

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

In the Matter of)	
)	
Negotiated Channel Election Arrangements)	
)	MM Docket No. 03-15
Second Periodic Review of the)	
Commission's Rules and Policies)	RM 9832
Affecting the Conversion to)	
Digital Television)	
)	

REPORT AND ORDER

Adopted: June 3, 2005

Released: June 8, 2005

By the Acting Chief, Media Bureau:

1. In the *Second DTV Periodic Review Report and Order*,¹ the Commission adopted a multi-step channel election process through which broadcast licensees and permittees (licensees) will select their ultimate DTV channel inside the core (*i.e.*, channels 2-51). In the first round, licensees with in-core channels (either one or two in-core channels) filed First Round Election Forms on February 10, 2005, selecting which of their assigned channels they preferred to use for digital operations. Licensees in the first round were not permitted to elect a channel that was not assigned to them unless rights to that channel were sought through a proposed negotiated channel election arrangement (NCA) with another station.² As the Commission noted, “[c]hannel swapping’ is an existing practice with beneficial results for the marketplace and consumers, and these channel election arrangements are similar in nature to them.”³ The Commission emphasized, however, that all such arrangements are subject to Commission approval and may be rejected if they propose the acceptance of a significant level of interference or loss of service.⁴ In addition, an NCA may be rejected if “we find that the NCA reasonably could be construed to have an adverse impact on the interests of a station not a party to the NCA, or is otherwise not in the public interest.”⁵

2. By *Public Notice* released March 1, 2005,⁶ the Media Bureau released a list of the stations participating in the first round of DTV channel elections which had also indicated that they were

¹ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18,279 (2004).

² *Second Periodic Review*, 19 FCC Rcd at 18,297-98.

³ *Id.*

⁴ *Id.*; see also *Public Notice, DTV Channel Election Issues – Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC Form 381 Certifications, and Notification to FCC of Flash Cut Decisions*, DA 05-273 (released February 1, 2005).

⁵ *February 1, 2005 Public Notice* at 1.

⁶ *Public Notice, DTV Channel Election Issues – Proposed Negotiated Channel Election Arrangements and Procedures for Filing Associated Pleadings*, DA 05-519 (released March 1, 2005).

participating in a negotiated channel arrangement, or had been identified by another station as participating in an NCA. Comments and objections were filed in connection with a number of these channel elections. In addition, the staff performed an engineering analysis for each proposed channel election to determine whether implementation of the NCA would result in impermissible interference to another station (i.e., in this context, more than 0.1% in addition to existing interference.)⁷

3. In this order, we approve 25 NCAs as consistent with the procedures adopted by the Commission in the *Second DTV Periodic Review Report and Order*, and with the public interest. Only one of these NCAs, involving Vancouver, Washington, received an objection, which we will deny. A list of approved NCAs are identified in Attachment I. For the reasons set forth below, we reject 12 channel election proposals where the initiating party failed to enter into a signed agreement with other licensees in its market, the channel arrangement adversely impacted another licensee's channel election rights, or implementation of the NCA would result in impermissible interference to another station. Attachment II provides a listing of the participants, and the alternative channel each selected in the event the NCA was not approved.⁸

I. APPROVED NEGOTIATED CHANNEL ELECTION ARRANGEMENTS

4. With respect to the NCA groups on Attachment I, we conclude that the channels elected therein are not predicted to cause impermissible interference or to adversely impact other licensees' channel election rights. Nor will the proposed operations on these channels result in a significant loss of service. Accordingly, we conclude that the negotiated channel election arrangements in Attachment I comply with the public interest and are approved. These elected channels will receive tentative designations upon completion of the first round interference conflict analysis.⁹ Three NCA groups on Attachment I have special circumstances that require further discussion, below.

5. Vancouver, Washington. Meredith Corporation is the licensee of KPDX, Vancouver, Washington and KPTV, Portland, Oregon. KPTV has NTSC channel 12 and DTV channel 30 assigned to it, and Meredith proposes to elect channel 30 as the DTV channel for KPDX to use post-transition, rather than either of its allotted channels 48 and 49. La Grande Broadcasting, Inc. (La Grande), the licensee of KPOU, La Grande, Oregon, filed an objection stating that it has not entered into a NCA with Meredith. It further states that it does not have a paired DTV channel and has elected not to convert to digital operation on its analog channel 16. According to La Grande, it "intends to seek a new digital channel and does not have enough information available at this time to participate in Meredith's arrangements."

⁷ *Second Periodic Review*, 19 FCC Rcd at 18,302-03.

⁸ In its FCC Form 382, Front Range Educational Media Corp., the licensee of KBDI-TV, NTSC channel 12 and DTV channel 38, Broomfield, Colorado, indicated that it had entered into an NCA and proposed channel 13 as its digital channel. Front Range, however, did not identify any licensees with which it negotiated. Because Front Range did not enter into any agreements, channel 13 was not available for selection by Front Range in the first round of elections. We will accept Front Range's "alternative" election of its assigned DTV channel 38.

⁹ In connection with the Jackson, Mississippi NCA, CivCo, Inc (CivCo), the licensee of WLBT, NTSC channel 3 and DTV channel 9, Jackson, Mississippi, and WDAM License Subsidiary (WDAM), the licensee of WDAM, NTSC channel 7 and DTV channel 7, Laurel, Mississippi, agreed that WDAM would elect its DTV channel and release its NTSC channel 7 for election by CivCo as its post-transition DTV channel. While CivCo listed five other stations as participants in the NCA, all of whom elected their NTSC channels, these channel elections are not affected by or do not affect CivCo's election of a channel not currently assigned to it. Thus, because these elections are not technically related to the CivCo-WDAM channel swap, these five stations will proceed to round one conflict analysis.

National Minority TV, Inc. (NMTV), the licensee of KNMT in Portland also filed comments stating that while it had no objection to Meredith's election of channel 30, it had not entered into an NCA with Meredith.

6. In response, Meredith states that because it was not entirely clear whether any additional parties were required to be part of the NCA regarding Meredith's two stations, it notified a number of stations of the intended channel 30 election and invited objections, receiving none. In its Form 382, Meredith indicated by listing on Schedule A with an asterisk the stations which had been informed of the election and did not object. It did not indicate that it had entered into written agreements with these stations. With respect to La Grande's objection, we find that La Grande is not adversely affected by Meredith's channel election because KPOU is located over 240 miles east of Vancouver and is terrain blocked by two mountain ranges. Thus, Meredith's election of channel 30 in no way precludes La Grande from selecting a channel. Accordingly, we approve Meredith's proposal.¹⁰

7. Raleigh, North Carolina. Capitol Broadcasting Company, Inc. (Capitol) the licensee of WRAL-TV, NTSC channel 5 and DTV channel 53, Raleigh, North Carolina, Paxson Greenville License, Inc. (Paxson-Greenville), the licensee of WEPX, NTSC channel 38, Greenville, North Carolina, the University of North Carolina (UNC), the licensee of WUNC-TV, NTSC channel 4 and DTV channel 59, Chapel Hill, North Carolina, and a number of other area stations, entered into an agreement whereby Capitol, Paxson-Greenville and UNC elected channels 48, 51 and 25, respectively, as their post-transition DTV channel.¹¹ Capitol's proposed use of channel 48 is predicted to result in impermissible interference to the protected DTV channel for WCTI-TV, channel 48, New Bern, North Carolina (34.1%). Eastern North Carolina Broadcasting Corp. (ENCB), the licensee of WCTI-TV, has elected its NTSC channel 12 to use post-transition, and our engineering analysis indicates that WCTI-TV's digital operation on channel 12 will receive interference from another station's election of its NTSC channel. Because an interference conflict exists, there is a possibility that WCTI-TV will revert to its DTV channel at the end of the conflict resolution process. Thus, we will approve the Raleigh NCA, conditioned on WCTI-TV's continued election of NTSC channel 12. If WCTI-TV reverts to its DTV channel 48, Capitol will proceed with its alternate selection and elect in Round Two.¹²

8. Merced, California. NBC Telemundo License Co. is the licensee of KNSO, NTSC channel 51 and DTV channel 5, Merced, California, and KNTV, NTSC channel 11 and DTV channel 12, San Jose, California. NBC Telemundo proposes that KNTV elect its DTV channel and release its NTSC channel 11 for KNSO to use post-transition. In its FCC Form 383, NBC Telemundo proposed KNSO technical operating facilities that would serve a larger coverage area than its certified coverage area (FCC Form 381), which was specifically disallowed.¹³ Thus, while we will approve the NCA, we reject the proposed technical amendment for KNSO.

¹⁰ Our engineering analysis indicated that KPTV's elected channel 12 and the NTSC channel 12 elected by Fisher Broadcasting – Oregon TV, L.L.C. for KVAL-TV, Eugene, Oregon, were predicted to cause mutual interference. Meredith and Fisher entered into interference consent agreements, making Fisher a party to Meredith's NCA. The other stations listed on Meredith's Form 382 will proceed to the round one conflict analysis.

¹¹ Capitol and UNC both have an out-of-core DTV channel and a low VHF NTSC channel. Paxson-Greenville does not have a paired digital channel.

¹² As indicated in Attachment I in connection with the Chapel Hill, North Carolina NCA, Station WUNL-TV, Winston-Salem North Carolina, has submitted an FCC Form 383 in which it resolves an interference conflict by reverting to its DTV channel.

¹³ See February 1, 2005 Public Notice at 2; see also Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, DA 04-2446 (released August 3, 2004).

II. REJECTED PROPOSED NEGOTIATED CHANNEL ARRANGEMENTS

9. Newton, Iowa. Paxson Des Moines License, Inc. (Paxson-Des Moines), is the licensee of KFPX, channel 39, Newton, Iowa. That station does not have a paired DTV channel, and rather than elect its assigned NTSC channel 39, Paxson-Des Moines requests channel 29 as its digital channel. Paxson-Des Moines' Form 382 lists 11 stations as participants in its NCA. Several licensees in the Des Moines market that were listed as NCA participants on Paxson-Des Moines' Form 382 filed comments, denying that they had entered into an NCA with Paxson-Des Moines. Instead, they explained that Paxson-Des Moines had informed a number of stations by letter that it intended to elect Channel 29 for the post-transition operation of KFPX, and instructed them to return an acknowledgement form indicating whether or not the station objected to the channel election. The letter concluded by stating that failure to return the acknowledgement form would lead Paxson-Des Moines to "presume that there is no objection" by the station. In reply, Paxson-Des Moines admits that it had not entered into an NCA with the stations listed on Schedule A of the FCC Form 382 it filed, and that only one of the stations returned a signed acknowledgement. Because Paxson-Des Moines does not have a signed NCA regarding the use of channel 29, that channel was not available for selection by Paxson-Des Moines in the first round of elections.¹⁴

10. In addition, Capital Communications Company, the licensee of WOI, Ames, Iowa, which has a low VHF and out-of-core channel assigned to it, and Caroline Powley, the permittee of KDMI-DT, Des Moines, Iowa, which has only an out-of-core digital channel, argued that they would be adversely affected by Paxson-Des Moines' selection of channel 29 at this time. Finally, we also note that our engineering analysis indicates that Paxson-Des Moines' proposed digital operation on channel 29 would result in impermissible interference to the protected DTV channel assigned to KSFY, channel 29, Sioux Falls, South Dakota (0.2%). These constitute additional grounds for rejecting Paxson-Des Moines' proposed channel election. Paxson-Des Moines also filed an FCC Form 383 to specify modified technical operating facilities. Because we are rejecting the associated NCA, we also reject the proposed technical amendment.

11. Spokane, Washington. Paxson Spokane License, Inc. (Paxson-Spokane) is the licensee of KGPX, NTSC channel 34, Spokane, Washington. That station does not have a paired DTV channel, and rather than elect its assigned NTSC channel 34, Paxson-Spokane requests channel 43 as its digital channel. Paxson-Spokane's Form 382 lists 19 stations as participants in its NCA. Numerous licensees in Washington and Oregon that were listed as NCA participants on Paxson-Spokane's Form 382 filed comments, denying that they had entered into an NCA with Paxson-Spokane. Following the same procedure it adopted in connection with its Iowa and North Carolina stations, Paxson-Spokane informed these stations by letter that it intended to elect Channel 43 for the post-transition operation of KGPX, and instructed them to return an acknowledgement form indicating whether or not the station objected. In addition, two of the contacted stations specifically informed Paxson-Spokane that they objected to the

¹⁴ Paxson Greenville License, Inc. (Paxson-Greenville), which indicated that it had entered into an NCA, also followed this approach, sending a letter to stations in the Greenville-New Bern-Washington DMA stating that it intended to elect Channel 51 for the post-transition operation of WEPX and instructing them to return an acknowledgement form indicating whether or not the station objected to the channel election. In response to comments filed in connection with its election form, Paxson-Greenville admitted that none of the stations in the market had returned signed acknowledgements. While we are rejecting Paxson-Greenville's channel proposal because it did not reach an agreement, we note that Paxson-Greenville is also a participant in an approved NCA with Capital Broadcasting Company, Inc., licensee of WRAL-TV, Raleigh, North Carolina and numerous other area licensees, whereby the parties agree to Paxson-Greenville using channel 51 as its digital channel.

channel election.¹⁵ In reply, Paxson-Spokane acknowledges that it received written acknowledgement from only five of the 19 stations it contacted. Because Paxson-Spokane did not have a signed NCA for the use of channel 43, that channel was not available for selection by Paxson-Spokane in the first round of elections.¹⁶ Paxson-Spokane also filed an FCC Form 383 to specify modified technical operating facilities. Because we are rejecting the associated NCA, we will also reject the proposed technical amendment.

12. Pine Bluff, Arkansas. Agape Church, Inc. (Agape), the licensee of KVTN, NTSC channel 25 and DTV channel 24, Pine Bluff, Arkansas, and KATV, LLC (KATV), the licensee of KATV, NTSC channel 7 and DTV channel 22, Little Rock, Arkansas, entered into an NCA whereby Agape would acquire channel 7, the analog channel currently operated by KATV, as its post-transition DTV channel, and release its allotted channels 24 and 25. Arkansas Educational Television Commission (AETC), the licensee of noncommercial educational television station KETS, Little Rock, filed an objection. AETC operates on NTSC channel 2 and has been allotted DTV channel 5. Consistent with the Commission's directive, AETC released both of its low VHF channels in the first round and agreed to be treated as a two out-of-core licensee eligible to participate in the second round. AETC requests that the Commission reject the NCA (to which it is not a party) so as to make channel 7 in Little Rock available in the second round. According to AETC, it costs significantly less to operate a DTV station on a VHF, rather than a UHF channel, and AETC also believes that channel 7 will permit replication of its existing NTSC channel 2 coverage area.

13. In response, Agape argues that like AETC, it also operates on a non-profit basis, and further asserts that the public interest is served by the NCA because requiring Agape to operate on DTV channel 24 at full power would cause interference to its NTSC operation on channel 25. Agape also asserts that channel 10 is available for AETC's use, and thus, that it is not adversely affected. We disagree. The Commission explicitly stated that "NCA's are subject to Commission approval, including particular consideration of the effect on the channel election rights . . . any licensee not a party to the negotiated channel election agreement."¹⁷ Here, the effect of the NCA between Agape and KATV is to reduce the number of desirable, already allotted channels to AETC and other licensees in this market and adjacent markets, who will elect a channel in the second round. Because Agape and KATV failed to obtain AETC's consent to Agape's use of channel 7, the NCA must be rejected.

14. Philadelphia, Pennsylvania. NBC Telemundo License Co. (NBC), the licensee of WCAU, NTSC channel 10 and DTV channel 67, Philadelphia, Pennsylvania entered into an NCA with Independence Public Media of Philadelphia, Inc. (Independence), the licensee of noncommercial educational station WYBE, NTSC channel 35 and DTV channel 34 of Philadelphia. Pursuant to the

¹⁵ Apple Valley Broadcasting, Inc., the licensee of KAPP, Yakima, Washington, objected because it had not been able to complete an engineering analysis prior to the deadline specified in the letter it received. The State Board of Education, State of Idaho, licensee of noncommercial educational stations KUID, Moscow, Idaho and KCDT, Coeur d'Alene, Idaho also notified Paxson-Spokane that it objected because the use of channel 43 would result in harmful interference to a translator station it uses to provide service to the underserved communities of Juilaetta and Priest Lake, Idaho.

¹⁶ Several commenters accuse Paxson-Spokane of bad faith, or attempting to deceive the Commission, by representing that they had entered into an NCA with Paxson-Spokane, when, in fact, they had not. In response, Paxson-Spokane asserts that there was no misrepresentation because it explained in its reply comments that the parties listed on its Form 382 had been contacted and none "raised any reasonable objection," but admits "that it should have expressed its intentions on the form's schedule with greater clarity . . ." Stations were on clear notice that in order to elect an unassigned channel under an NCA, they were required to have a written agreement with other stations.

¹⁷ *Second Periodic Review*, 19 FCC Rcd at 18,297-28.

agreement, Independence agrees to elect its currently assigned NTSC channel 35 as its digital channel for post-transition DTV operations, and to release its currently assigned DTV channel 34 to be elected by NBC as its digital channel.

15. ABC, Inc., the licensee of WPVI, NTSC channel 6 and the permittee of WPVI-DT, channel 64, Philadelphia, Pennsylvania, filed an objection on the basis that the NCA will have an adverse impact on ABC's channel election rights.¹⁸ ABC's allotted DTV channel is out-of-core and thus unavailable for post-transition DTV operation, and its remaining channel 6 is a low VHF channel that ABC released to participate in the second round of DTV channel elections. According to ABC, either of the channels assigned to Independence would be a realistic and viable option for post-transition DTV operation by WPVI-DT, and thus, its channel election rights are adversely impacted in that, if not for the NCA, one of Independence's assigned channels would be available for selection by ABC in the second round.

16. In response, NBC states that neither of its allotted channels was available for selection; its digital channel 67 is out-of-core and it cannot return to its NTSC channel 10 due to DTV facilities authorized on channel 10 in Harrisburg, Pennsylvania and channel 9 in Bethlehem, Pennsylvania. According to NBC, ABC's channel election rights were not impacted by the NCA because "ABC has channel election rights only to Channels 6 and 64, neither of which is materially affected by the channels involved in the NCA." We disagree. Licensees such as ABC, which have an out-of-core channel and a low VHF channel which has been released, as well as licensees with two out-of-core channels, have second round channel election rights to all channels remaining after completion of the first round. The NCA between Independence and NBC, which removes one of Independence's channels from the pool of channels available for round two selectors, clearly has an adverse impact on ABC. NBC also argues that ABC's interpretation of "adversely affected" would have required parties to an NCA to speculate about the possibility of other stations having an interest in the channels subject to the NCA, and thus, to include as parties to the NCA "an indeterminable number of stations in adjacent or even more distant markets . . . before any NCA could be acceptable." The negotiated channel election agreement process which we adopted, however, did not require such efforts by the parties, and in any event, NBC acknowledges that it knew that "both WCAU and WPVI faced difficult challenges in the channel elections process." Because of its adverse impact upon ABC, we reject the NCA between NBC and Independence. We also note that our engineering analysis indicates that Independence's proposed digital operation on channel 35 would result in impermissible interference to the protected DTV channel for WDCA, channel 35 (0.3%) and WITF-TV, channel 36, Harrisburg, Pennsylvania (2.5%), stations which are not parties to the NCA. Independence also filed an FCC Form 383 to specify modified technical operating facilities. Because we are rejecting the associated NCA, we also reject the proposed technical amendment.

17. Orlando, Florida. Post-Newsweek Stations, Orlando, Inc. (Post-Newsweek) is the licensee of WKMG-TV, NTSC channel 6 and DTV channel 58, Orlando, Florida, and entered into an NCA with Daytona Beach Community College (DBCC), the licensee of WCEU-TV, NTSC channel 15 and DTV channel 33, New Smyrna Beach, Florida. Pursuant to the agreement, Post-Newsweek released its low VHF channel and DBCC assigned its right to elect channel 15 to Post-Newsweek. Waterman Broadcasting Corporation of Florida, Inc. (Waterman), the licensee of WBBH-TV, channel 15, Fort Meyers, Florida, filed an objection, alleging that the proposed WKMG-TV operation is predicted to cause 1.35% new interference to WBBH-TV, which significantly exceeds the 0.1% interference limit adopted by the Commission in the *Second Periodic Review*.

¹⁸ ABC also argues that the NCA disserves the public interest because it allows private interests to circumvent application of the Section 307(b) public interest based criteria for resolving conflicts between stations, 47 U.S.C. § 307(b), is inconsistent with the Commission's goals in permitting NCAs, and could result in anticompetitive effects. Because we agree that ABC's channel election rights are adversely impacted by the NCA, we need not reach these other arguments.

18. In response, Post-Newsweek argues that the predicted interference to WBBH-TV is permissible under the Commission's exception to the 0.1% interference standard for the channel election process. We disagree. In its *Second Periodic Review*, the Commission stated that, with respect to stations with an allotted out-of-core DTV channel, or no paired channel, "it would permit the 0.1% additional interference limit to be exceeded on a limited basis in order to afford these stations an improved opportunity to select their NTSC channel."¹⁹ While Post-Newsweek's digital channel is out-of-core, its NTSC channel is in-core. We agree that if it had elected its NTSC channel 6, it would fall under this exception. Post-Newsweek, however, has specified channel 15 pursuant to an NCA, and thus, was required to satisfy all DTV interference rules with regard to other stations not involved in the negotiated arrangement.²⁰ The fact that its in-core channel is a low VHF is not an adequate justification to grant a waiver of the interference protection standards and election procedures adopted in the *Second Periodic Review* over Waterman's objection.²¹ Post-Newsweek also asserts that we should discount the interference to WBBH-TV because it occurs in areas outside the DMA in which the station is located. It is irrelevant, however, whether the areas in which interference occur are located within the geographic confines of a Nielsen designated market; WBBH is entitled to protection from interference within its predicted contour and Post-Newsweek's operation on channel 15 does not provide the requisite level of protection. Accordingly, the NCA between Post-Newsweek and DBCC is rejected.

19. Birmingham, Alabama. WBRC License, Inc., the licensee of WBRC, NTSC channel 6 and DTV channel 50, Birmingham, Alabama, and WTTO Licensee, Inc., the licensee of WTTO, NTSC channel 21 and DTV channel 28, Homewood, Alabama, entered into an NCA whereby WTTO elected its assigned DTV channel 28 and assigned its released NTSC channel 21 to be elected by WBRC as its digital channel. No objections were received. Our engineering analysis, however, indicates that WBRC's proposed digital operation on channel 21 would result in impermissible interference to the elected DTV channel for WPBA, channel 21, Atlanta, Georgia (0.7%), WUXP-TV, channel 21, Morehead, Kentucky (0.2%) and WFIQ, channel 21, Florence, Alabama (3.0%). Accordingly, the NCA is rejected.

20. San Francisco, California. Young Broadcasting of San Francisco, Inc. (Young), the licensee of KRON-TV, NTSC channel 4 and DTV channel 57, San Francisco, California, and KQED, Inc. (KQED), licensee of noncommercial educational station KQED, NTSC channel 9 and DTV channel 30, San Francisco, entered into an NCA whereby KQED elected its assigned NTSC channel 9 and released its DTV channel 30 to be elected by Young as its digital channel. No objections were received. Our engineering analysis, however, indicates that KQED's proposed digital operation on channel 9 would result in impermissible interference to the protected DTV channel 10 for KSBW, Salinas, California, (2.1%) as well as its elected NTSC channel 8 (10.3%), and to the elected NTSC channel for KXTV, channel 10, Sacramento, California (3.0%). Accordingly, the NCA is rejected.²²

¹⁹ *Second Periodic Review*, 19 FCC Rcd at 18,302-02.

²⁰ *Id.* at n.92.

²¹ The Commission accommodated stations with only low VHF channels by permitting them to release the low VHF channels in the first round and be treated as two out-of-core licenses and participate in the second round. Alternatively, the station could elect its low VHF channel in round one, with an opportunity to make an alternate election in the third round. *Id.*

²² KQED specified channel 30 as its alternate channel, but later informed the staff that it preferred to specify channel 9, its assigned NTSC channel. According to KQED, there was some confusion as to whether a station would be permitted to specify, as its alternate channel, the same channel it had elected in connection with a rejected NCA. In light of the importance of these elections, and the clear intent of the Commission to permit a station to elect either of its assigned channels for post-transition DTV operations, we believe the public interest would be served by allowing KQED to specify channel 9 as its alternate channel.

21. Columbus, Ohio. WSYX Licensee, Inc. (WSYX), the licensee of WSYX, NTSC channel 6 and DTV channel 13, Columbus, Ohio, and Columbus (WTTE-TV) Licensee, Inc. (WTTE), the licensee of WTTE, NTSC channel 28 and DTV channel 36, Columbus, entered into an NCA whereby WTTE elected its assigned NTSC channel 28 and released its assigned DTV channel 36 to be elected by WSYX as its digital channel. No objections were received. Our engineering analysis, however, indicates that WTTE's proposed digital operation on channel 28 would result in impermissible interference to the elected DTV channels for WOUB-TV, channel 27, Athens, Ohio (6.0%), WPTO, channel 28, Lorain, Ohio (7.5%) and WUAB, channel 28, Oxford, Ohio (0.8%). Accordingly, the NCA is rejected.

22. Fort Worth, Texas. Viacom Television Stations Group of Dallas/Fort Worth L.P. (Viacom), the licensee of KTXA, NTSC channel 21 and DTV channel 18, Fort Worth, and CBS Stations Group of Texas L.P. (CBS), licensee of KTVT, NTSC channel 11 and DTV channel 19, Fort Worth, entered into an NCA whereby CBS elected its currently assigned NTSC channel 11 and released its assigned DTV channel 19 to be elected by Viacom as its digital channel. No objections were received. Our engineering analysis, however, indicates that CBS's proposed digital operation on channel 11 would result in impermissible interference to the elected NTSC channels for KWTX-TV, channel 27, Waco, Texas (0.3%) and KXII, channel 12, Sherman, Texas, (11.6%), and to the protected DTV channel for and KTRE, channel 11, Lufkin, Texas (0.4%). Accordingly, the NCA is rejected.²³

23. Milwaukee, Wisconsin. WVTV Licensee, Inc. (WVTV), the licensee of WVTV, NTSC channel 18 and DTV channel 61, Milwaukee, and WCGV Licensee, LLC (WCGV), licensee of WCGV-TV, NTSC channel 24 and DTV channel 25, Milwaukee, entered into an NCA whereby WCGV elected its presently assigned NTSC channel 24 and released its assigned DTV channel 25 to be elected by WVTV as its digital channel. No objections were received. Our engineering analysis, however, indicates that WCGV-TV's proposed digital operation on channel 24 would result in impermissible interference to the elected DTV channels for WBAY-TV, channel 23, Green Bay, Wisconsin (0.6%) and WHRM-TV, channel 24, Wausau, Wisconsin (0.5%). Accordingly, the NCA is rejected.

III. ORDERING CLAUSES

24. IT IS ORDERED that the Negotiated Channel Arrangement Agreements proposed by the licensees listed in Attachment I ARE HEREBY APPROVED.

25. IT IS FURTHER ORDERED that the Negotiated Channel Arrangement Agreements proposed by the licensees listed in Attachment II ARE HEREBY REJECTED, and their alternative channel election preferences are elected.

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein
Acting Chief, Media Bureau

²³ We will also permit CBS to select its assigned NTSC channel as its alternate channel. See n. 22, *supra*.