

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

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DEC 28 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.606(b) )  
Table of Allotments. )  
TV Broadcast Stations )  
(Ridgecrest, California) )

MM Docket No. 92-246

ORIGINAL  
FILE

To: The Commission

COMMENTS OF  
COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA

Community Television of Southern California ("CTSC") hereby submits the following comments in response to the Notice of Proposed Rule Making ("NPRM"), released by the Commission on November 5, 1992 (MM Docket No. 92-246). The NPRM was issued as the result of a Petition for Rule Making ("Petition") filed by Valley Public Television Inc. ("Valley"), licensee of noncommercial educational television Station KVPT, Channel \*18, Fresno, California. Valley's Petition requests that Channel \*41 be substituted for Channel \*25 at Ridgecrest, California, or alternatively, that the Commission place a site restriction on the existing Channel \*25 allotment at Ridgecrest to accommodate Valley's application for a new noncommercial education television station on Channel \*39 at Bakersfield (File No. BPET-900904KF). For the reasons stated below, CTSC submits that Valley's proposal

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will not serve the public interest and urges the Commission to deny that proposal.<sup>1/</sup>

#### Discussion

Valley argues that the proposed change in the Table of Allotments serves the public interest by solving a short-spacing problem Valley faces in connection with its Channel \*39 application in Bakersfield. In that application, Valley has proposed to locate its transmitter on Breckenridge Mtn, which is over 10 km short-spaced to the Ridgecrest allotment. Valley claims that its proposal to serve Bakersfield is superior to the application filed by CTSC, which is not short-spaced, in that Valley's facilities will serve more people. Valley also argues that, since there has been little interest in Channel \*25 since it was allotted and no one can currently apply for the channel at this time because of the ATV freeze, no one will be harmed by the proposed change.

Valley's claims do not support the proposed modification in the Table of Allotments. In fact, the proposal is nothing more than another in a series of late attempts by Valley to cure a fundamental defect in its Channel \*39 application. As Valley

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<sup>1/</sup> CTSC has standing to file these Comments since it is an applicant for facilities which are mutually exclusive with those of Valley for file for Channel \*39 in Bakersfield. (See File No. BPET-881012KE). CTSC has filed a Petition to Deny Valley's application on the grounds, inter alia, that Valley's application is short-spaced to the Ridgecrest allotment and has opposed Valley's request for a waiver of the short-spacing rules. Accordingly, CTSC is an interested party whose interest may be adversely affected by the Commission's resolution of Valley's petition.

admits, its proposed facility in Bakersfield is short-spaced to Channel \*25, and Valley has filed a request for a waiver of the short-spacing rule to solve this problem.<sup>2/</sup> The determination of whether the public interest will be served by waiver of that rule should be determined in that comparative proceeding, and not in this, a collateral effort to skirt the Commission's rules by belatedly attempting to modify the Table of Allotments.

Valley has unquestionably taken this tack since it is aware that its waiver petition is without merit. As CTSC demonstrated in its Opposition to Valley's Request for Waiver ("Opposition"), Valley has not borne the heavy burden required of applicants seeking a waiver of the Commission's rules.<sup>3/</sup> Specifically, CTSC showed that Valley did not made the threshold showing for a waiver that no fully spaced or less short-spaced sites were available. Valley also did not advance any other substantial public interest benefit that would justify its request for a waiver. As CTSC noted, its own application demonstrates that there are other suitable, fully-spaced sites which provide comprehensive coverage of Bakersfield.

Moreover, as demonstrated in CTSC's Opposition, Valley's claim -- both here and in its request for a waiver -- that its

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<sup>2/</sup> Valley's request for a waiver of the allocation rules was not filed until after CTSC filed a Petition to Deny the application pointing out that Valley's proposal was short-spaced. Thus, the waiver request itself was a late attempt to cure a basic defect in its application.

<sup>3/</sup> A copy of that Opposition is attached as Exhibit No. 1 for the Commission's convenience.

Bakersfield proposal provides superior coverage of Bakersfield than CTSC's is simply wrong. As CTSC showed in its Opposition, its Channel \*39 proposal would provide Grade B service to over 332,290 people, while Valley's application will provide service to some 338,670 people, or a difference of only 1.9%.<sup>4/</sup>

Consequently, there is no public interest benefit achieved by modifying the allotments in Ridgecrest as proposed here in order to permit Valley to prosecute its Bakersfield application. In fact, modifying the Table would only reward Valley for its late attempts to solve a problem of its own making.

Further, Valley's proposal will result in an inferior noncommercial allotment in Ridgecrest. First, as the Commission notes in its NPRM, use of Channel 41 would be subject to any rules adopted in Docket No. 85-172, and that allotment would be required to accept interference from land mobile operations in Los Angeles. See NPRM, at n.3. Second, allocation of Channel 41 would be inconsistent with the Commission's policy against substituting a higher reserved channel for a lower one, even where the reserved channel is unoccupied and unapplied for. See, Santa Maria, California, MM Docket No. 86-282, DA 92-1474, released November 23, 1992 (¶ 7). Third, allotment of Channel 41 at Ridgecrest would be short-spaced to the Channel 41 ATV allotments for Barstow, Clovis and Santa Barbara, proposed in the

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<sup>4/</sup> See Statement of Robert L. Hammett, submitted with CTSC's December 3, 1990 Opposition to Waiver Request. (File No. BPET-900904KF)

Commission sample ATV Table of Allotments. Thus, any efforts to maximize service over the facilities could be adversely affected by any ATV operation on those allotments.

Similarly, Valley's proposal to place a site restriction on Channel \*25 at Ridgecrest, will impair the ability of any licensee to serve the area. Under Valley's proposal, Channel \*25 would be required to locate at least 10 km to the east of Ridgecrest. However, the China Lake Naval Weapons Center lies directly to the northeast of Ridgecrest and approximately twenty miles to the east and south. Since the Weapons Center is a secret military installation, the proposed site restriction would effectively limit any applicant to an antenna site in a very narrow area lying in a small arc to the east of Ridgecrest. The number of available antenna sites in that area are unquestionably limited.

More importantly, however, the more desirable antenna sites lie to the west and due south of Ridgecrest. The Sierra Nevadas lie to the west and there are a substantial number of suitable sites on those mountains which would permit a station to provide excellent coverage to Ridgecrest and the surrounding areas. Further, there are a number of mountains due south of Ridgecrest from which a station could enjoy excellent coverage. However, all of those more desirable sites will be precluded by the proposed site restriction. Given the relatively sparse population in the area, it is vital that any applicant from Ridgecrest reach as large an audience as feasible in as

economical a manner as possible. Forcing any applicant to move to the east of Ridgecrest is inconsistent with that goal and will impair the prospects that the channel will be activated.

Although Valley emphasizes that there have been no applicants for Channel \*25 in the past, that factor has never played a role in the Commission's allotment decisions. Indeed, the very premise underlying the reservation of channels is that it will take time, and in many cases substantial periods of time, for local groups to raise the funds necessary to construct a noncommercial educational station. Accordingly, the lack of any application for the Ridgecrest allotment to date manifestly does not warrant burdening any potential applicant with the limitations imposed by the Valley's proposed site restriction on Channel \*25. Indeed, those burdens will only decrease the chances that any applicants will apply for Channel \*25 in the future.

Finally, none of the cases cited by Valley in support of its Petition actually support its proposal, since in each there were substantial public interest benefits accompanying the site restriction or other burden. In Television Channel Assignments at Battle Creek, Michigan, 57 R.R.2d 140 (1984), the Commission imposed a 3 mile site restriction on Channel \*58 in Ann Arbor in order to provide a second commercial service in Battle Creek. There was no evidence that the site restriction would impair service to Ann Arbor, and the Commission rejected as meritless claims that the site restriction would effectively re-allocate

the station to Detroit -- which was almost 40 miles away. Similarly, in Television Channel Assignment at Junction City, Kansas et al, 57 R.R. 2d 719 ((B/cast Bur. 1985), the Commission imposed a site restriction on the petitioning applicant in order to provide a first local service to Junction City. So too in FM Channel Assignment at Austin, Texas, 41 R.R.2d 62 (B/cast Bur. 1977) and in FM Channel Assignment at Mayfield, Ky, 46 R.R.2d 1267 ((B/cast Bur. 1980), recon. denied, 48 R.R.2d 1232 ((B/cast Bur. 1982), the Commission modified the FM Table and imposed site restrictions in order to provide a first local service or substantially improved service to a community.

No comparable public interest benefit will result here were the need for the change in the Table and the site restriction arises solely from Valley's self-made problem. Accordingly, CTSC submits that Valley has not demonstrated that the public interest will be served by its proposed modification to the Table of Allotments. Rather, its proposal is simply an effort to solve a problem of Valley's own making which will also hamper the prospects of provision of noncommercial services to the currently unserved Ridgecrest area.

**Conclusion**

For the reasons set forth herein, CTSC requests that Valley's proposal to substitute Channel \*41 for Channel \*25 at Ridgecrest or to place a site restriction on Channel \*25 be denied.

Respectfully submitted,



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December 28, 1992

**EXHIBIT NO. 1**

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

In re Application of )  
 )  
**VALLEY PUBLIC TELEVISION, INC.** )  
 )  
For Construction Permit for a New )  
Television Station on Channel \*39 )  
in Bakersfield, California )

File No. BPET-900904KF

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DEC 3 - 1990

To: The Commission

Federal Communications Commission  
Office of the Secretary

**OPPOSITION TO  
REQUEST FOR WAIVER**

Community Television of Southern California ("CTSC")<sup>1</sup> hereby opposes Valley Public Television, Inc.'s ("VPT") Request for a Waiver of Section 73.610 of the Commission's rules ("Waiver Request"). VPT seeks a waiver of that rule so that it may locate the antenna for its proposed station at a site which is short-spaced to the allotment for Channel \*25 in Ridgecrest, California. VPT has failed to bear the heavy burden required of those seeking a waiver of the Commission's rules, and has not demonstrated that the public interest will be served by grant of its waiver request. Accordingly, its Waiver Request must be denied.<sup>2</sup>

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1 CTSC is an applicant for a construction permit for a new noncommercial educational television station to operate on Channel \*39 in Bakersfield which is mutually exclusive with the application of VPT. Accordingly, CTSC has standing to file this Opposition.

2 On the same day VPT filed its Waiver Request, it also submitted a Petition for Leave to Amend to allow it to amend its application to incorporate the Waiver Request. Simultan-  
(continued...)

**I. VPT Has Not Established That Grant of Its  
Waiver Request Will Serve the Public Interest**

It is well established that applicant's requesting a waiver of the Commission's rules have a heavy burden to demonstrate that grant of the waiver request will serve the public interest. WAIT Radio v. FCC, 459 F.2d 1203,1207 (D.C. Cir.), cert. den'd 409 U.S. 1027 (1972). This requirement applies to applicants seeking short-spacing waivers, See North Texas Media, Inc. v. FCC, 778 F.2d 28 (D.C. Cir. 1985), and the Commission has stated that it "does not favorably regard proposals for authorizations in derogation of the mileage separation requirements of the rules except where a most pressing urgency has been demonstrated (citation omitted)" Mid-New York Broadcasting Corp., 3 F.C.C.2d 529,532 (1966)(TV short-spacing waiver request denied). As shown below, VPT has failed to meet this burden. It has not made the required threshold showing that fully-spaced sites are unavailable, and has failed to set forth any other public interest factors that might justify the grant of its Waiver Request.

**A. VPT has not shown that fully-spaced  
sites are unavailable**

It is now well established that applicants seeking a waiver of the minimum spacing rules must, as an initial matter, demonstrate that alternative fully-spaced sites are not avail-

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2(...continued)  
eously herewith, CTSC is submitting an Opposition to that  
Petition for Leave to Amend.

able. Orange Park Florida TV Inc. v. FCC, 811 F.2d 664, 669 (D.C. Cir. 1987), citing Townsend Broadcasting Corp., 62 F.C.C.2d 511,512 (1976); North Texas Media, Inc. v. FCC, supra. As the Commission stated in Townsend Broadcasting Corp., supra at 512, the showing that fully-spaced sites are unavailable must be based on "concrete support, preferably documentary, that suitable, non-short-spaced spaced sites are unavailable." VPT has failed to make that showing here, and, it cannot. CTSC's proposal demonstrates that such fully-spaced sites are in fact available. On this basis alone, VPT's waiver request must be denied. See Nelson County Broadcasting Co., 64 F.C.C.2d 932 (1977); Townsend Broadcasting Corp., supra; Trend Broadcasting, Inc., 18 F.C.C.2d 749 (1969).

Perhaps in recognition of this problem, VPT claims that, although there are fully spaced sites available, those sites are "inferior" to its short-spaced site. Waiver Request at 3. However, VPT does not offer any explanation as to why the alternative sites are inferior, and its bare, unsupported assertion can not relieve it of the obligation to meet this established threshold showing. Townsend Broadcasting Corp., supra.<sup>3</sup>

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3 VPT also argues that the Commission should take into account its goal of fostering the growth of noncommercial services in evaluating VPT's admission that fully spaced sites are available. Waiver Request at 3. This argument is mystifying: CTSC also proposes a non-commercial service, yet managed to find a fully spaced site that serves Bakersfield and its surrounding area. Furthermore, VPT has provided no precedent or policy explaining why the mileage separation rules, which  
(continued...)

Further, the cases on which VPT relies to justify the grant of its waiver request do not support its request. None of those cases involved comparative proceedings in which one of the applicants had proposed a full-spaced site. See Donovan Burke, 104 F.C.C.2d 843 (1986). Moreover, those cases are distinguishable on other grounds; in each there were substantial other public interest benefits which supported grant of the waiver. For example, while the Commission granted a waiver in Caloosa Television Corp., 3 FCC Rcd 3656 (1988), even though the applicant did not show that there were no fully-spaced sites available, it did so only "because of the unusual combination of public interest factors present" in that case. Id. at 3657. Those factors included (a) that the proposed site would provide additional service to more than 60,000 people and a provide a first off-the-air ABC network service to more than 34,000 people, id. at 3658, (b) that the choice of sites was "severely limited by the proximity of the Gulf of Mexico and extensive swamp areas." id., and (c) that, while the amount of short-spacing was "not minimal," (11.5 out of the required 329 kilometers or 3.5%), it was nevertheless within the range of previous waivers. Id.<sup>4</sup>

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3(...continued)  
are designed to maximize the quality of broadcast service, should be less applicable to noncommercial service in situations such as these.

4 The Commission also made it clear in its reconsideration decision that Caloosa was a unique case and that applicants seeking short-spacing waivers were still required to  
(continued...)

None of those factors are present here. First, while VPT claims that its proposal will provide non-commercial service to 88,707 more people than CTSC's proposal, Waiver Request at 3, that claim rests on an erroneous comparison. As the attached Statement of Robert Hammett attests, VPT's claim that it will serve more people results from VPT's use of data obtained from the Kern County Board of Trade and Economic Development, while CTSC used the official 1980 Census Data as required by the Commission. See Statement of Robert L. Hammett ("Hammett Statement") at p. 1. When using the same data, the difference in the population served by CTSC and by VPT is minuscule: some 6,390 more people out of more than 330,000, less than 2%.<sup>5</sup>

Secondly, VPT has not made any comparable showing that the available sites are constrained by geographic limitations, and it can not. There are adequate sites available which will permit it to serve Bakersfield fully. Lastly, VPT's proposed short-spacing (9.8 out of the required 95 kilometers or 10.24%)

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demonstrate that there were no fully spaced sites available. Thus, it stated that it was

reaffirm[ing] [its] intent generally to require applicants proposing short-spaced sites to make a threshold showing that suitable fully spaced or less short-spaced sites are unavailable.

Caloosa Television Corp., 4 FCC Rcd 4762 (1989).

5 As Mr. Hammett also notes, updated Census Data indicates that the relative difference in the population served by the two applicants remains unchanged. Hammett Statement at p. 1.

is not only substantially greater than that in Caloosa, it is greater than those cited in that case by the Commission as defining the acceptable range.<sup>6</sup>

The other cases cited by VPT are similarly inapposite. Thus, in Pappas Telecasting, Inc., 49 R.R.2d 1688 (1981), the Commission granted the short-spacing waiver request because the proposed short-spacing was de minimis: 2.4 miles out of the required 175, i.e., 1.4% of the required separation and the short-spaced site would permit Pappas to serve some 54,000 additional people. Id. at 1689. Similarly, in The Outlet Co., 12 R.R.2d 387 (1968), the applicant demonstrated that the FAA had disapproved of other possible sites and that there were no other fully-spaced sites available which could improve service, id. at 389,<sup>7</sup> while in KXO, Inc., 6 R.R.2d 834 (1966), the applicant showed that its proposal would provide a gain in service to 23,365 people, id. at 835, and that, because of constraints imposed by other allotments and physical characteris-

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6 For example, the Commission cited Midcontinent Broadcasting Co., 45 F.C.C. 1798 (1964), where a shortfall of 14.2 miles out of the required 190 (7.4%) was approved. 3 FCC Rcd at 3658.

7 Furthermore, the applicant in that proceeding proposed to use a directional antenna that would provide "equivalent protection" to a co-channel station. Id. at 391. However, Commission policy no longer allows use of "equivalent protection" theories in UHF licensing, and accordingly Outlet is no longer persuasive authority in this context. See Caloosa Television Corp., supra, 3 FCC Rcd at 3659, note 1, citing New Jersey Public Broadcasting Authority, 50 RR 2d 251 (1981). See also Pappas Telecasting, Inc., supra, 49 RR 2d at 1689.

tics of the area, the short-spaced site was the only feasible site.

In the present case, none of these factors are present. VPT's proposed short-spacing of 9.8 kilometers is far from de minimis, and there are numerous other suitable, fully-spaced sites from which VPT could serve Bakersfield. Further, VPT's application will provide service to only some 6,000 more people as compared to CTSC's fully spaced proposal, see Hammett Statement at p. 2.<sup>8</sup>

**B. VPT Has Not Advanced Any Other Public Interest Factors Which Would Justify Grant of its Waiver Request**

Notwithstanding VPT's inability to make the required threshold showing, it suggests that other public interest factors warrant the grant of its waiver request. VPT's showing is unpersuasive.

VPT cites five such factors: (1) that the short-spacing is small, (2) that there will be no loss of service, (3) that there are no environmental factors, (4) that its site is superior to any other, and (5) that grant of its waiver request will allow the Commission to evaluate comparatively its application and the application of CTSC. As to the first factor, the magnitude of short-spacing requested by VPT is not "small." In

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<sup>8</sup> It should also be noted that CTSC has applied for and received a grant of an application to operate a translator station in Lake Isabella. That facility will permit it to serve the largest population center to the east of Bakersfield included within VPT's predicted Grade B contour, but outside CTSC's.

absolute terms, it is among the larger short-spacing requests and has none of the unique characteristics which justified grants of a waiver in those cases where the absolute short-spacing was greater. When calculated as a percentage of the required distance, the short-spacing proposed by VPT (10.24%) is significantly greater than that approved in virtually all of the cases cited by VPT, such as Pappas Telecasting (1.4%) or Caloosa Television (3.5%).<sup>9</sup>

The second and third "factors" are irrelevant in this case as it involves applicants for new stations, not changes in facilities, and there are no environmental issues here. VPT makes much of the last factor, claiming that its proposed site will permit it to provide better service to Bakersfield than is feasible from any other site. It argues that its site is the location of an "antenna farm"<sup>10</sup> and will permit residents of Bakersfield to orient their antennas towards its tower. It

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<sup>9</sup> In fact, the cases cited in Caloosa Television as examples of the acceptable range of waiver requests, i.e., Midcontinent Broadcasting (7.47%) and Peninsula Broadcasting Corp., 45 RR 1662 (1964) (4.94%), all involved short-spacing which were substantially smaller than the short-spacing proposed by VPT.

<sup>10</sup> Commission policy in evaluating short-spacing waiver requests gives weight to a proposal to locate at an antenna farm only "if extraordinary reasons of aeronautical safety indicate that a particular antenna structure should be located within the antenna farm." Antenna Farm Areas, 8 FCC 2d 559,566 (1967). See also Edens Broadcasting, FCC 86D-36 at ¶50 (I.D. released May 14, 1986) (No showing of aeronautical necessity for locating short-spaced antenna at antenna farm, short-spacing waiver denied); Cowles Florida Broadcasting, Inc., 60 FCC 2d 372, 387, note 12 (1976).

also claims that the height of the site will permit it to provide a better signal to Bakersfield.

The claims are specious. As shown in the Hammett Statement, both VPT's and CTSC's proposed sites are located to the east of Bakersfield and both have several television towers situated at the same site. Thus, VPT's site is not any more of an antenna farm or more desirable from antenna orientation perspective than CTSC's. In fact, as Hammett's Statement demonstrates, the strength of VPT's signal in Bakersfield is actually inferior to that provided by CTSC. Hammett Statement at p. 2. In addition, VPT's claim that its proposed site will permit it to serve a greater population is a gross exaggeration. VPT's proposed station will serve at best 1.9% more people than CTSC's fully-spaced proposal.

Finally, VPT relies on Azalea Corp., 31 F.C.C.2d 561 (1971), and Anax Broadcasting, 87 F.C.C.2d 483 (1981), for the proposition that its waiver should be granted so that the Commission can consider its application comparatively with CTSC's. Waiver Request at 6-7. However, those two cases are irrelevant since they deal with the issue of whether the Commission should allow untimely amendments -- not whether it should grant waiver requests.<sup>11</sup>

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<sup>11</sup> However, even if the Commission were, for the first time, to conclude that having the opportunity to consider competing applicants was relevant to a waiver request, it would not support the grant of VPT's request. As is the case with respect to untimely amendments, that factor can not, standing alone, establish that the public interest would be served by  
(continued...)

CONCLUSION

VPT has failed to make the required threshold showing that fully spaced sites are unavailable. In addition, it has failed establish other public interest factors justifying its Waiver Request. Accordingly, CTSC urges the Commission to deny VPT's Waiver Request.

Respectfully submitted,

  
/s/ Theodore D. Frank  
\_\_\_\_\_  
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December 3, 1990

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grant of the waiver. Cf. Royce Intern. Broadcasting Co. v. FCC, 820 F.2d 1332, 1337-38 (D.C. Cir. 1987), citing Belo Broadcasting Corp., 68 F.C.C.2d 1313,1322 (1978); Shoblom Broadcasting, 93 F.C.C.2d 1027, 1030 (1983). Indeed, if it was sufficient to justify grant of a waiver, the Commission's rules would effectively be rendered meaningless in any comparative situation.

Consequently, the value of giving the Commission a choice among competing applicants must be one among many that must be weighed in determining whether to grant a waiver. Here, it is clear that, when weighed against VPT's failure to make the required threshold showing that no fully spaced or less short-spaced sites are available and its failure to advance any other substantial public interest benefit that would derive from its short-spaced proposal, this factor does not justify the grant of its Waiver Request.

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**STATEMENT OF ROBERT L. HAMMETT, CONSULTING ENGINEER**

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Community Television of Southern California ("Community"), applicant for a new non-commercial television broadcast station to operate on Channel \*39 in Bakersfield, California, to study the Request for Waiver dated November 6, 1990, filed by Valley Public Television, Inc. ("Valley").

Valley seeks to amend its application for Channel \*39 in Bakersfield, which is mutually exclusive with the pending application of Community Television of Southern California, to include a request for waiver of Sections 73.610 and 73.698 of the Commission's Rules. As detailed in the Engineering Statement of Hammett & Edison, Inc., dated October 18, 1990, the Valley proposal specified a transmitter site at Breckenridge Mountain that would be short-spaced to the Channel \*25 allotment to Ridgecrest, California. The request for waiver recently filed by Valley offers as justification for waiver the following unsupported technical assertions:

1. Breckenridge Mountain is a unique antenna farm,
2. Valley would reach 421,000 persons with Grade B service as compared to Community's service to 332,293 persons,
3. There are some non-short-spaced sites available, but they are inferior to Breckenridge, and
4. Valley's proposed facilities would allow maximum coverage of the Bakersfield area.

Valley argues that locating a new television station at an established antenna farm is desirable to avoid receiving antenna orientation problems, to save costs, and to benefit the environment. We agree with the desirability of using an antenna farm but, as shown in this statement, another antenna farm is available and there is no necessity to use Breckenridge Mountain, for which Valley would require a waiver of the Rules.

**ADEQUATE FULL-SPACED SITES ARE AVAILABLE**

In 1988, Hammett & Edison, Inc., made studies of alternative transmitter locations as a fundamental part of preparing the engineering portion of the Community application for Channel \*39 in Bakersfield, (see my engineering exhibit dated August 29, 1988). Engineering studies were made of several alternative transmitter locations. We rejected Breckenridge Mountain at that time because of the short-spacing which it would cause to the Channel \*25

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allotment in Ridgecrest, California. The transmitter site selected by Community on Mt. Adelaide, 24 kilometers east of Bakersfield, is in full compliance with the FCC Rules and is an existing antenna farm from which Bakersfield would be well served. There are two existing full-power television stations on Mt. Adelaide: KGET on Channel 17 and KDOB on Channel 45. It is, therefore, apparent that Breckenridge Mountain is not a unique antenna farm as claimed by Valley in its assertion No. 1 above.

**VALLEY WOULD NOT SERVE SIGNIFICANTLY MORE PERSONS**

Valley's Request for Waiver depends heavily upon an asserted superiority of coverage for its proposal, as compared with Community's proposal using Mt. Adelaide, which does not require a waiver of the spacing rules. The comparative coverage asserted by Valley is erroneous, being based on different assumptions for the two facilities. The 421,000 persons claimed by Valley were apparently based on the coverage map in its application, which stated that the population data were "updated by Kern County Board of Trade and Economic Development." The Valley data are not, therefore, based upon the latest Census as required by Section V-C of FCC Form 340. The data we supplied with our engineering statement for the Community application was based upon the latest available Census.

To obtain a valid comparison between the two proposals, a population count has now been made under my direction based upon the distances to the Grade B contour shown in the Valley application. I find that the population contained therein, according to the 1980 Census, is 338,673 persons. The population served was determined for both applications by summing the populations of all Census Enumeration Districts whose geographical centroids are located within the pertinent contours. In borderline cases, where coverage of a particular community was not clearly apparent, reference was made to the coverage maps on file.

As shown in the Community application, it would include 332,293 persons within its Grade B contour. The mutually exclusive proposals for Channel \*39 thus include essentially the same number of persons within their Grade B contours, differing by only 1.9%.

The 1986 Census Update shows a growth in the pertinent area of 22% since the 1980 data. Studies using the updated figures show that the populations covered by the two proposals remain essentially equal.

To further illustrate the comparative coverage, the attached figure has been prepared showing, on the same map, the Grade B contours of each application. It is clearly evident that the Community proposal provides more extensive coverage of the southern San Joaquin Valley than does the Valley proposal. The Community Grade B contour reaches approximately 16 kilometers further west and includes Taft and the Census Designated Places of Ford City,

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Taft Heights, and South Taft, which are not within the Valley Grade B contour. The Valley Grade B contour extends further east into very mountainous regions. Much of the additional area that would be served by Valley is unpopulated.

**VALLEY WOULD PROVIDE INFERIOR SERVICE TO BAKERSFIELD**

The city of Bakersfield is within the 80 dBu contour of both applicants. As determined from the Community application, the effective antenna height above average terrain in the direction toward the center of Bakersfield at N 255° E is 871 meters. The effective radiated power in that direction is 24.4 dBk. According to the FCC F(50,50) propagation curves, the field strength at a distance of 26.5 kilometers in the center of Bakersfield would be approximately 96 dBu. By contrast, Valley would provide a weaker signal in Bakersfield. Its antenna height above average terrain in the direction N 258° E from the Mt. Breckenridge proposal is shown by its applications to be 1240 meters. The proposed effective radiated power in that direction is 21.6 dBk and the median field strength at 39.8 kilometers at the center of Bakersfield would be approximately 87 dBu.

Based on the above factual data, it is my considered opinion that the Valley proposal would deliver approximately 9 dB less signal strength to Bakersfield than would Community. Valley's claim, therefore, that the Breckenridge site deserves a waiver of the spacing requirements is not supported by the facts regarding the coverage of Bakersfield and environs. Valley's assertions No. 2 and No. 4 above are not factually correct.

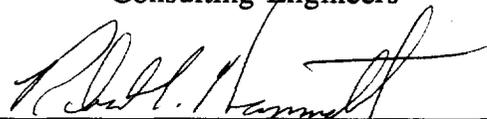
In its assertion No. 3 above, Valley concedes that potential transmitter sites are available that are not short-spaced. The facts do not support the Valley assertion that all such sites are inferior to Breckenridge.

**LIST OF FIGURES**

In carrying out these engineering studies, the following attached figure was prepared under my direct supervision:

1. Map showing comparative Grade B coverage of competing proposals.

HAMMETT & EDISON, INC.  
Consulting Engineers

  
\_\_\_\_\_  
Robert L. Hammett, P.E.

November 27, 1990

**AFFIDAVIT**

State of California     )  
                                  ) ss:  
County of San Mateo    )

Robert L. Hammett, being first duly sworn upon oath, deposes and says:

1. That he is a qualified Registered Professional Engineer, holds California Registration No. E-007601 which expires September 30, 1994, is also registered in the State of Texas and in the District of Columbia, and is a consultant to the firm of Hammett & Edison, Inc., Consulting Engineers, with offices located near the city of San Francisco, California,

2. That he graduated from Stanford University in 1942, received a Master of Arts Degree in Electrical Engineering from Stanford University in 1943, was a Research Associate at Radio Research Laboratory, Harvard University, from 1943 through 1945, and has practiced as a consulting engineer since 1946,

3. That the firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by Community Television of Southern California, applicant for a new non-commercial television broadcast station to operate on Channel \*39 in Bakersfield, California, to study the Request for Waiver dated November 6, 1990, filed by Valley Public Television, Inc.,

4. That such engineering work has been carried out by him or under his direction and that the results thereof are attached hereto and form a part of this affidavit, and

5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements made therein on information and belief, and as to such statements, he believes them to be true.

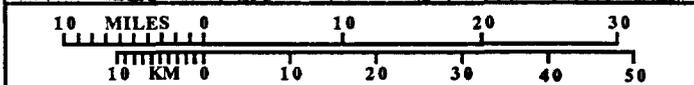
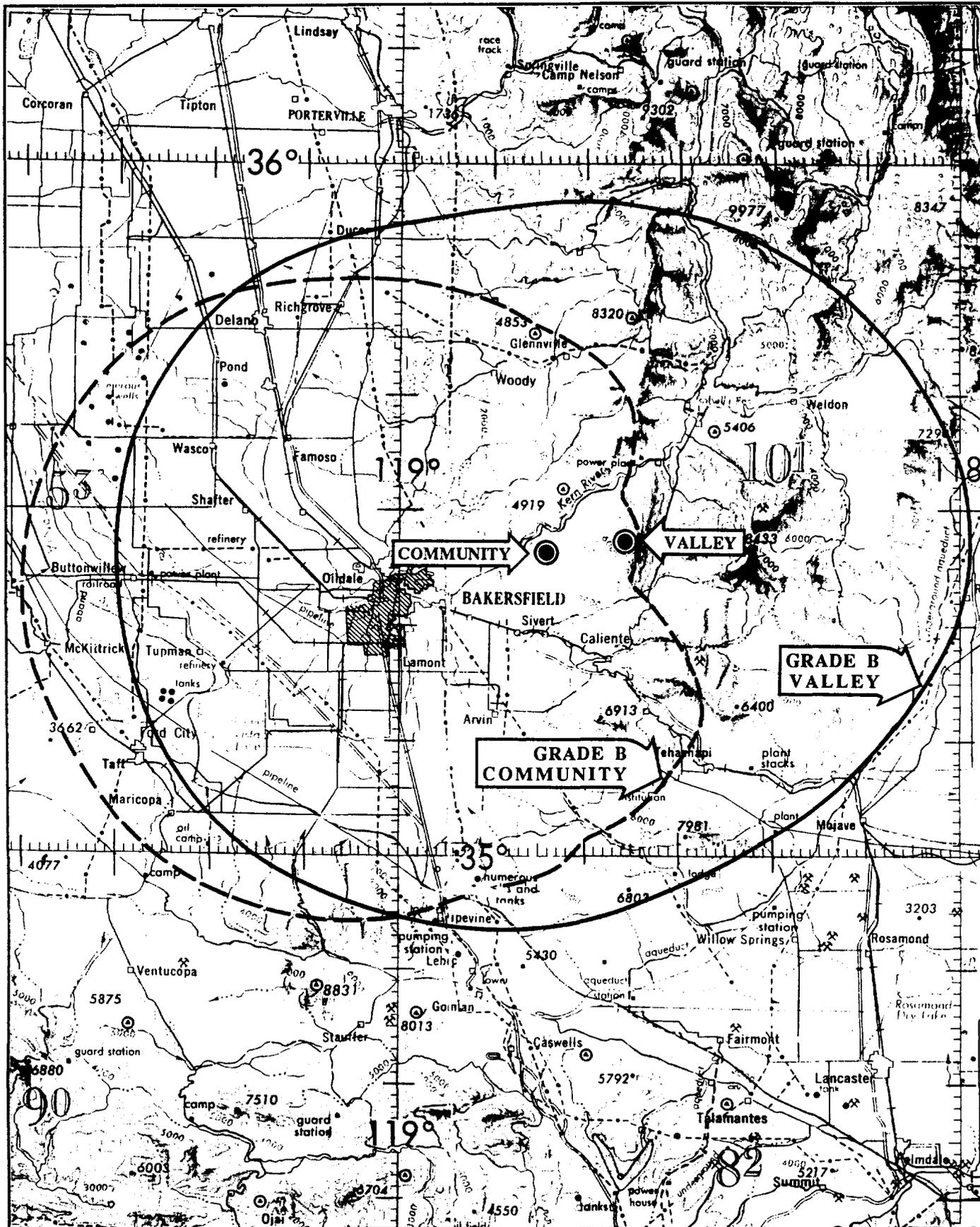
---

Robert L. Hammett, P.E.

Subscribed and sworn to before me this 27th day of November, 1990

---

**ORIGINAL COPY NOTARIZED**



**COMPARATIVE COVERAGES**  
**FCC GRADE B CONTOURS**  
**SHOWN IN PENDING APPLICATIONS**

HAMMETT & EDISON, INC.  
 CONSULTING ENGINEERS  
 SAN FRANCISCO

COMMUNITY TELEVISION  
 OF SOUTHERN CALIFORNIA  
 BAKERSFIELD, CALIFORNIA

901120

FIGURE 1

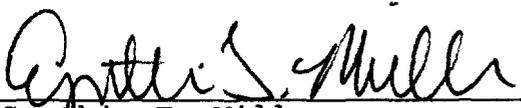
CERTIFICATE OF SERVICE

I, Cynthia T. Miller, hereby certify that I have on this 28th day of December, 1992, caused copies of the foregoing "Comments of Community Television of Southern California" to be served by first class U.S. mail, postage prepaid, upon the following:

Lonna M. Thompson, Esquire  
Fletcher, Heald & Hildreth  
Suite 400  
1225 Connecticut Avenue, N.W.  
Washington, D.C. 20036

\*Karl A. Kensinger, Esquire  
Federal Communications Commission  
Mass Media Bureau  
Room 314  
1919 M Street, N.W.  
Washington, D.C. 20554

\*Clay Pendarvis, Esquire  
Federal Communications Commission  
Mass Media Bureau  
Room 700  
1919 M Street, N.W.  
Washington, D.C. 20554

  
Cynthia T. Miller

\*Hand Delivery