interference-free service to an additional 634,000 persons, a 65% increase over the station's allotment reference facilities. The WGVK Maximized Facility would provide interference-free service to an additional 1,328,000 persons, an increase of 388% over the station's allotment reference facilities. The parties agree that the public interest benefits of expanding the WLMB-DT and WGVK-DT service areas far outweigh the small amount of interference that will actually occur from the operation of both maximized facilities.

Because the parties believe that grants of both maximization applications would achieve substantial public interest benefits and therefore wish to expedite such grants, Grand Valley and Dominion agree to accept such interference to the WGVK Maximized Facility and the WLMB Maximized Facility as may result from the grant of both maximization applications. Accordingly, in exchange for the mutual covenants and promises contained herein, and intending to be legally bound, Dominion and Grand Valley agree as follows:

1. Cooperation: Both parties shall cooperate in the prompt submission of this agreement to the FCC for its approval in conjunction with their respective amendments to the WGVK Application and WLMB Application. The parties shall thereafter cooperate with each other in the prosecution of the WLMB Application and the WGVK Application, as each may be amended, before the FCC. Neither party shall take any action to delay, impede or prevent the FCC's approval of either application.

2. Condition/Termination: (a) Neither Dominion nor Grand Valley will accept the aforementioned interference to its respective DTV facility should the FCC deny or dismiss its own maximization application but grant the other party's maximization application. This agreement is therefore conditioned upon the FCC granting both the WLMB Application and the WGVK Application. The parties agree to specifically state in their respective amendments that this agreement is subject to the foregoing condition and to request concurrent action on their respective maximization applications, as amended. This agreement shall terminate and be declared null and void upon the issuance of a Final order denying or dismissing either the WLMB Application or the WGVK Application. For purposes of this agreement, "Final" shall mean an action taken by the FCC (including action duly taken by the FCC's staff pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated. In the event the FCC, or the FCC's staff acting pursuant to delegated authority, dismisses or denies the WGVK Application, as amended, or the WLMB Application, as amended, then the other party agrees to cooperate and take all reasonable steps necessary in connection with the dismissed or denied party's effort to have the FCC or the FCC's staff reinstate or reconsider the dismissed or denied

application, including the preparation and filing of an amendment or amendments to its application (or if its application is granted a new application) that would allow such reinstatement or reconsideration or, if necessary, the submission of a new application to replace the dismissed or denied application; provided, however, that any such amendment or new application would not cause any additional predicted interference to the other party's DTV facility beyond what is predicted from each party's maximized DTV facilities agreed to herein.

(b) The parties recognize that this agreement is subject to the FCC's approval pursuant to 47 C.F.R. Section 73.623(g). In the event the FCC, or the FCC's staff acting pursuant to delegated authority, fails to approve this agreement, or indicates that it will not approve the agreement without amendment, then the parties agree to use reasonable efforts to amend this agreement to address the reasons why the FCC denied the agreement or to obtain the FCC's approval. In the event the parties are unable to reach an agreement on such amendment(s) within thirty (30) days after receiving notice of the FCC's action or concerns, or within such longer time period as the FCC may specifically authorize for submitting an amended or revised agreement, and provided the parties have fulfilled their obligations set forth herein, then this agreement shall terminate and the parties shall return to their status *quo ante*.

3. Expenses: Each party hereto shall bear all of its own expenses incurred in connection with the actions contemplated by this Agreement.

4. Station Operating Parameters: The parties acknowledge and agree that they have each examined the levels of service and interference that will result from their respective maximized DTV facilities described in this agreement. They also acknowledge and agree that such predicted service and interference areas are based on FCC-defined propagation models and algorithms, and that the actual service and interference areas may vary from such predictions. The parties are agreeing herein only to the specific operating parameters referenced in this agreement for the WGVK Maximized Facility and the WLMB Maximized Facility (antenna height, antenna pattern, effective radiated power, and transmitter site location). Any actual service areas or interference areas resulting from either station's operation with the agreed to maximized facilities which vary from predicted service or interference areas will not give rise to any cause of action or claim by one party against the other.

5. Facilities Changes: If either party finds it desirable or necessary to relocate or modify its DTV transmission facility (including but not limited to transmitter site location, antenna height or pattern, or effective radiated power), then the parties agree not to oppose an application for such modification filed by the other party if the following conditions are met:

(a) The locus of the FCC F(50,90) 28 dBu contour of the station proposing a modification shall not be extended in the direction of the other party's station, including over the range of azimuths bounded by the two bearings from the modifying station's transmitter site which are tangential to the other station's FCC F(50,90) 28 dBu contour, with such contours calculated pursuant to the FCC's rules, and

(b) The new, unmasked interference predicted to be received by the other station from the modifying station's proposed facilities, calculated pursuant to the FCC's rules and

referenced to the base population using the non-modifying station's FCC allotment reference facilities (not its maximized facilities), shall not increase by more than 0.1%.

6. Remedies: Each party acknowledges and agrees that money damages will not be an adequate remedy in the event it fails to comply with the terms of this agreement. Accordingly, in addition to any other rights and remedies available to it, each party shall be entitled to obtain specific performance of the terms of this agreement.

7. Representations and Warranties: Each party represents to the other that:

(a) It is legally qualified and has all requisite power to execute and perform this agreement;

(b) The execution, delivery and performance of this agreement does not and shall not constitute a breach or violation of any agreement, contract, document, judicial order, or other obligation to which it is subject or by which it is bound; and

(c) It has taken any and all actions necessary to authorize the execution and performance of this agreement.

8. Further Assurances: From time to time after the date hereof, each party hereto will take all reasonable actions as the FCC or the other party may request, without payment of any consideration, in connection with carrying out and effectuating the intent and purpose hereof and all actions contemplated by this agreement.

9. Entire Agreement: This agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof, and shall not be amended without the prior written consent of each party hereto.

10. Notices: All notices required or permitted under this agreement shall be in writing (which shall include notice by facsimile transmission) and shall be deemed to have been made and received when personally served, or when delivered by recognized overnight courier service, expenses prepaid, or, if sent by facsimile communications equipment, delivered by such equipment, to the parties at the following addresses:

(a) Dominion Broadcasting, Inc.:

Jamey R. Schmitz
General Manager & CEO
Dominion Broadcasting, Inc. WLMB-TV40
P.O. Box 908/26693 Eckel Road
Perrysburg, Oh 43552
Fax: 419-874-8867

with a copy (which shall not
constitute notice) to:

Richard Bodorff, Esq.
Wiley Rein & Fielding, LLP
1776 K Street, NW
Washington, DC 20006
Fax: 202-719-7049

(b) Grand Valley State University:

Michael Walenta
General Manager
WGVU & WGVK(TV)
301 W. Fulton
Grand Rapids, MI 49504
Fax: 616-771-6625

with a copy (which shall not
constitute notice) to:

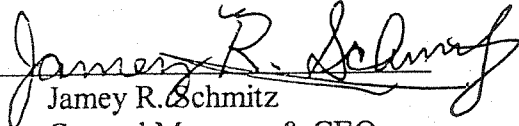
Mark Van Bergh
Arter & Hadden LLP
1801 K Street, NW
Third Floor L Street
Washington, DC 20006
Fax: 202-857-0172

11. Counterparts: This letter agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

Please sign below to confirm your agreement to the foregoing.

[SIGNATURE PAGE FOLLOWS]

Sincerely,
DOMINION BROADCASTING, INC.

By: 
Jamey R. Schmitz
General Manager & CEO
Dominion Broadcasting, Inc.

ACCEPTED AND AGREED AS OF THE
DATE FIRST SET FORTH ABOVE.

GRAND VALLEY STATE UNIVERSITY


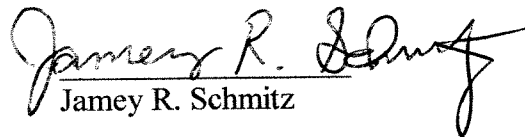
By: 
Michael Walenta
General Manager
WGVU & WGVK(TV)

EXHIBIT B

DECLARATION

I, Jamey R. Schmitz, General Manager and CEO of Dominion Broadcasting, Inc. WLMB-TV40 ("Dominion"), hereby declare under penalty of perjury that the following are true and correct:

1. Dominion has an application pending for maximized DTV facilities for WLMB, Toledo, Ohio (Facility Id. No. 17076) (FCC File No. BPCDT-19991027ADB, as amended) (the "WLMB Application").
2. The WLMB Application was not filed for the purpose of reaching or carrying out a settlement agreement.
3. Neither Dominion nor its principals has paid, will pay, or will receive from Grand Valley or any third party, any money or other consideration other than as set forth in the agreement between Dominion and Grand Valley, attached to the Joint Request.
4. There is no agreement between Dominion and Grand Valley other than the agreement attached to the Joint Request.
5. Approval of the agreements is in the public interest because it will resolve the MX Group 1 proceeding in a manner that will provide a significant increase in the populations served by WLMB-DT and WGVB-DT and expedite the provision of DTV service to Toledo, Ohio and Kalamazoo, Michigan.


Jamey R. Schmitz

Dated: April 23, 2002



GRAND VALLEY
STATE UNIVERSITY

301 WEST FULTON • GRAND RAPIDS, MICHIGAN 49504-6495 • 616/771-6610

DECLARATION

I, Jean Enright, Secretary of the Board of Control of Grand Valley State University ("GVSU"), hereby state the following:

1. GVSU is the licensee of noncommercial educational television station WGVK, Kalamazoo, Michigan (FCC Facility Id. No. 24783). GVSU has pending an application for a construction permit to construct WGVK's digital television ("DTV") facilities on Channel 5 (FCC File No. BPEDT-20000214AAPB) (the "WGVK Application").

2. GVSU has entered into an interference acceptance agreement ("Agreement") with Dominion Broadcasting, Inc. ("Dominion"), licensee of television station WLMB, Toledo, Ohio.

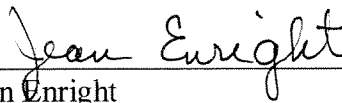
3. GVSU did not file the WGVK Application for the purpose of reaching or carrying out a settlement agreement.

4. Neither GVSU nor any officer, director or other party associated with GVSU has paid or promised to pay, or will receive from Dominion or any other party, any money or other consideration other than as set forth in the Agreement.

5. There are no other agreements or understandings between GVSU and Dominion other than as set forth in the Agreement.

6. FCC approval of the Agreement will serve the public interest. It will resolve the mutual exclusivity between the WGVK Application and Dominion's application for maximized DTV facilities for WLMB, expedite the provision of digital television service to Kalamazoo, Michigan and Toledo, Ohio, and significantly increase the populations that will be served by the DTV facilities of WGVK and WLMB.

I hereby declare under penalty of perjury that the foregoing matters are true and correct to the best of my personal knowledge. Executed this 24th day of April, 2002.


Jean Enright