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Federal Communications Commission
Office of Secretary

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

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

To: The Commission

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PETITION FOR RECONSIDERATION
SUBMITTED BY THE EASTERN WASHINGTON AND NORTHERN
IDAHO DTV CHANNEL ALLOCATION CAUCUS

June 13, 1997

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SUMMARY

The Eastern Washington and Northern Idaho DTV Channel Allocation Caucus (the "Caucus"), by its attorneys, requests reconsideration of the Sixth Report and Order in the Commission's digital television proceeding to the extent it allocates and assigns paired channels in Spokane and Yakima, Washington, and surrounding areas.

The FCC's DTV channel plan for eastern Washington and northern Idaho is flawed for two primary reasons. First, the FCC's plan assigns a number of short-spaced adjacent channel DTV stations in the region such that the ABC, CBS and NBC affiliates in Spokane, the PBS outlet in Coeur d'Alene and two Idaho stations will be unable to replicate their NTSC service. Second, the FCC's plan fails to account for the mountainous terrain, thick evergreen forests and sparse population pattern of eastern Washington and northern Idaho by assigning a number of high UHF channels in the region. As the Commission well knows, high UHF frequencies are less able to penetrate obstructions and transmit long distances than high band VHF or lower tier UHF frequencies.

Because stations in eastern Washington and northern Idaho are terrain-blocked from stations in adjacent geographic areas, the Caucus has been successful in negotiating a modified channel plan for the region that resolves the problems discussed above and satisfies the FCC's criteria for modification of the Table of Allotments. The Caucus' plan has been accepted by all affected broadcasters, meets the FCC's technical requirements for channel

pairing settlements, and, because it utilizes only Channels 7-46, will not stand in the way of the Commission's spectrum reclamation efforts.

Accordingly, the Caucus respectfully requests that the Commission reconsider its plan for allotment and assignment of DTV channels in the eastern Washington and northern Idaho region and instead adopt the modified channel allocation plan negotiated by the Caucus.

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As described herein, the DTV allotments and assignment pairings prescribed by the Sixth R & O ("FCC Channel Plan" or "FCC Plan") for the eastern Washington State and northern Idaho region will cause unnecessary loss of coverage, hardship and delay in implementation of digital service for a number of Spokane and Yakima, Washington television stations. In response to the FCC's expressed interest in plans that make more efficient use of DTV spectrum, members of the Caucus have collaborated over the past several months to establish a proposed modified channel table ("Modified Channel Plan" or "Caucus Plan") (attached herein as Exhibit A) encompassing all affected licensees,² which improves coverage and lowers power requirements while meeting the Commission's criteria for DTV table modification. Specifically, the Caucus Plan stays within the central core spectrum (Channels 7-46), eliminates interference cause by short-spaced adjacent channel DTV stations, and minimizes adjacent channel NTSC-DTV operations to permit more complete replication of NTSC service areas. See Engineering Statement of Stephen S. Lockwood, P.E. (attached herein as Exhibit B). The Caucus Plan supports the Commission's other objectives by relocating DTV allocations from Channels 47-69, permitting the Commission to reclaim contiguous blocks of

District No. 81; KXLY, Spokane, WA, authorized to Spokane Television, Inc.; and KTNW, Richland, WA, and KWSU, Pullman, WA, authorized to Washington State University.

² The channel plan proposed herein accounts for KCWT (NTSC Ch. 27), a station which appears to have been dark since 1988 or before based on review of the FCC's records and industry sources.

frequencies, and from Channels 2-6, permitting evaluation of the low VHF frequencies during the initial phases of DTV implementation.³

Most importantly, the Caucus Plan supports the Commission's objective of expeditious, nondisruptive implementation of DTV service by providing a negotiated industry solution to the particular problems faced by broadcasters in the eastern Washington and northern Idaho region.

I. The FCC Channel Plan Fails to Provide Replication of NTSC Service In The Eastern Washington and Northern Idaho Region

If implemented, the FCC Channel Plan would cause substantial loss of service in the eastern Washington and northern Idaho region. First and foremost, the FCC Channel Plan allots and assigns a number of high UHF frequencies in a region that is notoriously ill-suited to such frequencies. Eastern Washington is characterized by large and tall mountains in close proximity to each other. As is well known to the Commission, the short radio waves characteristic of high UHF frequencies are less able to penetrate natural or man-made obstructions than those of high band VHF and lower tier UHF frequencies. See UHF Television Reception Improvements, 51 RR 2d 1628, 1629 (1982) ("UHF frequencies are more

³ Although the Modified Channel Plan assigns DTV channels only within the central core spectrum of Channels 7 through 46, the Caucus favors retention of Channels 2 through 6 in the television spectrum unless and until data based on actual operation of DTV facilities demonstrates that these channels are unsuitable for DTV operations.

attenuated by natural obstacles such as terrain and foliage"). The propagation problems inherent in UHF transmissions are especially acute due to terrain shielding in extremely mountainous eastern Washington and northern Idaho. These difficulties are aggravated by the thick stands of Douglas fir and Ponderosa pine covering the region.

Further exacerbating the situation, the Commission has assigned high UHF channels to stations which, because of the mountainous terrain, and scattered population of eastern Washington and northern Idaho, use transmitter sites over 30 kilometers from the cities they serve. KXLY (NTSC Ch.4; ABC) is more than 30 kilometers from its city of license, Spokane. KREM-TV (NTSC Ch.2; CBS), KHQ-TV (NTSC Ch.6; NBC) and KSPS-TV (NTSC Ch.7) serve Coeur d'Alene as part of their Metro Nielsen study area using transmitter sites over 30 kilometers from that city.

The FCC Plan is especially untenable in Spokane, where, regardless of terrain and vegetation, the channel assignments will create substantial areas of interference within the coverage areas of each of three major network stations and the Coeur d'Alene PBS outlet. The Commission has assigned DTV Channels 57, 54, 55, and 56, respectively, to KREM-TV (NTSC Ch.2; CBS), KXLY (NTSC Ch.4; ABC), KHQ-TV (NTSC Ch.6; NBC) and KCDT (NTSC Ch.26; PBS). As indicated in Exhibit B, because these stations operate from three separate transmit sites, loss of coverage will result from adjacent channel DTV assignments as these sites will not track each other in received signal strength at the consumer's digital set. A similar

scenario is presented by KUID (FCC DTV Ch. 33, Moscow, ID) and KLEW (FCC DTV Ch. 32, Lewiston, ID), whose transmitters are separated by 33 kilometers. As demonstrated in the attached signal coverage map, such spacing of the Commission's proposed adjacent channel DTV stations will create a large area of interference. See Exhibit C.

With regard to these adjacent channel allocations and transmitter site separations, the Commission's new practice rules are violated. The table of separations contained in new Section 73.623(d) states that there should be no first adjacent channel allotments between 32.2 kilometers and 88.5 kilometers. In contrast to this spacing requirement, for one example, there is a 40.3 kilometer separation between the transmitters for KXLY (FCC DTV Ch. 54) and KHQ-TV (FCC DTV Ch. 55). As a consequence of this spacing, many areas will receive digital dropouts since the two stations' signals fail to track each other in field strength. Under these circumstances, it is believed that KXLY fails to replicate service to nearly 15% of its community of license.

As a consequence of channel allocations above Channel 51, a number of eastern Washington and northern Idaho licensees likely would experience substantial delay and be subject to unnecessarily enormous expenses in attempting to implement the FCC Channel Plan. The difficult transmitting environment of the eastern Washington and northern Idaho region combined with high UHF frequency allocations necessitate the use of extremely high transmitting power in order to attain coverage replicating present NTSC coverage areas, if such replication is possible at all. See Exhibit B.

Because of the terrain, transmitting with ultra high power presents unique problems in eastern Washington and northern Idaho. A substantial challenge is providing adequate additional electricity to the transmit site. Because of the mountainous terrain of eastern Washington and northern Idaho, broadcast transmitters often by necessity are located on mountain peaks. Such areas are difficult to access and unlikely to be served by standard electrical systems. Mountain peaks, moreover, are likely to be located within state or national parks, areas in which the use of extremely high transmitting power is limited by the public presence. KXLY's transmitter, for example, is located atop Mt. Spokane, a 6,000 foot mountain, inside Mt. Spokane State Park. Inland Power and Light, the electrical utility serving the area presently does not have the necessary additional capacity in its high tension mountain feed to provide enough power to permit KXLY to replicate its existing NTSC coverage on its assigned DTV channel. Major construction is needed to install an upgraded power supply. Such construction not only would be costly and time-consuming, but also would involve environmental disruption in a state park. Even if such additional capacity were installed, KXLY's ability to use high power would be limited because of the proximity of the public to the transmitter.⁴

⁴ Regardless of whether the Commission adopts the Caucus Plan, moreover, tower modifications likely will be necessary during the transition to DTV. Accordingly, the Caucus urges the Commission to speed service to the public through prompt action to preempt local zoning restrictions hampering DTV implementation.

In contravention of its own objectives, the Commission also assigns five DTV channels in eastern Washington to channel slots first adjacent to existing NTSC operations.⁵ As the Commission recognized in the Sixth R & O, such assignments create substantial interference between the new DTV facility and the existing NTSC station. Sixth R & O at ¶ 195. Although the FCC Plan attempts to minimize the implications of such interference by assigning adjacent NTSC and DTV channels to the same licensee, a more complete solution is to reduce the number of instances of adjacent NTSC and DTV channels. The Caucus plan decreases the number of adjacent NTSC and DTV channels from five instances to a single channel pair⁶ in the Spokane and Yakima DMAs.

Finally, the Sixth R & O creates substantial uncertainty for stations whose assigned DTV channels fall outside the FCC's central core of television broadcast frequencies (Channels 7 through 46). The Commission has specifically contemplated auctioning the frequencies above Channel 59, Sixth R & O at ¶ 80, stated its intention to reclaim Channels 52-59, Sixth R & O at ¶ 37; see Sixth Further Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd. 10968 (1996) ("Sixth FNPRM"), and has reserved judgement as to the utility of Channels 2-6 in the DTV Service, Sixth R & O

⁵ The affected stations are KAYU (NTSC Ch.28), KEPR (NTSC Ch.19), KNDU (NTSC Ch.25), KTNW (NTSC Ch.31) and KAPP(NTSC Ch.35).

⁶ Under the Caucus Plan, only KEPR (NTSC Ch.19), at its own request, is assigned a DTV channel first adjacent below its NTSC station.

at ¶ 83.⁷ Accordingly stations assigned DTV channels above Channel 46⁸ or below Channel 7 are at risk of forced relocation and attendant equipment cost and viewer confusion. In the eastern Washington and northern Idaho region, the Commission has assigned DTV channels outside the central core spectrum in 8 instances. In contrast to the FCC Plan, the Caucus Plan utilizes only channels within the FCC's core spectrum, eliminating the uncertainty and potential for substantial additional equipment expenses and viewer loss that would be created by forced relocations.⁹

II. The Caucus Plan Meets FCC Criteria For Table Modification

Throughout this proceeding, the Commission has voiced its support for voluntary negotiations among broadcasters both before and after adoption of a final Table of Allotments. See, e.g., Second Report and Order/Further Notice of Proposed Rule Making, MM Docket 87-268, 7 FCC Rcd. 3340 (1992); Sixth NPRM at ¶ 44-46. In the Sixth R & O, the Commission provided the following principles for negotiated regional allotment/assignment plans:

⁷ As discussed above in Footnote 3, the Caucus favors retention of Channels 2 through 6 for television broadcasting.

⁸ The Commission also has discussed reclaiming Channels 47-51 should it decide to retain Channels 2-6. Sixth R&O at ¶ 83.

⁹ The Caucus supports the Commission's proposals whereby new users of the recaptured broadcast spectrum would be required to compensate licensees for the cost of forced relocation to core spectrum, but notes that the Commission has yet to definitely rule on this issue. Prompt affirmation of displaced broadcasters' right to compensation will ensure that licensees with NTSC or DTV channels outside the core can have access to the financing necessary to construct DTV facilities.

(1) All affected broadcasters, including those in neighboring geographic areas, must agree to the revised plan;

(2) The changes must not result in additional interference to other stations or allotments;

(3) The changes must not propose allotments on Channels 60-69 or otherwise adversely affect the FCC's spectrum reclamation efforts; and

(4) The revised plan should consider LPTV and TV translator stations and avoid impact on such stations wherever possible.¹⁰

See Sixth R & O at ¶¶ 172, 182.¹¹

Adoption of the Caucus Channel Plan on reconsideration would support each of these principles.¹² First, all affected licensees have agreed to the Caucus' plan. Second, the Caucus Plan does not

¹⁰ The Sixth R & O also indicates that negotiated channel changes must be subject to appropriate international coordination. Sixth R & O at ¶ 172. As discussed above, and given Industry Canada's apparent desire to construct its DTV Table by August 1997, the Caucus strongly urges the Commission to ensure that negotiations with Canada take into account proposals for reconsideration of the Commission's current Table of Allotments. In particular, the Commission should note that Channel 13 (proposed as a DTV channel herein) is a vacant NTSC channel in Canada.

¹¹ Although careful review of Paragraphs 172 through 182 of the Sixth R & O indicates that the Commission recognizes and supports negotiated industry efforts to develop alternatives to the final Table of Allotments where necessary, the Caucus respectfully requests that the Commission more forcefully clarify that it has adopted its proposed policy of "permit[ting] broadcasters within a community to negotiate among themselves their designated allotments and to develop an alternative allotment/assignment plan for their local area." See Sixth R & O at ¶ 172.

¹² The Commission defines an "affected broadcaster" as "a broadcaster whose allotment within a community would be changed or whose existing NTSC or new DTV service area would be affected technically by a proposed change to the Table." Sixth R & O at ¶ 172 n. 307.

affect broadcasters in areas adjacent to the Spokane and Yakima DMAs. As discussed above, the eastern Washington and northern Idaho region is uniquely in need of a modified channel plan because of its mountainous terrain, thick forests and sparsely populated areas. These features also divide the region from other geographic areas, permitting a negotiated regional plan which does not adversely impact stations in adjoining areas. Specifically, the eastern Washington region is terrain blocked to the east by the Rocky Mountains and to the west by the Cascades. The region also is geographically distant from other markets because of these remote and sparsely-populated mountain areas.

Third, as discussed above in Section I, the Caucus Channel Plan eases the FCC's channel reclamation efforts by relocating all eight DTV allotments that lie outside the central core spectrum in the FCC Plan into the Channel 7 through 46 range.

Fourth, the Caucus Plan was designed with the goal of minimizing adverse impact to LPTV stations and translators. The Caucus plans to continue its efforts to accommodate the approximately 200 LPTV stations and translators authorized in the region by inviting comments from these parties and organizing meetings as appropriate.

As demonstrated in the Engineering Statement attached as Exhibit B, the Caucus Plan meets the FCC's technical requirements for channel pairing settlements.¹³ The proposed DTV allotments and

¹³ KSKN, Inc. seeks reconsideration of the proposal to assign minimum power of 50 kilowatts at 426 meters HAAT to KSKN. KSKN,

assignments generally satisfy the spacing requirements set forth in new Section 73.623 for most of the allotments proposed in the Caucus Plan. See Exhibit B. In instances where there is short-spacing, as demonstrated in the terrain profile studies attached to Exhibit B, any potential for interference in most cases is rectified through terrain shielding in accordance with the criteria set forth in Section 73.623. Although some of the propagation studies depict areas of undesirable interference with existing Grade B contours, as stated in Exhibit B, this de minimis interference lies in mountain peak areas which are remote and largely uninhabited. Exhibit B also provides terrain profiles demonstrating shielding from Canadian NTSC allocations.¹⁴

As discussed above and in Exhibit B, it is believed that the Caucus Plan satisfies the FCC's requirements for interference protection and spacing. However, there are some areas where the

Inc. has had pending since February 29, 1996 (File No. BPCT-960229KH) a modification application seeking an increase in power from 324 kilowatts ERP to 5,000 kilowatts ERP, and an increase in HAAT to 581 meters. This was further modified by an amendment filed on July 12, 1996 proposing a new antenna site one quarter mile from KSKN's site and proposing an additional increase in antenna HAAT to 597 meters. Other modification applications granted prior to April 3, 1997 have been accommodated. See Sixth R & O at ¶¶ 33, 113. KSKN, Inc. should not be penalized due to FCC processing delays beyond its control, especially where similarly situated applicants have had modification applications granted and accommodated. KSKN, Inc. requests that it be allocated an increase in power and HAAT to accommodate its pending modification application.

¹⁴ As discussed above in Footnote 10, the Caucus respectfully urges the Commission to take appropriate action to ensure that negotiations concerning the Canadian DTV channel plan account for proposals to adjust the FCC Channel Plan on reconsideration.

new rules may be unclear as to requirements for existing broadcasters seeking to propose modified DTV allocations and assignments. To the extent the Commission further clarifies its DTV service rules and OET Bulletin No. 69 (as yet unreleased) clarifies the method for conducting propagation studies outlined in the Sixth R & O, the Caucus reserves the right to supplement this Petition as necessary. In this regard, the Caucus believes that existing broadcasters should be afforded 90 days following release of OET Bulletin No. 69 to propose alternative channel plans to the Commission.

The Caucus also favors modification of the DTV practice rules to facilitate authorization of negotiated channel changes following the reconsideration period. Although the new rules streamline the approval process for proposals to change allocations and assignments within a community, see Section 73.622(c), many negotiated channel plans necessarily will involve stations in more than one community. Rather than relying on the existing cumbersome procedures requiring two notice and comment periods for inter-city channel changes, the Commission should establish expedited procedures through which consensual channel changes may be implemented. Streamlined procedures are particularly important in circumstances such as these, where numerous channel changes are likely to be requested and the Commission has imposed tight deadlines for filing construction permit applications.

In addition, the Caucus urges the Commission to provide stronger, more well-defined support for the industry DTV

coordination committee process. In the Sixth FNPRM, the Commission invited comments concerning regional coordination committees, proposing that such committees "evaluate and provide advice to the Commission with regard to coordination of changes in allotments; the creation of new allotments; and changes in authorized facilities (for both NTSC and DTV stations) that would impact other allotments/assignments." Sixth R & O at ¶ 173, citing Sixth FNPRM at ¶¶ 44-49. This proposal received substantial support in comments to the Sixth R & O.¹⁵ On January 10, 1997, the Broadcasters Caucus filed a Petition for Further Rule Making in this proceeding, requesting that the Commission establish an industry coordination committee process. Although the Commission again endorsed the concept of industry coordination committees in the Sixth R&O, the Caucus respectfully notes that affirmative steps are needed to ensure that the coordination committees become an effective process for expediting necessary changes in the DTV channel plan.

In short, the Commission should act promptly, on reconsideration, to adopt the Caucus Channel Plan. As discussed above and demonstrated in Exhibits B and C, the FCC Channel Plan is flawed in that it assigns adjacent DTV channels to short-spaced facilities, adversely affecting replication of six stations' NTSC service areas, and allots high UHF frequencies in a region whose mountainous terrain and dense forests present unique propagation

¹⁵ Based on a review of the Commission's summary of comments on the issue, it appears that the coordination committee proposal was not opposed by any party, provided that the coordination process account for the interests of LPTV stations and new entrants. Sixth R & O at ¶¶ 174-181.

challenges and whose geography and population pattern necessitates the location of transmitters at a distance from the communities to be served. Because of its flaws, implementation of the FCC Channel Plan will result in substantial loss of coverage for a number of eastern Washington and northern Idaho stations, as well as potential delays in construction of DTV facilities.

The Caucus Plan rectifies the problems inherent in the FCC Plan while staying with the central core spectrum (Channels 7-46) and removing instances of adjacent channel NTSC-ATV operations except where requested by the licensee. The Caucus Plan also meets the Commission's criteria for DTV table modification by encompassing all affected licensees and complying with the requirements of the new DTV practice rules.

WHEREFORE, the premises considered, the Caucus respectfully requests reconsideration of the Sixth R & O to the extent it allocates paired DTV channels in the Spokane and Yakima, Washington area, and urges that the negotiated DTV channel allocation plan discussed herein be adopted instead.

Respectfully submitted,

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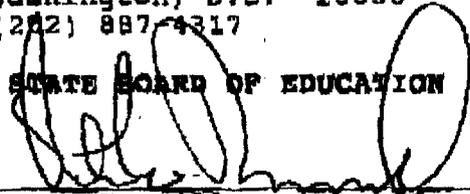
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