

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of
Applications for Renewal of Station License of

WTMJ-TV, Milwaukee, WI	)	BRCT20050729CYF
WITI-TV, Milwaukee, WI	)	BRCT20050729DRL
WISN-TV, Milwaukee, WI	)	BRCT20050729CEF
WVTV-TV, Milwaukee, WI	)	BRCT20050729BDQ
WCGV-TV, Milwaukee, WI	)	BRCT20050729BBZ
WVCY-TV, Milwaukee, WI	)	BRCT20050729AGS
WMLW-TV, Milwaukee, WI	)	BRTT20050729ADM
WJJA-TV, Racine, WI	)	BRCT20050729ABE
WQRS-TV, Mayville, WI	)	BRCT20050729DNH
WPXE-TV, Kenosha, WI	)	BRCT20050729AIH
WDJT-TV, Milwaukee, WI	)	BRCT20050729ADL
WBBM-TV, Chicago, IL	)	BRCT20050801AFV
WMAQ-TV, Chicago, IL	)	BRCT20050801CEL
WLS-TV, Chicago, IL	)	BRCT20050801CUZ
WGN-TV, Chicago, IL	)	BRCT20050801BXY
WCIU-TV, Chicago, IL	)	BRCT20050801ADO
WFLD-TV, Chicago, IL	)	BRCT20050729DSN
WCPX-TV, Chicago, IL	)	BRTTA20050729AGG
WSNS-TV, Chicago, IL	)	BRCT20050801CFO
WPWR-TV, Gary, IN	)	BRCT20050401AQB

TO: Chief, Video Division, Media Bureau

SECOND PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules, Chicago Media Action ("CMA") and Milwaukee Public Interest Media Coalition ("MPIMC") respectfully seek reconsideration of the July 11, 2008 letter decision (No. 08-1636, released July 11, 2008), by which the Chief, Video Division, Media Bureau ("staff"), affirmed her dismissal of CMA's and MPIMC's (collectively "Petitioners")

November 1, 2005 *Petitions to Deny*. 22 FCC Rcd 10877 (2007) (“*Dismissal Letter*”). The *Petitions to Deny* challenged the license renewals of all commercial television broadcasters (the “Broadcasters”) in the Chicago and Milwaukee markets.

INTRODUCTION

As set forth below, this *Second Petition for Reconsideration* relies upon facts not previously presented to the staff because they relate to an event which occurred since the last opportunity to present such matters. See 47 CFR §1.106(b)(2)(i) and 47 CFR §1.106(c)(1). Moreover, and in any event, consideration of these facts is required in the public interest. See 47 CFR §1.106(c)(2).

The circumstance which requires reconsideration is the recent issuance of a decision of the full Commission which cannot be reconciled with the *Dismissal Letter*. Specifically, on January 24, 2008, the Commission released its “enhanced disclosure” decision. See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 23 FCC Rcd 1274 (2008) (“*Report and Order*”). Since this decision post-dates the pleading cycle for reconsideration of the staff’s 2007 decision, it occurred after the last opportunity to present arguments in this matter. As explained further below, the Commission’s *Report and Order* is premised on the value of collecting information which the staff erroneously held was irrelevant to its public interest determination. The standards set forth in the *Report and Order* provide a new lens with which the staff must revisit its prior decisions.

The relevance of the January 24, 2008 *Report and Order* to the present matter is obvious. Indeed, in the *Dismissal Letter*, the staff actually took note of the pendency of the “enhanced disclosure” docket and the important role it might play in clarifying broadcasters’ public interest obligations, including with respect to local programming. See *Dismissal Letter*, 22 FCC Rcd at

10879.

ARGUMENT

Petitioners ask that the staff reconsider and vacate its decision taking into account the arguments set forth herein and, accordingly, designate these applications for hearing and grant all such other relief as may be just and proper.

The *Petitions to Deny* sought to challenge the license renewals of all the commercial television broadcast stations in the Chicago and Milwaukee markets. The *Petitions to Deny* along with the *Petition to Reconsideration* make specific showings that the Broadcasters, singly and together, failed to provide adequate programming relating to state and local elections. Because of this marketwide failure, the Petitioners asked the Commission to designate the applications for hearing on the basis that the Broadcasters have failed to serve the public interest.

Despite the evidence demonstrating that there are substantial and material issues of fact as to whether renewal of the licenses is in the public interest, the staff rejected the *Petitions to Deny*. Asserting that “Section 326 of the Act and the First Amendment to the Constitution prohibit any Commission actions that would improperly interfere with the programming decisions of licensees...,” the staff claimed that “the Commission has very little authority to interfere with a licensee’s selection and presentation of news and editorial programming” and that “[q]uantity is not necessarily an accurate measure of the overall responsiveness of a licensee’s programming.” *Dismissal Letter*, 22 FCCRcd at 10878-9. In light of that determination, the staff failed to consider, much less evaluate, Petitioners’ quantitative data with respect to the Broadcasters’ failure to serve the needs of the public.

The staff’s action cannot be reconciled with the recently-issued *Report and Order*. There,

the Commission promulgated a reporting requirement which included details of programming very similar to the kind of information upon which Petitioners relied in preparing their evidentiary submission, noting that “[t]he more comprehensive disclosure will also allow the public to participate more effectively in license renewal proceedings.” *Report and Order*, 23 FCCRcd at 1292. *See also, id.*, 23 FCCRcd at 1281 (quantitative information about programming is material “that members of the public would reasonably need...to participate in pre-hearing procedures with respect to the licensing process.”)

It is of particular significance that the Commission did not consider collection and use of quantitative programming data to be proscribed by either Section 326 or the First Amendment. To the contrary, the Commission held that collection of such information is in the public interest and rejected constitutional objections. *Id.*, 23 FCCRcd at 1287.

In light of the Commission’s recent decision, it is clear that the staff’s refusal to consider quantitative programming data was arbitrary and capricious and inconsistent with clear Commission policy as announced in the *Report and Order*.

CONCLUSION

The newly-issued *Report and Order* requires the staff to reconsider its action and conduct an analysis of the the evidence presented in the *Petitions to Deny* and the *Petition for Reconsideration*. There exists *prima facie* evidence raising substantial and material questions of fact as to whether the Broadcasters have fulfilled their duty to serve the public interest during the license period. Thus, the Commission must designate the Broadcasters’ renewal applications for a hearing

to resolve these substantial and material questions of fact and grant all such other relief as may be just and proper.

Respectfully submitted,

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*Counsel for Chicago Media Action and
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August 11, 2008

Certificate of Service

I, Andrew Jay Schwartzman, certify that on this 11th day of August 2008, a copy of the foregoing *Second Petition for Reconsideration* was served by first-class mail, postage prepaid, upon the following:

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