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November 3, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

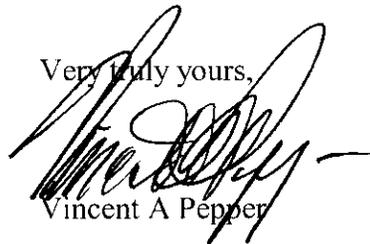
RE: MB Docket No. 03-15: RM 9832

Dear Ms. Dortch:

Transmitted herewith on behalf of Television Capital Corporation of Portland are an original and four (4) copies of its Petition for Reconsideration filed in the above-referenced matter.

Should any information be desired in connection with this matter, please communicate with the undersigned.

Very truly yours,



Vincent A Pepper

Enclosures (5)

By: [Signature] /s/ Vincent A Pepper
Date: 11/3/04

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

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Second Periodic Review of the) MB Docket No. 03-15
Commission's Rules and Policies)
Affecting the Conversion) RM 9832
To Digital Television)

To: The Commission

PETITION FOR RECONSIDERATION

COMES NOW Television Capital Corporation of Portland ("TC") acting pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. §1.106, hereby seeking reconsideration of the *Report and Order*, FCC 04-192 (released September 7, 2004), in the above-captioned proceeding. In support of this petition, the following is stated:

TC filed an application (File No. BPCT-960920WH) for a construction permit for a new television broadcast station to be operated on Channel 40 in Portland, OR on September 20, 1996. This application, as filed, was mutually exclusive with the pending application of Sinclair Communications of Portland, Inc. (File No. BPCT-960724LF), which had been filed on July 24, 1996.

A Joint Request for Approval of Settlement Agreement, Dismissal of Application, and Grant of Amended Application was tendered for filing with the Commission on July 17, 2000 pursuant to the provisions of Public Notice, 14 FCC Rcd 19559 (MMB 1999). The Public Notice opened a "window filing opportunity to allow persons with certain pending requests for new analog (NTSC) television stations to modify their requests, if possible, to eliminate technical conflicts with digital television (DTV) stations and to move from Channels 60 through 69."

Public Notice, p.1. The sixth Report and Order adopted April 3, 1997 and released April 21, 1997 assigned NTSC Channel 40 for use as digital Channel 40 in Portland, OR. Therefore, all pending applications for this frequency in Portland were “frozen” until such time as a filing window opened, allowing an application filed on Channel 40 to be modified to specify an alternate channel. The November 22, 1999 Public Notice announced a filing window for applicants with pending applications between Channel 60 to 69 and those channels eliminated because of DTV channel assignments to modify those applications to specify a new channel. Therefore, TC in the July 17, 2000 Joint Request included a rule making petition requesting the allocation of NTSC Channel 59 to Portland, OR in place of NTSC Channel 40, which had been lost to a digital allocation.

Thereafter, on November 19, 2001, TC filed an Amendment to Petition for Rule Making in response to the Commission’s Reallocation and Service Rules for the 698-746MHz spectrum band (television channels 52-59) Notice of Proposed Rule Making FCC 01-91 (March 28, 2001) proposing an amendment to the Table of Allotments for NTSC TV broadcast station to add Channel 42 at Portland, OR instead of the previously requested NTSC Channel 59, which would no longer be available for allocation. The request for the allocation of NTSC Channel 42 to Portland, OR and the Settlement Agreement between TC and Sinclair Communications of Portland, Inc. are still pending before the Commission.

In the Report and Order the Commission proposed a number of procedures designed to ensure that the FCC’s database is stable throughout the channel election and repacking process. The Commission concluded that it would refrain from processing all pending allotment proposals for new NTSC construction permits for which a Notice of Proposed Rule Making had not yet been issued, which included applications which were filed on or before September 20, 1996 as

was the TC application. TC requests reconsideration of the Commission's treatment of applications filed by September 20, 1996 and their associated allotment rule making petitions. The Commission is hereby requested to immediately issue a Notice of Proposed Rule Making and consider the proposed allotment in connection with the channel election process.

1. The Report and Order. The Commission recognized that there currently are applications pending for approximately 50 new NTSC stations, which were filed with the Commission prior to 1997.¹ In Paragraph 66 of the Report and Order the Commission indicated that it would "generally protect those NTSC allotments with pending new station applications that have 'cut-off' status...." TC's Portland application qualifies for this "protection."

However, the Commission then held in Paragraph 67 that these pending rule making requests (such as TC's Portland request) fall into one of three groups. The first group are those with pending Petitions for Rule Making (TC is contained in this group). The second group are those where Notices of Proposed Rule Making have been issued. This would include, for example, TC's related proposals in Gainesville, FL and Mobile, AL. The third group are those where the Rule Making has been completed and they now have pending applications for a construction permit. The Commission indicated that it would attempt to protect allotments and proposed allotments in the second and third groups where it had already adopted a Notice of Proposed Rule Making or a Report and Order. With regard to the remaining rule making petitions (group one), the Commission held that they would be evaluated at the conclusion of the channel election and repacking process and may be accommodated with a post-transition DTV allotment or dismissed when the Commission issues the NPRM proposing the new DTV Table of Allotments. The Commission in Paragraph 68 directed the Media Bureau staff to dismiss all

¹ TC in addition to its Portland, OR proceedings, through related companies, has similar proceedings pending in Lexington, KY, Richmond, VA, Gainesville, FL and Mobile, AL.

pending petitions to change the NTSC Table of Allotments in which a Notice of Proposed Rule Making has not been issued prior to the adoption of this Order.

2. TC Rule Making Proceeding. As indicated above, TC has a pending allotment proposal for NTSC Channel 42 at Portland, OR. That proposal is a part of the Joint Request for Approval of Settlement Agreement filed on July 17, 2000. Although the Commission has been frequently opportuned to issue the Notice of Proposed Rule Making in the Portland matter so that the settlement agreement could be approved, no action has been taken by the Commission to move the situation out of group one as identified in Paragraph 67. TC has frequently urged the issuance of the NPRM, but to no avail. As a result, the application which it filed in 1996 and the Joint Request for Approval of Settlement Agreement, which it filed on July 17, 2000, are still pending without action as of this date. TC had no control over the taking of Channel 40 for a digital allocation. It then properly and promptly amended to Channel 59. TC, again, had no control over the Commission's decision to eliminate the use of Channels 52 through 59 and upon this being done promptly filed an amendment to specify Channel 42. On November 19, that amendment will have been pending without action and without the issuance of a NPRM for three years.

3. Violation of the Balanced Budget Act of 1997.² In the Balanced Budget Act of 1997, the Commission was directed to waive its rules to facilitate the grant of settlements that were filed prior to that Congressional mandate. This, for example, is the precise situation existing in both Lexington, KY and Mobile, AL. While the TC Portland proposal is not within the specific purview of the Balanced Budget Act of 1997, the principles of that Act apply equally

² See 47 U.S.C. §309(1). Section 309(1) was added to the Communications Act by Section 3002(a)(3) of the Balanced Budget Act of 1997 ("Budget Act"). Pub. L. No. 105-33, 111 Stat. 251 (1997).

significantly to the Portland, OR situation and other pending settlement proceedings, which may fall in the Commission's "group one."

The statutory directive of the Balance Budget Act of 1997, necessarily, implies that the Commission may not frustrate the grant of settlement proposals by refusing to process them until the "conclusion of the channel election and repacking process." TC already has more than eight years invested in the Portland project, which the Commission plans to ignore by actually dismissing the Portland proposal without any regard to the merits of the proposal and the years of expenses which have been accumulated by TC for reasons totally beyond its control.

In order to minimize, to the extent possible, the unconscionable time involved in the processing of the Portland proposal, the Commission is requested to reconsider Paragraph 67 of the Report and Order and immediately issue a NPRM proposing to allot Channel 42 to Portland as an additional analog television service. Allotment of Channel 42 to Portland would bring substantial public interest benefits to the Portland television market as indicated in TC's pending pleadings. The allocation of Channel 42 to Portland with the resultant approval of the Settlement Agreement and the granting of a construction permit to TC will serve the public interest, convenience and necessity, and will not disturb the Commission's need for a stable database during the channel election process.

TC recognizes the need for a stable database. However, the proposed allotment of Channel 42 to Portland will not have an adverse effect on the channel election process. TC requested its consultant engineer, Melvyn Lieberman (Lieberman & Walisko), to undertake a review of all television assignments within 300 kilometers of the TC transmitter coordinates. Mr. Lieberman completed the study and found no licensed NTSC channel without a companion in-core DTV channel within that area. His statement is attached hereto as Exhibit A. Since

everyone of those stations has a paired channel inside the core, although there is no guarantee that these stations will select their existing in-core channel as their post-transition DTV channel during the channel election process, the allotment of Channel 42 to Portland should not have any adverse effect on the channel election process.

Furthermore, if the Commission were to issue an NPRM proposing the allotment of Channel 42 to Portland as has been requested and as should have been done years ago, any licensee or permittee interested in selecting Channel 42 during the channel election process would have an opportunity to file comments in the rule making proceeding and express an interest in the channel. The Commission could then consider those opposing comments within the context of these specific allotment proceedings. If the Commission chose to do so, assuming a bona fide expression of interest in Channel 42 other than that of TC, the Commission might then consider deferring processing of the Portland proposal until the conclusion of the channel election process. This is a far more reasonable result than the draconian act of dismissal of the Portland proceeding because of the Commission's inaction. TC is entitled to the same protection as those protected by the Balanced Budget Act of 1997 since the equities of those applicants are no different than the equities of TC and other similarly situated settling applicants who have been waiting many years for processing and approval of their proposals which, of course, were filed in good faith by the applicants consistent with Commission-specified procedures.

TC and other similarly situated applicants are entitled to no less consideration in this matter by the Commission. Granting these settlement proceedings and adopting the required channel changes should have no effect on the repacking process. TC and other similarly situated applicants are entitled to have their individual cases evaluated by that standard and if the Commission concludes after study of the proposal that the allocation could result in repacking

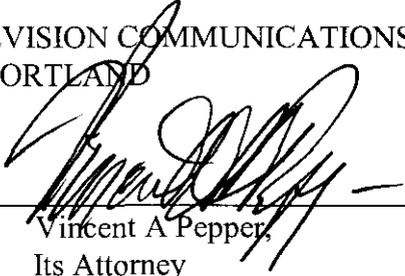
problems, then that can be addressed at that time. TC, having completed the engineering evaluation of the possible effect of the grant of Channel 42 to TC and having found no apparent effect upon the Commission's repacking process, is entitled to the continued and prompt processing of its proposal by the issuance of the long overdue NPRM.

WHEREFORE, the premises considered, TC respectfully requests that the Commission reconsider Paragraph 67 of the Report and Order and upon reconsideration rescind that portion of the Report and Order which provides for the dismissal of these now eight-year-old television proposals and immediately issue an NPRM proposing the allotment of the requested channel and not defer processing of the allotment proposal due to the channel election and repacking process unless and until comments are filed in the Channel 42 allotment rule making proceeding expressing an opposing interest in the requested allotment.

Respectfully submitted,

TELEVISION COMMUNICATIONS CAPITAL
OF PORTLAND

By: _____


Vincent A. Pepper,
Its Attorney

November 3, 2004

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NEW - Portland, OR

ENGINEERING STATEMENT

This Engineering Statement is given in support of a Petition for Reconsideration (Media Bureau Docket #03-15, RM 9832) submitted on behalf of Television Capitol Corporation of Portland seeking a construction permit for television channel 42 in Portland Oregon.

We have reviewed all the television assignments within 300 kilometers of the applicant's coordinates and found no licensed NTSC channel without a companion in core DTV channel.

The herein stated information was personally prepared by me or under my direct supervision and is given under penalty of perjury.

Nov 3, 2004
Date

Melvyn Lieberman
Melvyn Lieberman

CERTIFICATE OF SERVICE

I, Vincent A Pepper, an attorney at the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that true copies of the foregoing "Petition for Reconsideration" were hand-delivered on this 3rd day of November, 2004, to the following:

The Honorable Michael Powell*
Chairman
Federal Communications Commission
The Portals II, Room 8-B201
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Kathleen Abernathy*
Commissioner
Federal Communications Commission
The Portals II, Room 8-B115
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Michael Copps*
Commissioner
Federal Communications Commission
The Portals II, Room 8-A302
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Kevin Martin*
Commissioner
Federal Communications Commission
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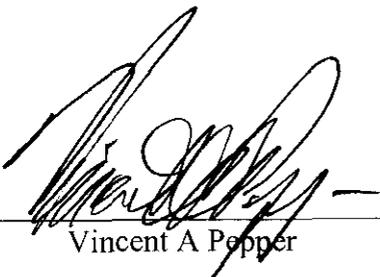
The Honorable Jonathan Adelstein*
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Vincent A Pepper

*Via Hand Delivery