

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

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In re Application of:)
)
KM LPTV of Milwaukee, L.L.C.)
)
To Convert LPTV Station WMKE-LP,)
Milwaukee, Wisconsin To Class A Station)

File No. BLTVA-20001206ADM

Facility ID No. 35091

To: Chief, Low Power Television Branch
Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Respectfully submitted,

KM LPTV of Milwaukee, LL.C.

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Its Attorney

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February 12, 2001

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EXECUTIVE SUMMARY

Milwaukee Area Technical College (“MATC”), licensee of digital television (“DTV”) station WMVS-DT, DTV Channel 8, Milwaukee, Wisconsin, has filed for reconsideration of the Commission’s grant of a Class A license for WMKE-CA, analog Channel 7, Milwaukee, Wisconsin, licensed to KM LPTV of Milwaukee, L.L.C. (“KM”), on claims of interference by WMKE-CA to WMVS-DT. MATC bases its claims of interference solely on a prediction of interference in an area with a radius of only 20 meters around the WMKE-CA antenna where a desired-to-undesired signal strength ratio interference protection requirement applicable to Low Power Television (“LPTV”) stations is not met. The WMKE-CA application involved is for a Class A license, to which a different interference protection rule applies, rather than the LPTV interference protection rule upon which MATC relies in its petition. Since KM can demonstrate that it fully complies with Section 73.6013, the applicable rule for Class A station protection of full power DTV stations, MATC’s petition for reconsideration must be dismissed or denied.

MATC reveals that its real concerns relate to its ability to modify or maximize WMVS-DT in the future. However, the fact that MATC in any proposed future modification of WMVS-DT will have to demonstrate protection to WMKE-CA as a primary Class A station is the result of an express policy determination by Congress, in adopting the Class A statute, and therefore is not a basis for reversing the grant of Class A status for WMKE-CA. MATC’s other arguments, about what may happen if or when WMKE-CA may convert to digital or if KM wants to relocate to WMKE-CA, are speculative, and any such future applications would already be subject to Commission rules requiring interference protection to WMVS-DT; therefore, these speculative arguments are not relevant to the Commission’s consideration of this matter.

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To Convert LPTV Station WMKE-LP,)	Facility ID No. 35091
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OPPOSITION TO PETITION FOR RECONSIDERATION

KM LPTV of Milwaukee, L.L.C. ("KM"), licensee of Class A television station WMKE-CA, Milwaukee, Wisconsin ("WMKE"), by its counsel, and pursuant to Section 1.106(g) of the Commission's rules, 47 C.F.R. § 1.106(g), respectfully submits this Opposition to the Petition for Reconsideration (the "Petition") filed on January 31, 2001, by Milwaukee Area Technical College ("MATC"), licensee of full power digital television ("DTV") station WMVS-DT, DTV Channel 8, Milwaukee, Wisconsin ("WMVS"), seeking reconsideration of the Commission's grant of KM's above-captioned application (the "Application") for a Class A license for WMKE. In support of this Opposition, the following is shown:

I. Introduction

1. KM demonstrated in the Application that WMKE does not cause and will not cause interference to the first-adjacent channel DTV Channel 8 allotment or authorization of WMVS, or to any maximization application for WMVS on file by the May 1, 2000 statutory deadline required for such proposals to be entitled to protection from Class A applicants. KM's showing of no

interference by WMKE to WMVS has been expressly accepted by the Commission, as MATC concedes,^{1/} both in the Application and the earlier Displacement Application, and fully satisfies the requirements of the Class A statute. Furthermore, MATC's speculative arguments (i) related to its future DTV plans for WMVS are expressly precluded by the line drawn in the Class A statute; and (ii) related to some potential future conversion of WMKE to digital is not relevant to the Application and the conversion of WMKE to Class A status; therefore, neither of these arguments are entitled to any consideration whatsoever. Accordingly, the Petition is without merit, and must be promptly dismissed or denied.

**II. The Application Satisfied, And WMKE Satisfies, The
"No Interference" Showing Required By The Class A Statute**

2. MATC suggests that grant of the Application conflicts with the "no interference" requirements of the Class A statute, see Petition at 4-5, and demonstrates that it continues to misunderstand the interference analyses that have been submitted by KM. What KM has demonstrated, both in support of its earlier request for waiver of Section 74.706(d)(2)(ii) of the Commission's rules^{2/} in the Displacement Application as well as in its showing of no interference to WMVS necessary for Class A status as provided in the Application, is that WMKE does not and

^{1/} See Petition at 4 ("The FCC found that WMKE-LP's proposed operation on Channel 7 *was not predicted to cause objectionable interference* to the operation of WMVS-DT"). This Commission finding that WMKE will not cause interference to WMVS, in granting KM's displacement application (File No. BPTVL-980918JG, the "Displacement Application"), has become a final order with respect to MATC and WMVS, in the context of the Displacement Application and WMKE's operation on Channel 7 as a Class A station, and therefore is no longer subject to review or appeal since MATC did not timely file a petition for reconsideration of the grant of the Displacement Application. The petition for reconsideration filed by WLS Television, Inc. ("WLS") to which MATC refers, id., did not raise or address any issue related to WMVS.

^{2/} See 47 C.F.R. § 74.706(d)(2)(ii).

will not cause interference to WMVS (including WMVS's DTV allotment, authorization and any relevant applications for modification or maximization filed by May 1, 2000). This is all that the Class A statute requires of KM or WMKE, so KM has satisfied the Class A requirements, as specified in the Class A statute and as that statute has been interpreted and implemented by the Commission.

3. The Class A statute, as codified at Section 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. § 336(f), addresses the interference showing that an applicant for a Class A license must make with regard to full power DTV stations. Specifically, Section 336(f)(7)(A) states, in pertinent part, that:

The Commission may not grant a class A license ... unless the applicant or licensee shows that the class A station for which the license ... is sought will not cause [] interference within - ...

(ii)(I) the [DTV] service areas provided in the DTV Table of Allotments; (II) the areas protected in the Commission's [DTV] regulations (47 CFR 73.622(e) and (f)); (III) the [DTV] service areas of stations subsequently granted by the Commission prior to the filing of a class A application; and (IV) stations seeking to maximize power under the Commission's rules, if such station has complied with the notification requirements in paragraph (1)(D);^{3/} ...

See § 336(f)(7)(A)(ii). The statute does not limit the types of non-interference showings that are permitted or required, quite properly leaving that determination to the Commission, but rather only requires Class A applicants to make a showing that it "will not cause interference within" certain specified DTV service areas. Id.

^{3/} Section 336(f)(1)(D) requires full power DTV stations that wish to "maximize" their DTV facilities to the extent permitted by Sections 73.622 and 73.623 of the Commission's rules, 47 C.F.R. §§ 73.622 and 73.623, at the expense of a Class A station or applicant to have "filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000." See § 336(f)(1)(D).

4. The Commission, in turn, established the criteria for the required no interference showing when implementing the Class A statute, stating that “Class A station proposals generally will be subject to the protection criteria in Sections 73.622 and 73.623 of our rules and in [Office of Engineering and Technology, or “OET”] Bulletin 69.”^{4/} Class A applicants are permitted to cause up to 0.5% new interference to DTV station allotments, authorizations and pending applications (including maximization applications filed prior to the May 1, 2000 statutory deadline).^{5/} These “no interference” showing requirements are codified in Section 73.6013 of the Commission’s rules, 47 C.F.R. § 73.6013.^{6/}

5. Attached hereto as Exhibit 1 is an Engineering Report dated February 2001 prepared by Cohen, Dippell and Everist, P.C. (“CD&E”), KM’s consulting engineers, which presents the results of a Longley-Rice terrain dependent propagation interference study, conducted in accordance with Sections 73.622 and 73.623 of the Commission’s rules, OET Bulletin 69, and Section 73.6013 of the Commission’s rules. The Engineering Report demonstrates that WMKE is predicted to cause no (as in zero) new interference to WMVS; KM does not even need to rely on the 0.49% rounding allowance that the Commission would permit with this type of showing. This Longley-Rice study demonstrates that WMVS is predicted to serve 2,600,025 persons and 27,335.1 square kilometers

^{4/} See Establishment of a Class A Television Service, MM Docket No. 00-10, Report and Order, FCC 00-115, 15 FCC Rcd 6355, 20 CR 154 at ¶ 79 (2000)(the “Class A Order”).

^{5/} Id.

^{6/} KM also notes that Class A proposals were not made subject to the requirements of Section 74.706(d) of the Commission’s rules, the requirements for Low Power Television (“LPTV”) station protection of DTV stations, as MATC suggests, see Petition at 5, but rather are treated like full power television stations, where interference analysis is conducted under Sections 73.622 and 73.623 of the rules. Therefore, MATC’s arguments based on Section 74.706(d), see Petition at 5, are misplaced.

of area within its existing interference-free service area, whether WMKE is operating on Channel 7 or not. This showing of “no interference” is expressly permitted by the Class A statute, as interpreted and implemented by the Commission, and as codified in the Commission’s rules.^{2/} End of story (or at least it should be, but based on prior history KM fully expects MATC to try to scramble up some new theory).

6. This result from the Longley-Rice study is also of course completely consistent with KM’s earlier showing, in the Displacement Application and the Application, that no actual interference is expected to occur due to the extremely limited area (i.e., no more than 20 meters from the antenna, even using the estimates of MATC’s engineers) within which the ratio in dB of WMKE’s field strength to WMVS’s field strength was not expected to meet the +48 dB requirement of Section 74.706(d)(2)(ii). See Application, Exhibits 9 and 10 at 1-2. Since the antenna is mounted almost 100 meters up on a tower which in turn is on the roof of a multi-story hotel building that is more than 80 meters above ground level, there were no (and never will be any) DTV receivers or population within that 20 meter radius area where the +48 dB ratio is not met and interference may be predicted. Id. As a result, and as KM quite properly noted in the Application, “WMKE-LP complies with Section 73.6013 in that no population is within the noise limited DTV service area of WMVS-DT predicted to receive interference from WMKE-LP (i.e., within approximately 20 meters of the WMKE-LP antenna), which is well within the 0.5% of population rounding

^{2/} KM believes the Application made a more than adequate and permissible showing of no interference to WMVS. However, in the event that the Commission reconsiders the grant of the Application (which it should not), KM requests that the Commission consider this supplementary Longley-Rice study. Since the deadline for filing Class A applications has not passed, WMVS would not be prejudiced by consideration of this supplemental showing of no interference.

allowance.” Id. at 3. This was not a waiver showing in the Application,^{8/} but rather a showing of no interference, as required by the Class A statute.

III. MATC’s Concerns About Its Ability To Modify WMVS In The Future Are Speculative And Not Due Consideration Under The Class A Statute

7. MATC finally shows its true concern when it observes that now that WMKE is a primary Class A station, “MATC will now have to protect it, which could thwart the *future modification and expansion plans*” for WMVS. See Petition at 6 (*emphasis added*). MATC also states that WMKE “will prevent WMVS-DT from ‘maximizing’” WMVS after the DTV transition.^{9/} Id. Unfortunately for MATC, however, this is a line that was drawn by Congress in the Class A statute, as part of Congress’ policy determination that LPTV stations that have met certain public interest eligibility criteria have earned the right to acquire a certain primary status as Class A

^{8/} MATC suggests that KM has not met the public interest showing required for a waiver request. See Petition at 8-9. To the extent that MATC’s suggestion is directed to the waiver granted by the Commission in the Displacement Application, its argument is grossly untimely. If MATC’s suggestion is directed to the Application, it is misguided in that KM demonstrated in the Application that it would not cause interference to WMVS, so a waiver showing was not required. See, e.g., Application, Exhibit 9 and 10 at 3 (where KM unequivocally states that it “complies” with Section 73.6013). Even if a waiver showing were required, KM more than adequately demonstrated that the purpose of the rule would be served, by its demonstration that no interference would be caused to WMVS. Finally, if there remained any doubt about that showing, it has been removed by the Longley-Rice/OET Bulletin 69 study attached hereto.

^{9/} KM notes that although MATC and its consulting engineer imply that WMVS would be permitted to increase power up to 30 kilowatts ERP, see Petition at 6 and Engineering Statement at 2 and n.2 (“DTV stations on Channels 7-13 are permitted an ERP of 30 kW (in Zone I) at an HAAT of 305 meters”), WMVS may already be at (or even over) the maximum ERP permitted for its antenna height above average terrain (“HAAT”), because WMVS is licensed at 354 meters HAAT. See KM Engineering Statement. Under the maximum height and power limits permitted under Section 73.622(f)(5), applying the formula in Section 73.622(f)(7)(ii), WMVS would have to reduce its ERP to 18.3 kilowatts at its current antenna HAAT of 354 meters. Id. KM must assume that MATC relied on the provision in Section 73.622(f)(5) that allows it to match the service area of a larger station in the market in order to obtain its current authorization at 25.1 kilowatts.

stations. Fortunately for MATC, though, KM does not want to stay on Channel 7 any longer than is necessary, since its effective service area is limited on Channel 7,^{10/} and looks forward to the end of the DTV transition when an alternate channel should become available.^{11/}

8. Congress very explicitly addressed in Section 336(f)(7)(A)(ii) the DTV facilities that Class A applicants must protect when applying for Class A status - - specifically, the DTV service areas as defined in the DTV Table of Allotments, as protected under Sections 73.622(e)-(f), or as authorized by the Commission prior to the filing of the Class A application, and DTV “maximization” proposals, to the extent of applications to maximize that were filed prior to May 1, 2000. See § 336(f)(7)(A)(ii)(I)-(IV). In addition, the Commission is affirmatively required to preserve the service area of Class A stations by the Class A statute, which states that “[t]he Commission shall act to preserve the service areas of low-power television licensees pending the final resolution of a class A application.” See § 336(f)(1)(D).

9. Accordingly, the Commission is precluded by the Class A statute from considering, in the context of a Class A application, whether a Class A station may limit the ability of a DTV

^{10/} KM notes that MATC’s consulting engineer questions “the choice of Channel 7 over other channels” and wonders why KM did not seek some other channel. See Petition, Engineering Statement at 4 and n.1. KM has studied potential alternate channels extensively (evidently MATC’s consulting engineer has not), and has not been able to identify any alternate channel that would be more suitable. But if MATC or its consulting engineer can identify an alternate channel within the core on which WMKE could serve its original (or even current) service area, KM would more than gladly expend the money and effort to move to such an alternate channel. To the extent that MATC’s consulting engineer suggests additional hurdles that KM’s waiver showing in the Displacement Application should have met, such as an alternate channel preclusion study, id., his suggestions are untimely (but KM assures MATC and the Commission that all possible alternate channels were considered).

^{11/} As just one example, if WMVS elects to keep its DTV operations on Channel 8, WMVS’s analog Channel 10 should become available for WMKE at the end of the DTV transition; other full power stations in Milwaukee and other relevant adjacent markets will be making similar elections, so other channels should also become available for WMKE.

station to modify or “maximize” its facilities at some point in the future (beyond any proposal in an application on file as of May 1, 2000).^{12/} This line was drawn in the Class A statute, as a result of a policy determination by Congress, and may not be altered by the Commission. The Commission recognized this balancing of Congress’ intent to ensure that television stations could continue “to provide both digital and analog service throughout their existing service areas” (i.e., within their analog Grade B contour), but to maximize beyond that existing service area only to the extent proposed in a DTV maximization application filed by May 1, 2000. See Class A Order at ¶¶ 55-56 (emphasis omitted). The Commission considered in the Class A proceeding the very arguments advanced by MATC, of DTV stations not being able to maximize due to limitations from other stations, but still limited DTV stations to the extent of maximization proposals in applications on file by the May 1, 2000 statutory deadline, as expressly required by the Class A statute. Id. at ¶¶ 57-60.

10. MATC tosses out one other speculative argument, about what may happen if or when WMKE may apply to convert to digital operations. See Petition at 7-10. Assuming for the sake of argument that WMKE will propose to convert to DTV on Channel 7 while WMVS is still on Channel 8 (which very well may not be the case), KM would be required to demonstrate that it meets the interference protection requirements of Section 73.6018 of the Commission’s rules, 47 C.F.R. § 73.6018, which is the rule for Class A protection to full power DTV stations. This would require a Longley-Rice/OET Bulletin 69 study of that new digital Class A proposal, to demonstrate

^{12/} KM notes that even under Section 336(f)(1)(D), which permits the Commission to make changes in a DTV station’s channel or parameters to the limited extent necessary to resolve a technical problem without considering the effect on Class A stations, such technical changes are limited to providing the DTV station with a service area that replicates its analog Grade B contour, except to the extent that maximization was proposed in an application on file by the May 1, 2000 statutory deadline.

the protection to which WMVS may be entitled under Sections 73.622 and 73.623. In any event, speculation about that possible future application and showing is not relevant to the instant matter, of WMKE's operation in an analog mode as a Class A station, and may not be considered by the Commission. Any suggestions of power limits or other conditions on WMKE's potential future conversion to digital, see Petition at 8 and Engineering Statement at 3-5, are also speculative and inappropriate at this time.

11. Finally, MATC's consulting engineer suggests that WMKE's Class A status should be limited or conditioned in certain respects, over and above the requirements of the Class A statute and the Commission's implementing rules and regulations. See Petition, Engineering Statement at 5. Since there is no basis in law to support these suggestions, the Commission may not and should not consider imposing them. MATC's consulting engineer first suggests that WMVS should be allowed to unilaterally increase its power, i.e. maximize, without respect for the potential impact on WMKE's Class A facility. Id. As discussed extensively above, WMVS's ability to maximize was limited by the line drawn by Congress in the Class A statute, and therefore the Commission lacks the authority to impose such a condition (and KM certainly would not agree to such a limitation). Second, he suggests that WMKE should be required to reduce its power so that it does not increase the interference to WMVS if WMKE changes site. Id. Such a condition or limitation of course is not necessary, since any modification of WMKE as a Class A station would remain subject to the requirements of Section 73.6013, and therefore any such modification application would be required to address the interference protection to which WMVS may be entitled. Similarly, his suggestion of imposing a power limit if or when WMKE converts to digital on Channel 7, id., is not necessary, since again any proposed conversion of WMKE to digital would be subject to the requirements of

Section 73.6018, and again WMVS would receive the level of interference protection to which it may be entitled.

IV. MATC's Procedural Arguments

12. MATC echoes several procedural arguments also tossed out by WLS in its pleadings, which KM will briefly address. MATC concedes that the Class A statute requires the Commission to act on Class A applications within 30 days, see § 336(f)(1)(C), but then turns around and suggests that the Commission should violate that statutory requirement by waiting at least 30 days before acting, relying on another more general statutory requirement. See Petition at 2. KM asserts that the Commission should assume that Congress knew what it was doing in requiring action within 30 days, and give credit to Section 336(f)(1)(C). Indeed, KM submits that it is delaying tactics such as MATC's pleading that Congress sought to curtail in requiring Commission action on Class A applications within some prompt time frame. The statute could not be much clearer than the 30 day time frame set forth by Section 336(f)(1)(C), and where a statute speaks clearly to an issue there is no room for interpretation or changes of that Congressional mandate by the Commission.

13. MATC also has not been deprived of "adequate notice and time to respond" to protect its interests. Id. The Commission has expressly found that there has been no deprivation of due process rights in cases where parties have had an opportunity to participate in a matter by presenting their cases in petitions for reconsideration,^{13/} as MATC has done here, and KM has no doubt that

^{13/} See, e.g., 10 MDS Applications, 10 FCC Rcd 11671 at ¶ 57 (1995) ("no deprivation to which a due process claim might apply" where return of MDS application was put on a Public Notice and an interested party timely-filed a petition for reconsideration); Metromedia, Inc., 56 RR 2d 1198 ¶ 9 (1984) (no basis for assertion of denial of due process or opportunity to be heard where petitioner for reconsideration of grant of broadcast application had enjoyed "continued participation" in the proceeding).

MATC's concerns will be addressed by the Commission. Therefore MATC has not been deprived of the notice and opportunity to respond required by due process.

14. In addition, KM notes that the "notice and opportunity for hearing" that is required by due process must only be "appropriate to the nature of the case";^{14/} there is no set minimum period of time required before action can be taken, and indeed there are "some situations in which a postdeprivation hearing will satisfy due process requirements."^{15/} KM submits that the 8 day pre-grant period in this case^{16/} provided MATC and any other interested party an appropriate opportunity to present its concerns where, as MATC concedes, the Commission was required by the Class A statute to act on the Application "within 30 days after receipt" of the Application.^{17/} And unlike in Cleveland, where the "balancing of the competing interests at stake" weighed in favor of employees that lost their jobs (and therefore their only means of support), see Cleveland at 542-543, MATC and WMVS are not adversely affected in any present sense by the grant of Class A status to WMKE, since KM would have every right to continue to operate WMKE as an LPTV station with the exact same parameters (at least until such time that they Commission may act on WLS's petition for

^{14/} See Cleveland Bd. Of Educ. v. Loudermill, 470 U.S. 532, 542 (1985)(citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)).

^{15/} See Cleveland at n.7. The Commission's decisions in Metromedia and 10 MDS Applications are prime examples where the Commission has relied on just such a post-determination hearing without depriving interested parties of their rights to due process.

^{16/} The Application appeared on Public Notice as accepted for filing on January 8, 2001, and was granted 8 days later, on January 16, 2001. See Public Notice, Broadcast Applications, Report No. 24896 (released January 8, 2001), and Public Notice, Broadcast Actions, Report No. 44904 (released January 19, 2001).

^{17/} See § 336(f)(1)(C). Indeed, since the Commission received KM's application on December 6, 2000, the better question may be why the Application was not granted by January 5, 2001.

reconsideration of the grant of the Displacement Application) as it currently is operating WMKE as a Class A station.

15. MATC next points out that the Commission's grant of the Displacement Application is subject to a petition for reconsideration filed by WLS, id., but the finality of that application is not relevant to the Application at issue here. As discussed above, the showing of no interference required in a Class A application under Section 73.6013 differs from the interference protection requirements for an LPTV station under Section 74.706(d), so the status of the one application has no bearing whatsoever on the other application. Furthermore, the grant of the Displacement Application and the related waiver are effective until such time that the Commission may grant reconsideration and reverse its decision (which of course it should not do); otherwise the effectiveness of the grant of any application as in the public interest could be substantially delayed by meritless petitions for reconsideration.

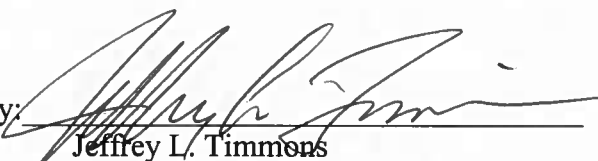
16. Last, MATC argues that the Commission should not have acted on the Application while the issue of interference protection by Class A applicants to DTV facilities is before the Commission in a petition for reconsideration of the Class A Order. Id. at 2-3. KM agrees with MATC to the limited extent that it suggests that issues of general applicability should be determined in rule making proceedings rather than an adjudication - - which is why MATC should have addressed its concerns in the reconsideration of the Class A Order, not here. However, until such time that the Commission issues an order on reconsideration in that proceeding changing the interference protection rules, the Commission must act in accordance with the rules it has adopted. And in this matter, the rule is Section 73.6013, and WMKE meets the showing of no interference to WMVS that is required under that rule.

V. Conclusion

17. KM has demonstrated, both in this Opposition (including the Engineering Report attached hereto) and in the Application, that WMKE does not and will not cause interference to WMVS, in the manner required by the Class A statute as well as the Commission's interpretation and implementation thereof. Therefore, the above premises being considered, the Petition for Reconsideration filed by MATC in the above-captioned matter should be promptly dismissed or denied.

Respectfully submitted,

KM LPTV of Milwaukee, L.L.C.

By: 
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February 12, 2001

EXHIBIT 1

ENGINEERING REPORT
ON BEHALF OF
KM LPTV OF MILWAUKEE, L.L.C.
RE WMKE-CA, CHANNEL 7, MILWAUKEE, WISCONSIN

FEBRUARY 2001

COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington)
) ss
District of Columbia)

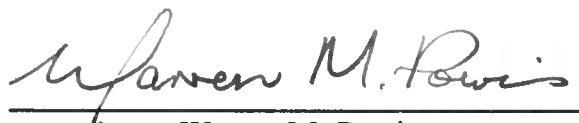
Warren M. Powis, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer of the University of Canterbury, New Zealand, a Registered Professional Engineer in the District of Columbia, the State of Virginia, the State of South Carolina, and Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; previously employed for 15 years with the New Zealand Broadcasting Corporation; a member of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Federal Communications Consulting Engineers (AFCCE), and the National Society of Professional Engineers (NSPE).

That his qualifications are a matter of record in the Federal Communications Commission;

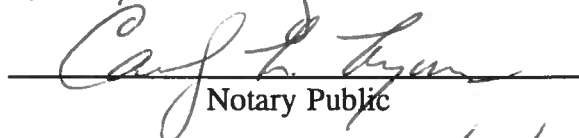
That the attached engineering report was prepared by him or under his supervision and direction and,

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.



Warren M. Powis
District of Columbia
Professional Engineer
Registration No. 8339

Subscribed and sworn to before me this 7th day of February, 2001.


Notary Public

My Commission Expires: 2/28/2003

This engineering statement has been prepared on behalf of KM LPTV of Milwaukee, L.L.C. in support of its opposition to the Petition for Reconsideration filed by Milwaukee Area Technical College ("MATC") concerning the FCC's grant of KM's application for Class A status for WMKE-CA, licensed to operate on Channel 7 at Milwaukee, Wisconsin. An interference study was conducted in accordance with the requirements of Sections 73.622 and 73.623 of the Commission's Rules and FCC OET Bulletin 69 to determine any potential impact by WMKE-CA on WMVS-DT, Channel 8, Milwaukee, Wisconsin, (a printout of the results of the Longley-Rice studies are attached hereto for reference). The baseline study (WMVS_2_BASE_EXH.txt) which does not include WMKE-CA found a population of 2,600,025 persons served within WMVS-DT's existing interference-free service area. The study was rerun including the Class A operation of WMKE-CA (WMVS_2_RES_EXH.txt) and the population served within WMVS-DT's existing interference-free service area remained unchanged, at 2,600,025 persons. Therefore, WMKE-CA is predicted to cause no interference to WMVS-DT when studied using a Longley-Rice terrain dependent propagation model, as required by Sections 73.622 and 73.623 of the Commission's Rules.

MATC also claims that since WMVS-DT is operating at 25.1 kilowatts, it is operating "considerably below the 'normal' maximum power of a Zone I High-Band VHF DTV station", and that "DTV stations on Channels 7-13 are permitted an ERP of 30 kW (in Zone I) at an HAAT of 305 meters." WMVS-DT, however, is licensed with an antenna HAAT of 354 meters, and therefore would be required to reduce its ERP well below the 30 kW permitted to Zone I high band VHF DTV stations, in accordance with the formula set forth in Section 73.622(f)(7)(ii) of the Commission's rules. In fact, at an antenna HAAT of 354 meters, the "normal" maximum power for WMVS-DT would be limited to 18.3 kW ERP, which is less than its currently licensed 25.1 kW ERP. MATC

may have relied or be entitled to rely on the provision of Section 73.622(f)(5) that permits DTV stations to increase ERP to the extent necessary to provide the same geographic coverage area as the largest station in their market; since MATC does not state that it relies on that provision when it implies that WMVS-DT would normally be permitted 30 kW, that alternative has not been analyzed.

WMVS_2_BASE_EXH.txt
LAYOUT OF PROBLEM AREA

SE corner 42-11-28, 86-44-40; NW corner 43-59-48, 89-10-02

Total Cells	Center Lat (DMS, N)	Center Long (DMS, W)	Cell Height (sec)	Cell Width (sec)	Area Height (cells)	Area Width (cells)
9800	43-05-38	087-57-21	65	89	100	98

```

Specified cell size = 2.000 km each side
Precise cell size = 4.02698 sq km
Fetching census blocks for problem area                                0:00:01
Sorting census blocks by latitude                                      0:00:06
Loading problem area grid with population data                        0:00:07
Initializing problem area grid                                       0:00:07
Allocating memory for results                                         0:00:07
Determining noise-limited contours using FCC curves                  0:00:07
Calculating service fields                                           0:00:07
    Desired station 8A WI MILWAUKEE                                DWMVS 0:00:07
Counting population covered                                           0:00:12
Computing IX fields of 9 undesired stations                          0:00:12
    Undesired station 7N IL CHICAGO                                WLS 0:00:12
    Undesired station 9N IL CHICAGO                                WGN 0:00:13
    Undesired station 8N IL MOLINE                                WQAD-TV 0:00:14
    Undesired station 8N IN INDIANAPOLIS                          WISH-TV 0:00:23
    Undesired station 8N MI GRAND RAPIDS                          WOOD-TV 0:00:23
    Undesired station 8N MI IRON MOUNTAIN                         WDHS 0:00:35
    Undesired station 8N MI SAULT STE. MARIE                      WGTQ 0:00:42
    Undesired station 7N MI TRAVERSE CITY                         WPBN-TV 0:00:42
    Undesired station 8N WI LA CROSSE                             WKBT 0:00:42
Evaluating service and interference                                  0:00:50

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Analysis of: 8A WI MILWAUKEE

HAAT 354.0 m, ATV ERP 25.1 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	2732315	29678.8
not affected by terrain losses	2693125	29151.3
lost to NTSC IX	93100	1816.2
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	93100	1816.2
Population/Area Served	2600025	27335.1

WMVS_2_RES_EXH.txt
LAYOUT OF PROBLEM AREA

SE corner 42-11-28, 86-44-40; NW corner 43-59-48, 89-10-02

Total Cells	Center Lat (DMS, N)	Center Long (DMS, W)	Cell Height (sec)	Cell Width (sec)	Area Height (cells)	Area Width (cells)
9800	43-05-38	087-57-21	65	89	100	98

```

Specified cell size = 2.000 km each side
Precise cell size = 4.02698 sq km
Fetching census blocks for problem area                                0:00:01
Sorting census blocks by latitude                                      0:00:07
Loading problem area grid with population data                        0:00:07
Initializing problem area grid                                       0:00:07
Allocating memory for results                                        0:00:07
Determining noise-limited contours using FCC curves                  0:00:07
Calculating service fields                                           0:00:07
  Desired station 8A WI MILWAUKEE                                   DWMVS 0:00:07
Counting population covered                                           0:00:12
Computing IX fields of 10 undesired stations                         0:00:12
  Undesired station 7N WI MILWAUKEE                                WMKE-CA 0:00:12
  Undesired station 7N IL CHICAGO                                  WLS    0:00:16
  Undesired station 9N IL CHICAGO                                  WGN    0:00:17
  Undesired station 8N IL MOLINE                                   WQAD-TV 0:00:17
  Undesired station 8N IN INDIANAPOLIS                            WISH-TV 0:00:26
  Undesired station 8N MI GRAND RAPIDS                             WOOD-TV 0:00:27
  Undesired station 8N MI IRON MOUNTAIN                            WDHS    0:00:39
  Undesired station 8N MI SAULT STE. MARIE                         WGTQ    0:00:46
  Undesired station 7N MI TRAVERSE CITY                            WPBN-TV 0:00:46
  Undesired station 8N WI LA CROSSE                                WKBT    0:00:46
Evaluating service and interference                                  0:00:54

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Analysis of: 8A WI MILWAUKEE
HAAT 354.0 m, ATV ERP 25.1 kW

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	POPULATION	AREA (sq km)
within Noise Limited Contour	2732315	29678.8
not affected by terrain losses	2693125	29151.3
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lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	93100	1816.2
Population/Area Served	2600025	27335.1

CERTIFICATE OF SERVICE

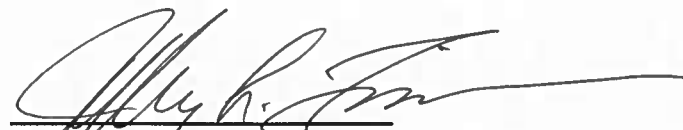
I, Jeffrey L. Timmons, hereby certify that on this 12th day of February, 2001, copies of the foregoing "Opposition to Petition for Reconsideration" have been served by overnight courier then hand delivery or by U.S. Priority Mail, postage prepaid, upon the following:

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* by Airborne Express to Portals, then hand delivery