

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

In the Matter of )
)
Amendment of Section 73.622(i), ) MM Docket No. 08-30
Final DTV Table of Allotments, ) RM-11419
Television Broadcast Stations. )
(Riverside, California) )

NOTICE OF PROPOSED RULE MAKING

Adopted: March 5, 2008

Released: March 5, 2008

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Chief, Video Division, Media Bureau:

A. Introduction

1. Pursuant to Section 1.420 of the Commission's rules, we initiate a rulemaking proceeding to substitute post-transition DTV channel 35 for channel 45 for KRCA-DT. In comments filed in the Seventh Report and Order for Advanced Television, KRCA License, LLC (KRCA) licensee of station KRCA(TV), channel 62, and KRCA-DT, channel 68, Riverside, California, requested this substitution in the event that channel 45, the tentative channel designation for KRCA-DT, would not receive clearance from the Government of Mexico. As of this time, the Commission has not received approval from the Government of Mexico for KRCA-DT's post-transition operation on channel 45. KRCA's proposed substitute channel 35 is more likely to obtain Mexican clearance thus ensuring that KRCA-DT will have a channel on which to continue broadcasting after February 17, 2009.

B. Background

2. KRCA was allotted channel 45 for post-transition operations in the Seventh Report and Order. In comments filed after the release of the Seventh Report and Order, KRCA states that it would accept the allotment of channel 45 as the post-transition DTV channel for KRCA-DT. However, KRCA notes that it had proposed channel 35 instead of 45 based in part on an assessment of available channels in

1 See Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA") (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A).

2 Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, 22 FCC Rcd 15581, 15647 App B. (2007) (Seventh Report and Order).

3 See Comments of KRCA License, LLC, filed Oct. 25, 2007, at 2.

the Los Angeles market and the prospect of obtaining concurrence from Mexico for use of the channel. KRCA was denied the allotment of channel 35 during the channel election process due to interference caused to other stations.<sup>4</sup> However, KRCA notes that during the channel election process channel 35 had been approved by Mexico for use for digital operations as a result of a previous international coordination with Mexico for another station's (KMEX-DT, Los Angeles, California) interim DTV operations.<sup>5</sup> KRCA concludes that approval by Mexico for KRCA-DT's use of channel 35 should be able to be obtained more quickly, whereas coordination of channel 45 faces a number of obstacles that could prevent it from completing its post-transition DTV facilities by the end of the DTV transition.<sup>6</sup>

3. The Commission's interference analysis shows that the requested substitution of channel 35 would cause 1.17 percent interference to KMEX, Los Angeles, CA (analog channel 34, pre-transition digital channel 35, and post-transition digital channel 34), and 0.24 percent interference to KNBC, Los Angeles, CA (analog channel 4, digital channel 36 for both pre- and post-transition). Despite this, KRCA argues that licensees such as itself, with two out-of-core channels and facing international coordination issues, should be allowed greater flexibility with respect to interference.

4. In addition, our interference analysis has determined that KRCA's proposed channel substitution would not comply with Section 73.623(c)(5) of the Commission's rules,<sup>7</sup> which specifies protection requirements for Class A television stations, with respect to Class A television station K35DG, La Jolla, California. Section 336(f)(1)(D) of the Communications Act,<sup>8</sup> however, provides that if, after granting Class A status to a qualifying low power television station:

technical problems arise requiring an engineering solution to a full-power station's allotted parameters of channel assignment in the digital Table of Allotments, the Commission shall make such modifications as necessary –

- (i) to ensure replication of the full-power digital television applicants service area, as provided in sections 73.622 and 73.623 of the Commission's regulations . . . ; and

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<sup>4</sup> *Id.* at 1-2 and Attachment A; and Comments of KRCA License, LLC, to the Third DTV Periodic Review NPRM, filed Aug. 15, 2007, at 1-2. In the second round of the channel election process, KRCA had proposed channel 35 for its post-transition digital channel, but the Commission had issued an interference conflict letter denying this choice and citing impermissible interference to neighboring stations KMEX-TV, Los Angeles, California; KNBC-TV, Los Angeles, California; and Class A television station K35DG, La Jolla, California. *Id.* at 2. The Commission subsequently denied KRCA's request. See *Public Notice*, "Tentative Digital Channel Designations for Stations Participating in the Second Round of DTV Channel Elections and Third Round Election Filing Deadline," 21 FCC Rcd 5080 (MB 2006). Subsequently, in the third round of the channel election process, the Commission assigned KRCA channel 45. See *Public Notice* "Third Round of the DTV Channel Election Process: Tentative Channel Designations," 21 FCC Rcd 9572 (MB 2006). This decision was reaffirmed in the *Seventh Report and Order*.

<sup>5</sup> See KRCA Third DTV Periodic Review Comments at 3.

<sup>6</sup> *Id.*

<sup>7</sup> 47 C.F.R. § 73.623(c)(5).

<sup>8</sup> 47 U.S.C. § 336(f)(1)(D).

- (ii) to permit maximization of a full-power digital television applicant's service area consistent with such sections 73.622 and 73.623.

5. Given that substituting channel 35 for KRCA-DT's post transition DTV operation would likely resolve the issue of lack of Mexican clearance and would ensure that KRCA-DT is able to complete its DTV transition in a timely fashion, we tentatively conclude that KRCA's proposed channel substitution constitutes an engineering solution to a technical problem, consistent with Section 336(f)(1)(D). We seek comment on this tentative conclusion. To the extent that K35DG receives interference as a consequence of KRCA's channel substitution, we note that it is eligible to file a displacement application pursuant to Section 73.3572(a)(4)(iii) of the rules.<sup>9</sup>

### C. Discussion

6. We believe that the unique circumstances of this case warrant consideration of KRCA's proposed channel substitution. KRCA is one of only a small number of television stations with both out-of-core analog and pre-transition DTV channels.<sup>10</sup> We have previously acknowledged the challenges that these stations face in seeking to complete their transition to digital.<sup>11</sup> Although consideration of channel changes and substitutions is currently subject to the filing freeze,<sup>12</sup> we believe it is appropriate to consider channel substitutions for a licensed station that has no in-core channel on which it may operate after February 17, 2009. We believe KRCA's situation is unique because it cannot remain on either its current analog or

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<sup>9</sup> See 47 C.F.R. § 73.3572(a)(4)(iii).

<sup>10</sup> Television stations are required to cease operating on channels 52-69 (out of core channels) and operate on only the "core" television channels 2-51 by February 17, 2009. See *DTV Act, supra* at n. 1. Full-power television stations were provided a paired DTV channel for pre-transition DTV operations. See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order*, 12 FCC Rcd 14588 (1997). The Commission attempted to provide all eligible broadcasters with a paired DTV channel within the core channels 2-51 but where necessary, however, out-of-core channels were also used. *Id.* A small number of stations with out-of-core analog channels also received an out-of-core paired DTV channel.

<sup>11</sup> See, e.g., *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18322 (2004).

<sup>12</sup> See Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810, 14810-11 (MB 2004). The freeze, which was imposed on August 3, 2004 – prior to the commencement of the channel election process, precludes parties from filing the following items: (i) petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. In the *Third DTV Periodic Review Report and Order*, the Commission announced its intention to lift the freeze on the filing of maximization applications on August 17, 2008, but has not announced whether it intends to lift the freeze for the other types of filings listed above including petitions for rulemaking. See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, Report and Order*, FCC 07-228, released December 31, 2007 (*Third DTV Periodic Review Report and Order*).

digital channel because they are both out-of-core and because the channel we allotted in the Table of Allotments proceedings has not yet been cleared by the Government of Mexico and the transition deadline is fast approaching. We propose to allow KRCA to substitute channel 35 because we believe coordination of this channel with full certified coverage is more likely to receive approval because Mexico has previously approved the use of this channel with the interim DTV operations of another station (KMEX-DT). Were we to require KRCA to wait for us to complete coordination of channel 45, there is no certainty that KRCA-DT would be able to complete construction of its DTV facilities by the end of the DTV transition.<sup>13</sup> Therefore, we believe that the only way to ensure that KRCA-DT is operational with its post-transition DTV facilities by February 17, 2009, would be to consider its channel substitution.

7. Although we seek comment on KRCA’s proposed substitution of channel 35 as its post-transitional channel, we note that such substitution would be modified to the extent that KRCA-DT’s service contour will be entirely contained within the existing digital operations on channel 35 which were previously approved for channel KMEX-DT, Los Angeles, CA, through international coordination with Mexico. Accordingly, should we approve its proposed channel substitution, KRCA-DT will need to utilize parameters consistent with those approved for KMEX-DT on channel 35, based on the following proposed replacement data for KRCA’s Appendix B parameters:

| Facility ID | State and City |           | NTSC Chan | DTV Chan | DTV ERP (kW) | DTV HAAT (m) | DTV Antenna ID |
|-------------|----------------|-----------|-----------|----------|--------------|--------------|----------------|
| 22161       | CA             | RIVERSIDE | 62        | 35       | 400          | 907          | 84842          |

| Latitude (DDMMSS) | Longitude (DDMMSS) | Area (sq km) | Population (thousand) | % Interference Received |
|-------------------|--------------------|--------------|-----------------------|-------------------------|
| 341250            | 1180340            | 30212        | 14860                 | 1.4                     |

8. Alternatively, we seek comment on whether to assign channel 35 KRCA-DT based on the KRCA-DT certified coverage if Mexico approves such Appendix B facilities (*i.e.*, channel 35 facilities that would allow them to match the coverage previously provided on channel 45) before this rule making proceeding is completed.

9. We also seek comment on the proposed amendment of the Final DTV Table of Allotments, Section 73.622(i) of the Commission's Rules, for the community listed below, to read as follows:

| City                  | Channel No. |          |
|-----------------------|-------------|----------|
|                       | Present     | Proposed |
| Riverside, California | 45          | 35       |

<sup>13</sup> Unlike most situations in which international coordination is required and the station can build a facility, albeit not the full facility the licensee might want to have, in this case, if KRCA’s use of channel 45 is rejected by Mexico, the station will not be able to build any facility and therefore the current analog viewers of KRCA, an independent foreign language broadcaster, serving Riverside, CA since 1989, will lose access to this station.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

11. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [30 days after publication in the Federal Register] and reply comments on or before [45 days after publication in the Federal Register], and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Marnie K. Sarver, Esq.  
Wiley Rein, LLP  
1776 K Street, N.W.  
Washington, DC 20006

12. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary.<sup>14</sup> Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the DTV Table of Allotments, Section 73.622(i). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, § 3506(c)(4).

14. For further information concerning a proceeding listed above, contact Shaun Maher, Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new

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<sup>14</sup> See 47 C.F.R. § 1.7.

written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

## APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the DTV Table of Allotments, 47 C.F.R. Section 73.622(i), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.