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

In re Application of)	
)	
KM LPTV of Milwaukee, L.L.C.)	File No. BLTVA-20001206ADM
)	
To Convert Low Power)	
Television Station WMKE-LP,)	
Milwaukee, Wisconsin)	
to Class A Station Status)	

PETITION TO DENY

WLS Television, Inc. ("WLS"), licensee of WLS-TV, Channel 7, Chicago, Illinois, by its counsel and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1), and Section 73.3584 of the Commission's rules, 47 C.F.R. § 73.3584, hereby respectfully petitions the Commission to deny KM LPTV of Milwaukee, L.L.C.'s ("KM") above-referenced application ("Application") to convert low power television (LPTV) station WMKE-LP, Milwaukee, Wisconsin, to Class A status. The Commission issued a public notice of the application's acceptance for filing on January 8, 2001,¹ and therefore this Petition is timely filed.

I. STATEMENT OF INTEREST AND BACKGROUND

WLS is a party in interest within the meaning of Section 309(d) of the Communications Act of 1934, as amended, and within the meaning of Section 73.3584 of the Commission's rules, because operation of WMKE on Channel 7

¹ *Public Notice*, Report No. 24896 (Jan. 8, 2001).

causes co-channel interference within WLS-TV's protected Grade B contour. KM it its Application, concedes that WMKE-LP causes interference within WLS-TV's Grade B contour.

On February 11, 2000, the Commission granted the application of WMKE-LP and simultaneously granted WMKE-LP waivers of certain interference requirements ("Waiver Letter") to move its operations to Channel 7.² The grant was made upon reconsideration of an earlier denial and over the objections of WLS.³ WLS filed a Petition for Reconsideration on March 17, 2000 that remains pending.⁴ The Commission's grant allowed WMKE-LP to move its operations to VHF Channel 7 and to increase its power to the maximum permissible peak effective radiated power (ERP) for an LPTV station of three kilowatts, subject to employing a specialized directional antenna.

The grant was based upon WMKE-LP's argument that predicted interference within the WLS-TV Grade B contour is overlapped by interfering contours of one or more other Channel 7 stations -- an analog station in Traverse City, Michigan (WPBN) and a digital station in Grand Rapids, Michigan (WOOD-DT).⁵ The Waiver Letter stated that no new interference was predicted to be caused to WLS-TV by the signal of WMKE-LP, but if in fact actual interference to WLS-TV viewers resulted, WMKE-LP would be required to remedy any such

² Letter from Hossein Hashemzadeh, Supervisory Engineer, LPTV Branch, VSD, MMB to Jeffrey L. Timmons, Esq., et al. (Feb. 11, 2000) (1800E3-JLB) (hereinafter "Waiver Letter").

³ See File No. BPTVL-980918JG.

⁴ See WLS Television, Inc., Petition for Reconsideration in File No. BPTVL-980918JG (filed Mar. 17, 2000). The arguments made in WLS-TV's Petition for Reconsideration remain apposite and the Petition for Reconsideration is incorporated by reference herein. Nothing in this Petition to Deny should be construed as acceptance of the grant contained in the Waiver Letter.

⁵ See Waiver Letter.

interference or to cease operating on Channel 7 pursuant to Section 74.703(b) of the FCC's low power rules.⁶

On April 4, 2000, pursuant to the Community Broadcasters Protection Act of 1999 ("CBPA"),⁷ the FCC released final rules⁸ to permit low power TV stations to obtain permanent protected status as Class A television stations. The rules provide for a bifurcated licensing process. WMKE-LP completed the first step to secure Class A status by timely filing a certification of eligibility with the FCC.⁹ The above-referenced Application to convert to Class A status is the second and final step in the licensing process and the subject of this Petition to Deny.

II. WMKE IS INELIGIBLE TO BE GRANTED CLASS A STATUS BECAUSE THE STATION CAUSES INTERFERENCE WITHIN WLS-TV'S PREDICTED GRADE B CONTOUR

The CBPA unequivocally prohibits the Commission from granting a Class A license unless the applicant shows that the station will not cause interference within the predicted Grade B contour of a protected analog station:

- (7) No interference requirement. —The Commission may not grant a class A license, nor approve a modification of a class A license, unless the applicant or licensee shows that the class A station for which the license or modification is sought will not cause—
- (A) interference within—
 - (i) the predicted Grade B contour (as of the date of the enactment of the Community Broadcasters Protection Act of 1999, or November 1, 1999, whichever is later, or as proposed in a

⁶ 47 C.F.R. § 74.703(b).

⁷ Pub. L. No. 106-113, Section 5008, 113 Stat. 1501 (1999), codified at 47 U.S.C. § 336 (f), (g).

⁸ *Establishment of a Class A Television Service, Report and Order* in MM Docket No. 00-10, 15 FCC Rcd 6355 (2000) ("*Report and Order*").

⁹ See *Public Notice*, Report No. 97659 (Feb. 8, 2000).

change application filed on or before such date) of any television station transmitting in analog format;¹⁰

Moreover, the Commission states in its implementing rule, Section 73.6011, that Class A stations must protect analog broadcast television stations “based on the requirements specified in Section 74.705” of the Commission’s rules.¹¹ Section 74.705 prohibits an LPTV station’s 28 dBu F(50, 10) contour from overlapping a full power television station’s Grade B 56 dBu F(50,50) contour.

KM in its Application reveals that WMKE-LP’s facilities do not comply with Section 73.6011. (Application at p. 5 and Exhibits 9-10.) Nonetheless, despite its admitted failure to comply with Section 73.6011, KM argues that WMKE-LP should be granted Class A status based on a theory that the waiver of Section 74.705 underlying WMKE-LP’s low power authorization on a non-interference secondary basis provides a basis for its ascension to protected primary Class A status.

Specifically, KM relies on language from the *Class A Report and Order*, in which the Commission determined that Class A applicants should be permitted to “utilize all means for interference analysis” afforded LPTV stations in the DTV *Sixth Report and Order*, such as Longley-Rice terrain-dependent propagation models.¹² KM asserts that the language from the *Report and Order* means that Class A applicants may utilize all “interference analysis and waiver methods”

¹⁰ 47 U.S.C. § 336(f)(7).

¹¹ 47 C.F.R. § 73.6011.

¹² *Report and Order* at ¶ 76 (emphasis added).

permitted in the DTV proceeding.” (Application at Exhibits 9-10 (emphasis added).)

Despite KM's creative attempt to bootstrap the waiver it received as a low power licensee with only secondary status into Class A protected status, the fact that WMKE's signal causes interference within WLS-TV's predicted Grade B contour bars grant of Class A status to WMKE-LP. KM's interpretation of the *Class A Report and Order* (1) is contrary to the CBPA; (2) is contrary to the plain language in the *Report and Order*, and (3) has been implicitly rejected by the Commission.¹³

First, incorporating the full panoply of Section 74.705 waiver bases into Section 73.6011 is contrary to the CBPA – which clearly prohibits interference within an analog broadcast station's predicted Grade B contour and does not grant the Commission authority to waive such interference or to distinguish between permissible and impermissible interference. If a station causes interference within a full power analog station's predicted Grade B contour, the statute prohibits Class A status being extended to that station.

The absolute nature of this statutory provision is demonstrated by the fact that earlier versions of the CBPA would have prohibited “impermissible interference,” which the Senate Committee on Commerce, Science, and Transportation stated was intended to provide the FCC with flexibility in

¹³ KM is aware that the interpretation advanced in its application lacks support. It filed a Petition for Reconsideration of the *Class A Report and Order* in which it asks the Commission, *inter alia*, to allow LPTV stations desiring to convert to Class A status to do so under all existing LPTV waivers of the requirements for interference protection. See Petition for Reconsideration of KM Communications, Inc., et al., in MM Docket No. 00-10 (filed June 9, 2000).

determining “what constitutes interference.”¹⁴ The final version, however, was specifically toughened and prohibits “interference” without qualification.

Second, the Commission did not, and pursuant to the language of the CBPA, could not, make the determination that a station which causes interference within the Grade B contour of a full power analog station remains eligible for Class A protected status by virtue of a waiver associated with the station’s low power secondary authorization. In the case of WMKE, the waiver was explicitly grounded on the secondary status of WMKE-LP, and that status was relied upon to ensure protection of WLS’s signal. Granting Class A status would eradicate the very protection upon which the waiver was granted.

In implementing the CBPA, the Commission merely stated that Class A applicants should be permitted to “utilize all means for interference analysis” afforded LPTV stations in the *DTV Sixth Report and Order*, including the Longley-Rice terrain-dependent propagation models. This is far from addressing waivers. The Commission made no mention of utilizing waivers granted to LPTV stations in order to obtain Class A status, and its rules are completely consistent with this purpose.

Finally, it is emphasized that KM, in both its Comments and Reply Comments in the Class A proceeding, unsuccessfully argued this issue. KM argued that LPTV stations desiring to convert to Class A status should be permitted to rely upon all existing waivers of the requirements for interference protection to analog full power television stations granted to them as LPTV

¹⁴ S. REP. NO. 105-411 at 7 (1998).

licensees.¹⁵ The Commission did not adopt KM's proposal. KM is well aware of this fact, and filed a Petition for Reconsideration in which it once again asks the Commission to "grandfather" all LPTV waivers.¹⁶

Accordingly, KM's application, which concedes that WMKE-LP causes interference within WLS-TV's predicted Grade B contour in violation of the CBPA and Section 73.6011 of the Commission's rules, must be denied.

III. WMKE-LP'S APPLICATION FOR CLASS A STATUS SHOULD BE DENIED BECAUSE AN ESSENTIAL BASIS FOR WMKE-LP'S UNDERLYING LPTV AUTHORIZATION WOULD BE EVISCERATED UPON ELEVATION TO CLASS A STATUS

There could be harmful and severe implications if the CBPA and the Commission's implementing rules permitted LPTV stations to convert to Class A status under waivers of the requirements for interference protection. Such would be the case with WMKE-LP.

Commission staff, in granting KM's displacement application and waiver of Section 74.705(d)(1) of the Commission's rules, explicitly relied upon the provisions of Section 74.703(b) of its rules,¹⁷ which require that low power television stations remedy actual interference. If WMKE is granted Class A status, WMKE no longer would be subject to Section 74.703 and WLS would lose the protection provided by Section 74.703(b). In other words, WMKE no longer

¹⁵ See Comments of KM Communications, Inc., et al. in MM Docket No. 00-10, at 13 (filed Feb. 10, 2000); Reply Comments of KM Communications, Inc., et al. in MM Docket No. 00-10, at 11 (filed Feb. 22, 2000).

¹⁶ See Petition for Reconsideration of KM Communications, Inc. et al., in MM Docket No. 00-10 (filed June 9, 2000).

¹⁷ See Waiver Letter; see also 47 C.F.R. § 74.703(b).

would be required to remedy any actual instances of interference within WLS's protected contour.

The probability of such interference is substantial for a number of reasons. KM's antenna is a fed array of *seven* CL-713 antennas theoretically designed as a single radiating structure to provide the desired performance. An array of multiple fed antennas displays completely different characteristics than a single antenna, and each antenna must be fed with a correct proportion of the total power and at correct phases.¹⁸

The foundation of WMKE-LP's current authorization includes the protection from interference provided to WLS by Section 74.703(b). If WMKE-LP were to attain Class A status, this protection would be permanently eliminated and leave the viewers of WLS-TV unprotected.

IV. CONCLUSION

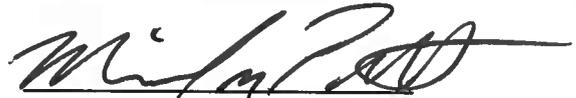
WMKE-LP's low power television authorization, is an authorization based on specific facts and assumptions including its obligations as a secondary licensee to remedy interference. KM's attempt to bootstrap its authorization into a Class A authorization therefore must be denied. The CBPA explicitly prohibits the granting of Class A status to a station that causes interference within the predicted Grade B contour of a full power analog station and Commission implementation of the CBPA is consistent with this prohibition. Moreover, even if such interference did not preclude Class A status, WMKE's LPTV authorization cannot be converted to Class A status because it is based, in part, on a rule

¹⁸ See Declaration of Alfred E. Resnick (Exhibit A).

assigning to it the responsibility to cure all interference complaints that is not applicable to Class A stations.

For these reasons, this Petition to Deny the application to convert low power television station WMKE-LP to Class A Station Status should be granted.

Respectfully Submitted,



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January 17, 2001

EXHIBIT A

DECLARATION OF ALFRED E. RESNICK

I, Alfred E. Resnick, P. E., am a Registered Professional Engineer. My education and experience are a matter of record with the Federal Communications Commission. I have read the foregoing Petition to Deny. I have personal knowledge of the facts contained therein. The facts therein are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Alfred E. Resnick, P. E.

January 16, 2001

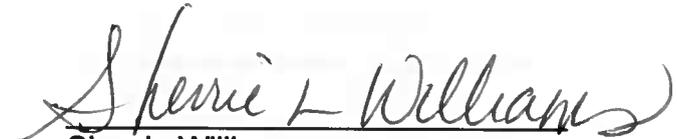
CERTIFICATE OF SERVICE

I, Sherrie Williams, do hereby certify that a copy of the foregoing Petition to Deny was sent by first-class mail, this 17th day of January, 2001, to the following:

Jeffrey Timmons, P.C.
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and hand-delivered to the following:

Mr. Hossein Hashemzadeh
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Sherrie Williams