



Federal Communications Commission
Washington, D.C. 20554

February 9, 2005

DA 05-343

Barry A. Friedman, Esq.
Thompson Hine, LLP
1920 N Street, NW
Washington, D.C. 20036-1600

Re: KJLA(TV), Ventura, CA
Request to Discontinue Analog Operations
Facility ID No. 14000

Dear Counsel:

This letter is in response to your request, filed on behalf of KJLA, LLC (KJLA), licensee of analog television station KJLA(TV), Channel 57, Ventura, California, and permittee of digital television (DTV) station KJLA-DT, Channel 49, Ventura, California, to discontinue operation of the KJLA(TV)'s analog operation on Channel 57. For the reasons set forth below, we deny your request to terminate analog operations for KJLA(TV).

In *Reallocation and Service Rules for the 698-746 MHz Spectrum (Television Channels 52-59)*,¹ the Commission stated that it would consider requests by incumbent television stations on channels 52-59 to voluntarily vacate their analog channels prior to the end of the DTV transition on a case-by-case basis. The Commission stated that it would examine three factors in considering such requests: (1) whether grant of the request would make new or expanded wireless services available to consumers; (2) whether grant would result in the loss of any of the four stations in the DMA with the largest audience share, the loss of sole service licensed to the local community, or the loss of the community's sole noncommercial educational television service; and (3) whether grant would have a negative effect on the pace of the DTV transition in that market.²

In your request, you argue that vacating channel 57 will free up analog spectrum and "pave the way for new and expanded wireless services." The spectrum comprising television channel 57, however, has yet to be auctioned for use by new wireless services. You have not shown, therefore, that vacating channel 57 at this time will serve the public interest by expediting new or expanded use of this spectrum.

Although KJLA(TV) is Ventura's sole broadcast television station, you maintain that there would be no actual loss of analog over-the-air service if KJLA(TV) were to

¹ 17 FCC Rcd 1022, 1096 (2002).

² *Id.* at n. 549.

terminate operation. You submit documentation from Nielsen research that purports to show that 0.25% of the station's analog viewers receive the station via over-the-air viewing. While you did not supply the exact number of station viewers, we find that in a market the size of Los Angeles, the loss of analog over-the-air service to even 0.25% of a station's audience could result in the disenfranchisement of a significant number of persons. In adopting its policy prohibiting the early termination of analog operation, the Commission stated that its simulcasting policy (whereby stations must simulcast a certain percentage of their analog programming on their DTV stations) was premised on the idea that each licensee operate an analog and DTV station until the end of the transition period.³ Furthermore, the Commission noted that some viewers could be disenfranchised by licensee decisions removing their option to continue to watch over-the-air analog television until the end of the transition period.⁴ Permitting the early termination of KJLA(TV)'s analog service would result in the type of disenfranchisement the Commission was seeking to prevent when it adopted this policy.

Furthermore, KJLA(TV) provides unique Spanish-language programming that will no longer be available to its analog over-the-air viewers should we permit the station to discontinue operation on channel 57. Ventura and Los Angeles Counties contain sizable Hispanic populations (33.4% for Ventura and 44.6% for Los Angeles according to 2000 Census data). The loss of analog over-the-air Spanish-language programming could have a significant impact in these areas.

You further maintain that discontinuation of KJLA(TV)'s analog service will not have a negative impact on the pace of the DTV transition in the market. You state that discontinuing analog service will enable KJLA to concentrate its resources on commencing, expanding and improving its digital services. Although KJLA(TV)'s discontinuation of analog service may not affect the efforts of other stations in the Los Angeles market to convert to digital, you have not shown how the public interest will be served by a grant of your request. You have shown only that the private interests of the station will be served, namely its ability to save money from its analog operation.

Finally, you argue that discontinuation of KJLA(TV)'s analog operations is consistent with Commission precedent. You cite three cases where the Commission permitted stations to terminate their analog operations.⁵ Each of those cases is distinguishable from the facts in this case. In *Goldvein*, *Twenty-Nine Palms* and *Atlantic City*, the stations were able to demonstrate that there would be no actual loss of analog over-the-air service. As we note above, the loss of service would be more significant in this case. Furthermore, in *Goldvein*, the station was a noncommercial educational station that had

³ See *Advanced Television Systems and Their Impact on the Existing Broadcast Television Service*, 12 FCC Rcd 12809, 12832-12833 (1997) (R&O); *recon.*, 13 FCC Rcd 6860, 6886-7 (1998) (MO&O).

⁴ *Id.*

⁵ See *WNVT-DT, Goldvein, Virginia*, DA 03-2845, released September 10, 2003 (*Goldvein*); *Twenty-Nine Palms, CA*, DA 03-1481, released May 1, 2003 (*Twenty-Nine Palms*); *WWAC-DT*, DA 02-2478, released October 3, 2002 (*Atlantic City*).

sustained a large operating loss. The station demonstrated that discontinuation of its analog operation was necessary to prevent it from having to sacrifice much of its unique noncommercial educational programming. No argument of financial hardship was advanced in this case.

Upon consideration of these factors and the unique combination of circumstances present in this case, and in accordance with our management of the digital television transition, we conclude that the public interest would not be served by allowing KJLA to terminate the analog operations of KJLA(TV).

Wherefore, the above facts considered, KJLA's request to discontinue analog operations IS DENIED.

Sincerely,

W. Kenneth Ferree
Chief, Media Bureau