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Federal Communications Commission
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Federal Communications Commission
Office of the Secretary

In re

Application of

Lehigh Valley Community Broadcasters
Association, Inc. for a Minor Change to Station
WDIY(FM), Allentown, PA, Fac. ID No.
36992

FCC File No. BPED-19990823IA

SUPPLEMENT TO OPPOSITION TO APPLICATION FOR REVIEW

ABC, Inc. ("ABC"), licensee of full-power commercial television station WPVI-TV, Philadelphia, Pennsylvania ("WPVI"), by its attorneys, hereby submits a supplement ("Supplement") to its opposition ("Opposition") to the application for review ("AFR") filed by Lehigh Valley Community Broadcasters Association, Inc. ("Lehigh"), licensee of non-commercial FM ("NCE FM") station WDIY(FM), Allentown, Pennsylvania ("WDIY"). This Supplement is intended to correct the record in this proceeding with respect to two incorrect assertions in Lehigh's reply pleading.¹ By way of background, in its AFR, Lehigh seeks reinstatement of its dismissed construction permit application through a waiver of, change to, and/or novel interpretation of Section 73.525, which requires WDIY, an NCE FM station, to protect channel 6 television stations, like WPVI.²

¹ In order to ensure that the record in this proceeding is complete and accurate, ABC respectfully requests leave to file this Supplement outside of the pleading cycle set forth in Section 1.115 of the rules of the Federal Communications Commission ("FCC" or "Commission").

² WPVI filed its opposition to the AFR on March 30, 2007, in which it opposed the AFR on various grounds. Lehigh filed its reply on April 12, 2007.

In its reply, Lehigh makes several inaccurate statements; two of these statements in particular require correction and are addressed herein. First, in support of its request for waiver of Section 73.525, Lehigh incorrectly states that “WPVI will actually *increase* its coverage once it begins operations on digital Channel 6, to the tune of over 800,000 viewers, a more than 10 percent increase!”³ This statement is incorrect because WPVI’s coverage post-transition will not increase. Rather, WPVI merely will replicate its analog coverage, at best. As shown in the attached map, WPVI’s post-transition DTV contour will match almost precisely with its currently licensed analog Grade B contour.⁴ Further, the Commission recently acknowledged that WPVI merely will replicate its analog coverage with its digital signal post-transition. Specifically, WPVI is among a group of stations whose original DTV allotments “do not permit the station to provide service to the area served by the station’s analog facility.”⁵ Thus, the Commission “recalculated Appendix B facilities based on replicating [WPVI’s] analog coverage.”⁶ In sum, WPVI at best will replicate its analog coverage and will not, as Lehigh asserts, increase its coverage.

³ Reply, at 4 (emphases in original).

⁴ At the time that Lehigh filed its reply, WPVI’s allotted facilities were only 2.25 kW at 332 meters HAAT. Using these facilities, WPVI could not even replicate, let alone increase its coverage, as Lehigh asserts. See Exhibit 1 (depicting previously authorized DTV contour as blue dotted line).

⁵ See In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, *Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking*, MB Docket No. 87-268, FCC 07-132 (rel. Aug. 6, 2007, at ¶62).

⁶ *Id.* at ¶66 and Appendix D-3.

Second, Lehigh questioned “just how hard ABC looked for an alternative” to channel 6.⁷ Lehigh is flatly wrong in its accusation and apparently oblivious to the difficulties facing stations like WPVI due to the overly congested television spectrum in the northeast corridor of the United States. Contrary to Lehigh’s assertion, ABC chose channel 6 only after fully researching its post-transition DTV channel options and finding no reasonable alternative.⁸ Further, ABC was particularly motivated to find a channel other than channel 6 because of well-documented concerns regarding the technical feasibility of using low VHF channels like 6 for DTV operations and the fact that its pre-transition DTV channel, channel 64, was out of core. Because of this difficult predicament, ABC conducted a thorough search for an alternative channel.

For example, through extensive testing and analysis, ABC learned that either of the channels held by station WNJU, Linden, New Jersey would be a feasible alternative to channel 6. However, WNJU entered into a negotiated channel election agreement (“NCA”) with another Philadelphia station, WCAU, to whom it assigned its unused channel, channel 34. In an attempt to preserve its rights to channel 34, ABC objected to the NCA in multiple pleadings, but ultimately chose channel 6 instead given the uncertainty over whether channel 34 ever would be available.⁹ In sum, only after (i) it was determined that no other alternative DTV channel was available, and (ii) significant testing of channel 6 pursuant to special temporary authority

⁷ Reply, at 4 and n.15.

⁸ Indeed, ABC initially elected not to return to channel 6 but amended this election after finding no other alternative. *See* BFRECT-20050210AQO (amended Aug. 31, 2005).

⁹ ABC filed an objection to the NCA on March 15, 2005 and the Commission initially rejected the NCA on June 8, 2005. However, WCAU and WNJU filed an application for review of that decision on July 8, 2005. ABC opposed the application for review and WCAU and WNJU filed a reply. Given the pending application for review, there was no certainty regarding whether channel 34 would be made available to WPVI. Because of this uncertainty and in the interest of compromise, ABC selected channel 6, which mooted its objection to the WCAU and WNJU NCA. WCAU and WNJU later executed an amended NCA, with other Philadelphia area stations, which the FCC approved.

indicated that digital operation on channel 6 could be less problematic than originally predicted, did ABC settle on channel 6 as its best available post-transition DTV channel.

ABC respectfully requests that the record be corrected in accordance with the foregoing statements and that the two mischaracterizations in Lehigh's reply pleading be stricken from the record. As shown in ABC's Opposition, the AFR promptly should be denied or dismissed.

Respectfully submitted,

ABC, Inc.

By: _____

Tom W. Davidson, Esq.
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 New Hampshire Ave., N.W.
Washington, DC 20036
(202) 887-4011

November 13, 2007

Its Attorneys

CERTIFICATE OF SERVICE

I, Dayle Jones, of Akin Gump Strauss Hauer & Feld, LLP, certify that a copy of the foregoing Supplement to Opposition to Application for Review, filed on behalf of ABC, Inc., was served via first-class mail (unless otherwise noted) on this 13th day of November 2007, upon the following:

John Crigler and James E. Dunstan
Garvey Schubert Barer
1000 Potomac Street, N.W., Fifth Floor
Washington, DC 20007-3501
Counsel to Lehigh Valley Community Broadcasters Association, Inc.

Chairman Kevin J. Martin*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554


Commissioner Jonathan S. Adelstein*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Deborah Taylor Tate*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Robert M. McDowell*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Monica Desai, Esq.*
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

* Hand Delivered



Dayle Jones