

ORIGINAL

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems and)
Their Import on the Existing)
Television Broadcast Service)

MM Docket 87-268

TO: Chief, Television Branch
Mass Media Bureau

PETITION FOR SPECIFIC LOCATION WAIVER
OF TELEVISION FREEZE ORDER, ABILENE, TEXAS

Comes now The Citizens Committee for Full Television Service for Abilene, Texas ("the Committee"), a potential applicant for authority to reconstruct a television broadcast station to operate on UHF Channel 15 at Abilene, Texas,¹ and requests that the Commission waive in the specific case of Abilene its Order of July 17, 1987 ("TV Freeze Order")² whereby it decreed that "no petitions to amend the table [of TV Allocations] will be accepted" for certain areas and "Further, construction permit applications for vacant television allotments in these areas will not be accepted" (TV Freeze Order, par. 2).

¹ At the suggestion of a member of the Commission's staff, this Petition is filed prior to the submission of an application for authority to reconstruct a station on Channel 15 at Abilene, Texas. Upon grant of this Petition, an application will be filed immediately.

² A copy of the TV Freeze Order is attached to this pleading. The term "TV Freeze Order" is used to distinguish it from a subsequent Freeze Order released February 25, 1994. See infra.

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It should be noted at the outset that the Committee is not advocating waiver of the TV Freeze in general, but only in the case of Abilene, which involves particular justifications in no wise applicable to other locations.

Background

Pursuant to a Petition filed February 13, 1987 by the Association of Maximum Service Telecasters, Inc. and 37 other broadcast organizations and companies, the Commission adopted July 16, 1987 a Notice of Inquiry (2 FCC Rcd 5125) looking toward establishment of future engineering standards for a system of advanced television (ATV). Recognizing that ". . .it is necessary to preserve sufficient broadcast spectrum to insure reasonable options relating to spectrum issues for these new technologies", the Commission concurrently adopted July 16, 1987 an Order (released the following day), stating that no new allotments would be made, nor new applications accepted for cities within specified mileage separations from some 30 major cities throughout the country.³

This petition is concerned with Dallas-Fort Worth and the community of Abilene, Texas 140 miles to the west. According to the TV Freeze Order, no new allotments would be made, nor any construction permit applicants accepted for vacant television channels for cities within the Freeze areas, which in the case of

³ Included were six hyphenated communities: Dallas-Fort Worth, Seattle-Tacoma, Minneapolis-St. Paul, Tampa-St. Petersburg, Sacramento-Stockton, and Hartford-New Haven.

the Petitioner includes an area within a radius of 174.5 miles of "Dallas-Fort Worth".⁴

According to the TV Freeze Order, no existing station was required to go off the air; the sole purpose of the Order was to maintain the status quo, and to preclude the addition of new stations in the affected areas.⁵ Not only did the Commission recognize stations existing as of the TV Freeze date, July 17, 1987, but with reasonable flexibility it also proposed not only continue to process "applications and petitions for rule making already on file" but stated that it would also "accept and process applications filed after the Freeze that are mutually exclusive with applications filed before the freeze".

Radii of the TV Freeze Order areas were established as specified in §73.610(b) of the rules. For Abilene, the area is located within a radius of 174.5 miles of "Dallas-Fort Worth".

Long prior to the Freeze, Channel 15 was allocated to Abilene, Texas, along with previously established KBRC, Channel 9 (NBC);

⁴ City coordinates of Dallas are 32° 47' 09" and 96° 47' 37"; coordinates of Fort Worth are 32° 44' 55" and 97° 19' 44"; coordinates for the two cities are 31.3 miles apart.

⁵ It is of interest to note that since the TV Freeze Order does not apply to "changes by existing stations" or to allotments outside the Freeze area. An existing station within the area could move closer to Fort Worth-Dallas, or a station newly allotted to a community outside the TV Freeze area could locate its transmitter within the prohibited area. Both cases pose disservice to ATV future proposals, but are not precluded by the TV Freeze Order.

KTAB, Channel 32 (CBS); and KTXS, Channel 12 (ABC),⁶ all of which remain on the air.

Channel 15 at Abilene was the subject of an application filed by Tower Broadcasting Corp., owned 100% by a Helen Oman, who originally proposed 1776 kw visual, 176.6 kw aural and an antenna 258 feet above ground.⁷ The Tower application was granted July 5, 1983, four years before the TV Freeze and call sign KSUZ-TV was assigned. The permit was valid and in effect on the date of the TV Freeze Order; it expired November 3, 1989, two and one half years after the TV Freeze date.

Argument

Petitioner proposes to activate (or reactivate) Channel 15 at Abilene, with a site outside the TV Freeze area as dictated by Dallas-Fort Worth. It will serve Abilene, Sweetwater and the surrounding area but will not serve Dallas-Fort Worth. Since the Abilene area is already adequately served by stations carrying ABC, CBS and NBC, Petitioner proposes to seek application with Fox Network, thus filling a network programming void in the Abilene-Sweetwater area.

Status Quo Maintained

Waiver of the TV Freeze in the specific case of Abilene, Texas, and/or Commission authorization to activate Channel 15 at

⁶ KTXS is licensed to Sweetwater-Abilene, Texas, the former community 3.7 miles west of Abilene.

⁷ A subsequent modification changed these figures.

Abilene will but maintain the status quo as of the Freeze date, thus preserving the ATV protection exactly as required by the TV Freeze Order. In adopting that Order, the Commission paid full heed to the Advisory Groups, Working Parties, or other groups concerned with protecting spectrum availability for high-definition television, and established areas precluded from invasion by new stations employing existing technical standards. Construction of KSUZ at Abilene had previously been authorized by permit issued four years previously. The Committee now seeks authority but to in effect replace a facility recognized and accepted by ATV proponents and subject to the Commission's general TV Freeze Order.⁸

If there were no outstanding allocation of Channel 15 to Abilene, and the Committee now sought to establish a new allocation at Abilene; or since there is a present and valid allocation and there had been no outstanding authorization for its use, the Commission might have some justification for not waiving its TV Freeze Order under either of those circumstances, but since neither is here involved, the Commission can justify a waiver in this special situation, where operation on Channel 15 at Abilene will provide no impediment to ATV plans beyond that contemplated (and accepted) in 1987.

⁸ It is indeed arguable that since Channel 15 at Abilene was the subject of a valid construction permit on the TV Freeze Date, no waiver is required. Nonetheless, the Committee determined to request a waiver in order to preclude objections by the Commission's staff.

The Requested Waiver is Consistent with Commission Television Allotment Policies.

The foregoing argument relative to maintenance of the status quo notwithstanding, the Committee shows that its proposed station will comply with Commission policies relating to the television service. The TV Freeze Order prohibits a new allotment under 174.5 miles of Dallas-Forth Worth.⁹ That prohibition, as aforementioned, presumably precludes a new allotment to Abilene, the reference point of which lies within the forbidden zone.

The TV Freeze Order does not preclude a new allotment to a community just west of Abilene and 175 miles from the (worst case) reference point of the city of Fort Worth, such as, for example, Sweetwater where a signal could be placed over Abilene.¹⁰

The station contemplated by the Committee has proposed as a transmitter site, a location outside the 174.5 mile freeze zone, hence it is technically not prohibited by the TV Freeze Order. As shown by Attachment A hereto, with a 400-foot tower and 5,000 kw, an applicant will provide city grade coverage over the city of Abilene (but would not intrude into the TV Freeze Zone as far as if the proposed transmitter site were farther to the East and closer toward Fort Worth.

⁹ The Order is unclear whether measurement is made from the city coordinates of Dallas, or of Fort Worth, or from a point midway between the two, or elsewhere.

¹⁰ KTXS(TV), the ABC outlet is licensed to Sweetwater-Abilene.

The relief sought by the Committee will permit the Commission to avoid putting form above substances. Under present rules, a new TV channel can be allotted to Sweetwater, and upon grant of an application therefor, a station built and operated as a new facility. However, such an approach would involve an unreasonable amount of time and expense by an applicant, and would require the Commission's staff to expend unnecessary effort in processing a Petition for Rule Making, a NPRM, a cut-off list and a Report and Order, all of which would take in excess of a year. To this must be added the time processing an application tendered by the Committee.

Thus grant of the relief sought by this Petition for Waiver would provide the exact same result as the rule making route, and would provide an additional competitive television service to Abilene and its surrounding area at least a year sooner!

Perhaps more importantly, grant of this Petition would disserve ATV interests no more than were the Commission to allot a new TV channel to Sweetwater for use by the Committee (or another applicant),¹¹ a procedure the Commission can do regardless of the TV Freeze Order.

¹¹ The Committee is aware that if an additional application or applications are filed exclusive with its application, settlement or hearing will be required. The Committee is also aware that a second (general) Freeze, on the issuance of cut-off lists, windows, etc., was imposed February 25, 1994, based upon Bechtel v. FCC. However, it is anticipated that this second Freeze can be modified to the extent that a non-exclusive application can be processed and granted.

A Needed Service Will Be Provided

Abilene and its surrounding area now receives television service from the three networks, through KRBC(TV) (NBC) and KTAB(TV) (CBS), both licensed to Abilene, and from KXTS(TV) (ABC) dual licensed to Sweetwater-Abilene. Since cancellation of the KSUZ(TV) permit, there is no possibility of other television service available on the air in the area. Thus, Fox Broadcasting Network is without an outlet, a provision felt keenly by viewers in and about Abilene, particularly in light of National Football League games to be aired elsewhere, but not in Abilene.

The competitive disadvantage of Fox and the loss of service to viewers dictate that the Commission consider seriously the public interest factors involved. Should the Commission continue to fail to correct the commercial imbalance of network services to Abilene, and continue to not take action to permit establishment of a new television station to serve the Abilene area with Fox programming, political repercussions are imminent. The relief sought is within the judgment of the Commission; that judgment should not be arbitrarily or capriciously exercised.

Relief Sought

The Committee urges the Commission to issue an order after due consideration waiving the TV Freeze Order as it specifically relates to Channel 15 at Abilene, Texas, effective immediately, and based upon the fact that there was a valid construction permit in effect for Station KSUZ(TV) at Abilene on the TV Freeze Date, and

that any applicant locate its transmitter site outside the Freeze area.

Upon receipt of an application for Channel 15, a cut-off list could be issued, and if no mutually exclusive application is filed, the received application processed and granted.

Conclusion

The public interest requires that the Commission carve out a specific waiver of its TV Freeze Order in the case of Abilene, Texas. The purpose of the said Order was to preserve the status quo of television stations in the air, granted but not on the air, or applied for when the order became effective. KSUZ(TV) held a valid construction permit on the effective date, thus establishing its status in the list of stations not prohibited by the Freeze. The fact that KSUZ was not built should not negate its status in the list of protected stations, and should not preclude receipt of an application or applications to replace it.

Furthermore, since there exists no impediment to the Commission establishing a new station by rule making and allocation at Sweetwater (or another community outside the Freeze area) that will serve Abilene, waiver of the TV Freeze will but accomplish the same result, with significant savings of time and Commission resources.

Finally, the public interest dictates that the Commission provide a "level playing field" and permit establishment of a new

television station to serve Abilene with Fox network programs,
programs eagerly awaited by viewers throughout the area.

Respectfully submitted,

**The Citizens Committee for Full
Television Service for Abilene,
Texas**

By 
Julian P. Freret
Its Counsel

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March 29, 1994

A copy of this Petition was delivered by hand to:

The Honorable Lloyd Bentsen	Secretary of the Treasury
The Honorable Phil Gramm	U. S. Senator
The Honorable Kay Hutchinson	U. S. Senator
The Honorable Charles W. Stenholm	U. S. Representative
Chairman Reed Hundt	FCC
Commissioner Andrew C. Barrett	FCC
Commissioner James H. Quello	FCC
Roy Stewart, Esq.	FCC
Barbara Kreisman, Esq.	FCC
Clay Pendarvis, Esq.	FCC
Preston Padden	Fox TV


Julian P. Freret

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

In the Matter of)
)
Advanced Television Systems)
and Their Impact on the) RM-5811
Existing Television Broadcast)
Service)

ORDER

Adopted: July 16, 1987

Released: July 17, 1987

By the Commission:

1. On February 13, 1987, the Association of Maximum Service Telecasters, Inc., (MST) and 57 other broadcast organizations and companies filed a joint "Petition for Notice of Inquiry," requesting the Commission to initiate a proceeding to explore the issues arising from the introduction of advanced television technologies. These technologies are designed to improve upon television picture quality and are in various stages of planning and development. These systems use different amounts of spectrum and different transmission and reception methods, many of which, to some extent, cannot be decoded or displayed by existing television receivers. The issues involved in this proceeding relate to the impact of the new technologies, on broadcast and non-broadcast uses and on the existing television broadcast service. One essential issue relates to the possible allocation or reallocation of available broadcast spectrum for use by the new technologies. On March 27, 1987, the Commission placed the MST petition on public notice.¹ Comments have been received.

2. On the basis of the record compiled to date, we find it in the public interest to initiate an Inquiry to consider these issues. As a

¹ Public Notice, Report No. 1650, Mimeo No. 2543, released March 27, 1987.

result, it is necessary to preserve sufficient broadcast spectrum to insure reasonable options relating to spectrum issues for these new technologies. Accordingly, we will temporarily freeze the TV Table of Allotments in certain areas.² No petitions to amend the table will be accepted for these areas. Further, construction permit applications for vacant television allotments in these areas will not be accepted. This freeze, however, will not apply to changes requested by existing stations. Moreover, applications and petitions for rule making already on file will continue to be processed as usual. Specifically, we will accept and process applications filed after the freeze that are mutually exclusive with applications filed before the freeze. Further, although new allotments will result from the affected pending petitions, no applications will be accepted for allotments in the specified areas during the freeze.³ The areas covered by the freeze are those areas where high densities of existing TV stations leave relatively limited spectrum available for the new technologies. In our judgment, this would preserve spectrum options in areas where we believe that additional station assignments would unduly restrict possibilities for providing additional spectrum for advanced television.⁴ The Commission will also consider waiver requests on a case-by-case basis for non-commercial educational channels, or for applicants which provide compelling reasons why this freeze should not apply to their particular situations or class of stations.

3. Accordingly, IT IS ORDERED, that effective immediately as of the close of Commission business on the day of adoption of this Order, and until further notice, the Commission WILL NOT ACCEPT amendments to the TV Table of Allotments or applications for television construction permits for

2 The affected areas are those circumscribed by the minimum co-channel separation distances specified in Section 73.610(b) of the Rules, from the reference points for the listed cities as given in Section 76.53 for the cities listed in the appendix.

3 The rule making Report and Order will indicate in each case whether the freeze will apply to the particular allotment.

4 This freeze will not apply to low power television (LPTV) and television translator applications. Therefore, LPTV and TV translator applications may continue to be filed in accordance with the restrictions announced in Docket No. 85-172. These constitute a secondary service and pursuant to present rules are subject to displacement by a primary service. Therefore, LPTV and TV translator grants will not restrict Commission options.

vacant television allotments within the minimum co-channel separation distance of the cities listed in the Appendix.⁵ Any television application received by the Commission that is not acceptable due to this freeze will be returned, along with any accompanying filing fee, to the applicant.

4. This action is taken pursuant to authority contained in Sections 1, 4(i), 5(d), 303(c) and (r) and 309(b) of the Communications Act of 1934, as amended.

5. For further information concerning this proceeding, contact Terry Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

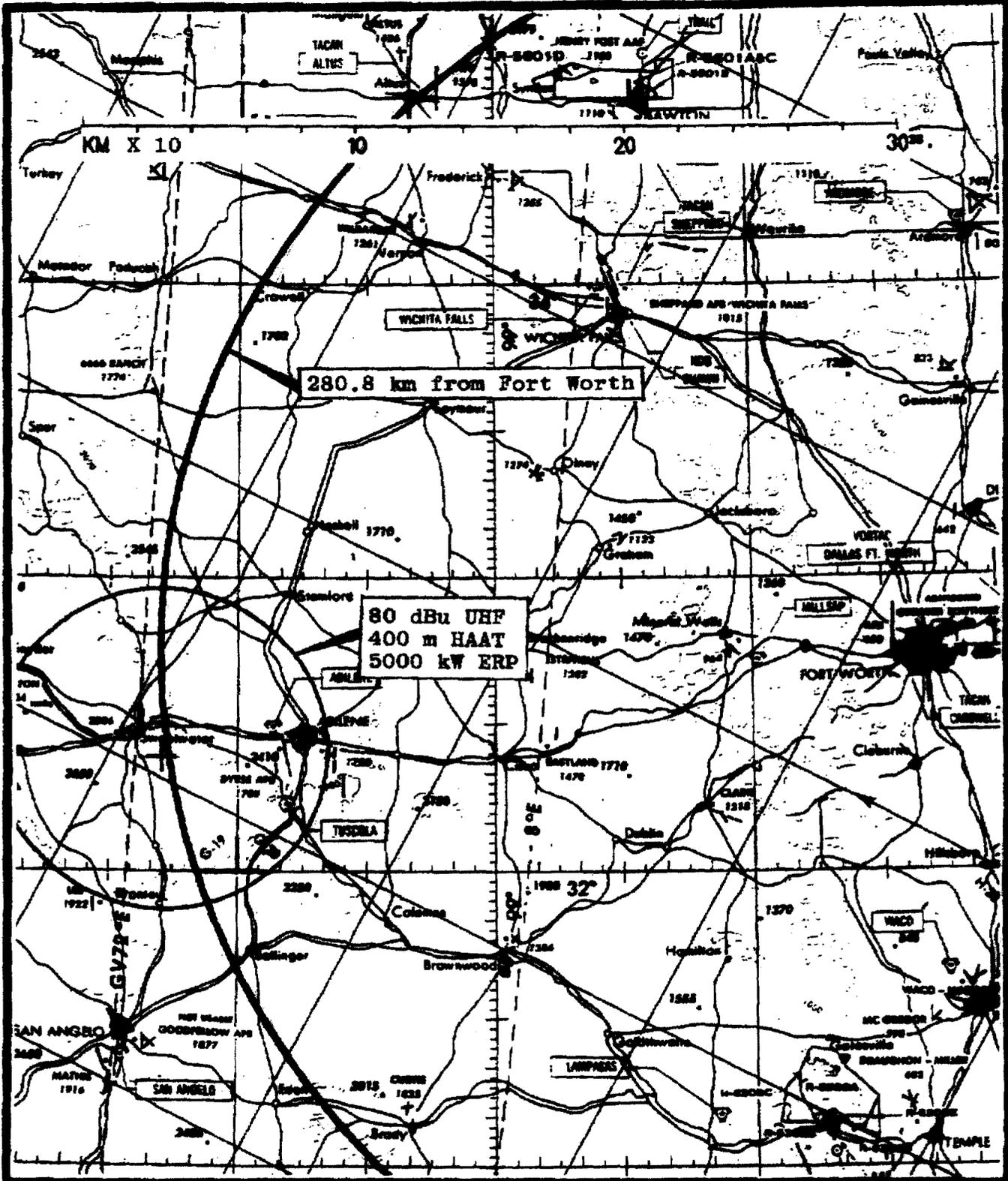
William J. Tricarico
Secretary

⁵ Pursuant to 5 USC Section 553(d)(3) we find that a delay in the effectiveness of this freeze could substantially undercut the goals we intend to achieve thereby. Accordingly, we find good cause to make this freeze effective on the day of adoption.

APPENDIX

List of the Cities Affected by this Freeze.

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
PHILADELPHIA, PA
SAN FRANCISCO, CA
BOSTON, MA
DETROIT, MI
DALLAS-FT WORTH, TX
WASHINGTON, DC
HOUSTON, TX
CLEVELAND, OH
PITTSBURGH, PA
SEATTLE-TACOMA, WA
MIAMI, FL
ATLANTA, GA
MINNEAPOLIS-ST PAUL, MN
TAMPA-ST PETERSBURG, FL
SAINT LOUIS, MO
DENVER, CO
SACRAMENTO-STOCKTON, CA
INDIANAPOLIS, IN
HARTFORD-NEW HAVEN, CT
PORTLAND, OR
MILWAUKEE, WI
CINCINNATI, OH
KANSAS CITY, MO
CHARLOTTE, NC
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