

The circumstances that KM now claims warrant emergency action by the Court and the Commission arise from the upcoming FCC broadcast spectrum incentive auction scheduled to commence on March 29, 2016.¹ But unlike petitioners in the allegedly related cases cited by KM (Pet.ii-iii), KM is eligible to participate in the auction from its current frequency location on channel 4. KM now seeks to enlist this Court in an eleventh-hour effort for the right to bid *on a particular channel*, channel 41, apparently because it believes channel 41 will be more valuable than channel 4. *Id.* at 6. However, as we show, KM never connected its channel change application or its application for review of the agency staff denial of that application to the auction until two short, informal filings with the Commission less than three weeks ago. And not until the filing of its petition for mandamus on March 2, 2016 did it ever claim that it should be protected or allowed to participate in the auction as a station on channel 41 rather than on its existing channel 4. If any emergency exists, it is entirely of KM's own making.

¹ Legislation known as the Spectrum Act (Middle Class Tax Relief and Job Creation Act of 2012, Title VI, Pub.L. No. 112-96, 126 Stat. 156) was adopted by Congress in 2012 authorizing the FCC to shift a portion of the licensed airwaves from over-the-air television broadcasters to mobile broadband providers. The Act directs the Commission to carry out the objective of repurposing spectrum through three interdependent initiatives, which are now referred to as the incentive auction: (i) a reverse auction to determine the prices at which broadcasters would voluntarily sell their spectrum rights; (ii) a reassignment of broadcasters who remain on the air after the auction to new channels in a smaller band of spectrum; and (iii) a forward auction to sell the blocks of newly available spectrum to wireless providers, with the proceeds used to compensate broadcasters who voluntarily relinquished their spectrum rights and to pay the relocation expenses of broadcasters reassigned to new channels. *See National Ass'n of Broadcasters v. FCC*, 789 F.3d 165, 168-69 (D.C. Cir. 2015).

Not only has KM failed to demonstrate justification for the expedited action it has sought, it has not come close to demonstrating a “clear and indisputable” right, *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988), to the “drastic remedy” of mandamus. *In re Al-Nashiri*, 791 F.3d 71, 78 (D.C. Cir. 2015). The matter that is before the FCC arises from a television station channel change application that centers on engineering issues relating to whether KM’s Chicago station is entitled to “displacement relief” because it is receiving interference from another television station. The Commission’s Media Bureau has twice rejected KM’s arguments and engineering claims that it is receiving a level and type of interference that would warrant such a remedy. Nothing in KM’s pending application for review to the agency or in its petition for a writ of mandamus to this Court offers any reason not to accord the ordinary deference to an agency decision that is based on technical findings relating to radio engineering principles and radio interference. *See Costa de Oro Television, Inc. v. FCC*, 294 F.3d 123, 129-30 (D.C. Cir. 2002).

KM is not entitled under the agency’s rules to change channels unless it can demonstrate that it is receiving, or is predicted to receive, harmful interference from another television station, which the Bureau determined it had not done. Even if KM could demonstrate that it is entitled to change channels, which the Media Bureau has twice found it had not, it would have no right to participate in the auction or receive protection on channel 41 because the deadline for raising such a claim regarding the station’s auction eligibility has long since passed.

The petition for a writ of mandamus should be denied.

FACTUAL BACKGROUND

1. KM's Application

KM is the licensee of Class A low-power television station WOCK-CD that is licensed to Chicago, Ill. and has been operating on TV channel 4 since June 2009. Under the Community Broadcasters Protection Act of 1999,² certain qualifying low-power television (LPTV) stations are accorded Class A status and thereby have “primary” status as television broadcasters, gaining a measure of protection from interference from full-power television stations. *See Establishment of a Class A Television Service*, 15 FCC Rcd 6355 (2000).

Under FCC rules, a Class A television station which “is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station” may file a “displacement relief application for change in channel.” 47 C.F.R. 73.3572(a)(4)(iii). Such applications are not subject to competing applications. *See id.* An application to change channels for other purposes may only be filed during specified periods and may subject the applicant to competing applications. 47 C.F.R. § 3572(c).

In March 2010, KM filed a displacement relief application to move its station to channel 30. *See Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, to Marcus Lamb* (Oct. 31, 2011), at 1. A. 43.³ The Media Bureau dismissed that application because KM had not demonstrated that the interference it claimed

² Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

³ References to “A.--” are to the addendum to this pleading.

its station received was caused by another television station, as required by FCC rules, but rather asserted that it had filed the application based on the fact that channel 4 “is not optimal spectrum for digital operations,” and is subject to “impulse noise interference,”⁴ unassociated with broadcast station signals. *Id.* at 2.

A. 44. The Bureau therefore concluded that WOCK’s “existing digital operation on channel 4 has not been ‘displaced.’”

KM subsequently filed a second displacement application in November 2013, which is the subject of the application for review currently pending before the Commission. In that application KM sought to change WOCK’s operations to channel 41, this time asserting expressly that its station was receiving interference from a full-power television station operating in Rock Island, Illinois. In support of its contention, KM included an engineering statement with maps showing that the two stations’ signal contours overlapped.

2. The 2015 Media Bureau Ruling

In August 2015, acting pursuant to delegated authority, the Commission’s Media Bureau dismissed KM’s second application. *Letter from Barbara A. Kreisman to Aaron Shainis*, FCC File No. BDISDTA-20131114BTV (Aug. 24, 2015) (*MB Ruling*). A. 1. It found that KM had again failed to demonstrate that the station had been displaced, *i.e.*, that it faced interference from another television station. It pointed out that KM had acknowledged that it was “‘still having problems

⁴ “Impulse noise interference” is electrical interference caused by such things as household appliances, vehicle ignitions or overhead power lines.

with providing adequate digital television service on Channel 4 ... due to the presence of relatively high impulse noise in the Channel ... [and the fact that] many receive TV antennas are not adequately configured to receive digital TV signals in the low VHF band.” *MB Ruling* at 2. A. 2. The Bureau observed that it had previously made clear that the existence of impulse noise interference was not a basis for displacement relief, and that “the fact that a station is operating on a low VHF channel does not qualify the station for displacement relief.” *Id.* at 3. A. 3.

In addition, the Bureau rejected KM’s claims that it had demonstrated that it was receiving interference from the Rock Island television station (WHBF-TV). It explained that the signal contour overlap analysis that KM had submitted was not as accurate as the Longley-Rice methodology, which takes account of terrain. “Using Longley-Rice, a more accurate interference analysis tool, demonstrates that there is no predicted impermissible interference to WOCK-CD from WHBF-TV.” *Id.* The Bureau also noted that the Rock Island station had been operating since June 2009 and that KM had not complained of interference from that station in its prior displacement application filed in May 2010. *Id.*

3. KM’s Application for Review

KM filed an application for review of the *MB Ruling* on September 22, 2015. A. 4. The application for review asserts that the Bureau improperly relied on engineering calculations of predicted interference while ignoring KM’s purported showings of actual interference. *Id.* at 6. A. 9. The application for review contains no argument based on any claimed right to participate in the incentive auction on

channel 41. Indeed, the application for review does not mention the incentive auction at all.

4. KM's Last Minute Filings

Five months later, on February 16 and 24, 2016, KM made two informal filings with the Commission. The February 16th "Notification" "remind[ed] the Commission that ... KM has certain rights." A. 38. The filing also warned the agency not to "drag its feet in reaching a decision" on KM's application for review and cautioned that the Commission should "govern itself accordingly, so that it does not take any action which would be inconsistent with KM's statutory rights." Notification at 1-2. A. 38. For the first time, KM sought to link the auction with its pending application for review – arguing *against* putting channel 41 in the auction, contending that the "the auctioning off of Channel 41 in the upcoming incentive auction would be inconsistent with KM's rights." *Id.* at 1. Other than reference to general provisions of the Administrative Procedure Act, however, KM's two-page filing offered no indication of the source of the "statutory rights" it claimed.

The similarly brief "Request for Ruling," filed less than two weeks ago on February 24th, offered no more detail on the statutory or regulatory basis for KM's claimed rights in relation to the incentive auction other than to reassert generally that KM "has rights in its pending application to use Channel 41 that the Commission cannot impair or extinguish in the Incentive Auction." Request at 2. A. 41. KM requested that the Commission rule on its application for review by February 29, 2016.

ARGUMENT

The remedy of “mandamus is drastic; it is available only in extraordinary situations; it is hardly ever granted; those invoking the court’s mandamus jurisdiction must have a clear and indisputable right to relief; and, even if the plaintiff overcomes all these hurdles, whether mandamus relief should issue is discretionary.” *In re Cheney*, 406 F.3d 723, 729 (D.C. Cir. 2005) (en banc) (internal quotation marks omitted). KM has failed to show that this is “one of the exceptionally rare cases” that warrants a judicial decree directing agency action. *See In re Barr Labs.*, 930 F.2d 72, 76 (D.C. Cir. 1991).

1. KM has no right to a writ of mandamus in this case because there has been no unreasonable delay. KM’s application for review of the Media Bureau dismissal of its displacement application has been pending for a little more than five months. Such a relatively brief period of agency deliberation does not come close to the sort of “unreasonable delay” that would justify the extraordinary remedy of mandamus. *See Telecomm. Research & Action Ctr. v. FCC*, 750 F.2d 70, 79-81 (D.C. Cir. 1984).

This is particularly so given that KM bases its request on the claim that Commission action is necessary to permit it to participate in the incentive auction on a “properly assigned channel” (Pet at i), *i.e.*, channel 41, a claim it has never raised before the Commission.⁵ To the contrary, KM’s last-minute filings before

⁵ There is no dispute that, unlike petitioners in the allegedly related cases cited by KM (Pet. at ii-iii), KM is eligible to participate in the auction on channel 4, the channel on which it currently operates. On June 9, 2015, the Media Bureau released a list of facilities eligible for participation in the incentive auction. *Media*

the Commission stated only that the Commission should *not* auction off channel 41; it never suggested that KM desired to participate in the auction on channel 41. *See* A. 38-41. This is a newly-minted claim, as to which the Commission has never had an opportunity to pass, which is nowhere reflected in KM's application for review, and as to which the Commission can hardly be said to have delayed at all, much less unreasonably.

Any evaluation of the timeliness of the Commission's consideration of KM's Application for Review must also take account of the competing demands on the agency's time and resources. The incentive auction itself is an unprecedented proceeding involving numerous complex and highly technical issues, representing the culmination of four years of work by the Commission and dozens of members of its staff, with significant ramifications for the nation's economy and consumers. *See generally NAB v. FCC*, 789 F.3d 165. With the beginning of the auction now approximately three weeks away, the Commission's work on the auction continues.⁶ At the same time, the agency continues to address other pressing

Bureau Announces Incentive Auction Eligible Facilities And July 9, 2015 Deadline For Filing Pre-Auction Technical Certification Form, 30 FCC Rcd 6153 (MB 2015) WOCK was listed as operating on channel 4. *Id.* at 6170. As required by that notice, KM filed a certification in July 2015 verifying the accuracy of the information as to WOCK's operation on channel 4. KM made no reference in that filing, or in any other filing with the Commission, to the claim it now makes that its 2013 displacement application entitled it to participate in the auction on channel 41.

⁶ *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, FCC 16-12 (rel. Feb. 12, 2016) ("*Third Reconsideration Order*") (denying a petition for reconsideration filed by Videohouse, Abacus, WMTM, and KMYA), *pet. for review filed, The Videohouse, Inc. v. FCC*,

communications issues outside the incentive auction process.⁷ During all of this, KM simply sat back and waited until the last minute to set forth its position that its request for a different channel was tied to its participation in the incentive auction.

In assessing claims of unreasonable delay, this Court has long recognized that “an administrative agency is entitled to considerable deference in establishing a timetable for completing its proceedings.” *Cutler v. Hayes*, 818 F.2d 879, 896 (D.C. Cir. 1987). “The agency is in a unique – and authoritative – position to view its projects as a whole, estimate the prospects for each, and allocate its resources in the optimal way.” *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1101 (D.C. Cir. 2003) (quoting *Barr Labs.*, 930 F.2d at 76). In administering the incentive auction, the FCC “has broad discretion to set its agenda and to first

D.C. Cir. No. 16-1060; *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, DA 16-120 (WTB, Feb. 3, 2016) (dismissing two petitions for reconsideration of the *Application Procedures PN*); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, DA 15-1454 (MB, Dec. 18, 2015) (denying a motion for stay of the deadline for filing applications to participate in the reverse auction); *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, 30 FCC Rcd 14927 (2015) (adopting proposals to mitigate the effect of the incentive auction on low power television and television translator stations).

⁷ For example, in a December 2015 order, the Commission granted forbearance from a number of outdated telecommunications regulations. *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, FCC 15-166 (rel. Dec. 28, 2015). And on February 18, 2016, the Commission launched a rulemaking to consider proposals to expand consumers’ choices for video navigation devices for multichannel video programming systems. *Expanding Consumers’ Video Navigation Choices*, FCC 16-18 (rel. Feb. 18, 2016).

apply its limited resources to the regulatory tasks it deems most pressing.” *Cutler*, 818 F.2d at 896. KM has not demonstrated that the agency abused its broad discretion here by dedicating its efforts to bringing the auction to fruition rather than giving special priority to review of KM’s unsupported and belated claim of a right to participate in the auction on a particular channel that had never been presented to the Commission until less than a week ago in its petition for mandamus filed in this Court. Consequently, the Court has “no basis for reordering agency priorities.” *Barr Labs.*, 930 F.2d at 76.⁸

2. In addition, we note, KM’s application for review is premised on a disagreement with the Media Bureau’s analysis of radio engineering principles and its related conclusion that KM had failed to demonstrate a level and type of interference to its signal that justified moving its station to another channel under the agency’s rules. *See* A. 4, 10-13. It is well established that “where a ‘highly technical question’ is involved, ‘courts necessarily must show considerable deference to an agency’s expertise.’ *MCI Cellular Tel. Co. v. FCC*, 738 F.2d 1322, 1333 (D.C. Cir. 1984).” *American Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 233 (D.C. Cir. 2008).

Indeed, this Court has held with respect to the competing methodologies for predicting interference at issue in this case that “the Commission’s conclusion that

⁸ KM’s claim that “the agency has recently acted on spectrum eligibility matters that have been pending a shorter time KM LPTV’s matter” (Pet. at 12) is incorrect. We are unaware of any party who has waited until late March 2016, just weeks before the auction is scheduled to start, to raise a claim *for the first time* that it is entitled to participate in the auction on a channel other than the one on which it is authorized to operate.

Longley-Rice maps are more accurate than Grade B contours is ‘precisely the type of technical issue on which we defer to the Commission's expertise.’ *Keller Communications v. FCC*, 130 F.3d 1073, 1077 (D.C.Cir.1997).” *Costa de Oro Television, Inc.*, 294 F.3d at 129-30. *See MB Ruling* at 3. A. 3.

Under well-settled principles, which KM does not dispute (Pet. at 8), a party that seeks mandamus must show a “clear and indisputable” right to relief. *Gulfstream Aerospace Corp.*, 485 U.S. at 289. KM has utterly failed to do that here.

CONCLUSION

The petition for a writ of mandamus should be denied.

Respectfully submitted,

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March 7, 2016

ADDENDUM

<i>Letter from Barbara A. Kreisman to Aaron Shainis</i> , FCC File No. BDISDTA-20131114BTV (Aug. 24, 2015) (<i>MB Ruling</i>)	1
Application for Review, filed by KM LPTV of Chicago-13 L.L.C. (Sept. 22, 2015)	4
Notification, filed by KM LPTV of Chicago-13 L.L.C. (Feb. 16, 2016)	38
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Federal Communications Commission
Washington, D.C. 20554

August 24, 2015

Aaron Shainis, Esq.
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1850 M Street, N.W.
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Washington, D.C. 20036

Re: WOCK-CD, Chicago, Illinois
Facility ID No. 35092
FCC File No. BDISDTA-20131114BTV

Dear Counsel:

This is with respect to the above-referenced application filed by KM LPTV of Chicago-13, L.L.C. (“KM”) for Class A television station WOCK-CD, Chicago, Illinois. The station is currently operating at the John Hancock Building and the application proposes to change the station’s channel from 4 to 41. For the reasons discussed below, the application is dismissed.

The Community Broadcasters Protection Act of 1999 accorded certain qualifying low power television stations with “primary” Class A status,¹ and WOCK-CD was granted Class A status in 2000. Class A television stations were subject to interference and displacement by full power television stations only as a result of “engineering solutions” necessary to resolve “technical problems” in replicating and maximizing the full power television station’s DTV service areas during the DTV transition.² The DTV transition ended in June 2009 and Class A stations are no longer subject to displacement. A Class A television licensee seeking to change channel for purposes other than displacement relief is required to file a major change application, which may only be filed after the Commission issues a Public Notice specifying a period for the filing of major modification applications.³

KM’s Class A analog operation on channel 13 was displaced by the allotment of digital channel 13 for WREX-DT at Rockford, Illinois. Accordingly, KM filed a displacement application for digital channel 4 in 2008 and licensed that facility in June 2009.⁴ The licensee of station WHBF-TV, Rock Island, Illinois, analog channel 4, pre-transition digital channel 58, post-transition digital channel 4, also filed a license to cover construction of its channel 4 digital facility in June 2009.⁵ After it flash-cut to digital channel 4, WHBF-TV began receiving numerous complaints from viewers regarding poor reception of the digital channel 4 signal. In order to alleviate these low-VHF channel reception problems, WHBF-TV obtained an STA on September 2, 2009 to increase its power to 33.7 kW ERP, and ultimately

¹ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix at pp. 1501A-594–1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

² See *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6380-81, paras. 61-64 (2000)(subsequent history omitted).

³ 47 C.F.R. § 74.787(a)(3).

⁴ FCC File Nos. BDISDVA-20081210AER and BLDVA-20090608ACN.

⁵ FCC File No. BLCDDT-20090618ACW.

licensed that facility.⁶ In its applications, WHBF-TV demonstrated that the proposed facilities complied with the Commission's interference protection requirements with respect to all stations entitled to protection.

Some WOCK-CD viewers experienced similar low-VHF channel reception difficulties after that station transitioned to digital, and KM was granted STAs to operate with higher power than its licensed ERP of .3 kW beginning in January 2010.⁷ KM also filed an application to operate on channel 33 in March 2010,⁸ arguing that the application "should be considered a displacement application since its original Channel 4 cannot provide satisfactory TV service within the station's current analog TV service."⁹ The Video Division dismissed this application, concluding that WOCK-CD was not "displaced."¹⁰ Under the Commission's rules, only "a digital low power television or television translator station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station . . . may at any time file a displacement relief application for change in channel . . ."¹¹ KM acknowledged in its 2010 application that it was not displaced by another station and its argument that there was support "for the premise of displacement from a VHF channel to a UHF channel predicated on impulse noise interference" was rejected by the Division.¹² After its application was dismissed in October 2011, KM filed for and received a construction permit to permanently increase power to 1 kW, which it has not yet licensed.¹³

In its above-referenced application filed in November 2013, KM initially asserted that because the station was operating on channel 4, "WOCK-CD currently encounters substantial interference throughout significant portions of its service area [and] has received numerous complaints of interference." In support, KM provided a number of statements from persons living in Chicago or close-in suburbs to the north and west, stating that "I would like to watch the programming (i.e., Korean language) that is carried on WOCK but find it extremely difficult due to the poor signal quality. Are there any plans to improve the signal quality?" KM amended the application in June 2014 to assert that WOCK-CD is receiving interference from WHBF-TV's operation on channel 4 with 33.7 kW ERP, and submitted an Engineering Statement with maps showing that the WOCK-CD and WHBF-TV contours overlap.¹⁴ It also asserts that WOCK-CD was granted a license for channel 4 in June 2009, that WHBF-TV was not licensed to operate on channel 4 until May 2011, and that since "the interference presented itself after KM commenced operations . . . KM could not have known of the interference."

We conclude again that KM has failed to demonstrate that WOCK-CD is displaced. With respect to its initial showing based on viewer complaints, the viewers do not allege interference but instead state that they have difficulty viewing the station because of its "poor signal." As KM acknowledged in its most recent STA request filed several months prior to its filing of the above-referenced application, "the station is still having problems with providing adequate digital television service on Channel 4 . . . due to the presence of relatively high impulse noise in the Channel . . . [and the fact that] many receive TV antennas are not adequately configured to receive digital TV signals in the low VHF band."¹⁵ As we

⁶ See FCC File Nos. BSTA-20090827ABR; BPCDT-20100512AFK; BLCDDT-20100629AVD.

⁷ See FCC File Nos. BSTA-20100108ABP; BSTA-20101109AAQ; BSTA-20120221ABH. It appears that WOCK-CD is currently operating with 1 kW ERP. See FCC File Nos. BSTA-20120221ABH and BESTA-20130220AAN.

⁸ FCC File No. BDISDTA-20100311ABP.

⁹ *Id.*, Engineering Statement at 2.

¹⁰ See Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, to Mr. Marcus Lamb (Oct. 31, 2011), available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=29149.

¹¹ *Id.* at 2, citing 47 C.F.R. § 73.787(a).

¹² *Id.*

¹³ FCC File No. BPDVA-20120907AAT.

¹⁴ KM amended its application a third time to specify a different directional antenna.

¹⁵ FCC File No. BESTA-20130220AAN, Engineering Statement at 2-3.

concluded in our dismissal of KM's first "displacement" application, the fact that a station is operating on a low VHF channel does not qualify the station for displacement relief.

We also reject KM's demonstration that WOOCK-CD is receiving interference from WHBF-TV. Section 73.623(c)(5) of the Commission's rules provides that a full power DTV station application proposing to expand its coverage area will not be accepted if it is predicted to cause interference to a Class A station.¹⁶ KM asserts that WHBF-TV is causing impermissible interference to WOOCK-CD as defined in section 73.623(c)(5)(ii) of the rules, which provides for calculating interfering contours using the appropriate F(50,10) chart in section 73.699,¹⁷ and submits maps showing contour overlap between the two stations using this measurement approach. Section 73.623(c)(5)(iii), however, allows a DTV applicant to "make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations."¹⁸ Using Longley-Rice, a more accurate interference analysis tool, demonstrates that there is no predicted impermissible interference to WOOCK-CD from WHBF-TV.

KM also incorrectly suggests that WOOCK-CD began operations on channel 4 well in advance of WHBF-TV, and that the claimed interference to WOOCK-CD is somewhat recent. When KM filed its displacement application for channel 4 in December 2008, WHBF-TV already held a construction permit for its post-transition facilities on channel 4 at 24.1 kW ERP,¹⁹ and both stations commenced digital operations on channel 4 in June 2009. WHBF-TV began operating at 33.1 kW ERP shortly thereafter, in September 2009, and KM did not complain of interference from those operations in 2009 and 2010, nor did it file an objection to the grant of the May 2010 application for a construction permit to permanently increase WHBF-TV's power to 33.1 kW. We also note that KM did not claim interference from WHBF-TV in its March 2010 "displacement" application, but only that operations on channel 4 were subject to "impulse noise interference."

Based on the foregoing, we conclude that the above-referenced application to change WOOCK-CD's channel is a major change application and that because there is no open period for the filing of Class A major change applications, the application must be dismissed. Accordingly, the above-referenced application filed by KM LPTV of Chicago-13, L.L.C. for station WOOCK-CD, Chicago, Illinois IS DISMISSED. A major change application may be filed when the Commission issues a Public Notice specifying a period for the filing of such applications for Class A stations.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁶ 47 C.F.R. §73.623(c)(5).

¹⁷ 47 C.F.R. §73.623(c)(5)(ii).

¹⁸ 47 C.F.R. §73.623(c)(5)(iii).

¹⁹ FCC File No. BPCDT-20080620ABL.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of KM LPTV of Chicago-13, L.L.C.)	File No. BDISDTA-20131114BTW
for a Displacement Application for Class A)	Facility ID No. 35092
Television Station WOCK-CD, Chicago, IL)	
)	

To: The Commission
Attn: Video Division, Media Bureau

APPLICATION FOR REVIEW

KM LPTV of Chicago-13, L.L.C. (“KM”), licensee of Class A Television Station WOCK-CD, Chicago, Illinois (“WOCK” or the “Station”), by its attorneys, pursuant to Section 1.115 of the Commission’s rules, hereby seeks Commission review of an August 24, 2015 letter action issued by the Media Bureau, Video Division (the “*Division Action*.”).¹ KM filed a displacement application (the “Application”) proposing to change the WOCK channel from Channel 4 to Channel 41 because of interference within its service area. The *Division Action* dismissed the Application, claiming it to be a major change application. The issue presented is whether a *Division Action* which violates the FCC’s displacement rule and treats KM and WOCK differently than similar displacement applications can stand. Clearly the Division’s *Action* should be reversed and KM’s Application must be approved. In support of its position, KM submits the following.

I. BACKGROUND

As noted, KM is the licensee of Class A Station WOCK-CD. The Station currently operates on Channel 4. However, WOCK has continued to suffer substantial interference

¹ Letter from Barbara A. Kreisman, Chief, Video Division, to Aaron Shainis, Esq. Regarding WOCK-CD, Chicago, Illinois (August 24, 2015). A copy of the *Division Action* is attached hereto.

throughout significant portions of its service area while operating on Channel 4. In filing its Application seeking a different channel, KM pleaded with the Commission that it be allowed to provide interference-free service to those viewers within its service area who have been unable to receive the WOCK signal interference-free. In support of its Application, KM initially submitted complaints from viewers who had suffered interference, then, in a supplemental showing, detailed a source of that interference to WOCK by Station WHBF-TV, Rock Island, Illinois.

From the time that WOCK was first licensed to operate on Channel 4 in June 2009, WOCK has suffered from interference and KM has taken a series of steps in an attempt to overcome that interference problem. KM filed a minor change application to use a directional antenna system.² The WOCK license application to cover that minor change construction permit was granted in February, 2010. However, the facilities change did not resolve the interference problem. KM also filed the first in a series of Requests for Special Temporary Authority to increase power.³ This effort to provide an interference-free signal also proved unsuccessful.

Therefore, in March 2010, KM filed a displacement application proposing to change channels and operate WOCK on Channel 33.⁴ The Video Division dismissed this application, concluding that WOCK had not been truly displaced. The Division contended that WOCK was not eligible for displacement because KM had neither demonstrated that the Station was causing or receiving interference nor was it predicted to cause or receive interference from an authorized

² See FCC File No. BPDVA-20090630ADV.

³ See FCC File No. BSTA-20100108ABP.

⁴ See FCC File No. BDISDTA-20100311ABP.

TV broadcast station.⁵ The Division concluded that KM's focus on "impulse noise interference" provided an insufficient basis for permitting relocation by WOCK to another channel.

The interference continued and additional viewers complained to WOCK. Having unsuccessfully attempted facility changes such as changing to a new directional antenna system and increasing power and having pointed out signal problems created by impulse noise to its service area, KM filed its current displacement application in November 2013. In its Application, KM proposed to change WOCK's channel from 4 to 41.

KM included in its Application numerous written complaints from viewers, which were intended to demonstrate that a substantial amount of actual interference was occurring throughout significant portions of the WOCK service area. Scores of WOCK viewers complained that they were finding it extremely difficult or were unable to view WOCK programming, and they were demanding that something be done so that they could receive an interference-free signal.

In a Supplementary Engineering Amendment, KM documented the interference that viewers were complaining about by submitting an Engineering Statement and maps showing the predicted noise limited contours of WOCK and the interference contour of Station WHBF-TV, Rock Island, Illinois in relation to the protected contour of WOCK. Thus, the Engineering Showing showed that it was interference to WOCK from WHBF-TV about which WOCK viewers were complaining. The interference was calculated according to Section 73.623(c)(5)(ii)

⁵ See Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, to Marcus Lamb (October 31, 2013).

of the Commission's rules, based on the D/U signal ratios for "DTV-into-DTV" specified in Sections 73.623(c)(2) and (c)(3) of the Commission's rules.⁶

Despite the showing provided by KM, the Video Division concluded in the *Division Action* that KM had failed to demonstrate that WOCK was displaced. Amazingly, the Division rejected the abundant viewer complaints because of the wording used by the complainants. The Video Division also rejected KM's Engineering Showing of interference to WOCK from WHBF-TV.

The Video Division reasoned that the FCC's rules provided that, while a full power DTV station application proposing to expand coverage area could not be accepted if it was predicted to cause interference to a Class A station under Section 73.623(c)(5) of the rules, that rule section allowed a DTV applicant to make use of Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to a Class A station. Therefore, reasoned the Division, since WHBF-TV had used Longley-Rice propagation methods in its application, this meant there could not be any predicted interference to WOCK from WHBF-TV. The Video Division refrained from commenting at all about actual interference to WOCK by the interfering station, WHBF-TV. The Video Division went on to state that KM had not complained of interference prior to its recent application and had not previously challenged WHBF-TV broadcast operations when that station filed its applications.

II. DISCUSSION

⁶ The predicted WHBF-TV interference to WOCK covered a population of over 500,000 people (510,964 persons) and an area of 566.6 square kilometers. The amount of interference was calculated to constitute 7.5% of the population and 12.9% of the area within the WOCK 43 dBu contour.

A fair review of the history of WOCK's problems attempting to provide service to its viewers while operating on its current channel, and the Video Division's responses to KM's efforts to resolve the WOCK interference problem establishes that the Division, ultimately, is motivated by a desire to reject any displacement proposal involving a relocation by a Class A or LPTV station from a VHF channel to a UHF channel. KM has not sought anything in the way unique here. It has not requested a waiver of any Commission rule or policy or asked for special treatment. It has simply pointed out that viewers of WOCK are unable to view that Station's programming without interference to their receipt of the Station's signal. Over the years, KM has pointed to two sources of this interference, the first being impulse noise and the second being interference caused by a full power television station, WHBF-TV.

The Video Division's reaction to KM's efforts has been to "nitpick" KM's displacement proposals. The Video Division criticizes KM's Application because WOCK viewers in their complaints to WOCK did not describe the interference they were receiving by using the right wording in their complaints and criticizes KM because it did not point out full power television interference, initially, in its Application. The Video Division also uses circular reasoning in order to conclude that a full power television station could not be causing interference because the Division granted its application and accepted its predicted interference showing. Of course, the fact that the Division reviewed the application to determine only whether predicted interference would occur, not whether actual interference was occurring, is never discussed in the *Division Action*.

KM filed a displacement application for WOCK pursuant to Section 74.787(a)(4) of the Commission's rules. Section 74.787(a)(4) states that "a digital low power television or television translator station which *is causing or receiving interference or is predicted to cause or receive interference* to or from an authorized...DTV station, may at any time file a displacement relief

application for a change in channels.” (Emphasis added.) The *Division Action* would distort the wording of this rule by only allowing displacement relief where a low power television station was *predicted* to receive interference from an authorized DTV station. However, as noted, Section 74.787(a)(4) of the rules permits displacement in those cases where a station is not predicted to receive interference from an authorized DTV station, but, nonetheless, receives such interference. The *Division Action* would ignore the rule’s language in an effort to curtail displacements to VHF channels.

The fact that Section 73.625(c)(5)(iii) of the Commission’s rules allows a DTV station applicant to use Longley-Rice terrain dependent propagation methods to demonstrate that the proposed station will not create predicted interference to a Class A station is meaningful only to the extent the Commission is dealing with the question of whether the proposed DTV station application should be granted. It has no bearing on whether the DTV station, once it has been constructed and is operating, actually causes interference to the Class A station or whether the Class A station’s viewers receive such interference.⁷

The *Division Action*, in effect, has constructed a straw man, claiming that the WHBF-TV application was in compliance with Section 73.625(c)(5)(iii) and that this, therefore, conclusively demonstrates that there can never be any impermissible interference occurring to WOCK. However, KM has not argued that the Commission incorrectly granted the WHBF-TV Channel 4

⁷ Similarly, the Commission allows parties to challenge applications filed by FM translator stations under Section 74.1204 of the FCC’s rules to demonstrate predicted interference. However, even if no challenge is made at that pre-grant stage, stations are still protected and may object due to the presence of actual interference under Section 74.1203(a) of the rules. Translators are a secondary service and must cease broadcasting if causing interference to a broadcast station. Here, the remedy is that Class A stations are accorded displacement relief to relocate to a different channel, even if that channel is a UHF channel.

application. Instead, what KM has both asserted and demonstrated is that (1) WOCK viewers have complained because they are unable to receive an interference-free signal in their reception of WOCK and (2) in computing the protected WOCK and WHBF-TV interfering contours, a sizable interference area has been calculated, covering a significant area and population. Thus, KM has provided viewer complaints stating their concern about the interference they are receiving to their reception of WOCK and a source of that interference.

The Division, itself, has acknowledged that KM has asserted in its application that WHBF-TV is causing impermissible interference to WOCK.⁸ However, the Video Division reasons that, because WHBF-TV used Longley-Rice methodology, which it categorizes as “a more accurate interference analysis tool,”⁹ there is no predicted impermissible interference to WOCK from WHBF-TV. The Video Division has misconstrued KM’s argument. KM is not arguing that it should be granted displacement relief solely on the basis of predicted impermissible interference to WOCK. It is contending that there is actual interference to WOCK occurring here, as amply demonstrated by viewer complaints. The presence of that actual interference is depriving WOCK viewers from receiving an interference-free signal.

The Video Division alludes to the fact that KM did not claim interference to WOCK until relatively recently. The Video Division points out that WHBF-TV had a construction permit for post-transition facilities on Channel 4 that was issued in December 2008 and that KM did not object. However, the Video Division does not explain how WOCK would be aware that actual interference would occur based on a construction permit proposal.

⁸ Division Letter Action at p. 3.

⁹ *Id.*

In point of fact, from 2009 onward, KM has repeatedly attempted to overcome interference to receipt of its signal on Channel 4, first by filing an application and Requests for Special Temporary Authority, then filing displacement applications. The 2010 displacement application filed by KM for WOCK did complain about “impulse noise interference.”¹⁰ However, the fact that there could be impulse noise interference present is not mutually-exclusive with the additional presence of interference from a DTV station. Because Channel 4 is a low VHF channel, the possible presence of impulse noise would not be surprising. However, such interference does not rule out the presence of interference caused by a full power DTV station such as WHBF-TV. Both types of interference may be present and, apparently, are in this case. KM cited impulse noise interference. However, KM has also cited interference caused by WHBF-TV. The Video Division ignores the actual presence of such station-caused interference which viewers are complaining about merely by claiming that it is not predicted to occur.

Furthermore, as noted numerous times, WOCK viewers have alleged interference to their reception of WOCK. The Video Division seeks to fault KM and to exclude these complaints because the viewers did not specifically use the word “interference” in their complaints, playing an FCC form of “Simon Says.” Viewers complained that they found it difficult to view WOCK and, therefore, were unable to watch station programming because of the poor Station signal.

¹⁰ It should be noted that KM’s 2010 displacement application was not out of line with other displacement applications filed by stations with low VHF channels showing “impulse noise interference,” which the Commission approved. In the Application of River City Broadcasters, Inc. (BDISDTL-200881223AAQ), a copy of which is attached herein, a displacement application to substitute Channel 43 for Channel 5 was approved on August 4, 2009. The application asked for displacement relief because of serious actual interference in the form of “man-made and electrical interference inhibiting the reception of the Channel 5 signal.” Application of River City Broadcasters, Inc., filed December 23, 2008 (Attachment A, Engineering Statement). *See also* Application of Nave Broadcasting, LLC. (BDISDTL-20100222ACD), Channel 42 substituted for Channel 2.

KM stated in its 2010 Application that the licensee has been unable to serve viewers in its service area because of “interference.” In an effort to discount complaints from Station viewers, the Video Division plays word games, contending that when viewers state that they cannot receive a watchable signal, they are alleging something other than interference. Clearly, when viewers complain that they cannot receive a watchable signal from their local station, whether or not these viewers use the term “interference” in their complaint or some other verbiage, those viewers are complaining about interference to their ability to receive a viewable signal. Whether viewers use the term “poor signal” or some other term, their complaints of interference are just as real. No amount of word games by the Video Division can hide this fact.

Moreover, other stations with VHF channels have successfully filed displacement applications without including an analysis of any predicted or actual interference by full power television stations.¹¹ The Commission is under a duty to explain disparate treatment of similarly situated stations. The Commission may not discriminate within the class of stations seeking displacement relief unless it provides a strong justification for such treatment.¹²

KM has demonstrated in its Application that a substantial amount of WOCK viewers have complained about their inability to receive an interference-free viewable signal. KM also demonstrated overlapping interfering contours by WOCK and WHBF-TV, thereby, providing an explanation for at least some of that interference. KM has not demanded that WHBF-TV curtail

¹¹ See e.g. Application of Budd Broadcasting Co., Inc. (BDISDTL-20090318AAB); Application of Abacus Television (BDISDVA-20121022AAQ); Application of Venture Technologies Group, LLC. (BDISDTL-20090630AAZ). This group is by no mean meant to be exclusive.

¹² *Melody Music, Inc. v. FCC*, 845 F.2d 731, 733 (D.C. Cir. 1965) (the Commission must “do more than enumerate factual differences, if any. It must explain the relevance of these differences to the purposes of the Federal Communications Act.”)

service, nor would it seek to do so. It has, however, sought to protect itself and its viewers from WHBF-TV caused interference by relocating WOCK to another channel. If the Commission is interested in just decision-making, serving the public interest rather than merely curtailing the relocation of VHF Class A stations to UHF channels, it can easily render a fair decision here by approving the WOCK Application.

In view of the above, the Video Division's failure to grant the WOCK displacement application was legal error and should be reversed, and the WOCK Application should be granted without further delay.

Respectfully Submitted,

KM LPTV of Chicago-13, LLC

By: 
Aaron P. Shainis
Lee J. Peltzman
Its Attorneys

September 22, 2015

Shainis & Peltzman, Chartered
1850 M Street, NW, Suite 240
Washington, DC 20036
(202) 293-0011



Federal Communications Commission
Washington, D.C. 20554

August 24, 2015

Aaron Shainis, Esq.
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, D.C. 20036

Re: WOCK-CD, Chicago, Illinois
Facility ID No. 35092
FCC File No. BDISDTA-20131114BTW

Dear Counsel:

This is with respect to the above-referenced application filed by KM LPTV of Chicago-13, L.L.C. ("KM") for Class A television station WOCK-CD, Chicago, Illinois. The station is currently operating at the John Hancock Building and the application proposes to change the station's channel from 4 to 41. For the reasons discussed below, the application is dismissed.

The Community Broadcasters Protection Act of 1999 accorded certain qualifying low power television stations with "primary" Class A status,¹ and WOCK-CD was granted Class A status in 2000. Class A television stations were subject to interference and displacement by full power television stations only as a result of "engineering solutions" necessary to resolve "technical problems" in replicating and maximizing the full power television station's DTV service areas during the DTV transition.² The DTV transition ended in June 2009 and Class A stations are no longer subject to displacement. A Class A television licensee seeking to change channel for purposes other than displacement relief is required to file a major change application, which may only be filed after the Commission issues a Public Notice specifying a period for the filing of major modification applications.³

KM's Class A analog operation on channel 13 was displaced by the allotment of digital channel 13 for WREX-DT at Rockford, Illinois. Accordingly, KM filed a displacement application for digital channel 4 in 2008 and licensed that facility in June 2009.⁴ The licensee of station WHBF-TV, Rock Island, Illinois, analog channel 4, pre-transition digital channel 58, post-transition digital channel 4, also filed a license to cover construction of its channel 4 digital facility in June 2009.⁵ After it flash-cut to digital channel 4, WHBF-TV began receiving numerous complaints from viewers regarding poor reception of the digital channel 4 signal. In order to alleviate these low-VHF channel reception problems, WHBF-TV obtained an STA on September 2, 2009 to increase its power to 33.7 kW ERP, and ultimately

¹ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix at pp. 1501A-594-1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

² See *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Red 6355, 6380-81, paras. 61-64 (2000)(subsequent history omitted).

³ 47 C.F.R. § 74.787(a)(3).

⁴ FCC File Nos. BDISDVA-20081210AER and BLDVA-20090608ACN.

⁵ FCC File No. BLCDDT-20090618ACW.

licensed that facility.⁶ In its applications, WHBF-TV demonstrated that the proposed facilities complied with the Commission's interference protection requirements with respect to all stations entitled to protection.

Some WOCK-CD viewers experienced similar low-VHF channel reception difficulties after that station transitioned to digital, and KM was granted STAs to operate with higher power than its licensed ERP of .3 kW beginning in January 2010.⁷ KM also filed an application to operate on channel 33 in March 2010,⁸ arguing that the application "should be considered a displacement application since its original Channel 4 cannot provide satisfactory TV service within the station's current analog TV service."⁹ The Video Division dismissed this application, concluding that WOCK-CD was not "displaced."¹⁰ Under the Commission's rules, only "a digital low power television or television translator station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station . . . may at any time file a displacement relief application for change in channel . . ."¹¹ KM acknowledged in its 2010 application that it was not displaced by another station and its argument that there was support "for the premise of displacement from a VHF channel to a UHF channel predicated on impulse noise interference" was rejected by the Division.¹² After its application was dismissed in October 2011, KM filed for and received a construction permit to permanently increase power to 1 kW, which it has not yet licensed.¹³

In its above-referenced application filed in November 2013, KM initially asserted that because the station was operating on channel 4, "WOCK-CD currently encounters substantial interference throughout significant portions of its service area [and] has received numerous complaints of interference." In support, KM provided a number of statements from persons living in Chicago or close-in suburbs to the north and west, stating that "I would like to watch the programming (i.e., Korean language) that is carried on WOCK but find it extremely difficult due to the poor signal quality. Are there any plans to improve the signal quality?" KM amended the application in June 2014 to assert that WOCK-CD is receiving interference from WHBF-TV's operation on channel 4 with 33.7 kW ERP, and submitted an Engineering Statement with maps showing that the WOCK-CD and WHBF-TV contours overlap.¹⁴ It also asserts that WOCK-CD was granted a license for channel 4 in June 2009, that WHBF-TV was not licensed to operate on channel 4 until May 2011, and that since "the interference presented itself after KM commenced operations . . . KM could not have known of the interference."

We conclude again that KM has failed to demonstrate that WOCK-CD is displaced. With respect to its initial showing based on viewer complaints, the viewers do not allege interference but instead state that they have difficulty viewing the station because of its "poor signal." As KM acknowledged in its most recent STA request filed several months prior to its filing of the above-referenced application, "the station is still having problems with providing adequate digital television service on Channel 4 . . . due to the presence of relatively high impulse noise in the Channel . . . [and the fact that] many receive TV antennas are not adequately configured to receive digital TV signals in the low VHF band."¹⁵ As we

⁶ See FCC File Nos. BSTA-20090827ABR; BPCDT-20100512AFK; BLCDDT-20100629AVD.

⁷ See FCC File Nos. BSTA-20100108ABP; BSTA-20101109AAQ; BSTA-20120221ABH. It appears that WOCK-CD is currently operating with 1 kW ERP. See FCC File Nos. BSTA-20120221ABH and BESTA-20130220AAN.

⁸ FCC File No. BDISDTA-20100311ABP.

⁹ *Id.*, Engineering Statement at 2.

¹⁰ See Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, to Mr. Marcus Lamb (Oct. 31, 2011), available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=29149.

¹¹ *Id.* at 2, citing 47 C.F.R. § 73.787(a).

¹² *Id.*

¹³ FCC File No. BPDVA-20120907AAT.

¹⁴ KM amended its application a third time to specify a different directional antenna.

¹⁵ FCC File No. BESTA-20130220AAN, Engineering Statement at 2-3.

concluded in our dismissal of KM's first "displacement" application, the fact that a station is operating on a low VHF channel does not qualify the station for displacement relief.

We also reject KM's demonstration that WOCK-CD is receiving interference from WHBF-TV. Section 73.623(c)(5) of the Commission's rules provides that a full power DTV station application proposing to expand its coverage area will not be accepted if it is predicted to cause interference to a Class A station.¹⁶ KM asserts that WHBF-TV is causing impermissible interference to WOCK-CD as defined in section 73.623(c)(5)(ii) of the rules, which provides for calculating interfering contours using the appropriate F(50,10) chart in section 73.699,¹⁷ and submits maps showing contour overlap between the two stations using this measurement approach. Section 73.623(c)(5)(iii), however, allows a DTV applicant to "make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations."¹⁸ Using Longley-Rice, a more accurate interference analysis tool, demonstrates that there is no predicted impermissible interference to WOCK-CD from WHBF-TV.

KM also incorrectly suggests that WOCK-CD began operations on channel 4 well in advance of WHBF-TV, and that the claimed interference to WOCK-CD is somewhat recent. When KM filed its displacement application for channel 4 in December 2008, WHBF-TV already held a construction permit for its post-transition facilities on channel 4 at 24.1 kW ERP,¹⁹ and both stations commenced digital operations on channel 4 in June 2009. WHBF-TV began operating at 33.1 kW ERP shortly thereafter, in September 2009, and KM did not complain of interference from those operations in 2009 and 2010, nor did it file an objection to the grant of the May 2010 application for a construction permit to permanently increase WHBF-TV's power to 33.1 kW. We also note that KM did not claim interference from WHBF-TV in its March 2010 "displacement" application, but only that operations on channel 4 were subject to "impulse noise interference."

Based on the foregoing, we conclude that the above-referenced application to change WOCK-CD's channel is a major change application and that because there is no open period for the filing of Class A major change applications, the application must be dismissed. Accordingly, the above-referenced application filed by KM LPTV of Chicago-13, L.L.C. for station WOCK-CD, Chicago, Illinois IS DISMISSED. A major change application may be filed when the Commission issues a Public Notice specifying a period for the filing of such applications for Class A stations.

Sincerely,


Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁶ 47 C.F.R. §73.623(c)(5).

¹⁷ 47 C.F.R. §73.623(c)(5)(ii).

¹⁸ 47 C.F.R. §73.623(c)(5)(iii).

¹⁹ FCC File No. BPCDT-20080620ABL.

Federal Communications Commission Washington, D.C. 20554 FCC 346	Approved by OMB 3060-0016 (February 2005) FOR FCC USE ONLY
APPLICATION FOR AUTHORITY TO CONSTRUCT OR MAKE CHANGES IN A LOW POWER TV, TV TRANSLATOR OR TV BOOSTER STATION	
Read INSTRUCTIONS Before Filling Out Form	FOR COMMISSION USE ONLY FILE NO. BDISDTL - 20081223AAQ

Section I - General Information

1.	Legal Name of the Applicant RIVER CITY BROADCASTERS, INC. Mailing Address 2100 EAST DOUGLAS AVE. <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">City WICHITA</td> <td style="width: 25%;">State or Country (if foreign address) KS</td> <td style="width: 25%;">ZIP Code 67214 - 4336</td> </tr> <tr> <td>Telephone Number (include area code) 3162678855</td> <td colspan="2">E-Mail Address (if available) KCTU@KCTU.COM</td> </tr> <tr> <td>FCC Registration Number: 0004946471</td> <td>Call Sign KCTU-LP</td> <td>Facility ID Number 56517</td> </tr> </table>	City WICHITA	State or Country (if foreign address) KS	ZIP Code 67214 - 4336	Telephone Number (include area code) 3162678855	E-Mail Address (if available) KCTU@KCTU.COM		FCC Registration Number: 0004946471	Call Sign KCTU-LP	Facility ID Number 56517
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2.	Contact Representative (if other than Applicant) PETER TANNENWALD Mailing Address 1300 N. 17TH ST. 11TH FLOOR <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">City ARLINGTON</td> <td style="width: 25%;">State or Country (if foreign address) VA</td> <td style="width: 25%;">ZIP Code 22209 - 3801</td> </tr> <tr> <td>Telephone Number (include area code) 7038120404</td> <td colspan="2">E-Mail Address (if available) TANNENWALD@FHHLAW.COM</td> </tr> </table>	City ARLINGTON	State or Country (if foreign address) VA	ZIP Code 22209 - 3801	Telephone Number (include area code) 7038120404	E-Mail Address (if available) TANNENWALD@FHHLAW.COM				
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3.	If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114): <input type="radio"/> Governmental Entity <input type="radio"/> Noncommercial Educational Licensee/Permittee <input checked="" type="radio"/> Other NO FEE FOR LPTV DISPLACEMENT (MINOR CHANGE) <input type="radio"/> N/A (Fee Required)									
4.	Facility Information a. <input checked="" type="radio"/> Low Power TV Station <input type="radio"/> TV Translator <input type="radio"/> TV Booster <input type="radio"/> Digital Low Power TV <input type="radio"/> Digital TV Translator b. Community of License: City: WICHITA State: KS									
5.	Application Purpose <input type="radio"/> New station <input type="radio"/> Major Change in licensed facility <input type="radio"/> Minor Change in licensed facility <input type="radio"/> Digital Flash Cut <input checked="" type="radio"/> Displacement [Exhibit I] <input type="radio"/> Analog <input checked="" type="radio"/> Digital <input type="radio"/> Major Modification of construction permit <input type="radio"/> Minor Modification of construction permit <input type="radio"/> Amendment to pending application <input type="radio"/> Digital Companion Channel a. File number of original construction permit or pending application: BLTVL-20040305ACL									

If an amendment, submit as an Exhibit a listing by Section and Question Number the portions of the pending application that are being revised. [Exhibit 2]

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

Section II - Legal

1.	<p>Certification. Applicant certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Applicant further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.</p>	<input checked="" type="radio"/> Yes <input type="radio"/> No											
2.	<p>Parties to the Application. List the applicant and all parties to the application. If other than natural persons, list officers, directors, stockholders with interests of 1% or more, general and limited partners and/or members.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; vertical-align: top;"> <p>a. Name and address of the applicant and, if applicable, its officers, directors, stockholders with interests of 1% or greater, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter remaining stockholders and partners.</p> </td> <td style="width: 60%; vertical-align: top;"> <p>b. Citizenship.</p> <p>c. Positional Interest: Officer, director, general partner, limited partner, LLC member, etc.</p> <p>d. Percentage of votes.</p> <p>e. Percentage of equity.</p> </td> </tr> </table> <p>[Enter Parties Information]</p> <p style="text-align: center;">Parties to the Application</p> <p>Parties to the Application. List the applicant and all parties to the application. If other than natural persons, list officers, directors, stockholders with interests of 1% or more, general and limited partners and/or members.</p> <p>a. Name and address of the applicant and, if applicable, its officers, directors, stockholders with interests of 1% or greater, or partners (if other than individual also show name, address, and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and partners.</p> <p>b. Citizenship.</p> <p>c. Positional Interest: Officer, director, general partner, limited partner, LLC member, etc.</p> <p>d. Percentage of votes.</p> <p>e. Percentage of equity.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 40%;">(a) Name and Address</th> <th style="width: 10%;">(b) Citizenship</th> <th style="width: 15%;">(c) Positional Interest</th> <th style="width: 15%;">(d) Percentage of Votes</th> <th style="width: 20%;">(e) Percentage of Equity</th> </tr> </thead> <tbody> <tr> <td>NOT REQUIRED FOR MINOR CHANGE</td> <td>US</td> <td>NOT REQUIRED</td> <td>0</td> <td>0</td> </tr> </tbody> </table>	<p>a. Name and address of the applicant and, if applicable, its officers, directors, stockholders with interests of 1% or greater, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter remaining stockholders and partners.</p>	<p>b. Citizenship.</p> <p>c. Positional Interest: Officer, director, general partner, limited partner, LLC member, etc.</p> <p>d. Percentage of votes.</p> <p>e. Percentage of equity.</p>	(a) Name and Address	(b) Citizenship	(c) Positional Interest	(d) Percentage of Votes	(e) Percentage of Equity	NOT REQUIRED FOR MINOR CHANGE	US	NOT REQUIRED	0	0
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(a) Name and Address	(b) Citizenship	(c) Positional Interest	(d) Percentage of Votes	(e) Percentage of Equity									
NOT REQUIRED FOR MINOR CHANGE	US	NOT REQUIRED	0	0									
3.	<p>Character Issues. Applicant certifies that neither applicant nor any party to the application has</p>	<input checked="" type="radio"/> Yes <input type="radio"/> No											

or has had any interest in or connection with:		See Explanation in [Exhibit 3]
a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or b. any pending broadcast application in which character issues have been raised.		
4.	Adverse Findings. Applicant certifies that, with respect to the applicant and any party to the application, no adverse finding has been made, nor has an adverse final action been taken related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 4]
5.	Alien Ownership and Control. Applicant certifies that it complies with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 5]
6.	Program Service Certification. (For Low Power Television Applicants Only) Applicant certifies that this station will offer a broadcast program service.	<input checked="" type="radio"/> Yes <input type="radio"/> No
7.	Local Public Notice. (For new station and major change Applicants Only) Applicant certifies that it has or will comply with the public notice requirements of 47 C.F.R. Section 73.3580.	<input type="radio"/> Yes <input checked="" type="radio"/> No
8.	Rebroadcast Certification. (For Applicants proposing translator rebroadcasts that are not the licensee of the primary station) Applicant certifies that written authority has been obtained from the licensee of the station whose programs are to be retransmitted.	<input type="radio"/> Yes <input checked="" type="radio"/> No
9.	Auction Authorization. If the application is being submitted to obtain a construction permit for which the applicant was the winning bidder in an auction, then the applicant certifies, pursuant to 47 C.F.R. Section 73.5005(a), that it has attached an exhibit containing the information required by 47 C.F.R. Sections 1.2107(d), 1.2110(i), 1.2112(a) and 1.2112(b), if applicable. An exhibit is required unless this question is inapplicable.	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A [Exhibit 6]
10.	Anti-Drug Abuse Act Certification. Applicant certifies that neither applicant nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.	<input checked="" type="radio"/> Yes <input type="radio"/> No
I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)		
Typed or Printed Name of Person Signing		Typed or Printed Title of Person Signing
RONALD V. NUTT		PRESIDENT
Signature		Date
		12/22/2008

SECTION III - ENGINEERING DATA (Digital)				
TECHNICAL SPECIFICATIONS				
Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.				
TECH BOX				
1.	Channel Number: 43			
2.	Translator Input Channel No. :			
3.	Primary station proposed to be rebroadcast:			
	Facility Identifier	Call Sign	City	State Channel
4.	Antenna Location Coordinates: (NAD 27) Latitude:			

	Degrees 37 Minutes 40 Seconds 49 <input checked="" type="radio"/> North <input type="radio"/> South																																																																																																										
	Longitude:																																																																																																										
	Degrees 97 Minutes 19 Seconds 52 <input checked="" type="radio"/> West <input type="radio"/> East																																																																																																										
5.	Antenna Structure Registration Number: 1064175 <input type="checkbox"/> Not Applicable [Exhibit 10] <input type="checkbox"/> Notification filed with FAA																																																																																																										
6.	Antenna Location Site Elevation Above Mean Sea Level: 395 meters																																																																																																										
7.	Overall Tower Height Above Ground Level: 59 meters																																																																																																										
8.	Height of Radiation Center Above Ground Level: 53 meters																																																																																																										
9.	Maximum Effective Radiated Power (ERP): 2.7 kW																																																																																																										
10.	Transmitter Output Power: 0.25 kW																																																																																																										
11.	<p>a. Transmitting Antenna: Before selecting Directional "Off-the-Shelf", refer to "Search for Antenna Information" under CDBS Public Access (http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm). Make sure that the Standard Pattern is marked Yes and that the relative field values shown match your values. Enter the Manufacturer (Make) and Model exactly as displayed in the Antenna Search. <input checked="" type="radio"/> Nondirectional <input type="radio"/> Directional "Off-the-shelf" <input type="radio"/> Directional composite</p> <p>Manufacturer ERI Model AL8</p> <p>b. Electrical Beam Tilt: 1.75 degrees <input type="checkbox"/> Not Applicable</p> <p>c. Directional Antenna Relative Field Values: <input checked="" type="checkbox"/> N/A (Nondirectional or Directional "Off-the-shelf")</p> <p>Rotation (Degrees): <input type="checkbox"/> No Rotation</p> <table border="1" style="width:100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th> </tr> </thead> <tbody> <tr><td>0</td><td></td><td>10</td><td></td><td>20</td><td></td><td>30</td><td></td><td>40</td><td></td><td>50</td><td></td></tr> <tr><td>60</td><td></td><td>70</td><td></td><td>80</td><td></td><td>90</td><td></td><td>100</td><td></td><td>110</td><td></td></tr> <tr><td>120</td><td></td><td>130</td><td></td><td>140</td><td></td><td>150</td><td></td><td>160</td><td></td><td>170</td><td></td></tr> <tr><td>180</td><td></td><td>190</td><td></td><td>200</td><td></td><td>210</td><td></td><td>220</td><td></td><td>230</td><td></td></tr> <tr><td>240</td><td></td><td>250</td><td></td><td>260</td><td></td><td>270</td><td></td><td>280</td><td></td><td>290</td><td></td></tr> <tr><td>300</td><td></td><td>310</td><td></td><td>320</td><td></td><td>330</td><td></td><td>340</td><td></td><td>350</td><td></td></tr> <tr> <td colspan="2">Additional Azimuths</td><td colspan="10"></td> </tr> </tbody> </table>											Degrees	Value	0		10		20		30		40		50		60		70		80		90		100		110		120		130		140		150		160		170		180		190		200		210		220		230		240		250		260		270		280		290		300		310		320		330		340		350		Additional Azimuths																					
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NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.																																																																																																											
12.	Out-of-channel Emission Mask: <input type="radio"/> Simple <input checked="" type="radio"/> Stringent																																																																																																										
CERTIFICATION																																																																																																											
13.	Interference : The proposed facility complies with all of the following applicable rule sections. 47.C.F.R Sections 74.709, 74.793(e), 74.793(f), 74.793(g), 74.793(h), 74.794(b) and 73.1030.										<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 11]																																																																																																
14.	Environmental Protection Act. The proposed facility is excluded from environmental processing under 47. C.F.R. Section 1.1306 (i.e., The facility will not have a significant environmental impact and complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments). Unless the applicant can determine RF compliance, an Exhibit is required.										<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 12]																																																																																																

	By checking "Yes" above, the applicant also certifies that it, in coordination with other users of the site, will reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic exposure in excess of FCC guidelines.
15.	<p>Channels 52-59. If the proposed channel is within channels 52-59, the applicant certifies compliance with the following requirements, as applicable:</p> <p><input type="checkbox"/> The applicant is applying for a digital companion channel for which no suitable channel from channel 2-51 is available.</p> <p><input type="checkbox"/> Pursuant to Section 74.786(d), the applicant has notified, within 30 days of filing this application, all commercial wireless licenses of the spectrum comprising the proposed TV channel and the first adjacent channels thereto, for which the proposed digital LPTV or TV translator antenna site lies inside the licensed geographic boundaries of the wireless licensees or within 75 miles and 50 miles, respectively, of the geographic boundaries of co-channel and adjacent-channel wireless licensees.</p>
16.	<p>Channels 60-69. If the proposed channel is within channels 60-69, the applicant certifies compliance with the following requirements, as applicable:</p> <p><input type="checkbox"/> Pursuant to Section 74.786(e), the applicant has notified, within 30 days of filing this application, all commercial wireless licenses of the spectrum comprising the proposed TV channel and the first adjacent channels thereto, for which the proposed digital LPTV or TV translator antenna site lies inside the licensed geographic boundaries of the wireless licensees or within 75 miles and 50 miles, respectively, of the geographic boundaries of co-channel and adjacent-channel wireless licensees.</p> <p><input type="checkbox"/> Pursuant to Section 74.786(e), the applicant proposing operation on channel 63, 64, 68 and 69 ("public safety channels") has secured a coordinated spectrum use agreements(s) with 700 MHz public safety regional planning committee(s) and state administrator(s) of the region(s) and state(s) within which the antenna site of the digital LPTV or TV translator station is proposed to locate, and those adjoining regions and states with boundaries within 75 miles of the proposed station location.</p> <p><input type="checkbox"/> Pursuant to Section 74.786(e), the applicant for a channel adjacent to channel 63, 64, 68 or 69 has notified, within 30 days of filing this application, the 700 MHz public safety regional planning committee(s) and state administrator(s) of the region and state containing the proposed digital LPTV or TV translator antenna site and regions and states whose geographic boundaries lie within 50 miles of the proposed LPTV or TV translator antenna site.</p>
PREPARERS CERTIFICATION ON PAGE 3 MUST BE COMPLETED AND SIGNED.	

SECTION III PREPARER'S CERTIFICATION

I certify that I have prepared Section III (Engineering Data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name KYLE FISHER	Relationship to Applicant (e.g., Consulting Engineer) CONSULTING ENGINEER
Signature	Date 12/22/2008
Mailing Address 2237 TACKETTS MILL DRIVE SUITE A	

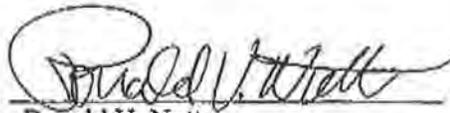
DECLARATION OF RONALD V. NUTT

Ronald V. Nutt hereby declares as follows:

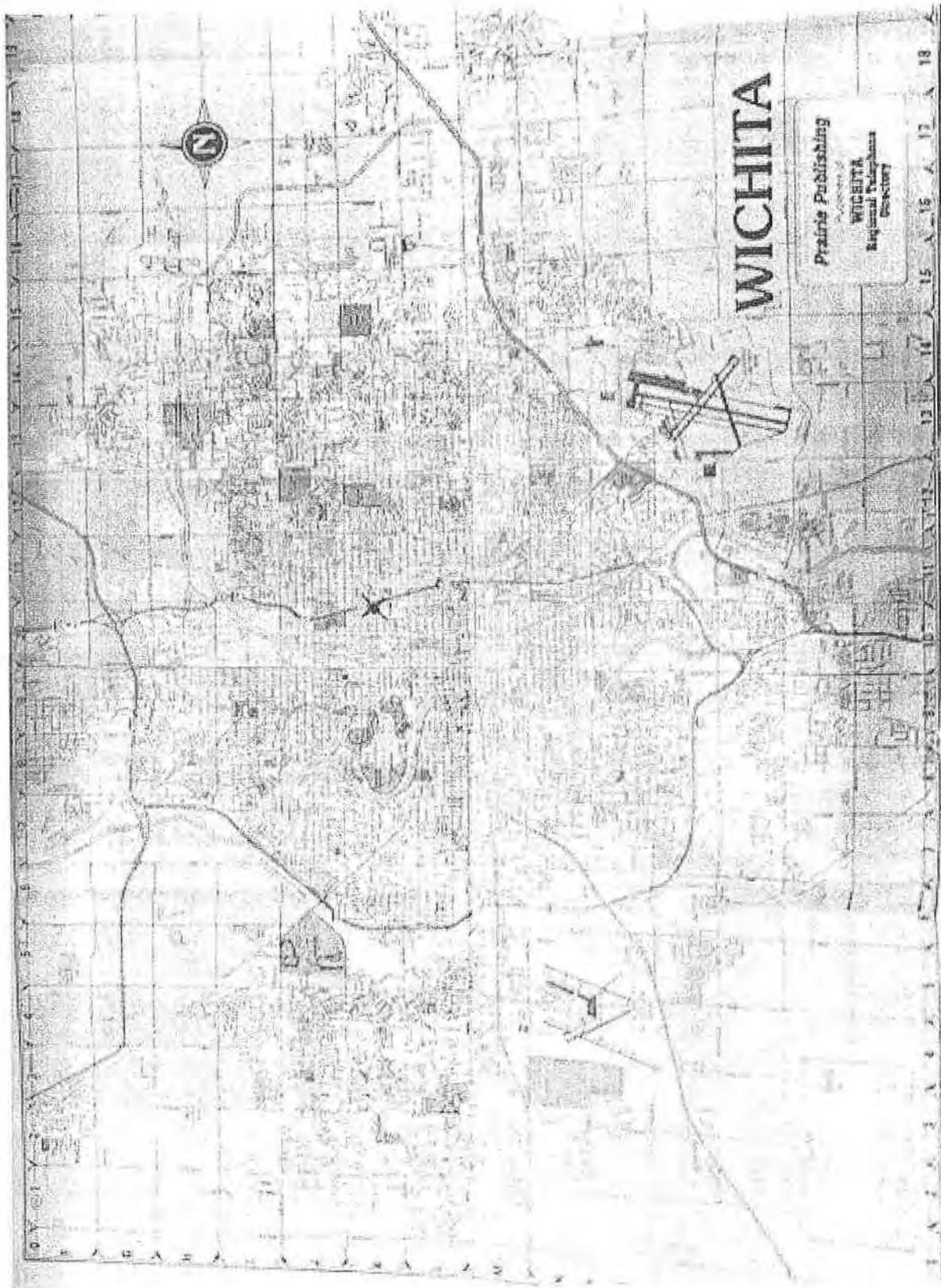
1. I am President of River City Broadcasters, Inc., licensee of Station KCTU-LP, Channel 5, Wichita, Kansas.
2. River City Broadcasters, Inc. is applying for displacement relief because of serious actual interference to reception of the KCTU-LP signal on Channel 5.
3. Attached hereto is a series of images and photographs.
 - a. The first page is a map showing in yellow the areas where interference is being experienced.
 - b. The second page is a map of the KCTU-LP protected 62 dBu contour, generated with the TV Query function on the FCC's website. This map shows that the interference areas are well within the 62 dBu contour. The largest interference areas shown in yellow on the first page are between Bel Aire and Eastborough shown on the 62 dBu map.
 - c. The largest interference area is located approximately 4 to 5 miles from the KCTU-LP transmitter site.
 - d. Outside the interference area, the picture of KCTU-LP is clear and is comparable to the picture from full power television stations in the market.
 - e. The third through final images are photographs taken of television screens on December 19, 2008, between 4:00 p.m. and 7:00 p.m. Central Standard Time. Some of the receivers were operated with rabbit ear antennas. Some were operated with outdoor antennas.
 - f. The final image shows interference appearing on the receiver screen during a short time when the program signal of KCTU-LP went to black.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 22, 2008.



Ronald V. Nutt



Service Area Map

<http://www.fcc.gov/fcc-bin/FMTV-service-area?x=TX976850.html>



[FCC Home](#) | [Search](#) | [Updates](#) | [E-Filing](#) | [Initiatives](#) | [For Consumers](#) | [Find People](#)

Audio and Video Divisions

FM and TV Service Contour Maps

(202)-418-2700

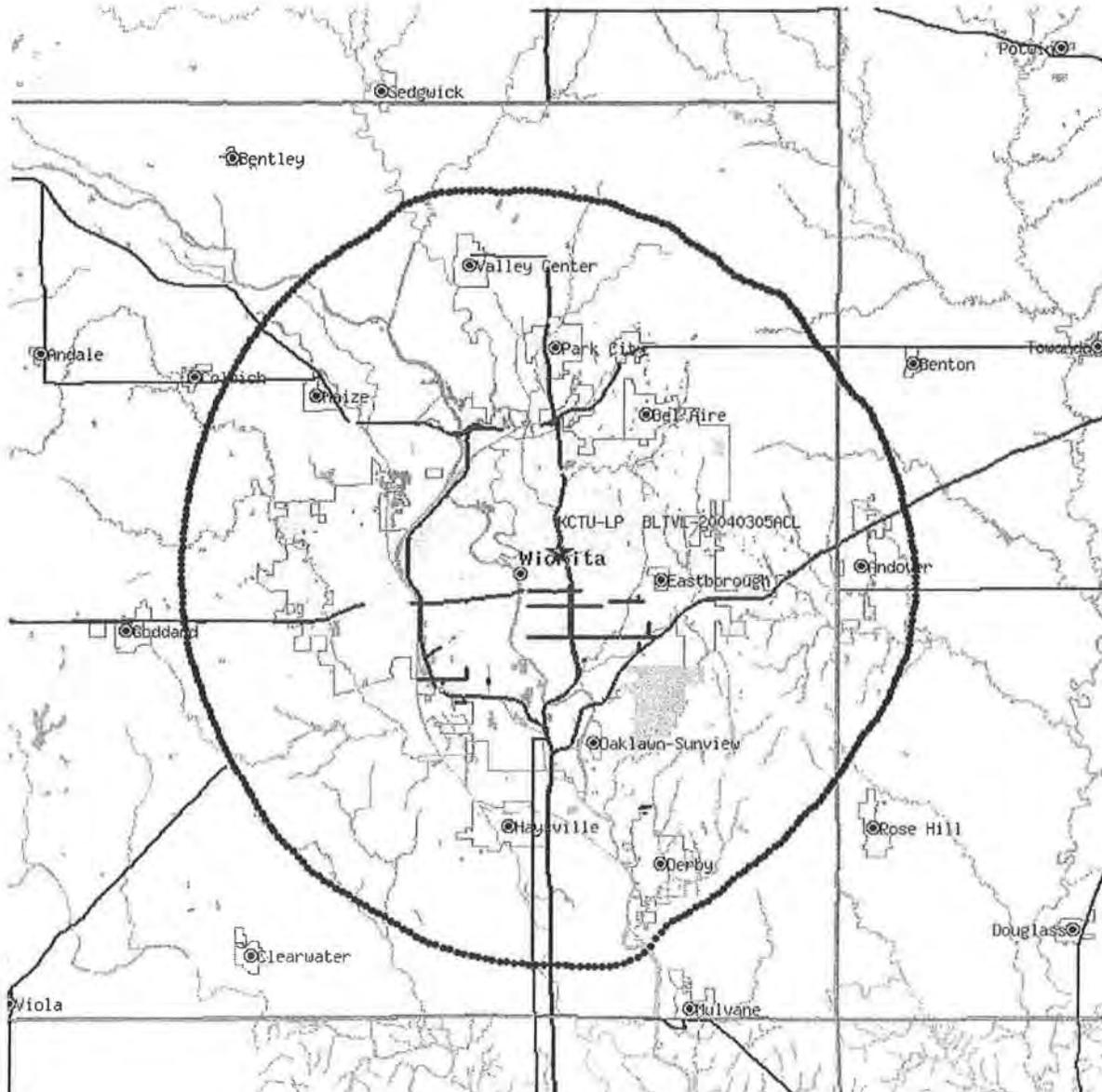
[FCC > MB > Audio Division - Video Division](#)

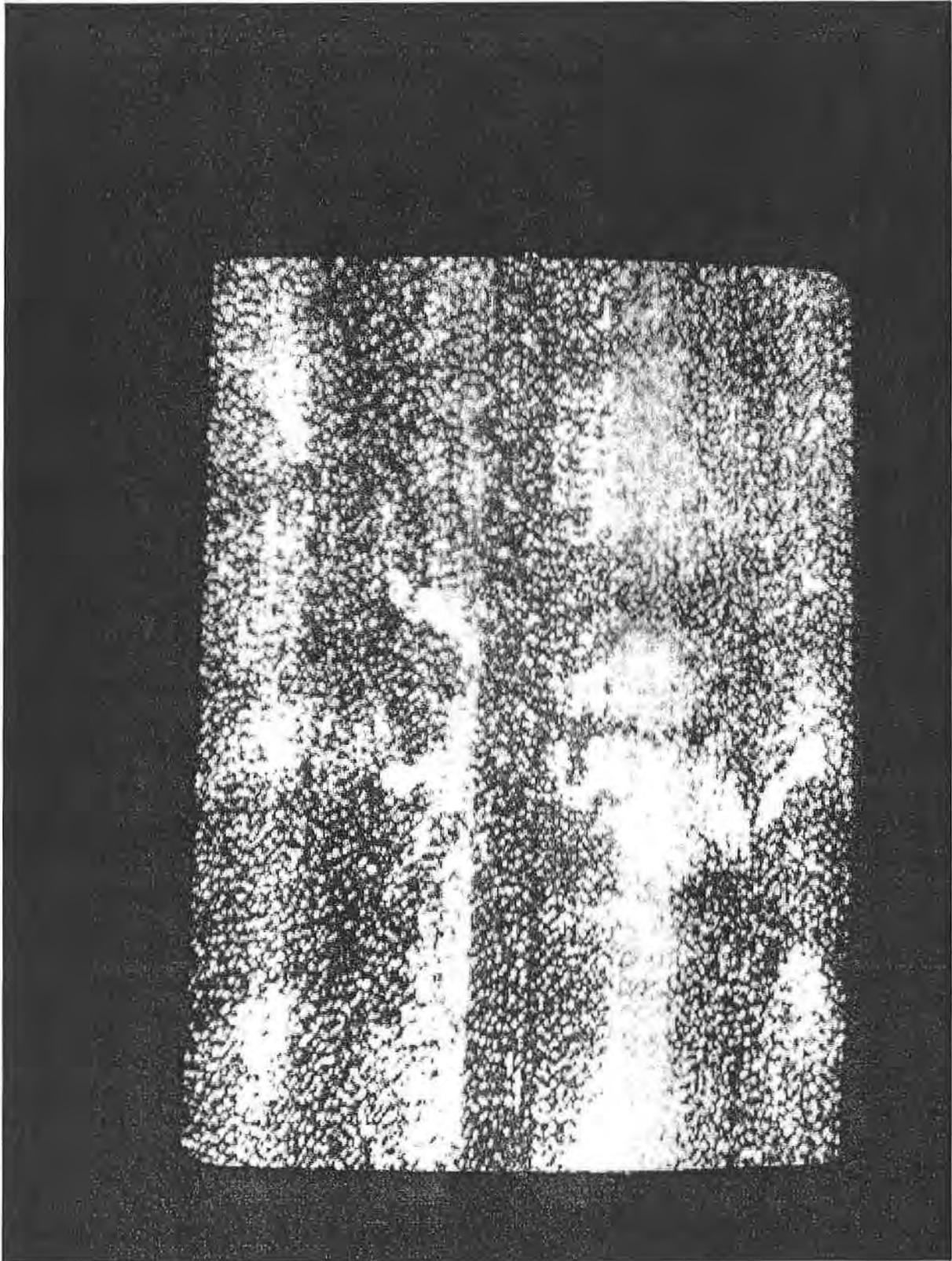
[FM Query](#)

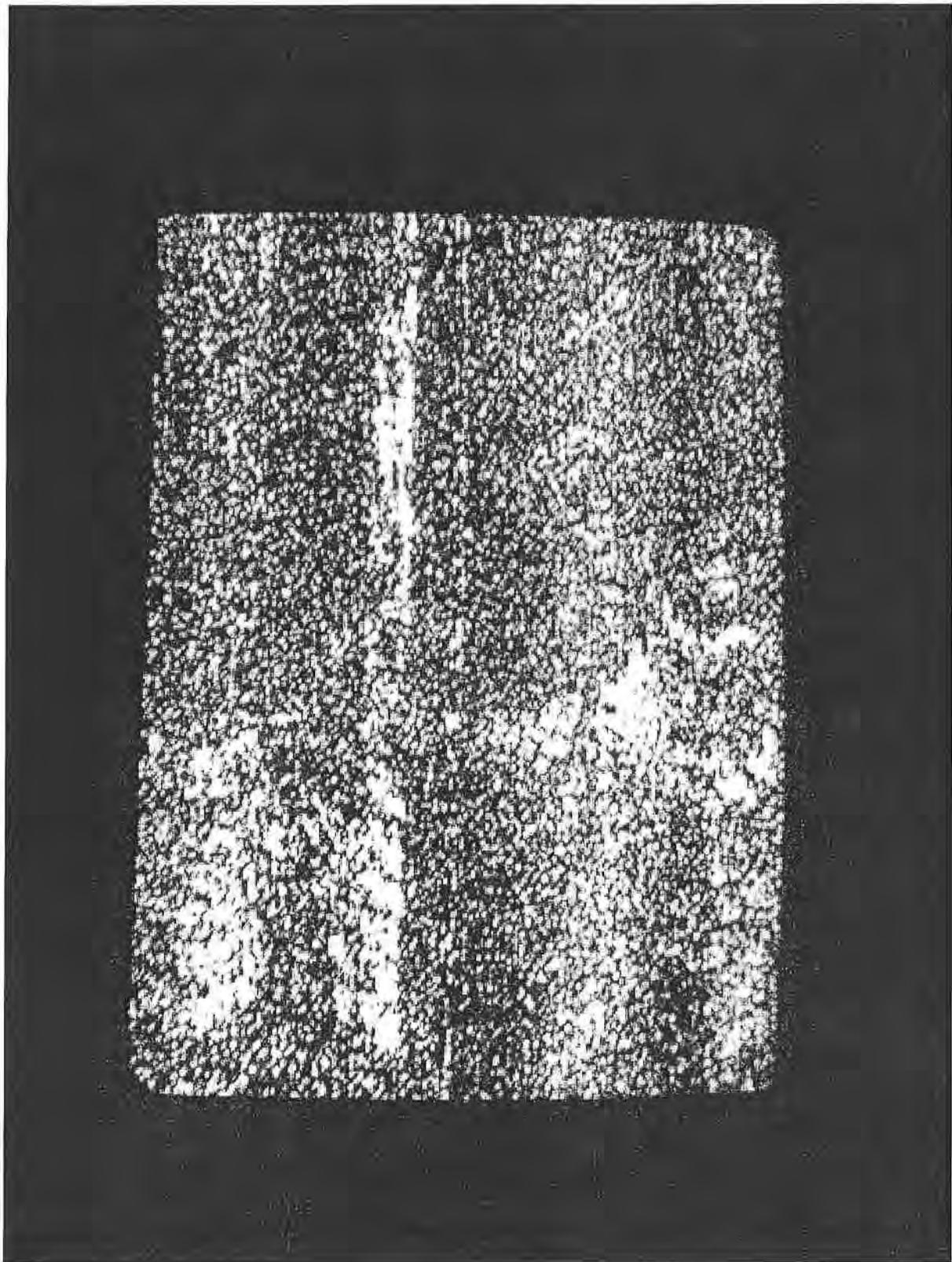
[TV Query](#)

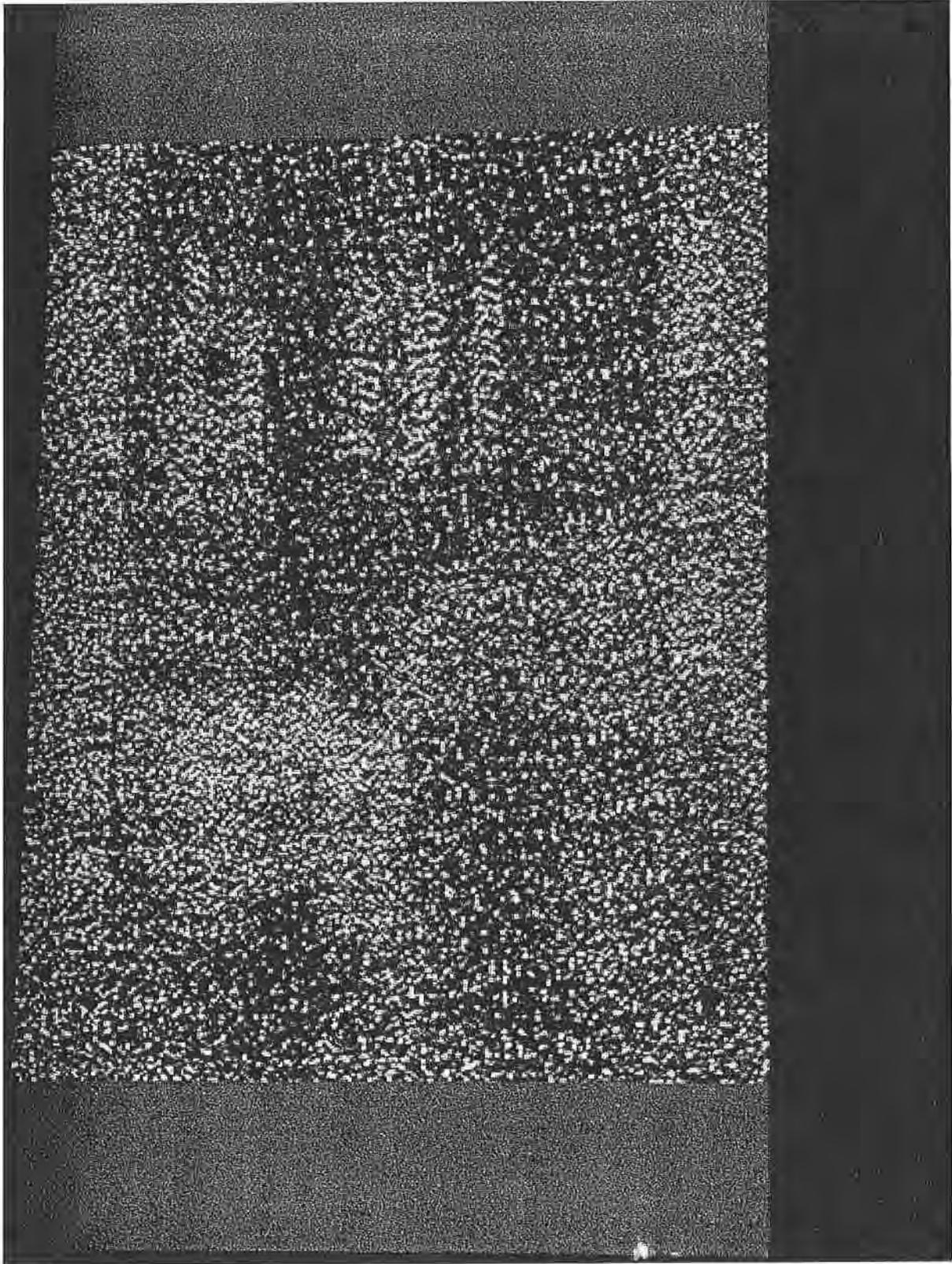
[FCC site map](#)

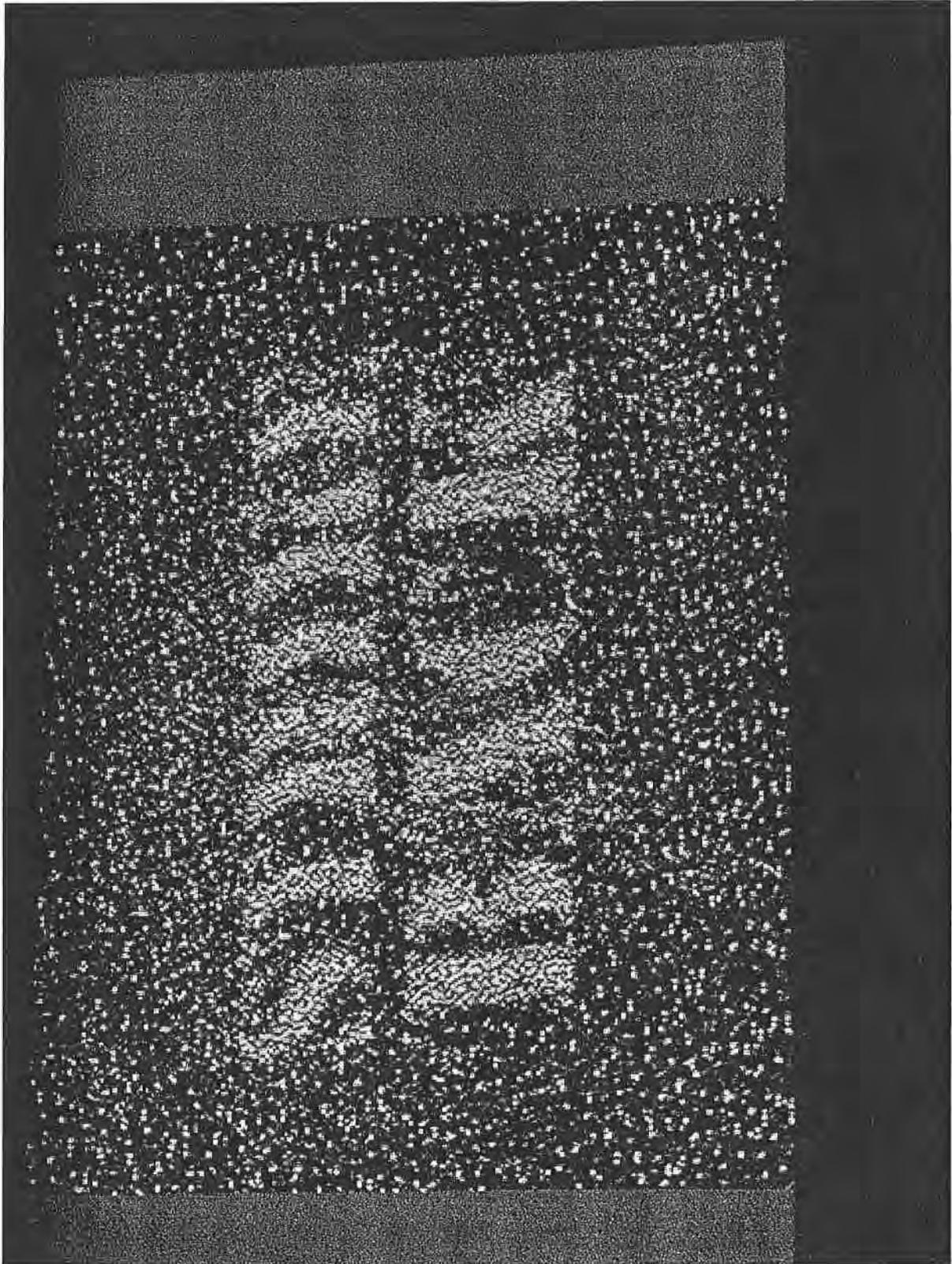
Service Area on a Tiger Census Map

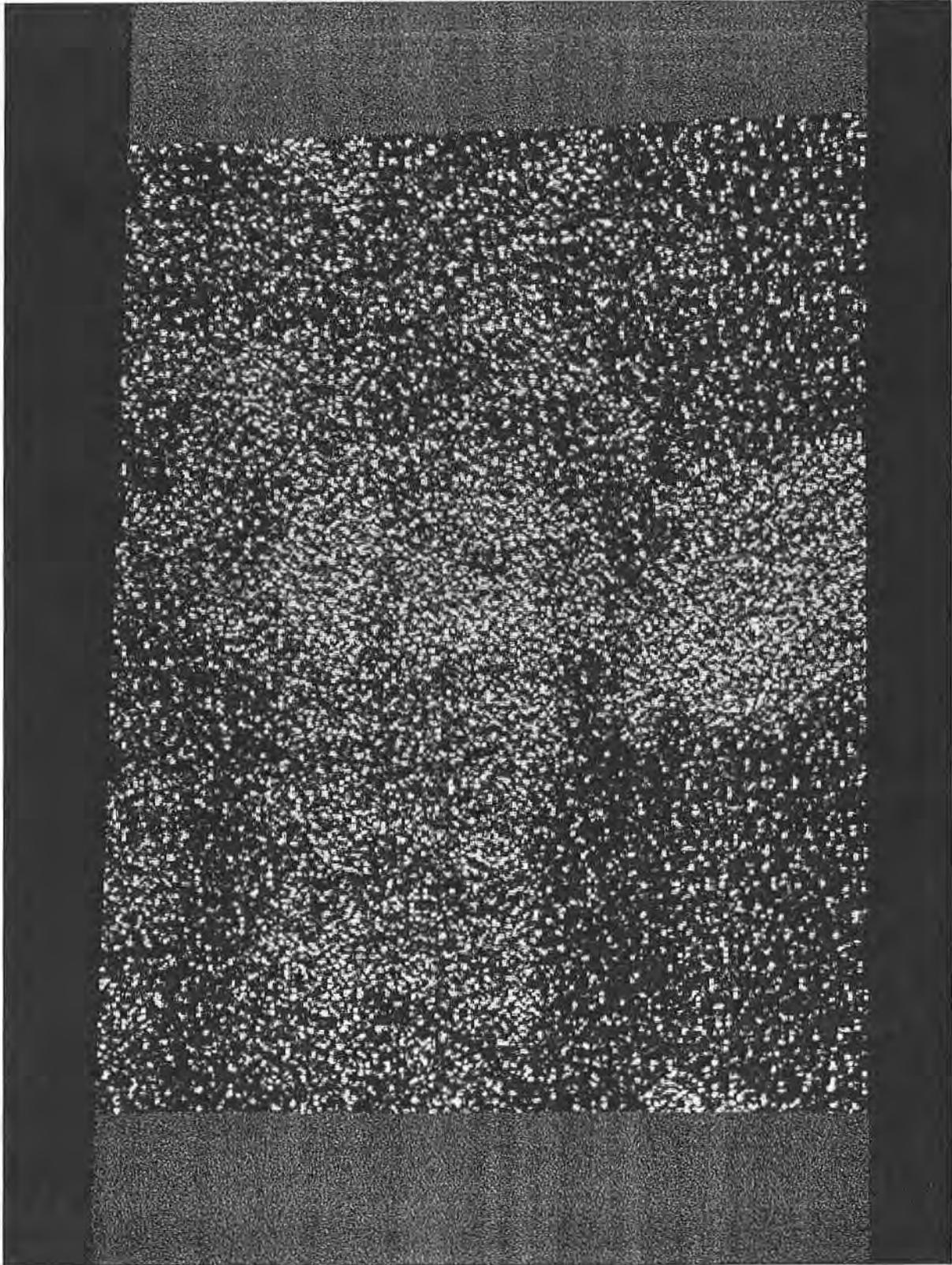


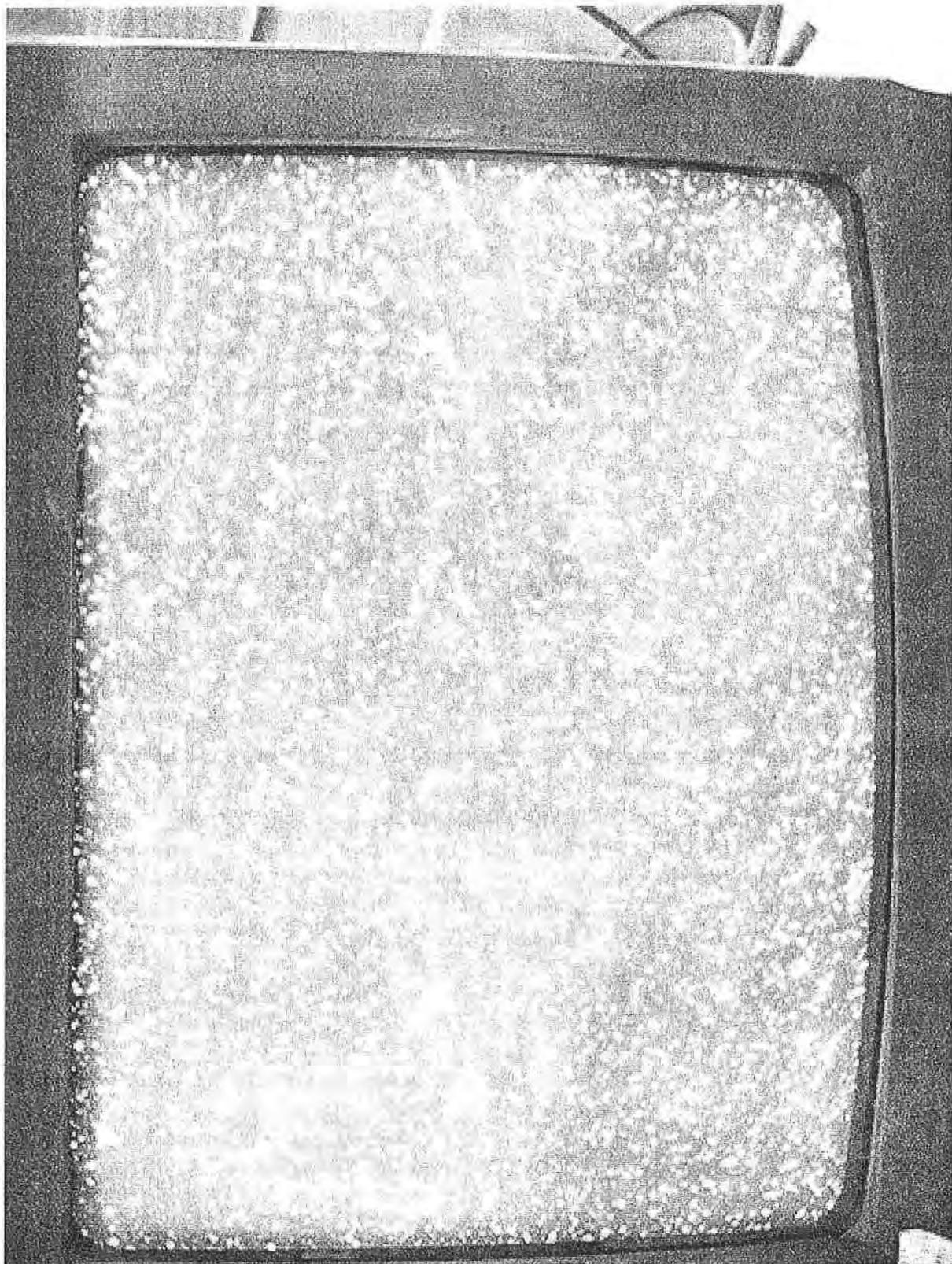












SMITH AND FISHER

EXHIBIT A

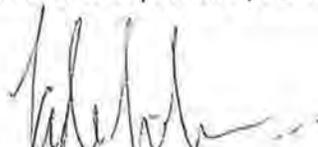
ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of RIVER CITY BROADCASTERS, INC., licensee of low-power television station KCTU-LP, Channel 5 in Wichita, Kansas, in support of this Application for Construction Permit to specify digital operation on Channel 43 from a new site as a displacement proposal. This request is being submitted as a result of man-made and electrical interference inhibiting the reception of the Channel 5 signal.

It is proposed to mount a standard ERI omnidirectional antenna at the 53-meter level of an existing 59-meter communications tower. Exhibit B is a map upon which the predicted service contours are plotted. It is important to note that the proposed 51 dBu contour encompasses a significant portion of the Grade A contour that obtains from the licensed KCTU-LP facility. Operating parameters for the proposed facility are tabulated in Exhibit C. An interference study is provided in Exhibit D, and a power density calculation follows as Exhibit E.

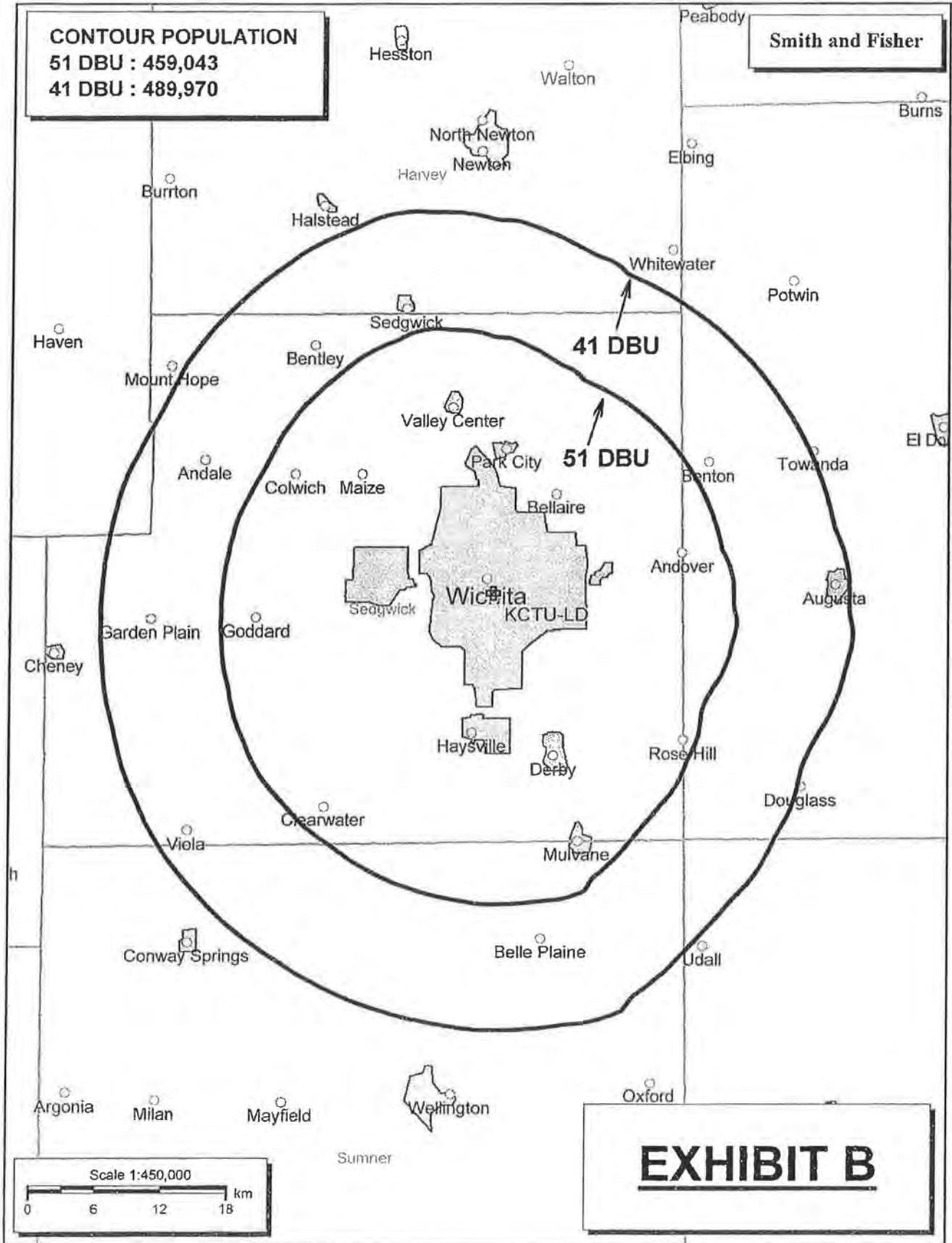
Because no change in the overall height or location of the existing tower is proposed, the FAA has not been notified of this application. The FCC issued Antenna Structure Registration Number 1064175 to this tower.

I declare under penalty of perjury that the foregoing statements and the attached exhibits, which were prepared by me or under my immediate supervision, are true and correct to the best of my knowledge and belief.



KYLE T. FISHER

December 18, 2008



SMITH AND FISHER

EXHIBIT C

PROPOSED OPERATING PARAMETERS

PROPOSED KCTU-LD
CHANNEL 43 – WICHITA, KANSAS

Transmitter Power Output:	0.25 kw
Transmission Line Efficiency:	77.6%
Antenna Power Gain – Toward Horizon:	14.06
Antenna Power Gain – Main Lobe:	14.06
Effective Radiated Power – Toward Horizon:	2.7 kw
Effective Radiated Power – Main Lobe:	2.7 kw
Transmitter Make and Model:	Type-accepted
Rated Output	0.5 kw
Transmission Line Make and Model:	Andrew HJ7-50A
Size and Type:	1-5/8" air heliax
Length:	200 feet*
Antenna Make and Model:	Andrew AL8
Orientation	Omnidirectional
Beam Tilt	1.75 degrees
Radiation Center Above Ground:	53 meters
Radiation Center Above Mean Sea Level:	448 meters

*estimated

SMITH AND FISHER

EXHIBIT D-1LONGLEY-RICE INTERFERENCE STUDIES
PROPOSED KCTU-LD
CHANNEL 43 – WICHITA, KANSAS

We conducted detailed interference studies using the Longley-Rice methodology contained in the Commission's *OET Bulletin No. 69*, with respect to all facilities of concern. The software utilizes a 1-square kilometer cell size, calculates signal strength at 0.1 kilometer increments along each radial studied, and employs the 1990 U.S. Census to count population within cells. In addition, the program does not attribute interference to the proposed facility in cells within the protected contour of the station under study where interference from another source (other than proposed KCTU-LD) already is predicted to exist (also known as "masking"). The results of these studies are provided in Exhibit D-2. They conclude that the facility proposed herein causes no significant new interference to any of the potentially affected stations.

As a result, it is believed that the proposed KCTU-LD facility complies with the requirements of Sections 74.709, 74.793(e), 74.793(f), 74.793(g), 74.793(h), 74.794(b) and 73.1030 of the Commission's Rules.

SMITH AND FISHER

EXHIBIT D-2

INTERFERENCE SUMMARY

PROPOSED KCTU-LD
CHANNEL 43 – WICHITA, KANSAS

<u>Call Sign</u>	<u>Status</u>	<u>City, State</u>	<u>Ch.</u>	<u>Longley-Rice Service Population</u>	<u>Unmasked Interference From Proposed Facility</u>	<u>%</u>
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[NO STATIONS AFFECTED]

SMITH AND FISHER

EXHIBIT E

POWER DENSITY CALCULATION

PROPOSED KCTU-LD
CHANNEL 43 – WICHITA, KANSAS

Since the FCC considers the possible biological effects of RF transmissions in its environmental determinations, we have studied the matter with respect to this Wichita facility. Employing the methods set forth in *OET Bulletin No. 65* and considering a main-lobe effective radiated power of 2.7 kw, an antenna radiation center 53 meters above ground, and the vertical pattern of the ERI antenna, maximum power density two meters above ground of 0.00032 mw/cm^2 is calculated to occur 46 meters from the base of the tower. Since this is only 0.1 percent of the 0.43 mw/cm^2 reference for uncontrolled environments (areas with public access) surrounding a facility operating on Channel 43 (644-650 MHz), this proposal may be excluded from consideration with respect to public exposure to nonionizing electromagnetic radiation.

Further, the station owner will take whatever precautionary steps are necessary, such as reducing power or leaving the air temporarily, to ensure that workers operating in the vicinity of the antenna are not exposed to excessive nonionizing radiation.

City LAKERIDGE	State or Country (if foreign address) VA	Zip Code 22192 -
Telephone Number (include area code) 7034942101	E-Mail Address (if available) KYLE@SMITHANDFISHER.COM	

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Exhibits

Exhibit 1

Description: JUSTIFICATION FOR DISPLACEMENT

KCTU-LP IS DISPLACED FROM CHANNEL 5 BY ACTUAL, HIGHLY DESTRUCTIVE INTERFERENCE WITHIN ONLY A FEW MILES FROM THE STATION'S TRANSMITTER, WELL WITHIN ITS PROTECTED SERVICE AREA AND THE POPULATION THE STATION WOULD EXPECT TO SERVE. ATTACHED IS A STATEMENT DOCUMENTING THE INTERFERENCE.

Attachment 1

Description
Interference Exhibit

Exhibit 10

Description: SEE EXHIBIT 11

SEE EXHIBIT 11

Attachment 10

Exhibit 11

Description: COMPREHENSIVE ENGINEERING EXHIBIT

A COMPREHENSIVE ENGINEERING EXHIBIT IS ATTACHED.

Attachment 11

Description
Comprehensive Engineering Exhibit

Exhibit 12

Description: SEE EXHIBIT 11

SEE EXHIBIT 11

Attachment 12

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Application of KM LPTV of Chicago-13, L.L.C.)
for a Displacement Application for Class A)
Television Station WOCK-CD, Chicago, IL)
)

File No. BDISDTA-20131114BTV
Facility ID No. 150022

Accepted/Files

FEB 18 2016

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attn: The Commission

NOTIFICATION

KM LPTV of Chicago-13, L.L.C. ("KM"), by its attorneys, hereby submits the instant notification relative to the pending September 22, 2015 Application for Review. In support, KM submits the following.

Background

Pursuant to an August 24, 2015 Letter signed by the Chief, Video Division, Meida Bureau, the above-referenced application of KM seeking displacement was dismissed (the "Video Division Action"). On September 22, 2015, KM filed a timely Application for Review of the Video Division Action.¹ That pleading is currently pending.²

Argument

The instant submission is intended to remind the Commission that until the Video Division Action becomes final, KM has certain rights. Specifically, should KM's position ultimately be affirmed, the Commission should not take any action which would preclude KM's right to obtain a grant of its pending application to utilize Channel 41. Specifically, the auctioning off of Channel 41 in the upcoming incentive auction would be inconsistent with KM's rights. *See* The Administrative Procedure Act, 5 U.S.C. §§ 703, 704 (1970).

¹ A copy of the pending Application for Review is attached.

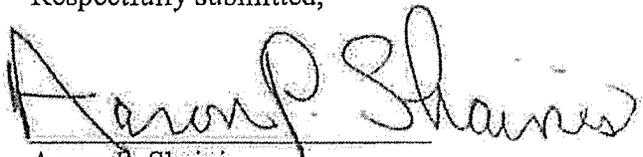
² In that pleading, KM has articulated those reasons the Video Division Action was incorrect and improper.

STAMP & RETURN

It should be noted that KM's application was filed on November 14, 2013. The Video Division Action is dated August 24, 2015. Thus, the Media Bureau took twenty-one (21) months to reach a determination on the KM application. The Commission cannot drag its feet in reaching a decision now and then make the argument, in the event KM ultimately prevails, that no relief is available. Such an outcome would be unconscionable. This would be especially egregious in light of the fact that the Commission is the responsible party initiating the incentive auction.³ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, 29 FCC Rcd. 6567 (2014) (remainder of citation deleted).

In view of the foregoing, KM requests that the Commission govern itself accordingly, so that it does not take any action which would be inconsistent with KM's statutory rights. See 5 U.S.C. §§ 551-59, 701-06 (1994 & Supp II 1996). In this regard, Section 706 of the APA expressly authorizes judges to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion...[or] without observance of procedures required by law." *Id.* at § 706.

Respectfully submitted,



Aaron P. Shainis
Counsel for
KM LPTV of Chicago-13, L.L.C.

February 16, 2016

Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036
(202) 293-0011

³ KM is not urging that the incentive auction be postponed or delayed, only that Channel 41 not be included in the auction until the Video Division Action has become final.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of KM LPTV of Chicago-13, L.L.C.)	File No. BDISDTA-20131114BTV
for a Displacement Application for Class A)	Facility ID No. 35092
Television Station WOCK-CD, Chicago, IL)	
)	
To: Office of the Secretary		
Attn: The Commission		

REQUEST FOR RULING

KM LPTV of Chicago-13, L.L.C. (“KM”), by its attorneys, requests that the Commission immediately rule on its pending September 22, 2015 Application For Review. In support, KM respectfully submits the following:

Background

On August 24, 2015, pursuant to a letter ruling, the Chief, Video Division, Media Bureau, dismissed the above-captioned application that KM filed in September, 2013 seeking a displacement from Channel 4 to Channel 41 in its service area (“Video Division Action”). On September 22, 2015, KM filed an Application for Review of the Video Division Action. The Application for Review articulated reasons that the Video Division action was incorrect and improper.

There are currently several matters pending in the United States Court of Appeals which would impact the Commission’s impending Incentive Auction.¹ Mako Communications & Reach TV Properties, Inc., Case Nos. 15-1264; 15-1280; Free Access & Broadcast Telemedia, LLC, et

¹ See In the Matters of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 29 FCC Rcd. 6567 (2014); and In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Second Order on Reconsideration, 30 FCC Rcd. 6746 (2015).

al., Case No. 15-1346; and The Videohouse, Inc., et al., Case No. 16-1060. All of these cases are scheduled to have oral arguments in May, at least two of them on the same day.²

Discussion

Should the Commission not agree with the arguments raised by KM in its Application for Review, KM desires to pursue its appeal rights. As KM has previously advised the Commission, until any such appeal is final KM has rights in its pending application to use Channel 41 that the Commission cannot impair or extinguish in the Incentive Auction.³ KM believes that it would be beneficial to all parties to be able to have any adverse decision in its case heard by the court in May, and that an immediate decision on its Application for Review, which has already been pending for over five months, is necessary to allow that option.⁴

KM does not intend to suggest or concede that it expects the Commission's ruling on its Application for Review to be adverse. KM is merely urging the Commission to render a decision so that it can avoid undue delay and take advantage of the orderly dispatch of the processes of the court.

KM requests that the Commission rule on the Application for Review immediately, and in any event no later than February 29, 2016.⁵

² The Mako and Beach TV appeal and the Free Access appeals are to be argued on the same day and before the same panel. Similar treatment has not yet been sought or determined for the Videohouse petition, but it will be argued in May.

³ See February 16, 2016 Notification Pleading.

⁴ KM reminds the Commission that the staff took twenty-one (21) months to rule on the displacement application. Thus, the agency must bear some responsibility for the necessity for the instant submission.

⁵ KM notes that the Commission ruled on February 12, 2016 on a reconsideration petition that Videohouse had filed September 2, 2015, thus allowing Videohouse to proceed in the court of appeals and obtain a May argument date. KM's request for a ruling on its Application for Review by February 29 is thus consistent with the schedule in this other matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Aaron P. Shainis". The signature is written in a cursive style with a horizontal line underneath the name.

Aaron P. Shainis
Counsel for
KM LPTV of Chicago-13, L.L.C.

February 24, 2016

Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
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(202) 293-0011



Federal Communications Commission
Washington, D.C. 20554

October 31, 2011

Mr. Marcus Lamb
President
Word of God Fellowship, Inc.
3901 Highway 121 South
Bedford, Texas 76021

Kevin Joel Bae
Vice President
KM LPTV of Chicago – 13, LLC
3654 West Jarvis Avenue
Skokie, Illinois 60076

Re: WDCI-LP (formerly K57DN)
Chicago, Illinois
Application for Minor Change
File No. BMPDTL-20100311AAA
Fac. Id. 67898

WOCK-CD
Chicago, Illinois
Application for Minor Change
File No. BDISDTA-20100311ABP
Fac. Id. 35092

Dear Stations:

This concerns the above-referenced application of Word of God Fellowship, Inc. (WGF) for minor change for WDCI-LP (formerly K57DN), Chicago, Illinois; and application of KM LPTV of Chicago – 13, LLC (KM) for minor change for WOCK-CD, Chicago, Illinois. On March 25, 2010, the Video Division of the Media Bureau granted WGF's application. On April 8, 2010, KM filed a petition for reconsideration of that action.¹ Also before us is WGF's April 16, 2010 Informal Objection to KM's application.² For the reasons set forth below, we deny KM's petition for reconsideration, grant WGF's Informal Objection, and dismiss KM's minor application for WOCK-CD.

This proceeding began when WGF's previous application to modify its digital construction permit for WDCI-LP, channel 30 (File No. BMPDTL-20100121AEU) was dismissed by the staff on March 4, 2010. On March 11, 2010, WGF re-filed the above-referenced application to modify the channel 30 digital construction permit for WDCI-LP. On that same day, KM filed the above-referenced application for WOCK-CD. KM claims that this application is a "displacement relief application" proposing to change the station's channel from 4 to 30. The staff granted WGF's minor change application on March 25, 2010, and KM submitted its petition for reconsideration of that action.

KM argues that its March 11, 2010 application for WOCK-CD, filed the same day as WGF's minor change application for WDCI-LP, should have been given processing priority since it was a

¹ Also before us is WGF's Response filed April 20, 2010.

² Also before us are KM's Response filed April 29, 2010, and WGF's Reply filed May 7, 2010.

“displacement relief application” seeking to change the station’s channel from 4 to 30.³ WGF responds that the application for WOCC-CD was not in fact a “displacement relief application” since the station is not being displaced by any primary station. Furthermore, WGF maintains that KM’s application is defective because it failed to provide the required protection to WGF’s construction permit for WDCI-LP on channel 30.⁴ WGF opines that KM must have incorrectly believed that the construction permit had expired when in fact it had been extended.⁵ WGF requests that the Commission dismiss KM’s application and affirm the grant of its minor change application for WDCI-LP.

We find that KM’s characterization of its March 11, 2010 filing as a “displacement relief application” is incorrect. The Commission’s Rules provide that “a digital low power television or television translator station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station, DTV station or allotment or other protected station or service, may at any time file a displacement relief application for change in channel”⁶ As noted by WGF, there is no authorized station, allotment or other protected station or service threatening KM’s use of digital channel 4. KM acknowledges that WOCC-CD is not being “displaced” by another station or service, as required by the displacement relief rule; however, it claims “there is ample support for the premise of displacement from a VHF channel to a UHF channel predicated on impulse noise interference.”⁷ KM also argues that the Commission has recognized that lower VHF channels 2-6 are “not optimal spectrum for digital operations as they are subject to a number of technical penalties. . . .”⁸ However, the precedent cited by KM does not involve application of the Commission’s displacement relief rule and are, therefore, inopposite. The fact remains that WOCC-CD’s existing digital operation on channel 4 has not been “displaced” and, therefore, KM could not have been afforded processing priority for its March 11, 2010 application. Furthermore, KM’s application failed to provide the requisite interference protection to WGF’s channel 30 construction permit. Therefore, for the above-outlined reasons, we affirm the grant of WGF’s March 11, 2010 application and dismiss KM’s March 11, 2010 application.

Accordingly, IT IS ORDERED, That the petition for reconsideration of KM LPTV of Chicago – 13, LLC IS DENIED.

IT IS FURTHER ORDERED, That the Informal Objection of Word of God Fellowship, Inc. IS GRANTED.

³ See 47 C.F.R. § 73.787(a)(4) (“where a displacement relief application . . . becomes mutually exclusive . . . with other non-displacement relief applications for facilities modifications . . . priority will be afforded to the displacement application . . . to the exclusion of other applications”).

⁴ See File No. BDISDT-20060213ACF.

⁵ See File No. BEP-20100203ACM.

⁶ 47 C.F.R. § 73.787(a).

⁷ KM’s Response to Informal Objection at 1-2, *citing Lexington, Kentucky*, 24 FCC Rcd 12946 (MB 2009); *Chicago, Illinois*, 24 FCC Rcd 11880 (MB 2009); *Danville, Kentucky*, 24 FCC Rcd 1140, 1141 (MB 2009); and Second Periodic Review of the Commission’s Rules and Policies Affecting Its Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279, 18306, n. 129 (2004).

⁸ *Id. citing PMCM TV, LLC*, 24 FCC Rcd 14588 (MB 2009); *Butte, Montana*, 16 FCC Rcd 10770 (MB 2001); *Albany, New York*, 19 FCC 4329 (MB 2004).

IT IS FURTHER ORDERED, That the application (File BDISDTA-20100311ABP) of KM LPTV of Chicago – 13, LLC IS DISMISSED.

Sincerely,

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

cc: Robert L. Olender, Esq. – Counsel for Word of God Fellowship, Inc.
Aaron P. Shainis, Esq. – Counsel for KM LPTV of Chicago – 13, LLC

