

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Section 73.622(b)
Table of Allotments
Digital Television Broadcast Stations
(Muskogee, Oklahoma)

MEMORANDUM OPINION AND ORDER

Adopted: December 16, 2003

Released: March 2, 2004

By the Commission:

1. The Commission has before it an application filed by Tulsa Communications, LLC (Tulsa Communications) seeking review of a December 20, 2001, staff letter dismissing a Petition for Rule Making to allocate DTV Channel 20 at Muskogee, Oklahoma as the "paired" DTV channel assigned to KWBT(TV).1 Tulsa Communications is the licensee of KWBT(TV), Muskogee, Oklahoma, currently operating on NTSC Channel 19. In denying the petition, the staff ruled that KWBT(TV) was not eligible for a paired DTV channel since it had not received its initial authorization by the cut-off date of April 3, 1997, as set forth in the Fifth Report and Order.2

2. In its Application for Review, Tulsa Communications essentially reiterates the arguments raised below, namely, that it needs a paired DTV channel to assist in its conversion to DTV operations and that the refusal to grant a paired DTV channel violates national policy by preventing the earliest possible implementation of DTV service.3 Tulsa Communications also claims that its engineering showing demonstrates that other applicants are precluded from using DTV Channel 20 and, therefore, it is unlikely that a third party would apply for a full-service stand-alone station on the channel. Finally, Tulsa Communications argues that granting it a paired DTV channel would not be inequitable in light of the Commission's different treatment of pre- and post-April 3, 1997 stations.

3. Discussion. In the Telecommunications Act of 1996, Congress specifically stated that "if the

1 Tulsa Communications has chosen not to file a petition for reconsideration of the December 20, 2001, letter pursuant to Section 1.115(a) of the Commission's rules. 47 C.F.R. §1.115(a).

2 Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 1289, 12816 (1997) ("Fifth Report and Order"), recon. granted on other grounds, 13 FCC Rcd 6860, 6865 (1998). See also Second Memorandum and Opinion on Reconsideration of the Fifth and Sixth Report and Orders, 14 FCC Rcd 1348 (1998).

3 Tulsa Communications further argues that the staff denied the request because of "spacing issues," even though that reason was not mentioned in the December 20, 2001, letter. Tulsa Communications contends that the alleged "spacing issue" provided an insufficient basis to deny the petition since the Commission did not employ spacing criteria during the initial DTV allotment process.

Commission determines to issue additional licenses for advanced television services, the Commission should limit the initial eligibility for such licenses to persons that, as of the date of such issuance [of DTV licenses], are licensed to operate a television broadcast station or hold a permit to construct a station (or both)....”⁴ Following Congress’ explicit direction, the Commission issued DTV licenses to those stations that had analog television station licenses or construction permits on April 3, 1997, the date the Commission adopted the *Fifth Report and Order*.⁵ The Commission has permitted all pending applicants who were not eligible for a second DTV channel, such as Tulsa Communications, to convert to digital service on the channel provided to them.⁶ Therefore, declining to provide Tulsa Communications a paired DTV channel does not violate national policy. This policy, as the Commission stated, “fully satisfies all the equitable and other considerations that have been raised in requests for additional digital channels.”⁷ Finally, Tulsa Communications has proffered no showing that the staff based its findings in the December 20, 2001, letter on anything other than the clear intent of Congress and the plain language of the relevant Commission orders. Upon review of the arguments set forth by Tulsa Communications, we uphold the staff decision for the reasons stated therein. There is no reason to disturb it.⁸

4. Accordingly, IT IS ORDERED, That the Application for Review filed by Tulsa Communications, LLC IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴ 47 U.S.C. §336(a)(1).

⁵ *Fifth Report and Order*, 12 FCC Rcd at 12816, 12838. The Commission issued DTV licenses to all eligible television licensees and permittees in the *Fifth Report and Order*. See *Id.* at 12838 and Appendix E.

⁶ *Second Memorandum and Opinion on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd at 1359.

⁷ *Id.*

⁸ See *WMAC, Inc.*, 10 FCC Rcd 12219 (1995).