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October 15, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

RE **Ex Parte Presentation of WLNY-TV Inc.**
Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television
MB Docket No. 03-15, RM 9832

Dear Ms Dortch

This letter is written on behalf of WLNY-TV Inc., licensee of television station WLNY(TV), Channel 55, and permittee of television station WLNY-DT, Channel 57, Riverhead, New York, pursuant to Section 1.1206 of the Commission's rules, to disclose an oral and written ex parte presentation made to the FCC staff on October 15, 2003 in connection with the above-referenced rulemaking proceeding.

The following individuals attended the meeting: Marvin Chauvin (Chief Executive Officer), David Feinblatt (President, General Manager) and Ronald Siegel (Counsel) on behalf of WLNY-TV Inc. and William Johnson, Rick Chessen, Mary Beth Murphy, Eloise Gore, Kim Matthews, Peter Corea and Gordon Godfrey on behalf of the FCC.

The presentation made by WLNY-TV Inc. covered the matters previously set forth in the Comments of WLNY-TV Inc. filed in this proceeding on April 14, 2003. There is also attached hereto a Memorandum (furnished to the FCC staff members attending the meeting) summarizing the ex parte presentation of WLNY-TV Inc.

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Two copies of this letter and accompanying Memorandum are being submitted to the Secretary of the FCC and copies of this letter and Memorandum are being submitted to the individual FCC persons attending the meeting.

Very truly yours

Ronald A Siegel

Ronald A Siegel
Counsel for WLNY-TV Inc.

Enclosure

cc: William Johnson
Rick Chessen
Mary Beth Murphy
Eloise Gore
Kim Matthews
Peter Corea
Gordon Godfrey

Memorandum Regarding Ex Parte Presentation of WLNY-TV Inc. in MB Docket No. 03-15, RM 9832

WLNY-TV Inc. is the licensee of WLNY(TV), Riverhead, New York, which is the only commercial, English language, local TV station licensed to Long Island. The station is licensed to operate on analog Channel 55, holds a construction permit for maximized DTV facilities on digital Channel 57 and, since April 28, 2002, has been operating with reduced power DTV facilities pursuant to special temporary authority. Channels 55 and 57 are the only two channels assigned to Riverhead in the FCC's TV allocations table. WLNY filed Comments in this proceeding on April 14, 2003. References to "out-of-core" TV stations herein are those stations, such as WLNY, whose analog and digital channels both lie between channels 52 and 59 and references to "in-core" TV stations are those stations whose analog and digital channels both lie between channels 2 and 51.

WLNY's Comments focus on one situation, namely, the dilemma faced by out-of-core stations in achieving successful transition to digital operations. Within that context, the Comments cover three issues (1) channel election deadline, (2) channel assignment procedures and (3) replication and maximization and related interference protection.

There are set below the goals that WLNY seeks to achieve in light of the dilemma which it confronts as a result of being an out-of-core TV station.

1. Be able to identify at an early date what in-core DTV channels will be available for WLNY's use in Riverhead.

2. Get a suitable in-core DTV channel moved or added to Riverhead and obtain a construction permit for that channel through a simplified and expedited procedure.

3. Not be required to build maximized DTV facilities embodied in its DTV construction permit on its out-of-core channel, but have the option to do so if the transition period is extended or for competitive or other reasons.

4. Have the option to continue to operate with reduced power DTV facilities pursuant to special temporary authority during the entire transition period and keep its maximized DTV construction permit intact during this period.

5. Have the ability to "flash cut" to maximized in-core DTV operation at the end of the transition period.

6. Continue to receive interference protection for its maximized service area covered by its existing construction permit for digital channel 57 during the transition period (even if the station operates only with reduced power DTV facilities).

7. Be able to carry over to the station's eventual in-core DTV channel, on an interference free basis, the maximized service area authorized in its out-of-core DTV construction permit.

The FCC should focus on ways to reduce or minimize the obstacles and burdens facing out-of-core stations and, to that end, WLNY suggests the adoption of the proposals set forth below.

1. Channel Election Deadline: The FCC should adopt an early election deadline. (The FCC initially proposed a deadline of May 1, 2004, but adopted an earlier deadline of December 31, 2003. The FCC then deferred the December 31, 2003 deadline pending consideration of the issue in the current periodic review proceeding wherein it proposed a May 1, 2005 deadline.) The FCC should adopt an election deadline of no later than May 1, 2004. However, if the FCC ultimately selects the proposed May 1, 2005 deadline, it should adopt an earlier deadline (no later than May 1, 2004) to govern those markets in which out-of-core stations are licensed (as well as the markets adjacent thereto). (According to the FCC records, there are 17 out-of-core stations, four of which are licensed to Puerto Rico, and these stations are located in 11 markets.)

a. The FCC should encourage earlier than required channel elections on a voluntary basis and private agreements between stations with two in-core channels and out-of-core stations enabling out-of-core stations to secure in-core channels now for use at the end of the transition. The FCC should offer incentives to entice in-core stations to voluntary submit (by no later than a date to be specified by the FCC) earlier than required channel election notices.

b. If WLNY does not know at an early date what in-core DTV channel will eventually become available for its use, it will have insufficient time to plan its DTV facilities, including a possible site move, determine costs (which may vary substantially depending upon the assigned channel number), acquire any necessary financing, order equipment, arrange for construction, promote its DTV operation, achieve competitive parity with other stations in the New York area and make arrangements with cable, satellite and other MVPDs regarding carriage of its digital signal.

2. Channel Assignment Procedures: It is imperative that the FCC adopt a system of priorities which affords out-of-core stations, such as WLNY, first choice in obtaining channels reclaimed by the FCC. The FCC should distinguish between stations which must find new in-core channels (*i e* , out-of-core stations) and stations which may desire alternative channels for varied reasons but are not required to find new channels for DTV operations; with the "must find" stations getting top priority.

a. After stations make their channel elections, the FCC should promptly issue a public notice identifying the relinquished channels and their locations (if it appears that this process will be time consuming, the FCC should first issue a public notice limited to the markets in which out-of-core stations are located; subsequent public notices can cover the remaining markets).

b. The FCC should open a window for seeking relinquished channels solely for out-of-core stations If the FCC decides to open a window for a broader category of stations, it should make it clear that out-of-core stations will be granted the channel in cases of conflict.

c. The FCC should adopt a one step process to move a channel from one community to another or to add a new channel to a community and for a station to apply for that channel. In

the case of WLNY, since only channels 55 and 57 are assigned to Riverhead, it will be necessary for WLNY to find a suitable in-core channel, have the channel allocated to Riverhead and apply for a construction permit for that channel. The FCC should expedite its consideration and grant of the channel move and construction permit. (The construction permit should be for a term of 3 years or the end of the transition, whichever is later).

3. Replication/Maximization and Related Interference Protection: Out-of-core stations should not be subject to any "use or lose" deadline for maximization or replication, regardless of whether the FCC adopts such a deadline for other such stations. Out-of-core stations should not be required to construct their maximized or replicated DTV facilities on their out-of-core channels during the transition period. Such stations should be permitted to continue to operate with reduced power DTV facilities during the entire transition period pursuant to STA and, as is now the case, the grant of the STA should automatically extend the term of the maximized DTV construction permit.

a. The FCC should establish for all stations a maximization/replication deadline that coincides with the end of the transition. If the FCC were to adopt the proposed July 1, 2006 maximization/replication deadline (for stations other than network stations in the top 100 markets) and if out-of-core stations were subject to this deadline, such operation might last as short as 6 months (from July 1, 2006 to the end of the transition, December 31, 2006). One can hardly justify the huge expense and effort necessary to construct a maximized facility on an out-of-core channel which will be in operation for such a short period of time and abandoned at the end of the transition. Moreover, there would be no benefit to building such a maximized facility because the experience (technical and otherwise) gained will be of no value in connection with the later DTV operation on a new in-core channel. It should also be noted because there are only 17 out-of-core stations and these stations are relatively small independent stations located in areas where there is an abundance of other TV stations, excluding such stations from any maximization/replication deadline during the transition will not adversely any FCC policy or goal nor would it have any cognizable impact on the FCC's desire to advance or speed transition to DTV nationwide.

b. There would be an enormous waste of money and resources if out-of-core stations were required to construct maximized or replicated facilities on out-of-core channels during the transition without any countervailing public interest benefits. If WLNY is required to undertake the "double move" (build a maximized facility on its out-of-core channel and, after abandoning that facility, construct a new DTV facility on an in-core channel), it will incur unnecessary and wasted expenditures that could run into millions of dollars. A detailed cost analysis is set forth in WLNY's Comments.

c. The FCC should maintain interference protection for the out-of-core maximized DTV construction permit during the entire transition period (even if the station continues to operate with reduced power DTV facilities and does not build the maximized facilities) in order to afford flexibility for the station to maximize its DTV facilities on the out-of-core channel if it wishes to do so (because the transition period is extended or competitive or other considerations justify such action). If for any reason this cannot be accomplished, the maximized DTV

construction permit should remain in effect, if for no other purpose, the purpose of establishing the interference free area to be carried over to the station's eventual in-core channel.

d. The FCC should preserve the right of out-of-core stations to carry over to their eventual in-core DTV channels, on an interference free basis, the maximized service areas authorized in their out-of-core DTV construction permits.

4. Note: The FCC should craft rules which provide out-of-core stations the maximum flexibility in achieving successful transition to digital operations. Whether to continue to operate with reduced power facilities or build maximized DTV facilities during the transition period should be left to the discretion of the stations and, whatever the stations' decision, the rules should permit a carry over of the maximized out-of-core service areas to the new in-core channels with full interference protection.

The FCC decision should specifically state that, in light of the extraordinary circumstances confronting out-of-core stations, it will entertain individual petitions for special relief requesting exemptions or variations from the general rules to assist in the transition and that the FCC will be liberal in granting such requests.

Respectfully submitted

WLNY-TV INC.

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