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

JUL 12 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of )

KM LPTV of Milwaukee, L.L.C. )

File No. BLTVA-20001206ADM

To Convert Low Power )  
Television Station WMKE-LP, )  
Milwaukee, Wisconsin )  
To Class A Station Status )

Facility ID No. 35091

To: Chief, Mass Media Bureau

**SUPPLEMENT TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

Respectfully submitted,

KM LPTV of Milwaukee, L.L.C.

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## **EXECUTIVE SUMMARY**

In this supplemental pleading tendered by KMLPTV of Milwaukee, L.L.C. ("KM"), licensee of Class A television station WMKE-CA, analog Channel 7, Milwaukee, Wisconsin ("WMKE"), KM addresses new issues and arguments improperly raised by WLS Television, Inc. ("WLS"), licensee of full power television station WLS-TV, analog Channel 7 ("WLS-TV") and digital television ("DTV") Channel 52 ("WLS-DT"), Chicago, Illinois, and Milwaukee Area Technical College ("MATC"), licensee of full power television station WMVS-DT, DTV Channel 8, Milwaukee, Wisconsin ("WMVS-DT"), in their reply pleadings in this matter. KM also addresses certain issues that have been clarified by the Commission in its recent reconsideration order in the Class A proceeding.

Specifically, although WLS has suggested that KM was not entitled in its Class A application to rely on a waiver granted to WMKE as an LPTV station with respect to the interference protection required to WLS-TV, the Commission has clarified on reconsideration that such reliance is permitted under certain circumstances which apply to WMKE and this case. Also, for the first time in its reply pleading, WLS raised the issue of the protection WMKE may be required to give to the prospective future WLS-DT digital operations on Channel 7, and KM demonstrates herein, pursuant to some very specific clarification and guidance provided by the Commission in its Class A reconsideration order with respect to that issue, that WMKE fully complies with the Commission's requirements. Similarly MATC, for the first time in its reply pleading, offered an anecdotal statement regarding purported actual interference by WMKE to WMVS-DT which, aside from lacking any testing validity and being contradicted by its own supporting statement, is wholly irrelevant under the Class A interference protection requirements.

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 To: Chief, Mass Media Bureau		

**SUPPLEMENT TO OPPOSITIONS TO PETITIONS 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 Sections 1.41 and 1.106 of the Commission's rules, 47 C.F.R. §§ 1.41 and 1.106, and the Motion for Leave to Supplement the Record ("Motion") being filed on the same date as this pleading, respectfully submits this Supplement to Oppositions to Petitions for Reconsideration (the "Supplement"). In support of this Supplement, KM submits the following:

**I. Introduction**

1. On January 16, 2001, the Commission granted KM's above-captioned application for a Class A television station license for WMKE (the "Class A Application"). Two parties, WLS Television, Inc. ("WLS"), licensee of full power television station WLS-TV, analog Channel 7 ("WLS-TV") and digital television ("DTV") Channel 52 ("WLS-DT"), Chicago, Illinois, and Milwaukee Area Technical College ("MATC"), licensee of full power television station WMVS-DT,

DTV Channel 8, Milwaukee, Wisconsin ("WMVS-DT"), filed petitions for reconsideration of the grant.<sup>1/</sup> KM filed oppositions to the petitions for reconsideration,<sup>2/</sup> and WLS and MATC each filed a reply.<sup>3/</sup>

2. As set forth separately in the Motion, since the pleading cycle in this matter was completed in late February, the Commission has adopted its order on reconsideration in the Class A proceeding,<sup>4/</sup> which provides further guidance on certain issues raised in this proceeding. Specifically, although WLS has suggested that KM was not entitled in the Class A Application to rely on a waiver granted to WMKE as an LPTV station with respect to the interference protection required to the WLS-TV analog Channel 7 facilities, the Commission has clarified on reconsideration that such reliance is permitted under certain circumstances which apply to WMKE and this case. The Commission also provided some very specific clarification and guidance in the Class A Reconsideration Order of the protection that is required from WMKE to WLS's prospective future DTV Channel 7 operations.

3. In addition, WLS and MATC improperly raised new issues and arguments for the first time in their reply pleadings, in violation of Section 1.106(h) of the Commission's rules, 47

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<sup>1/</sup> See Petition for Reconsideration filed by WLS on January 24, 2001 (the "WLS Petition") and Petition for Reconsideration filed by MATC on January 31, 2001 (the "MATC Petition").

<sup>2/</sup> See Opposition to Petition for Reconsideration filed by KM on February 7, 2001, opposing the WLS Petition (the "WLS Opposition") and Opposition to Petition for Reconsideration filed by KM on February 13, 2001, opposing the MATC Petition (the "MATC Opposition").

<sup>3/</sup> See Reply filed by WLS on February 12, 2001 (the "WLS Reply") and Reply to Opposition to Petition for Reconsideration filed by MATC on February 23, 2001 (the "MATC Reply").

<sup>4/</sup> See Establishment of a Class A Television Service, MM Docket No. 00-10, Memorandum Opinion and Order on Reconsideration, FCC 01-123 (released April 13, 2001)(the "Class A Reconsideration Order"), which addressed issues raised in petitions for reconsideration of the Report and Order, FCC 00-115, 15 FCC Rcd 6355, 20 CR 154 (2000)(the "Class A Order").

C.F.R. § 1.106(h), to which KM would not have an opportunity to respond absent grant of the Motion and leave of the Commission. Specifically WLS, for the first time in its reply pleading, raised the issue of the protection WMKE may be required to give to the prospective future WLS-DT digital operations on Channel 7. Similarly MATC, for the first time in its reply pleading, offered an anecdotal statement regarding purported actual interference by WMKE to WMVS-DT which, aside from lacking any testing validity and being contradicted by its own supporting statement, is wholly irrelevant under the Class A interference protection requirements.

4. KM therefore has requested leave of the Commission to supplement the record in this matter, to address the interference protection required of WMKE to the current analog operations of WLS-TV and the future DTV operations of WLS-DT on Channel 7, as recently clarified by the Commission in the Class A Reconsideration Order, and to address the issues and arguments first raised by MATC in its reply pleading.

**II. In Addition To The Longley-Rice Studies Showing No Interference to WLS-TV, WMKE Also Meets The Commission's Clarified Criteria For "Grandfathering" Of The Interference Protection Waiver Granted With Respect To WLS-TV**

5. In the WLS Opposition, KM demonstrated that WMKE provides the interference protection to WLS-TV's analog Channel 7 operation required by the Class A statute, as codified at Section 336(f) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 336(f), and as required by Section 73.6011 of the Commission's rules, 47 C.F.R. § 73.6011. See WLS Opposition at ¶¶ 2-8. Section 73.6011 requires Class A applicants, such as WMKE, to protect analog television stations, such as WLS-TV, based on Section 74.705 of the Commission's rules, 47 C.F.R. § 74.705, which in Section 74.705(c) expressly permits the use of Longley-Rice terrain dependent propagation studies, such as has been provided by KM in this case. Id. at ¶¶ 3-4 (citing

§ 74.705(e)) and Exhibit 1 (Longley-Rice study demonstrating zero/no new interference by WMKE to WLS-TV).

6. WLS attempted to argue that Class A applicants may not rely on waivers using Longley-Rice studies under Section 74.705(e), see WLS Reply at 4-6, stating that “the Commission made no mention of recognizing and extending waivers granted to LPTV stations to Class A stations”. Id. at 5. Apparently WLS skipped reading ¶ 77 of the Class A Order, which very clearly states that “where a requested Class A station does not provide the protection required by [Section 74.705], **Section 74.705(e) specifies that a waiver can be requested based on terrain shielding and use of the Longley-Rice model to demonstrate that actual interference would not be predicted to occur.**” See Class A Order at ¶ 77.

7. Fortunately, and in response to KM’s request for clarification in the Class A proceeding, the Commission has now further clarified that waivers of the interference protection requirements to full power television stations that were granted to LPTV stations are extended (or “grandfathered”, to use a common term) for such stations when they apply for Class A status, under certain conditions. See Class A Reconsideration Order at ¶ 79. Specifically, the Commission clarified that:

Existing waivers of the LPTV station interference protection requirements [to full power television stations] may be used as a basis for certifying compliance with the Class A interference protection requirements provided: (1) construction of the facilities for which Class A status is sought was authorized on the basis of a waiver of the interference standards with respect to a protected station; (2) all engineering parameters under that LPTV authorization remain unchanged; (3) all authorized engineering parameters of the protected station associated with the waiver remain unchanged; and (4) the LPTV licensee has no knowledge that its station is causing interference to the reception of the protected station within its protected service area; e.g., the Grade B contour for NTSC TV stations.

Id. WMKE meets all four of these provisions with respect to WLS.

8. Construction of WMKE's analog Channel 7 displacement facilities was authorized on the basis of a waiver of Section 74.705(d)(1) of the Commission's rules with regard to the interference protection WMKE was required to provide to WLS-TV.<sup>5/</sup> Class A status was sought for WMKE based on the license application (File No. BLTVL-20000630AEP, granted August 3, 2000) which covered the Displacement Construction Permit, and the analog Channel 7 facilities constructed in accordance therewith.<sup>6/</sup> There have been no changes in the WMKE engineering parameters since the modification of the Displacement Construction Permit granted on June 30, 2000 and as licensed on August 3, 2000 (under BLTVL-20000630AEP), which was well before the Class A Application was filed on December 6, 2000. All authorized engineering parameters for WLS-TV, the protected full power television station, have remained unchanged since at least January 24, 2000,<sup>7/</sup> which again was before the grant of the Displacement Construction Permit<sup>8/</sup> and

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<sup>5/</sup> See Letter dated February 11, 2000 from Hossein Hashemzadeh, Supervisory Engineer, Low Power Television Branch, granting the displacement application and analog Channel 7 construction permit for WMKE (File Nos. BPTVL-980918JG, as modified by BMPTVL-20000518ABX granted June 30, 2000, together the "Displacement Construction Permit"). KM notes that the minor modification application (BMPTVL-20000518ABX) expressly referenced and incorporated the interference showings made in the original displacement application (BPTVL-980918JG), which included KM's waiver showing with regard to WLS-TV.

<sup>6/</sup> See Class A Application at Section I, Question 5, and Exhibits 9 and 10 (which expressly discussed the granted waiver showing with regard to WLS-TV).

<sup>7/</sup> The last modification of the WLS-TV analog Channel 7 facility appears to be in File Nos BPCT-19980309KF and BLCT-19980309KG, granted on January 24, 2000. This modification appears to be related to a minor correction of WLS-TV's antenna coordinates; prior to those applications, the last modifications to WLS-TV's analog Channel 7 facilities appear to have occurred in 1982.

<sup>8/</sup> Both with regard to the original permit (BPTVL-980918JG), granted on February 11, 2000, and the modification of the original permit (BMPTVL-20000518ABX), granted June 30, 2000.



the filing of the Class A Application. Finally, even though WMKE has been on the air with its analog Channel 7 facilities for over a year (since June 30, 2000) and for over 5 months at the time the Class A Application was filed, KM has no knowledge and has received no complaints -- from WLS or the public -- that WMKE is causing interference to WLS-TV within WLS-TV's Grade B contour. This absence of complaints is particularly remarkable considering the scrutiny that WLS has likely given to WMKE's operations, based on its continued vehement opposition to WMKE's operation.<sup>9/</sup>

9. Therefore, in addition to the valid Longley-Rice showings that KM has submitted previously to demonstrate no new interference to WLS-TV, see WLS Opposition at ¶¶ 3-4 and Exhibit 1, KM meets the Commission's criteria for reliance on the waivers previously granted by the Commission of WMKE's interference protection requirements to WLS-TV. Since these criteria were established by the Commission in a rule making of general applicability, as the Commission's interpretation of the Class A statute, any change of these criteria would require action by the Commission or the courts in the context of the rule making proceeding, not in the context of this licensing proceeding.

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<sup>9/</sup> Indeed, although WLS alluded 5 months ago to the fact that "efforts have been initiated to assess the real world interference", see WLS Reply at 7, no complaints of interference have resulted. Furthermore, no such efforts appear to have been initiated, since by necessity KM and WMKE would have to participate in any such testing, by shutting down WMKE to allow measurements to be taken with WMKE on and off the air. Otherwise, WLS would not be able to distinguish whether any perceived interference was the result of WMKE, as opposed to the result of co-channel full power television stations WPBN-TV, analog Channel 7, Traverse City, Michigan and WOOD-DT, DTV Channel 7, Grand Rapids, Michigan, or even first-adjacent channel WMVS-DT, DTV Channel 8, Milwaukee, Wisconsin. As a reminder, the existing co-channel interference predicted from WPBN-TV and WOOD-DT was the basis for WMKE's waiver of the Section 74.705(d)(1) interference protection to WLS-TV (under the predicted contour overlap method), and along with WMVS-DT is the source of much of the "masking" interference in the Longley-Rice studies.

**III. WMKE Also Protects Any Future WLS-DT Digital Operation On Channel 7 Beyond The Extent Required By The Commission's Rules**

10. WLS finally reveals its true concern when it suggests, for the first time in its reply pleading, that WMKE may not protect some prospective future digital operation of WLS-DT on Channel 7. See WLS Reply at 7-8. However, WMKE's analog Channel 7 Class A operation meets all interference protection requirements to which any future WLS-DT digital Channel 7 operations would be entitled, in the manner required by the Commission's rules, as clarified in the Class A Reconsideration Order. The interference protection that the Commission's implementation of the Class A statute requires of Class A stations to future DTV operations may not be to WLS's liking, since it doesn't provide the kind of "open door" flexibility that WLS would like, but it properly reflects the line drawn by Congress in the Class A statute.

11. Specifically, when a full power television station with an out-of-core DTV channel assignment and an in-core analog channel, such as WLS-DT (which was assigned Channel 52 as its second channel for DTV, paired with its analog Channel 7 allotment), converts its DTV operations to its in-core analog channel at or before the end of the DTV transition, such station will be permitted DTV facilities on the in-core analog channel that: (i) replicate its predicted analog Grade B service area; and/or (ii) matches any previously "maximized" DTV service area, but only to the extent that such station has maximized its DTV service area on its out-of-core DTV channel allotment, in a DTV application filed prior to May 1, 2000 (provided such station filed a notice of intent to maximize its DTV facilities prior to December 31, 1999). See Class A Reconsideration Order at ¶¶ 63-68.

12. For WLS, this means that WLS-DT would have priority over Class A station WMKE and will be allowed to apply for and permitted to construct DTV Channel 7 facilities for WLS-DT

such that the predicted noise-limited contour of a future DTV Channel 7 facility may: (i) replicate the current WLS-TV analog Channel 7 Grade B contour; and (ii) match the "maximized" noise-limited contour of any WLS-DT digital Channel 52 facility as authorized or applied for on or before May 1, 2000, which means the directionalized 152 kilowatts effective radiated power ("ERP") and 507 meters antenna height above average terrain ("HAAT") parameters specified in its digital permit application BPCDT-19980501KK, filed on May 1, 1998 and granted on July 23, 1998.<sup>10/</sup>

13. Attached hereto as Exhibit 1 is an Engineering Report dated July 2001 and prepared by Cohen, Dippell and Everist, P.C. ("CD&E"), KM's consulting engineers, which presents the results of Longley-Rice interference studies of the interference protection scenarios required by the Commission's Class A Reconsideration Order and summarized in the preceding paragraph (the "Engineering Report"). The Engineering Report demonstrates that WMKE is predicted to cause interference to less than the 0.5% of the population of any future WLS-DT digital operation on Channel 7, which therefore would fully comply with Class A interference protection requirements

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<sup>10/</sup> However, WLS would not be permitted to maximize a DTV Channel 7 facility to the extent of the slightly larger noise-limited contour derived from its currently licensed DTV Channel 52 parameters of 153.6 kilowatts ERP and 514 meters antenna HAAT, since WLS did not file the modification of permit application (File No. BMPCDT-20000720ABN) for such parameters until July 20, 2000, after the May 1, 2000 deadline set by the Class A statute and the Commission's rules and policies. See Class A Reconsideration Order at ¶ 66. The Commission has specifically stated that "the [Class A] statute affords Class A stations a protection priority over [DTV maximization application proposals filed after May 1, 2000] to further enlarge or extend DTV service areas", and that a full power DTV broadcaster that seeks to change its DTV facilities under the provisions of Section 336(f)(1)(D) of the Act "would not be entitled to a protection priority over Class A stations in any area beyond that resulting from its earlier filed maximization proposal (May 1, 2000)." *Id.* Indeed, as a Class A-eligible LPTV station entitled to preservation of its service area, KM would have opposed WLS's application BMPCDT-20000720ABN had the new interference to WMKE not fallen below the 0.5% rounding allowance WLS-DT was permitted under Section 73.623(c)(5) of the Commission's rules, 47 C.F.R. § 73.623(c)(5).

to full power DTV station under Section 73.6013 of the Commission's rules.<sup>117</sup> See Engineering Report and § 73.6013.

14. Specifically, the results of the Longley-Rice studies presented in the Engineering Report demonstrate that WMKE is predicted to cause interference only to about 0.002% of the population that would be within the noise-limited service area of a WLS-DT digital Channel 7 operation that replicated the WLS-TV analog Channel 7 Grade B contour, and WMKE is predicted to cause interference only to about 0.002% of the population that would be within the noise-limited service area of a WLS-DT digital Channel 7 operation that matched the noise-limited service area that WLS-DT is predicted to achieve with its "maximized" (by May 1, 2000) DTV Channel 52 operations at 152 kilowatts ERP and 507 meters antenna HAAT. In either event, the predicted interference is well below the 0.5% interference rounding allowance allowed by Section 73.6013.

15. Furthermore, the consideration of potential interference to some prospective future digital Channel 7 operation of WLS-DT remains premature, and was not required to be made by KM in the Class A Application. Although the Commission clarified in the Class A Reconsideration Order what the priorities of a Class A station would be with respect to the future conversion of an out-of-core full power DTV station to its in-core analog allotment, any displacement of a Class A station that may result from such interference protection priorities would not occur until the DTV station actually converts its DTV operation back to the in-core analog allotment channel. Any

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<sup>117</sup> KM continues to believe that the Class A Application accurately certified compliance with Section 73.6013 of the Commission's rules. However, in the event that the Commission reconsiders the grant of the Class A Application (which it should not), KM requests that the Commission consider the supplementary Longley-Rice studies submitted in the Engineering Report with respect to the prospective future DTV operations of WLS-DT on Channel 7. Since the deadline for filing Class A applications has not passed, WLS would not be prejudiced by consideration of this supplemental showing of no interference.

consideration of such future events now is highly speculative, due to any number of events that may occur in the interim. In particular, if a full power DTV station's conversion to its in-core analog channel occurs at or near the end of the DTV transition, a lower priority Class A station may very well be able to propose alternate parameters, including a change in channels, which would permit the Class A station to continue to provide interference protection to any other station to which it may be required. There is no need to foreclose a Class A station's options, or potentially force a Class A station off-the-air, prematurely.

16. Accordingly, KM has demonstrated, by the Longley-Rice studies submitted herewith, that WLS's assertions that a grant of the Class A Application may be precluded by some prospective future operation of WLS-DT on digital Channel 7 are completely without merit, since any interference that may be predicted to occur falls well below the 0.5% rounding allowance expressly permitted by Section 73.6013 of the Commission's rules, and in addition is premature in the absence of any specific proposal by WLS in a digital Channel 7 application. Any challenge that WLS wishes to raise against Section 73.6013 and the Commission's rules and policies governing Class A protection of future DTV stations and modifications should be raised with the Commission or the courts in the context of the rule making proceeding of general applicability in which such rules and policies were adopted, not in this licensing proceeding. And if WLS wishes to change the Class A statute, it needs to seek legislation from Congress.

**IV. MATC's Anecdotal Statement Regarding Purported Actual Interference From WMKE To WMVS-DT Is Invalid, Contradicted By MATC's Own Statements, And Wholly Irrelevant Under Class A Interference Protection Requirements**

17. MATC appears to continue to be confused by the plain language of Section 73.6013 of the Commission's rules, which requires Class A stations and applicants to protect full power

digital stations such as WMVS-DT based on the interference analysis methods of Section 73.623(c)(2)-(4) of the Commission's rules, 47 C.F.R. § 73.623(c)(2)-(4), and expressly includes the 0.5% rounding allowance.<sup>12/</sup> This is not just "KM's interpretation of Section 74.6013 [*sic*, 73.6013] of the FCC rules", see MATC Reply at 2, but the rule itself. And in response to MATC's note that the Class A rules were under reconsideration, id., KM notes that Section 73.6013 remained unchanged upon the Commission's reconsideration in the Class A proceeding. See Class A Reconsideration Order at Appendix A.

18. In light of the plain language of Section 73.6013, MATC's anecdotal statements claiming interference by WMKE to WMVS-DT are irrelevant; Class A stations are not subject to remedying actual interference. But even if WMKE were still an LPTV station and subject to the Section 74.703 requirements for LPTV stations to remedy actual interference, see 47 C.F.R. § 74.703, which WMKE is not, the anecdotal statements offered by MATC are not probative or valid, and are contradicted by MATC's own supporting statement. If WMKE were still an LPTV station, MATC would have to cooperate with KM's efforts to test for and remedy any actual interference that may be claimed by MATC, or else WMKE as an LPTV station would be relieved of any responsibility to remedy any claimed interference. See § 74.703(b). This is important, since unless such testing is conducted with the LPTV station both on and off the air, there is no way to determine that the LPTV station is the source of any claimed interference. In this case, it is very likely that the reception problems encountered by WMVS-DT are the result of multi-path problems with the

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<sup>12/</sup> See § 73.6013 ("a Class A station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the DTV allotment, station or application.").

WMVS-DT signal, as conceded by MATC,<sup>13/</sup> but its reception difficulties could also be the result of its testing methods, interference from other stations, or any other of a number of factors. All of this of course is academic and irrelevant in a Class A application and station context, where the interference protection required from Class A station and applicant WMKE to WMVS-DT is governed by Section 73.6013, including the 0.5% rounding allowance, and not by the LPTV interference protection requirements under Section 74.706 and the LPTV requirement to remedy actual interference under Section 74.703.

19. In addition, MATC's ability to "maximize" WMVS-DT beyond the facilities authorized or applied for in an application filed before May 1, 2000, regardless of whether the limiting factor was other full power television stations, see MATC Reply at 3-4, is a function of the line drawn by Congress in the Class A statute, in Sections 336(f)(7)(A)(ii)(IV) of the Act, 47 U.S.C. § 336(f)(7)(A)(ii)(IV). If MATC believes that Congress did not consider the proper factors or drew the line in the wrong place after balancing the competing public interest factors, its recourse is to seek legislation by Congress to amend the statute, or, as it should also do if it was dissatisfied with Section 73.6013, MATC should challenge the Commission's implementation of the statute before the Commission or the courts in the context of the rule making proceeding of general applicability, rather than in the context of this licensing matter.

20. Moreover, it appears that MATC has already been authorized to maximize its WMVS-DT digital Channel 8 facilities beyond that permitted by the Commission's rules, without a waiver request or other showing, or indeed any explanation for the violation of the Commission's

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<sup>13/</sup> See MATC Reply, DTV Field Test Statement of Jan Louis Pritzl at ¶ 3 ("During site testing in the central city area of Milwaukee that includes[] high-rise office and residential buildings ... there were reception difficulties in several high multi-path locations.").

rules. KM respectfully requests that the Commission clarify, in any order adopted resolving this matter, whether KM is required to protect such "supermaximized" facilities of WMVS-DT, if KM seeks to improve its WMKE analog Channel 7 facilities. The Commission, in the Class A Reconsideration Order, expressly invited affected Class A stations to point out and object to such supermaximized facilities. See Class A Reconsideration Order at ¶ 65.

21. Specifically, under Section 73.622(f) of the Commission's rules, 47 C.F.R. § 73.622(f), WMVS-DT should have been limited to an ERP of 18.3 kilowatts at their antenna HAAT of 354 meters, rather than the 25.1 kilowatts that was granted (in File No. BPEDT-990429KW, the "WMVS-DT Permit Application"). See § 73.622(f)(7)(ii). The WMVS-DT Permit Application checked "no" to Form 340, Section V-D (DTV Broadcast Engineering Data), Question 1(c) regarding compliance with Section 73.622, but the engineering statement attached thereto does not justify, or even attempt to address, the excessive 25.1 kilowatts ERP at all.

22. Of interest, the Commission's internal engineering analysis "checklist" (a copy of which is attached hereto as Exhibit 2, the "Checklist") noted this problem, but then granted the excessive 25.1 kilowatts ERP requested without any further discussion or explanation or waiver, and without any correspondence with or amendment from MATC (based on KM's review of the Commission's publicly-available files). Specifically, KM would point out that: (i) page 1 of the Checklist notes that WMVS-DT requested a HAAT of 354 meters, but that the maximum permitted is 343 meters; (ii) page 2 of the Checklist notes at Question 3 that the WMVS-DT Permit Application does not comply with Section 73.622; and (iii) on page 3 of the Checklist, the reviewing Commission staff even performed the calculations which show, as does KM's calculations, that WMVS-DT is permitted only 18.3 kilowatts ERP at its proposed antenna HAAT of 354 meters (which exceeds the permitted antenna HAAT of 343 meters).

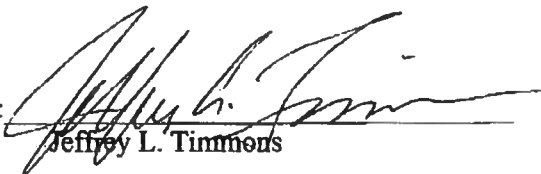


V. Conclusion

23. Wherefore, KM respectfully requests that upon the Commission's consideration of the supplemental information and arguments provided herein, upon a grant of the Motion and leave to KM to file this Supplement or upon the Commission's own motion based on its public interest obligation to consider all relevant matters to ensure the proper application of its rules, that the Commission dismiss or deny both the WLS Petition and the MATC Petition, and affirm its proper grant of the Class A Application and the Class A television station license to WMKE.

Respectfully submitted,

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July 12, 2001

**CERTIFICATE OF SERVICE**

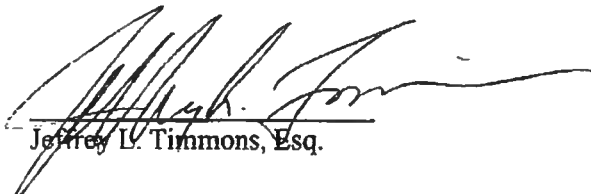
I, Jeffrey L. Timmons, hereby certify that on this 12th day of July, 2001, copies of the foregoing "Supplement to Opposition to Petition for Reconsideration" have been served by overnight courier and then hand delivery or by U.S. Priority Mail, postage prepaid, upon the following:

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Washington, D.C. 20554

  
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\* by overnight courier and then hand delivery

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

JULY 2001

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

City of Washington )  
 ) ss  
District of Columbia )

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 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.

Harvey M. Powers

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

Subscribed and sworn to before me this 11<sup>th</sup> day of July, 2001.

y of July, 2001.  
Carl L. Lyons  
Notary Public

My Commission Expires: 2/28/2003

This engineering statement has been prepared on behalf of KMLPTV of Milwaukee, L.L.C. in further support of its opposition to the Petition for Reconsideration filed by WLS Television, Inc. 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 using a Longley-Rice terrain dependent propagation model, in accordance with FCC OET Bulletin 69, to determine any potential impact by WMKE-CA on the possible future DTV operation of WLS-DT, Chicago, Illinois, based on a noise-limited F(50,90) predicted contour for WLS-DT on digital Channel 7 at the present predicted WLS-TV analog Channel 7, Grade B contour. A printout of the results of the Longley-Rice studies is attached hereto for reference. The baseline study (wlsdt7base.txt) which does not include WMKE-CA found a population of 8,500,899 persons served within WLS-DT's noise-limited service area. The study was rerun including the Class A operation of WMKE-CA (wlsdt7result.txt) and the population served within WLS-DT's noise limited service area decreased to 8,500,701 persons. Therefore, WMKE-CA is predicted to cause interference to 198 people or 0.002% of this hypothetical future WLS-DT digital Channel 7 noise-limited service area when studied using a Longley-Rice terrain dependent propagation model, as permitted by the FCC. This is well below the 0.49% figure permitted by FCC Rules and does not include the interference masking effects from other stations.

An interference study was also conducted using a Longley-Rice terrain dependent propagation model, in accordance with FCC OET Bulletin 69, to determine any potential impact by WMKE-CA on the possible future DTV operation of WLS-DT based on a noise-limited F(50,90) predicted contour for a digital Channel 7 operation determined by matching the noise-limited F(50,90) predicted

contour of the WLS-DT, Channel 52, 152 kW/507 meter (directional antenna) construction permit authorized as of May 1, 2000 (FCC File No. BPCDT-19980501KK). A printout of the results of the Longley-Rice studies is attached hereto for reference. The baseline study (baseline\_all\_deleted.txt) which does not include WMKE-CA found a population of 8,388,461 persons served within WLS-DT's noise-limited service area. The study was rerun including the Class A operation of WMKE-CA (result-WMKE-only.txt) and the population served within WLS-DT's noise limited service area decreased to 8,388,288 persons. Therefore, WMKE-CA is predicted to cause interference to 173 people or 0.002% of this hypothetical future WLS-DT digital Channel 7 noise-limited service area when studied using a Longley-Rice terrain dependent propagation model, as permitted by the FCC. This is well below the 0.49% figure permitted by FCC Rules and does not include the interference masking effects from other stations.

# COHEN, DIPPELL AND EVERIST, P. C.

wlsdt7base.txt

## LAYOUT OF PROBLEM AREA

SE corner 40-59-44, 86-26-51; NW corner 42-45-54, 88-48-57

Total	Center	Center	Cell	Cell	Area	Area
Cells	Lat	Long	Height	Width	Height	Width
	(DMS, N)	(DMS, W)	(sec)	(sec)	(cells)	(cells)
9604	41-52-49	087-37-54	65	87	98	98

Specified cell size = 2.000 km each side	
Precise cell size = 4.01361 sq km	
Fetching census blocks for problem area	0:00:01
Sorting census blocks by latitude	0:00:09
Loading problem area grid with population data	0:00:09
Initializing problem area grid	0:00:09
Allocating memory for results	0:00:09
Determining noise-limited contours using FCC curves	0:00:09
Calculating service fields	0:00:09
Desired station 7A IL CHICAGO	DWLS-TV
Counting population covered	0:00:14
Computing IX fields of 10 undesired stations	0:00:14
Undesired station 7N WI MILWAUKEE	WMKE-CA
Undesired station 7N IA WATERLOO	KWWL
Undesired station 7N MI DETROIT	WXYZ-TV
Undesired station 8N MI GRAND RAPIDS	WOOD-TV
Undesired station 7N MI TRAVERSE CITY	WPBN-TV
Undesired station 7N MO HANNIBAL	KHQA-TV
Undesired station 7N OH DAYTON	WHIO-TV
Undesired station 7N WI WAUSAU	WSAW-TV
Undesired station 7A MI GRAND RAPIDS	DWOOD-TV
Undesired station 8A WI MILWAUKEE	DWMVS
Evaluating service and interference	0:00:54

## Analysis of: 7A IL CHICAGO

HAAT 457.0 m, ATV ERP 4.8 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	8502299	30086.0
not affected by terrain losses	8500899	30025.8
lost to NTSC IX	0	0.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	0	0.0
Population/Area Served	8500899	30025.8
Finished		0:00:54

# COHEN, DIPPELL AND EVERIST, P. C.

wlsdt7result.txt

## LAYOUT OF PROBLEM AREA

SE corner 40-59-44, 86-26-51; NW corner 42-45-54, 88-48-57

Total	Center Lat	Center Long	Cell Height	Cell Width	Area Height	Area Width
Cells	(DMS, N)	(DMS, W)	(sec)	(sec)	(cells)	(cells)
9604	41-52-49	087-37-54	65	87	98	98

Specified cell size = 2.000 km each side

Precise cell size = 4.01361 sq km

Fetching census blocks for problem area

0:00:01

Sorting census blocks by latitude

0:00:09

Loading problem area grid with population data

0:00:09

Initializing problem area grid

0:00:10

Allocating memory for results

0:00:10

Determining noise-limited contours using FCC curves

0:00:10

Calculating service fields

0:00:10

Desired station 7A IL CHICAGO

DWLS-TV

0:00:10

Counting population covered

0:00:15

Computing IX fields of 10 undesired stations

0:00:15

Undesired station 7N WI MILWAUKEE

WMKE-CA

0:00:15

Undesired station 7N IA WATERLOO

KWWL

0:00:23

Undesired station 7N MI DETROIT

WXYZ-TV

0:00:27

Undesired station 8N MI GRAND RAPIDS

WOOD-TV

0:00:29

Undesired station 7N MI TRAVERSE CITY

WPBN-TV

0:00:29

Undesired station 7N MO HANNIBAL

KHQA-TV

0:00:36

Undesired station 7N OH DAYTON

WHIO-TV

0:00:37

Undesired station 7N WI WAUSAU

WSAW-TV

0:00:39

Undesired station 7A MI GRAND RAPIDS

DWOOD-TV

0:00:40

Undesired station 8A WI MILWAUKEE

DWMVS

0:00:53

Evaluating service and interference

0:00:54

Analysis of: 7A IL CHICAGO

HAAT 457.0 m, ATV ERP 4.8 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	8502299	30086.0
not affected by terrain losses	8500899	30025.8
lost to NTSC IX	198	8.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	198	8.0
Population/Area Served	8500701	30017.8

Finished

0:00:55



# COHEN, DIPPELL AND EVERIST, P. C.

baseline\_all\_deleted.txt

## LAYOUT OF PROBLEM AREA

SE corner 41-00-48, 86-42-32; NW corner 42-44-48, 88-47-14

Total	Center Lat	Center Long	Cell Height	Cell Width	Area Height	Area Width
Cells	(DMS, N)	(DMS, W)	(sec)	(sec)	(cells)	(cells)
8256	41-52-47	087-44-54	65	87	96	86

Specified cell size = 2.000 km each side

Precise cell size = 4.01362 sq km

Fetching census blocks for problem area 0:00:00

Sorting census blocks by latitude 0:00:09

Loading problem area grid with population data 0:00:09

Initializing problem area grid 0:00:09

Allocating memory for results 0:00:09

Determining noise-limited contours using FCC curves 0:00:09

Calculating service fields 0:00:09

Desired station 7A IL CHICAGO DWLS-TV 0:00:09

Counting population covered 0:00:14

Computing IX fields of 0 undesired stations 0:00:14

Evaluating service and interference 0:00:14

Analysis of: 7A IL CHICAGO

HAAT 508.0 m, ATV ERP 3.1 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	8398022	25791.6
not affected by terrain losses	8388461	25719.4
lost to NTSC IX	0	0.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	0	0.0
Population/Area Served	8388461	25719.4

Finished 0:00:14

# COHEN, DIPPELL AND EVERIST, P. C.

result\_WMKE\_only.txt

## LAYOUT OF PROBLEM AREA

SE corner 41-00-47, 86-42-33; NW corner 42-44-47, 88-47-15

Total	Center Lat	Center Long	Cell Height	Cell Width	Area Height	Area Width
Cells	(DMS, N)	(DMS, W)	(sec)	(sec)	(cells)	(cells)
8256	41-52-47	087-44-54	65	87	96	86

Specified cell size = 2.000 km each side

Precise cell size = 4.01363 sq km

Fetching census blocks for problem area 0:00:00

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 7A IL CHICAGO DWLS-TV 0:00:07

Counting population covered 0:00:12

Computing IX fields of 1 undesired stations 0:00:12

Undesired station 7N WI MILWAUKEE WMKE-CA 0:00:12

Evaluating service and interference 0:00:19

Analysis of: 7A IL CHICAGO

HAAT 508.0 m, ATV ERP 3.1 kW

	POPULATION	AREA (sq km)
within Noise Limited Contour	8398022	25791.6
not affected by terrain losses	8388461	25719.4
lost to NTSC IX	173	12.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	173	12.0
Population/Area Served	8388288	25707.3

Finished 0:00:19

**TELEVISION BRANCH**  
**ENGINEERING ANALYSIS FOR DIGITAL CONSTR. PERMIT**

FILE NO. BPEDT-990429 KW CALL: WMVS-DT  
APPLICANT: MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT BOARD  
PRINCIPLE COMMUNITY: MILWAUKEE, WI

**NATURE OF REQUEST:**

Expiration date of license or permit: \_\_\_\_\_

☒ New DTV CP? ☐ Modification to DTV CP?

Description of modification: \_\_\_\_\_

**TRANSMITTER:**N Latitude: 43 ° 05 ' 44 " W Longitude: 87 ° 54 ' 17 "DTV Channel: 8 Assignment: 180 - 186 MHzAssociated analog TV station channel number, if any: 10ERP [average power(kW)]: Stated: 25 Rounded: \_\_\_\_\_ Allowed: 9.9**ANTENNA:**Make & Type: DIELECTRIC THU-6AB-RHeight Above Average Ter: 354 m Maximum HAAT permitted: 343 mTotal Height above ground: 372 m Directional Antenna? ☒ or ☐ NElectrical tilt angle: 0.5 ° Main lobe direction: 226, 313 °Mechanical tilt angle: - ° Mechanical lobe direction: - °Paragraphs of obstruction marking specifications [see FCC Form 715(A)] that are required: TOWER REGISTRATION NUMBER: 1057482**ENGINEERING CONDITIONS:**

(8/28/97)

**DIGITAL TELEVISION (DTV)  
CONSTRUCTION PERMIT ENGINEERING CHECKLIST**

**GRANT QUESTIONS** ("Yes " to all of these 8 questions means immediately grantable)

	Yes	No
1. The proposed will operate on the DTV channel for this station as established in 47 C.F.R. Section 73.622.	<u>✓</u>	<u>      </u>
2. Will the proposed operate from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 C.F.R. Section 73.622? If no, forward to OET for interference review. Date of referral <u>                    </u>	<u>✓</u>	<u>      </u>
3. Will the proposal operate with an effective radiated power (ERP) in each azimuthal direction and antenna height above average terrain (HAAT) that do not exceed the DTV reference ERP and HAAT for this station as established in 47 C.F.R. Section 73.622	<u>      </u>	<u>✓</u>
4. Does the proposal meet environmental standards? That is, the proposed facility will not have a significant environmental impact, including exposure of workers or the general public to levels of RF radiation exceeding the applicable health and safety guidelines and therefore will not come within 47 C.F.R. Section 1.1307.	<u>✓</u>	<u>      </u>
5. Pursuant to 47 C.F.R. Section 73.625, the DTV coverage contour of the proposed facility will encompass the allotted principal community.	<u>✓</u>	<u>      </u>
6. The requirements of 47 C.F.R. Section 73.1030 regarding coordination with the Table Mountain, W.Va., quiet zone, and FCC monitoring stations have either been satisfied or are not applicable.	<u>✓</u>	<u>      </u>
7. The antenna structure to be used by this facility has been registered by the Commission and will not require reregistration to support the proposed antenna, OR the FAA has previously determined that the proposed structure will not adversely effect safety in air navigation and this structure qualifies for later registration under the Commission's phased registration plan, OR the proposed installation on this structure does not require notification to the FAA pursuant to 47 C.F.R. Section 17.7.	<u>✓</u>	<u>      </u>
8. Is the proposal outside the Canadian and Mexican border zones? If no, please discuss with John Morgan Date of referral <u>                    </u> to <u>                    </u>	<u>✓</u>	<u>      </u>

OTHER QUESTIONS OF CONCERN (to be completed for all applications)

	Yes	No
9. Main studio location is within the boundaries of the principal community. If not, waiver requested re: studio location at _____ [§73.1125].	<u>✓</u>	_____
10. The coordinates and elevation of the site appear to be accurate.	<u>✓</u>	_____
11. Will the proposed TV antenna/tower be mounted on an AM tower, or in the vicinity of an AM tower (within 1/2 mile of a non-directional AM tower, within 2 miles of a directional AM array)? If yes, attach the appropriate AM condition. [§73.685(h)].	_____	<u>✓</u>
12. Is this is for a Channel 14 or 69 facility? If yes, attach appropriate condition (re: land mobile interference).	_____	<u>✓</u>

CONCLUSIONS (Additional Comments):

73.622 (7)(LL)

Zone I Ch. 7-13 HAAT > 305

$$ERP_{max} = 97.35 - 33.24 \log_{10}(HAAT)$$

$$ERP_{max} = 97.35 - 33.24 \log_{10}(354)$$

$$ERP_{max} = 97.35 - 54.73 = 42.62 \text{ dB}$$

$$ERP_{max} = 13.23 \text{ kW}$$

Granted 25.1 kW

Roxanne Harris-Virington 6/25/99  
REVIEWED BY DATE

REVIEWED I

# DTV Application Interference Analysis

WMVS-DT

State and City	Chan N D	ERF kW	HAAT m	DTV Service		Cur. NTSC		New IX		Area Match
				Area	Pop	Area	Pop	Area	Pop	
				sq km	thou	sq km	thou	%	%	%
< Reference Conditions										
> Conditions created by proposed station parameters, BPEDT990429KW										
< IL MOLINE	8 38	836.6	308.0	28284	857	24345	827	0.0	0.0	99.8
> IL MOLINE	9 38	836.6	308.0	28284	857	24345	827	0.6	0.3	99.8
< MI GRAND RAPIDS	8 7	15.1	302.0	23097	1840	26015	1949	8.0	1.8	86.8
> MI GRAND RAPIDS	8 7	15.1	302.0	23097	1840	26015	1949	5.1	1.0	86.8
< MI IRON MOUNTAIN	8 22	50.0	190.0	12831	75	11714	67	0.0	0.0	100.0
> MI IRON MOUNTAIN	8 22	50.0	190.0	12831	75	11714	67	0.1	0.2	100.0
< WI LA CROSSE	8 53	1000.0	469.0	36877	681	29076	525	0.5	0.4	100.0
> WI LA CROSSE	8 53	1000.0	469.0	36877	681	29076	525	1.1	0.8	100.0
✓ < WI MILWAUKEE	10 8	9.9	343.0	26703	2457	24134	2110	0.0	0.0	98.4
> WI MILWAUKEE	10 8	25.1	354.0	27086	2519	24134	2110	0.0	0.0	97.7

BPEDT990429KW proposes DTV facilities to serve WI MILWAUKEE on channel 8

OK