



Federal Communications Commission
Washington, D.C. 20554

DA 08-2428
October 31, 2008
1800E3-JLB

KVMD Licensee Co., LLC
c/o Barry A. Friedman, Esq.
Thompson Hine LLP
1920 N Street, N.W.
Washington, D.C. 20036

Re: KVMD-DT, Twentynine Palms, CA
Petition for Channel Substitution
File No. BPRM-20080620AOJ
Facility ID No. 16729

Dear Applicant:

This is with respect to the above-referenced petition for rulemaking filed by KVMD Licensee Co., LLC (“KVMD”), the licensee of digital-only station KVMD-DT, channel 23, Twentynine Palms, California, requesting the substitution of channel 50 for post-transition use at Twentynine Palms. The station is part of the Los Angeles Designated Market Area (“DMA”).

In support of its channel substitution request, KVMD states that another station in the Los Angeles DMA will also use digital channel 23 for post-transition use and that neither station “is able to improve its facilities as it might wish . . .”¹ KVMD states that an analog station in the Los Angeles DMA will be vacating channel 50 at the end of the DTV transition, and that substitution of this channel for channel 23 at Twentynine Palms will allow KVMD to provide service to greater areas and populations. KVMD admits that loss of service is predicted to occur in two areas – an area to the north and east of Twentynine Palms with a population of 6,307 persons, and an area to the south with a population of 1,144,252 persons. According to KVMD, however, “none of these people [in the loss area to the north and east] live in areas predicted to receive signals above the reception threshold. Consequently, there is no service, and the real loss is zero”² In addition, KVMD states that the entire southern loss area is outside the Los Angeles DMA and well served by stations in the San Diego DMA, and that if the proposal is granted, the number of persons served by KVMD-DT will increase from 1,929,000 to 8,789,000 persons.³

It is well-settled that the Commission does not favor reductions in television service. Proposals that would result in a loss of TV service have been considered to be *prima facie* inconsistent with the

¹ Petition for Rulemaking at p. 2.

² Petition for Rulemaking, Attachment 1 at p. 6-7.

³ *Id.*

public interest, and must be supported by a strong showing of countervailing public interest benefits.⁴ “[O]nce a station begins operations, it is obligated to maintain service to its viewing audience absent offsetting public benefits to discontinuing service.”⁵ Because KVMD’s proposal would result in a loss of service to almost 60% of the population within the noise limited contour of the station, the staff requested that KVMD amend its channel substitution request to submit a public interest showing. KVMD filed a supplement on July 30, 2008.

In its supplement, KVMD again states that, with respect to the 6,307 persons who live within the loss area to the north and east of Twentynine Palms, a “Longley Rice study shows that none of these people live in areas predicted to receive signals above the reception threshold.”⁶ KVMD, however, provides no support for its bare assertion that none of the persons residing within this loss area are able to receive a signal from KVMD-DT. It does not provide the procedures used in reaching this conclusion, including the assumptions made and methodology employed, or provide a map showing those areas within the loss area which do not receive actual service from KVMD-DT.⁷

More importantly, our engineering analysis, utilizing Longley Rice, shows that at least 5,677 persons in this loss area are able to receive a signal from KVMD-DT on channel 23. In addition, it appears that some of the loss area would no longer receive an over-the-air full power television signal, and that the remainder of the loss area would continue to receive only one, or possibly two, other over-the-air full-power television signals. Thus, KVMD’s proposal would create a “white” and “gray” television area,⁸ and the entire loss area would be underserved, *i.e.*, receive fewer than five over-the-air television services.⁹

With respect to the loss area to the south, KVMD states that this area is within the San Diego DMA, rather than the Los Angeles DMA, to which KVMD-DT is assigned. According to KVMD, all but seven of the 1,144,252 persons who would no longer receive a signal from KVMD-DT are predicted to receive service from at least four other stations, and the remainder are predicted to receive service from no fewer than six stations.¹⁰ KVMD states that the public interest would be served because “there will be

⁴ See *West Michigan Telecasters, Inc.*, 22 FCC 2d 943 (1970), *recon. denied*, 26 FCC 2d 668 (1970), *aff’d*, *West Michigan Telecasters, Inc. v. FCC*, 460 F. 2d 883, 889 (D.C. Cir. 1972) (finding that losses in service are *prima facie* inconsistent with the public interest); *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964) (finding that “once in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting facts are shown which establish that the public generally will be benefited”); *Television Corporation of Michigan v. FCC*, 294 F.2d 730 (1961) (finding that deprivation of service to any group was undesirable, and can be justified only by offsetting factors); *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956) (finding that a curtailment of service is not in the public interest unless outweighed by other factors).

⁵ *KNTV License, Inc.*, 19 FCC Rcd 15479, n.11 (MB 2004) (*KNTV*).

⁶ Supplement #2 to July 30, 2008 Technical Statement at 2.

⁷ See *Reno, Nevada*, 3 FCC Rcd 5631, 5632-33 (1988).

⁸ The Commission defines a television “white area” as an area where the population does not receive any over-the-air television service and a “gray area” as one where the population receives only one over-the-air television service.

⁹ An area that receives at least five other existing services is considered well-served. See *Cambridge and St. Michaels, Maryland*, 19 FCC Rcd 2592 (AD 2004).

¹⁰ Supplement #2 to July 30, 2008 Technical Statement at 3.

an increase in service within the market served by KVMD-DT some fifteen times greater than the loss of service outside its market.”¹¹

We conclude that the public interest benefits alleged by KVMD do not outweigh the detriment to the public interest in withdrawing service to almost 60% of the population within the noise limited contour of the station. As discussed above, “once a station begins operations, it is obligated to maintain service to its viewing audience . . . ”¹² The proposed channel substitution would result in the creation of a significant white and gray area to the north and east of Twentynine Palms, that cannot be considered *de minimus*. Finally, the fact that almost the entire southern loss area is “well-served” has no impact on our decision because the new viewers which KVMD-DT would serve are also “well-served.”

In view of the foregoing, the above-referenced rulemaking petition IS HEREBY DISMISSED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹¹ *Id.* at 4.

¹² *KNTV*, 19 FCC Rcd at n.11.