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

ORIGINAL

In re Application of)	
)	
KM LPTV of Milwaukee, L.L.C.)	File No. BLTVA-20001206ADM
)	
To Convert Low Power)	Facility ID No. 35091
Television Station WMKE-LP,)	
Milwaukee, Wisconsin)	
To Class A Station Status)	

To: Low Power Television Branch
Mass Media Bureau

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OPPOSITION TO PETITION TO DENY

KMLPTV of Milwaukee, L.L.C. ("KM"), licensee of Class A television station WMKE-CA, Milwaukee, Wisconsin ("WMKE"), by its counsel, and pursuant to Sections 1.45(b) and 73.3584(b) of the Commission's rules, 47 C.F.R. §§ 1.45(b) and 73.3584(b), respectfully submits this Opposition to the Petition to Deny (the "Petition") the above-captioned application filed on January 17, 2001, by WLS Television, Inc. ("WLS"), licensee of full power television station WLS-TV, analog Channel 7, Chicago, Illinois ("WLS-TV"). In support of this Opposition, the following is shown:

I. The Petition Must Be Dismissed Or Returned As Untimely

1. KM's above-captioned application for a Class A license for WMKE (the "Application") was granted on January 16, 2001. See Public Notice, Broadcast Actions, Report No. 44904 (released January 19, 2001). Section 73.3584(a) requires any petition to deny the Application

to be “filed prior to the day such [Application is] granted”. See § 73.3584(a). Since WLS filed the Petition on January 17, 2001, after the Commission granted the Application, the Petition must be dismissed or returned as untimely filed, without consideration by the Commission. See § 73.3584(d). KM recognizes from past experience with WLS, however, that WLS is likely to try to continue its fight, and therefore KM would like to take this opportunity to address WLS’s arguments, with the faint hope that WLS will recognize that its arguments are misguided.

II. What Is “Interference”, And How Does The Commission Evaluate Interference?

2. In the Petition, WLS continues to demonstrate that it is unable to understand and distinguish among: (i) predicted interference, where the potential for interference is predicted based on engineering procedures specified by the Commission’s rules; (ii) the waiver process, where waivers of the predicted interference rules may be granted by the Commission using certain Commission-approved alternate showings to demonstrate that interference or new interference is not predicted and therefore should not actually occur; and (iii) actual interference - - what happens in the real world, once stations are constructed and operating, which often differs from predicted interference since the interference prediction models are necessarily based on assumptions and averages. There is a difference among these means of evaluating and preventing interference, which WLS fails or refuses to recognize.

3. **WLS’s insistence on focusing solely on one means of evaluating the potential for interference, to the exclusion of the alternate means of showing no interference that are expressly authorized by the Commission under the waiver process, is misguided at best (and malicious at worst).** There is no dispute from KM, and never has been, that WMKE’s 28 dBu predicted interference contour overlaps the 56 dBu Grade B protected contour of WLS-TV

(however, KM does point out that once a 6 dB receive-antenna front-to-back ratio is considered and applied, there is no predicted contour overlap). The grant of the Application,^{1/} though, is based on a demonstration of no new interference, in a manner expressly permitted by the Commission and its waiver policies,^{2/} and by a means upon which KM is entitled to rely.

4. The validity of the grant of the waiver showings have also now been reinforced by 7 full months of actual operation of WMKE on Channel 7 at its authorized parameters, without a single complaint of actual interference to date.^{3/} WLS's repeated statements in the Petition that WMKE causes interference to WLS-TV, see, e.g., Petition at 2, 5 and 7, are simply incorrect, and misleading since WLS is relying only on predictions of interference based on predicted contour overlap, without consideration of the predictions of no interference and no new interference under the permitted waiver showings. The Commission should not fall for WLS's attempts to cloud the issues.

^{1/} As well as WMKE's earlier displacement application to change to Channel 7 that WLS opposed, File No. BPTVL-980918JG (the "Displacement Application").

^{2/} See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, Sixth Report and Order, FCC 97-115, 12 FCC Rcd 14588, 7 CR 994 at ¶ 146 (1997)(the "DTV 6th R&O"). In the DTV 6th R&O, the Commission stated that it "will entertain requests to waive the LPTV protection standards where it can be demonstrated that proposed LPTV or TV translator stations would not cause any *new* interference to the reception of TV broadcast analog stations; that is, an LPTV or TV translator station would not be predicted to interfere at locations where there is not already predicted interference from other NTSC TV broadcast stations." Id. (*emphasis added*).

^{3/} KM expects that WLS will now try to go out and "drum up" an interference complaint to support the future petition for reconsideration KM fully expects from WLS.

III. The Application Satisfied The “No Interference” Showing Requirements Of The Class A Statute

5. The Class A statute, as codified at Section 336(f)(7)(A)(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 336(f)(7)(A)(i), addresses the interference showing that an applicant for a Class A license must make with regard to analog full power television stations. Section 336(f)(7)(A)(i) 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 [] the predicted Grade B contour ... of any television station transmitting in analog format ...

Id. The statute does not limit, or even address, the types of non-interference showings that are permitted or required, quite properly leaving that determination to the Commission. Id.

6. The Commission, in turn, in implementing the Class A statute, stated that “Class A applicants should be permitted to utilize *all* means for interference analysis afforded to LPTV stations in the DTV proceeding” when demonstrating no interference to analog full power television stations.^{4/} KM noted in the Application that it had demonstrated that no interference would occur to WLS-TV based on a showing of no new interference, under an interference analysis and waiver showing which the Commission expressly permitted in the DTV proceeding. Therefore, KM’s non-interference showing in the Application fully complies with the Class A statute interference showing requirements, as implemented by the Commission. KM also notes that WMKE has demonstrated that its predictions that WMKE will not cause interference to WLS-TV have been borne out by the

^{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 ¶¶ 76-77 (2000)(the “Class A Order”)(*emphasis added*). This statement is made in ¶ 76 as a recitation of the “proposal” made in the earlier Notice of Proposed Rule Making (“*Notice*”) in the Class A implementation proceeding, and then the Commission expressly states that it is “adopting the proposal from the *Notice*” in ¶ 77.

best means possible - - there have been no claims that WMKE has caused actual interference with WLS-TV during WMKE's operation on Channel 7 from June 2000 through this date.

7. WLS makes the mistake of placing great reliance on the fact that WMKE does not satisfy the contour overlap provisions of Section 74.705 of the Commission's rules, and attacks KM's waiver showings, see Petition at 4-5, while ignoring that Section 74.705 itself (as well as the Class A Order) expressly permit waiver of the contour overlap provisions of Section 74.705. See § 74.705(e) (regarding waivers of the interference protection rules) and Class A Order at ¶¶ 76-77. WLS concedes that Section 73.6011, which governs the interference protection that Class A applicants must demonstrate to analog full power television stations, incorporates the requirements of Section 74.705, see Petition at 4, but apparently wants to delete the waiver provisions of Section 74.705(e) that it doesn't happen to like. WLS wants to have its cake and eat it too, but the Commission should not permit that result.

8. Last, WLS's suggestion that the Commission has "implicitly rejected" the continued use of waiver showings by Class A applicants, by not addressing the issue when KM raised it in its pleadings in the Class A proceeding, see Petition at 5-7 and n.13, is simply hogwash, and is contradicted by express statements in the Class A Order. KM's Petition for Reconsideration in the Class A proceeding asked only for clarification on this point, to ensure that the rules that are codified properly reflect the Commission's decision, as expressed in the text of the Class A Order, that Class A applicants may rely on "*all* means for interference analysis" permitted in the DTV proceeding. WLS once again is simply incorrect when it suggests that the policy the Commission adopted, of permitting Class A applicants to continue to rely on waivers permitted under the DTV proceeding

waiver policies, is not consistent with KM's comments in the Class A implementation rule making proceeding.^{5/}

9. KM's request for clarification in the Class A proceeding is due solely to a disparity between the text of the Commission's decision, where the Commission states that it will allow use of all means of interference analysis from the DTV proceeding "*including* the Longley-Rice terrain-dependent propagation model", see Class A Order at ¶ 76, and Section 74.705(e) (as incorporated into Section 73.6011), which references only terrain shielding and the Longley-Rice method. Compare, § 74.705(e). Indeed, the Petition is evidence that KM's plea for clarification were justified, since WLS misunderstands the very policy adopted by the Commission in the Class A Order that KM has urged the Commission to state more explicitly. KM notes that, as referenced in the Application, the Commission staff that prepared the Class A Order has verified informally for KM that the Commission did not intend to limit the means of interference analysis that may be used by Class A applicants, and also advised KM to file a Class A application with an explanatory exhibit addressing this issue.

10. In short, KM has demonstrated that WMKE will not cause interference to WLS-TV, in a manner consistent with the Class A statute and in compliance with the Commission's interpretation of that statute, and the Commission has embraced KM's position regarding the use of waivers permitted under policies adopted in the DTV proceeding.

^{5/} This may come as a surprise to a company such as WLS, which is owned and backed by the economic clout and lobbying resources of ABC, Inc. and the Walt Disney Company, but sometimes when an issue is only raised in a rule making proceeding by a small company such as KM, the issue may receive less focus in a rule making order. Fortunately the Commission's rules permit interested parties to file petitions for reconsideration and/or clarification on issues when further clarification of rules and policies may be useful.

IV. KM's Offer To Enter Into A Consent Agreement

11. KM is confident that it has demonstrated that WMKE will not cause interference to WLS-TV, in the manner required by the Class A statute as well as under the Commission's implementation and interpretation of the Class A statute in the Class A Order. KM has also observed, as has WLS, that the operation of WMKE at its authorized parameters on Channel 7 since June 2000 has not resulted in any complaints of actual interference to WLS-TV. KM would like to get back to its business of broadcasting, rather than spending its time and resources filing responses to WLS's pleadings, and would like to see WLS do the same, and therefore KM offers to enter into a consent agreement with WLS to resolve this matter.

12. WLS expresses a concern, despite KM's showings of no interference that have been accepted by the Commission, that actual interference may still occur, and that KM may not be required to remedy actual interference now that it is a Class A station. If ABC is truly concerned only about actual interference, and not by some other underlying motive, KM submits that this concern may be addressed by a consent agreement between KM and WLS. Attached hereto as Exhibit 1 is a proposed Consent Agreement between KM and WLS, executed by KM so that WLS may finalize the agreement by signing the Consent Agreement and faxing its signed copy to KM. The Consent Agreement provides that WLS would withdraw its petitions for reconsideration of the grants of the Application and the Displacement Application, and KM would be required to remedy any actual interference by WMKE to WLS-TV in the manner provided in Section 74.703(b) of the Commission's rules, 47 C.F.R. § 74.703(b).

13. The Consent Agreement would serve the public interest by conserving the Commission's resources that would be consumed by WLS's ongoing dispute of this matter. WLS would benefit by eliminating the risk that the Commission will affirm its policy, adopted in the Class

A Order and implemented by the Commission's grant of the Application, that Class A applicants may rely on all means of interference analysis permitted under the policies adopted by the Commission in the DTV proceeding. WLS would also secure a contractual right that would ensure, in the unlikely event that WMKE may begin causing actual interference to WLS-TV at some point in the future, that KM would be required to remedy the interference. And KM would benefit by not having to continue to expend resources responding to WLS's pleadings, and could get back to the business of broadcasting.

14. KM would be pleasantly surprised if WLS accepts this offer, although we suspect that WLS has some hidden motive other than simply protecting WLS-TV from interference. But if not, KM trusts that the Commission will stick with the policy adopted in the Class A Order and affirm the grant of Class A status for WMKE.

V. Conclusion

15. WHEREFORE, the above premises being considered, the Petition to Deny filed by WLS in the above-captioned matter should be dismissed or returned as untimely filed, or in the alternative dismissed or denied on its merits.

Respectfully submitted,

KM LPTV of Milwaukee, L.L.C.

By: 
Jeffrey L. Timmons

Its Attorney

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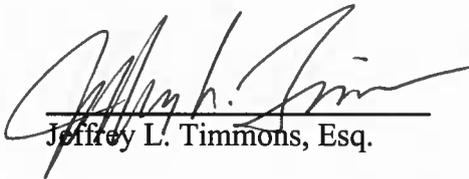
January 30, 2001

CERTIFICATE OF SERVICE

I, Jeffrey L. Timmons, hereby certify that on this 30th day of January, 2001, copies of the foregoing "Opposition to Petition to Deny" have been served by overnight courier then hand delivery or by U.S. Priority Mail, postage prepaid, upon the following:

David R. Siddall, Esq. (by U.S. Priority Mail)
Michael M Pratt, Esq.
Verner Liipfert Bernhard McPherson & Hand, Chartered
901 15th Street, N.W.
Washington, D.C. 20005

Hossein Hashemzadeh, Supervisory Engineer (by Airborne Express, then hand delivery)
Low Power Television Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
445 12th Street S.W., Room 2-C866
Washington, D.C. 20554



Jeffrey L. Timmons, Esq.

CONSENT AGREEMENT

This CONSENT AGREEMENT is entered into as of February __, 2001, by and between KM LPTV of Milwaukee, L.L.C. ("KM") and WLS Television, Inc. ("WLS").

WITNESSETH:

WHEREAS, KM is licensed by the Federal Communications Commission ("FCC") to operate analog Class A television station WMKE-CA on Channel 7 at Milwaukee, Wisconsin (FCC Facility Identification Number 35091, hereinafter "WMKE") and has been operating with the parameters specified in its current FCC license (FCC File Number BLTVA-20001206ADM, a copy of which is attached hereto as Exhibit A, and hereinafter the "WMKE Licensed Parameters") since June 2000;

WHEREAS, WLS-TV is licensed by the FCC to operate analog full power commercial television station WLS-TV on Channel 7 at Chicago, Illinois (FCC Facility Identification Number 73226, hereinafter "WLS-TV"); and

WHEREAS, WLS has opposed the FCC's grants of Class A status for WMKE and of a waiver granted to WMKE based on showings of no new interference and no actual interference by WMKE to WLS-TV, and the parties wish to resolve this matter by this mutual consent to the grants of KM's application and waiver;

NOW THEREFORE, in consideration of the above premises and of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KM and WLS, intending to be legally bound, hereby agree as follows:

1. Description of Predicted Interference. KM and WLS acknowledge and agree that the 28 dBu predicted interference contour of WMKE overlaps the 56 dBu Grade B protected contour of WLS-TV within the overlap area depicted on Exhibit B attached hereto (the "Contour Overlap Area"), and that within the Contour Overlap Area WLS-TV is predicted to receive interference from at least two commercial full power television stations (specifically, WPBN-TV, analog Channel 7, Traverse City, Michigan and WOOD-DT, digital Channel 7, Grand Rapids, Michigan); therefore, WMKE is not predicted to cause any new interference to WLS-TV within the Contour Overlap Area. In addition, no actual interference is predicted within the Contour Overlap Area once a 6 dB receive-antenna front-to-back ratio is applied, and no complaints of actual interference have been received since WMKE began operating on Channel 7 in June 2000.

2. Consent. Since no new interference is predicted to occur, no actual interference is predicted to occur when the 6 dB receive-antenna front-to-back ratio is applied, and no actual interference has been reported during the initial period of operation since June 2000, WLS hereby consents to the FCC's grant of Class A status for WMKE and the waiver(s) granted by the FCC in its decision letter dated February 11, 2000 in FCC File No. BPTVL-980918JG, subject to the following specific conditions and exceptions, to which KM and WLS mutually agree:

(a) WLS's consent extends only to WMKE's analog Channel 7 operations under the existing WMKE Licensed Parameters, and to such modifications of WMKE that do not extend WMKE's 28 dBu predicted interference contour in any direction within WLS-TV's 56 dBu Grade B protected contour.

(b) KM agrees that WMKE shall accept any received interference caused by any existing or future WLS-TV analog Channel 7 operations.

(c) KM agrees that in the event that WMKE causes actual interference to WLS-TV's analog Channel 7 operations, KM shall either (i) promptly remedy any such actual interference in accordance with the provisions of Section 74.703(b) of the FCC's rules, 47 C.F.R. § 74.703(b), to which a Low Power Television station would be subject, or (ii) if the actual interference can not be remedied, cease operating until the actual interference can be remedied.

3. Withdrawal of Pleadings. WLS agrees to voluntarily withdraw, within 10 business days after the execution of this Consent Agreement: (i) the Petition for Reconsideration of the grant of KM's displacement application and related waiver(s), in FCC File No. BPTVL-980918JG (as modified in FCC File No. BMPTVL-20000518ABX), as filed by WLS on March 17, 2000, and all related pleadings; and (ii) the Petition for Reconsideration of the grant of KM's application for Class A status (FCC File No. BLTVA-20001206ADM), as filed by WLS on January 17, 2001, and all related pleadings.

4. Term. This Consent Agreement shall remain in effect until the earliest of the following occurs: (i) WLS permanently discontinues analog operation of WLS-TV on Channel 7; (ii) KM permanently discontinues operation of WMKE on Channel 7; or (iii) upon 30 days prior written notice from either party upon a material breach or default under this Consent Agreement by the other party that is not cured or remedied within the 30 day termination notice period.

5. Notices. All notices, requests, demands or consents required or permitted to be given hereunder shall be in writing, and shall be deemed given when: (i) mailed by certified or registered United States mail, postage pre-paid, return receipt requested, effective upon the date of receipt; or (ii) delivered by overnight courier, effective upon the date of delivery; as follows:

If to KM: KM LPTV of Milwaukee, L.L.C.
Attention: Myoung Hwa Bae, President
3654 West Jarvis Avenue
Skokie, Illinois 60076

with a copy (which shall not constitute notice) to: Jeffrey L. Timmons, P.C.
3235 Satellite Boulevard
Building 400, Suite 300
Atlanta, Georgia 30096-8688

If to WLS: WLS Television, Inc.
Attention:
190 North State Street
Chicago, Illinois 60601

with a copy (which shall not constitute notice) to: Verner Liipfert Bernhard McPherson & Hand, Chartered
Attention: David R. Siddall, Esq.
901 15th Street, N.W.
Washington, D.C. 20005

or to such other address as either party may designate from time to time by notice to the other party.

6. Construction. This Consent Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, the Communications Act of 1934 (as amended), and FCC rules, regulations and published policies. If any provision of this Consent Agreement is declared unlawful or unenforceable by a court or administrative agency of competent jurisdiction, then this Consent Agreement shall be read and enforced with the offending provision deleted as if it had never been incorporated herein and with a substitute provision intended to accomplish to the maximum extent possible the intent of the parties. The headings in this Consent Agreement are for convenience only and in no way modify, interpret or construe the meaning of the specific provisions hereof. The waiver of any provision of this Consent Agreement, or forbearance from enforcing any provision, by any party shall not obligate that party to waive or forbear from enforcing the same or any other provision.

7. Assignment. This Consent Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns. KM may assign its rights and obligations under this Consent Agreement to any party to which it assigns the FCC license of WMKE. This Consent Agreement shall also be assigned by WLS and assumed by any party to which WLS assigns the FCC license of WLS-TV

8. Counterparts and Signatures. This Consent Agreement may be executed in one or more counterparts, each of which shall be deemed an original with full force and effect, but all of which together shall constitute only one agreement. Facsimile copies of any signature on this Consent Agreement shall be deemed and treated as if the facsimile signature is an original signature, with full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Consent Agreement as of the day and year first above written.

KM LPTV of Milwaukee, L.L.C.

By: _____
Name: Kevin Joel Bae
Title: Secretary

WLS Television, Inc.

By: _____
Name:
Title:

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KM LPTV of Milwaukee, L.L.C.

By: 
 Name: Kevin Joel Bae
 Title: Secretary

WLS Television, Inc.

By: _____
 Name:
 Title: