



Federal Communications Commission
Washington, D.C. 20554

December 15, 2005

1800E3-JLB

MS Communications, LLC
9911 West Pico Blvd
8th Floor
Los Angeles, California 90035

Re: Minor Modification Application for
Station K45EE, Ottumwa, IA
BPTTL-20020828AAW
Facility ID 7941

Dear Applicant:

This is with respect to the above-referenced displacement application MS Communications, LLC. The application proposes facilities on channel 30 at Council Bluffs, IA, a location 290 kilometers from the presently authorized site.

Section 73.3572 of the Commission's rules provides that low power television stations may file a displacement application to change output channel at any time. In addition to a change in channel, the rule also permits such displacement applicants to propose "any technical modifications which are necessary to avoid interference or continue serving the station's protected service area." When it adopted rules for low power television stations displaced by DTV stations, the Commission stated that the change in policy was meant "to allow low power stations that are displaced by new DTV stations to apply for a suitable replacement channel in the same area without being subject to competing applications."¹ When it later clarified its displacement policies, the Commission observed that:

Because of the importance of preserving, to the extent possible, the existing LPTV programming service for its viewers, we believe that providing relief so that low power stations can continue to operate should have higher priority than requests to extend or alter existing service that is not affected by DTV implementation.

Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87-268, 13 FCC Rcd 7418, 7466 (1998).

In considering a request for a waiver of the "same area" geographic restriction, the burden is on the applicant to prove that there is no channel available in the same area, using the same technical parameters as its displaced facility and starting with its existing site, with which it can replicate its pre-displacement coverage area. In its application, MS states that "this application is one of numerous construction permits obtained by cooperating licensees with the intent of building a series of wireless cable systems," and the reallocation of channels 52-69, as well the adoption of DTV channel allotments "virtually destroyed the viability of wireless cable systems."

¹ *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588, 14652 (1997); *see also Reallocation of Television Channels 60-69, the 746-806 MHz Band*, 13 FCC Rcd 21578, 21583 (1998).

According to MS, because of a scarcity of channels available for displacement, some stations are required to move significant distances. MS further states that it only considered locations which would result in “a market size of 40,000 households,” and locations meeting this standard of “economic viability” seldom had more than two useable channels, which required that more distant locations be considered for many of the displaced construction permits. In addition, according to the consultant, “it usually became necessary to rule out the area within about 40 km of the existing location because of the predicted coverage radii of about 40 km (25 miles) typically associated with most LPTV facilities.”

As discussed above, displacement applications are required to be filed in the same area as the displaced facility. MS states that it did not consider sites within 40 km of its authorized site. It is not entirely clear on what this criteria was based, but we note that the Commission’s rules define interference as contour overlap between co-channel facilities, adjacent channel facilities, and facilities proposed on a channel that is 15 channels above the channel in use by the existing station. 47 C.F.R. § 74.707. Contour overlap between low power television stations on other channels does not result in objectionable interference. Moreover, MS admits that it considered only “markets” which contain over 40,000 households. This criteria, however, runs directly contrary to our displacement policy, which permits a displaced low power television station to file, as a minor modification, an application for a new channel in the same area, and making such other technical changes that are necessary to avoid interference or continue serving the station’s protected service area. Thus, we conclude that MS has failed to justify moving its authorized facility 290 kilometers.

In view of the foregoing, the above-referenced application filed by MS Communications, LLC IS HEREBY DISMISSED as defective, pursuant to Section 73.3566 of the Commission’s Rules.

Sincerely,

Hossein Hashemzadeh
Associate Chief, Video Division
Media Bureau