



Federal Communications Commission
Washington, D.C. 20554

DA 04-767
Released: March 24, 2004
1800E3-JLB

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Re: Special Temporary Authority to Operate
Television Translator Station And
For Minor Modification of W44AA
Martinsburg, West Virginia
File Nos. BPTT-20030509AAW and
BSTA-20030509ACL; Facility ID 71688

Dear Licensees:

This is with respect to the petition to deny filed by WBDC Broadcasting, Inc. (WBDC), the licensee of WBDC-TV, channel 50, Washington, D.C., requesting that the Commission deny the above-referenced application for minor modification of television translator station W44AA, licensed to the West Virginia Educational Broadcasting Authority (WVEBA). WBDC also requests that we rescind the grant of the Special Temporary Authority (STA) authorizing WVEBA to operate a television translator station on channel 50 at Martinsburg, West Virginia. According to WBDC, WVEBA's operation on channel 50 pursuant to STA causes interference to the "direct reception" of WBDC-TV's signal in and around Hagerstown, Maryland, in violation of Section 74.703(b) of the Commission's rules.

Background. WVEBA originally operated television translator station W44AA on channel 44, but was displaced by the grant of a co-channel full service digital television application at Hagerstown, Maryland. On May 5, 2003, WVEBA filed the above-referenced displacement application to change to channel 50, and several days later, filed an STA request to operate a television translator station in accordance with the displacement application. The staff

granted WVEBA's STA request on May 14, 2003, and WVEBA began operations on channel 50 on July 2, 2003.

WBDC filed a petition to deny the displacement application on August 8th, alleging the WVEBA's operation pursuant to the STA was interfering with Antietam Cable's over-the-air reception of WBDC-TV in Hagerstown, Maryland. In support, WBDC submits the declaration of John Handley, its chief engineer, who states that sometime in July, Antietam Cable's chief engineer "asked if WBDC was having technical problems because they could no longer receive WBDC's over-the-air signal on channel 50." According to Handley, "[s]ubsequent investigation [by Antietam] ultimately determined that the signal of translator W44AA . . . pursuant to a grant of [STA] was swamping Antietam's over-the-air reception of WBDC," at both a receive antenna mounted approximately 75 feet on a tower in Antietam Cable's parking lot, and on "Antietam's search antenna that was mounted on a rotor approximately 25 feet high on top of their building." Handley further claims that once Jack Wells, the WVEBA engineer responsible for the STA operation, verified that the station was operating consistent with the technical parameters of the STA, Wells indicated to Handley "that he would take no further action relating to this issue."

One week later, WBDC filed a supplement to its petition to deny the displacement application, and also requested that the Commission rescind the STA. According to Handley, he learned that the STA operation would be off-the-air for approximately an hour mid-day on August 13th, and used the opportunity to take photographs of the WBDC-TV picture signal -- both with the STA on-the-air and off-the-air -- at three separate sites.¹ According to WBDC, "a comparison of these pictures clearly demonstrates that [the] STA operation interferes with the direct reception of WBDC's signal." Handley also states that a viewer named Bill Weston in Rippon, West Virginia, which is located outside the WBDC-TV predicted Grade B contour, "indicated to me earlier this year that he was receiving over-the-air signal very well despite being just outside WBDC's Grade B contour," and that at Handley's request, Weston took photographs of the signal he received in his home on August 13th, both when the STA was on and off the air.

In its opposition, WVEBA argues that the petition should be dismissed because: (1) no complaints have been submitted from viewers within the Grade B contour of WBDC-TV alleging that operation of the STA facility causes interference to the direct reception of WBDC-TV's signal; (2) the exhibits submitted do not support the claim of harmful interference; and (3) Section 74.703(b) does not protect reception at a cable headend located outside WBDC-TV's predicted Grade B contour, and even if it did, the allegation of interference is unsubstantiated. WVEBA also disputes WBDC's characterization of its efforts to resolve interference issues, and "reiterates its willingness to cooperate with WBDC to identify and implement a technical solution," if interference cognizable under the Commission's rules is documented.

¹ Handley claims that Wells told him that WVEBA was taking the STA operation off-air for maintenance on August 13th, while Wells claims that Handley called him to propose a phase cancellation test at Antietam Cable's headend. According to Wells, Handley asked if WVEBA would turn off the transmitter on August 13th for approximately one hour, which Wells agreed to do. We do not find this apparent discrepancy to be material to any issues raised in this case.

In reply, WBDC argues that procedurally, the STA should not have been granted prior to appearing on public notice for comment. WBDC also asserts that Section 74.703(b) requires more than cooperation from WVEBA; it requires WVEBA to assume affirmative responsibility (including financial responsibility) for initiating testing and deploying solutions to correct interference problems, which WVEBA has refused to do. In addition, WBDC contends that Section 74.703(b) does not, as WVEBA claims, permit translators to interfere with the signal of a full service station received outside of its predicted Grade B contour. Rescission of the STA is especially appropriate here, argues WBDC, where interference is occurring and WVEBA could operate on either channel 29 or 38, rather than the present channel 50. Finally, WBDC submits an email message from Weston, the viewer who provided photographs, who states that he is no longer able to receive an off-the-air watchable signal from WBDC-TV, and a handwritten note from another viewer in Hagerstown, stating that “I used to get channel 50 very good . . . but now I have a great deal of interference, so bad that I can no longer watch.”²

Discussion. Initially, with respect to WBDC’s procedural argument that the staff erred in granting the STA prior to public notice and comment period, we note that Section 309(c)(2)(C) of the Communications Act specifically exempts from the notice and comment requirement in Section 309(c)(b), applications for “a license under Section 319(c), or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license.” Thus, the staff’s grant of the STA was not procedurally infirm.

Television translator stations, as well as stations operating pursuant to special temporary authority, are authorized on a secondary basis. Thus, Section 74.703(a) provides that:

It shall be the responsibility of the licensee of a [television translator station] to correct at its expense any condition of interference to the direct reception of the signal of any other TV broadcast analog station and DTV station operating on the same channel as that used by the [television translator station] Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the [television translator station], regardless of the quality of the reception or the strength of the signal so used.

Moreover, WVEBA’s STA is specifically conditioned upon the avoidance of interference to any existing broadcast facilities. WBDC is correct that it is WVEBA’s responsibility to take corrective action to resolve interference to WBDC-TV’s “regularly used signal.” Based on the record before us, however, we conclude that WBDC has not met its burden to demonstrate that such interference has occurred.

When considering allegations of interference from a translator station to the signal of a full service television station beyond the full service station’s predicted Grade B contour, the

² By letter dated November 14, 2003, WBDC raised the same matters in connection with WVEBA’s request for an extension of the STA.

Commission employs a balancing test. In so doing, the Commission considers whether there are wide-spread complaints of interference from over-the-air viewers and whether there are any anomalous reception conditions, such as location on the top of a hill or a viewer's use of a taller or more sophisticated than normal outdoor receiving antenna. *See, e.g., Report and Order in BC Docket No. 78-253, 51 RR 2d 476, 493-94 (1982).*

WVEBA's translator station has been operating pursuant to an STA for over eight months, and WBDC has submitted interference complaints from only two viewers. With respect to Weston's complaint, we note that Rippon, West Virginia, is located outside WBDC-TV's predicted Grade B contour, and that Weston admits that he uses an on-mast amplifier and rotor to receive the signal. As we explained above, in balancing consideration of interference occurring outside of a station's predicted Grade B contour, the Commission treats anomalous reception conditions such as a viewer's use of a taller than normal outdoor receiving antenna as a mitigating circumstance in favor of the translator station. We have also examined the photographs submitted by Weston, and cannot consider them probative of interference. The photos were taken from different angles and distances, and compare a photo of a camera shot with a photo of an animated cartoon, making it difficult to make comparisons in signal quality. The other viewer only states that he used to get a "good" signal from WBDC-TV, but no longer does. Thus, we have insufficient evidence on which to reach a conclusion that WVEBA's STA operation is the source of the alleged interference.³

Finally, with respect to the interference allegedly received by Antietam Cable, we find it unnecessary to resolve the disputed applicability of Section 74.703 to this matter. With respect to the interference allegedly received by Antietam Cable, WBDC relies solely on the hearsay assertion of Handley that he was told that Antietam Cable's reception was impaired, and that the cable company somehow determined that the impairment resulted from the STA operation. There is no statement from a person with personal knowledge of the alleged impairment in reception, or any explanation how Antietam Cable arrived at the conclusion, advanced by Handley, that such impairment was due to the STA operation, and not some other source. This falls far short of the type of documentation we require in support of an interference complaint. Moreover, Antietam Cable's stated reception of the WBDC-TV signal, some 23 kilometers beyond the WBDC-TV predicted Grade B contour, was either due to use of a sophisticated receiving system (a search antenna) or the use of a taller than normal outdoor receiving antenna.

³ With respect to WBDC's supplemental showing, we do not find the submitted photographs to be relevant. These photographs, taken of television signals received in a vehicle parked in a residential neighborhood, a parking lot and at a highway intersection, do not represent viewer complaints that reception of a regularly used signal is impaired. Nor would they be probative evidence that WBDC was receiving interference from the translator station. As WVEBA points out, WBDC did not explain its criteria for selecting the sites at which to take photographs, or address whether there were other conditions or events that might affect signal reception. In addition, the photos were taken from different angles and distances, making it difficult to make comparisons in signal quality, and many of the photos include reflections from the inside of the vehicle or the outdoors, which further distort the photographed reception.

Under these circumstances, we conclude that WBDC has not presented an actionable claim of interference with respect to Antietam Cable.⁴

Based upon the information provided by WBDC, we conclude that it has not submitted sufficient facts to raise a *prima facie* question as to whether grant of the WVEBA displacement application would be inconsistent with the public interest. Accordingly, the petition to deny and objection and request for rescission of special temporary authority, filed by WBCD Broadcasting, Inc. ARE HEREBY DENIED, and the application for a construction permit for a television translator station on channel 50 at Martinsburg, West Virginia, filed by the West Virginia Educational Broadcast Authority IS HEREBY GRANTED. Although we are granting this construction permit application, we emphasize that, pursuant to the provisions of Section 74.703(a), if the translator's operation causes actual interference to WBDC-TV's regularly used signal and results in viewer interference complaints, WVETV will be required to resolve all such complaints, and, if necessary, discontinue operations on Channel 50.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁴ We also note that the interference alleged to Antietam Cable is not to a cable head end, but rather to Antietam Cable's direct off the air reception of WBDC-TV's signal.