



PUBLIC NOTICE

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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

Negotiated Channel Arrangements

In paragraph 45 of the *Second DTV Periodic Review Report and Order*, released September 7, 2004 (19 FCC Rcd 18,279) (“*Order*”), the Commission stated that licensees may negotiate channel arrangements with other stations in conjunction with the channel election process. As we stated in the *Order*, 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 or are otherwise inconsistent with the public interest. Parties contemplating such agreements are reminded that submission of such an arrangement does not guarantee acceptance, that the acceptance of such arrangements will result only in the assignment of tentative channel designations, and that tentative channel designations do not guarantee final allotments. Stations will be given only one opportunity to enter into an NCA. Stations may not propose an NCA and, in the event that arrangement is rejected by the Commission, then propose a substitute NCA. If, after review of the record, including but not limited to oppositions and replies, 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, the NCA will be rejected. There will be no separate conflict round for NCAs. In the event the NCA is rejected, the parties to the NCA will revert to their alternate channel elections.

The Media Bureau hereby announces procedures for acceptance and processing of negotiated channel arrangements (“NCAs”). Parties seeking consideration of an NCA in conjunction with the channel election process must finalize the agreement by the relevant channel election date. Thus, NCAs entered into in conjunction with the first round of channel elections must be finalized by February 10, 2005, which is the deadline for filing first round channel elections. *See Order Granting Further Extension of Time to File First Round DTV Channel Election Forms*, DA 05-164, released January 25, 2005. Parties to an NCA must indicate their participation in an NCA by selecting item 1.b. in Section II on FCC Form 382 (for first round elections), item 1.b. in Section II on FCC Form 384 (for second round elections), or item 2.b. in Section II on FCC Form 386 (for third round elections). Per paragraph 45 of the *Order*, parties must also indicate an alternate channel election in item 1.b., Section II of FCC Form 382 in the event the NCA is rejected. Stations participating in an NCA that have either only one assigned in-core channel or have two low VHF channels (2-6) and that, in the event the NCA is not approved, prefer to release their in-core channel(s) and participate in the second round of DTV elections must

nonetheless specify an alternate channel election in item 1.b. (*i.e.*, a currently-assigned channel, even if it is out-of-core). *See Order* at paragraph 44. Stations specifying an out-of-core alternate channel in this situation will be presumed to be requesting that their alternate election be deferred to round two. Stations that, in the event their NCA is rejected, prefer to release their in-core channel(s) and participate in the second round of channel elections must send an email to the Form 382 mailbox (see below) stating this request. In addition, these stations must send a letter confirming this request to Nazifa Naim, Federal Communications Commission, Room 2-A726, 445 12th Street, S.W., Washington, D.C. 20554.

After February 10, 2005, the Media Bureau will release a Public Notice listing the stations participating in the first round of channel elections that are also participating in an NCA. Parties will have 14 days from the date of that Public Notice to object to an NCA, and proponents of NCAs will have 7 days following the deadline for objections to file a reply. Details of how and where to file will be set forth in the Public Notice listing stations participating in NCAs.

We recognize that in some cases stations participating in NCAs may wish to reduce their technical operating facilities; *i.e.*, effective radiated power, antenna height, and/or antenna pattern in order to resolve interference conflicts. For example, a station might agree to reduce its service area to avoid interference to another station if operating at its certified facilities would cause new interference in excess of the 0.1 percent threshold. This is the same type of arrangement that we anticipate could be made to resolve interference in the conflict resolution phase of channel election rounds 1 and 2, as described in paragraphs 56-57 and 61 of the *Order*. Although NCAs will be accepted or rejected before the formal conflict resolution process begins, we believe that the same types of arrangements should be permitted provided they are contemplated in the NCA. We therefore will consider certifications from stations that they will operate with reduced technical facilities as part of NCAs. Stations agreeing to such reductions must include the revised facilities with which they intend to operate in the signed agreement and must provide to the Commission a copy of the agreement reflecting the proposed technical parameters no later than three days after we issue the Public Notice listing the stations that are participating in an NCA. These stations should use the Schedule B attached to FCC Form 383 to specify their proposed technical parameters and should file this Schedule electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. Further details about where and how to file Schedule B will be set forth in the Public Notice of stations participating in an NCA. Upon approval of the NCA by the Commission, the new facilities will then become the station's certified operating facilities and the station will be required to construct its DTV station to provide coverage to the area that would be covered by those facilities in the post-transition period. Stations participating in NCAs that do not propose reduced technical facilities as part of the agreement do not need to file their NCAs unless requested by the Commission.

We will not allow stations to increase their technical operating facilities to serve larger coverage areas as part of NCAs. Maximizations of station facilities are not permitted at this time. However, we also recognize that operation on a new channel at the facilities computed to serve the same coverage area predicted to be reached by operation at a station's currently certified facilities could result in service to slightly larger (or smaller) populations. We will not consider increases resulting from such changes to be maximizations. Where stations are permitted to serve smaller populations under approved agreements, we will revise the population they are required to serve to be that reached by their new facilities.

Establishment of Form 382 Mailbox

The Media Bureau has established the following mailbox where stations may email comments regarding their FCC Form 382 filing: form382@fcc.gov.

Revisions to FCC Form 381 Certifications

As a general matter, the Commission is not making revisions to update FCC Form 381 certifications as reflected in the updated Table of Station Assignment and Service Information released December 21, 2004. See Public Notice, DTV Channel Election Information and First Round Election Filing Deadline, DA 04-3922, Table I. This Table reflects service areas based on certifications to build DTV replication, maximization, or otherwise authorized facilities for post-transition operation, as indicated on FCC Form 381, Pre-Election Certification Form. We have, however, determined that revisions are necessary in four cases. These changes were made only where they reflect current DTV service and the error in the original certification would have resulted in a loss of existing DTV service to the community or where the Commission erred in its treatment of a certification. The changes pertain to the following stations:

WPCB-TV, Greensburg, PA (NTSC Channel 40; DTV Channel 50; correct certification to reflect operating, licensed DTV maximization facility authorized in BLCDDT-20030409ABC);

KOCE-TV, Huntington Beach, CA (NTSC Channel 50; DTV Channel 48; correct certification to reflect actual operation as described by STA authorization BMDSTA-20031105AIS);

KXAM-TV, Llano, TX (NTSC Channel 14; DTV Channel 27; correct certification to reflect a maximization CP BPCDDT-19991018AAV, which was inadvertently omitted from the Table I released December 21, 2004); and

KGMB, Honolulu, HI (NTSC Channel 9; DTV Channel 22; correct replication facilities to reflect an approved channel swap that was inadvertently omitted from Table I).

The corrected certifications for these stations and the referenced authorized facilities are reflected in the Commission's CDBS database and these corrected certifications should be used by affected stations for purposes of channel election and interference analyses.

Notification to FCC of Flash Cut Decisions

In paragraphs 95 and 102 of the *Order*, the Commission stated that it will permit certain licensees to surrender an assigned channel and to flash cut from analog to digital operation. Stations eligible and electing to flash cut pursuant to the requirements of the *Order* must elect a channel by the relevant deadline for channel elections and notify the Commission that they intend to flash cut if their channel election is granted. Stations participating in the first round of DTV channel elections that are electing to flash cut must notify the Commission by email at form382@fcc.gov no later than February 10, 2005. In addition, these stations must send a letter confirming their flash cut election to Nazifa Naim, Federal Communications Commission, Room 2-A726, 445 12th Street, S.W., Washington, D.C. 20554.

For additional information, contact Nazifa Naim of the Video Services Division, Media Bureau, at (202) 418-1600 or nazifa.naim@fcc.gov or Kim Matthews of the Policy Division, Media Bureau, at (202) 418-2120. TTY: (202) 418-7172.

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