

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

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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)

To: Chief, Mass Media Bureau

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

WLS Television, Inc. ("WLS"), licensee of WLS-TV, Channel 7, Chicago, Illinois, by its counsel hereby respectfully opposes the Motion for Leave to Supplement the Record ("Motion") filed on July 12, 2001, by KM LPTV of Milwaukee, L.L.C., licensee of television station WMKE-CA, Milwaukee, Wisconsin ("WMKE"), in the proceeding referenced above.

I. INTRODUCTION

WMKE's Motion was filed "a day late and a dollar short." Relative to the two grounds it has advanced in support of the urgency of its filing, WMKE has waited, respectively, more than five months in one instance, and more than three months in the other before determining that the issues warranted action. In addition to this egregious and unexplained delay, neither of the issues advanced by the Motion constitutes a legitimate basis to suspend the Commission's pleading rules and accept this unauthorized pleading.

Contrary to WMKE's assertions, WLS advanced no new argument in its Reply filed last February in response to WMKE's Opposition. Nor has WMKE even attempted to explain why it is necessary to supplement the record to bring to the Commission's attention

one of its own decisions (rendered in April), particularly where, as here, the matter in question was handled by the same Commission Division before which this proceeding is now pending.

Rather, as demonstrated herein, WMKE's Motion represents a brazen and unwarranted attempt to "take another bite at the apple" without contributing to the record in any meaningful way. Accordingly, the Motion should be dismissed summarily.

II. WLS'S DISCUSSION OF ITS DIGITAL SIGNAL IN THE REPLY WAS NOT NEW, BUT WAS RAISED SOLELY IN REBUTTAL TO WMKE'S OWN CONTENTION CONCERNING THE ACCEPTABILITY OF A CONSENT ORDER

WMKE first requests leave for its Supplement in order to respond to arguments it asserts WLS first made in its Reply, which was filed on February 12th. As an initial matter, WMKE fails to explain why it has taken more than five months for WMKE to decide that a response is necessary. Even setting that aside, however, the fact remains that with regard to the allegedly "new" issue of protecting WLS' DTV operations, WLS was merely replying to WMKE's proffer of a "consent agreement" in WMKE's Opposition to Petition to Deny dated January 30, 2001.

Contrary to WMKE's implication, WLS did not contend that protecting WLS' DTV allotment was an independent basis to deny WMKE's application. Rather, in responding to WMKE's unfounded shrill accusation that WLS had some "hidden motive," WLS explained that to be acceptable, a consent agreement would have to include, *inter alia*, provisions to protect WLS' future channel 7 DTV operations as well as its current analog reception.

WLS did not ask the Commission to address the DTV issue, nor did it assert that DTV protection was a basis for denying WMKE's license. Instead, WLS simply explained what would be required for WLS to enter into a consent agreement with WMKE. FCC protection of WLS' analog Grade B service area as required by the Community

Broadcasters Protection Act ("CBPA"), would also protect WLS' digital signal. However, WMKE used its pleading before the FCC to suggest that WLS should enter into a consent agreement that addresses only the analog signal. Doing so would leave WLS susceptible to interference with its digital signal precisely because the consent agreement would not afford the same protection that WLS would have through correct application by the FCC of the CBPA provisions addressed in WLS' petitions. This is not a new subject raised by WLS for the first time, but rather, a proper and necessary response to the incorrect suggestion of WMKE that its proposed "consent agreement" would fully protect WLS. Accordingly, it affords no basis to permit WMKE to file yet another pleading on the matter.

III. THE COMMISSION IS DUTY-BOUND TO TAKE NOTICE OF ITS OWN PRECEDENTS, AND NO "SUPPLEMENT" IS NEEDED TO BRING THE COMMISSION'S OWN ACTIONS TO ITS ATTENTION.

WMKE also contends that its Supplement is necessary in order to enable it to bring to the Bureau's attention the Commission's action in the Class A reconsideration proceeding three months ago. WMKE's attempt to enter into a whole new round of pleadings under the thin pretext that the FCC clarified this or that point three months ago lacks merit because the FCC must properly apply its own precedent in a directly related proceeding (Class A rules).

There is simply no basis to believe that the staff of the Mass Media Bureau is unaware or unfamiliar with the Commission's action in that proceeding. Indeed, it should be readily apparent that the contrary is true. The Commission's decision originated in the Bureau, and the Bureau staff has a material role in developing it. The staff certainly is aware of its own precedent and can be trusted to apply it in this and other licensing cases. Accordingly, WMKE's supplement in this regard would needlessly burden the record with additional paper and tax the Commission's resources.

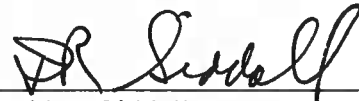
IV. CONCLUSION

For the foregoing reasons, WMKE's Motion for Leave to Supplement the Record is untimely and unwarranted. No valid basis exists to permit WMKE another opportunity to argue points already adequately treated in the record. WMKE's proffered Supplement would contribute nothing to disposition of this proceeding except more paper. Accordingly, the Bureau should expeditiously and summarily deny the Motion.¹

Respectfully Submitted,

WLS TELEVISION, INC.

By:



David R. Siddall

Eric T. Werner

VERNER, LIIPFERT, BERNHARD,

MCPHERSON & HAND, CHARTERED

901 - 15th Street, N.W.

Washington, D.C. 20005

(202) 371-6000

Dvora Wolff Rabino, Esq.
Executive Counsel, Law
and Regulation
ABC, INC.
77 West 66th Street
New York, New York 10023

July 25, 2001

¹ For the reasons set forth herein, WLS firmly believes WMKE's Motion should be denied and its Supplement rejected as unwarranted. Accordingly, WLS will not burden the Commission at this time by tendering a contingent response to the Supplement. In the unlikely event that the Bureau grants WMKE's Motion and accepts the Supplement, however, WLS respectfully requests that it be afforded an opportunity to respond to the Supplement at that time.

CERTIFICATE OF SERVICE

I, Eric T Werner, do hereby certify that a copy of the foregoing Opposition to Motion for Leave to Supplement the Record was sent by first-class mail, this 25th day of July, 2001, to the following:

Jeffrey Timmons, P.C.
3235 Satellite Boulevard
Building 400, Suite 300
Atlanta, GA 30096-8688

and hand-delivered to the following:

Mr. Hossein Hashemzadeh
Low Power TV Branch, Video Services Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

A handwritten signature in black ink, appearing to read "Eric T. Werner", written over a horizontal line.

Eric T. Werner