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October 30, 1997

VIA HAND DELIVERY

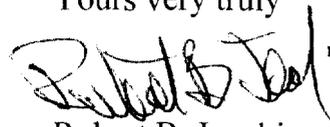
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

In re: MM Docket No. 97-182

Dear Mr. Caton

On behalf of Golden Orange Broadcasting Co., Inc., licensee of television station KDOC, Anaheim, California, there is herewith transmitted an original and five copies of "Comments" in the above-referenced proceeding.

Yours very truly

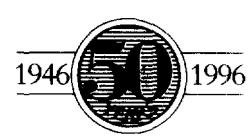


Robert B. Jacobi

RBJ:btc

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BEFORE THE

Federal Communications Commission

In the Matter of

Preemption of State and Local Zoning and
Land Use Restrictions on the Siting,
Placement and Construction of Broadcast
Station Transmission Facilities

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MM Docket No. 97-182

COMMENTS OF GOLDEN ORANGE BROADCASTING CO., INC. IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

Golden Orange Broadcasting Co., Inc. ("Golden Orange"), licensee of television station KDOC, Anaheim, California, by its attorneys, files these Comments in response to the Notice of Proposed Rule Making ("NPRM") released in the above-captioned proceeding on August 19, 1997. Golden Orange generally supports both the Commission's proposals in this proceeding, and the underlying reason for them--namely, the great importance not only of the shift to digital television transmissions, but also that the transition be made as universal as possible in the shortest transition time frame to insure the best service to the public.

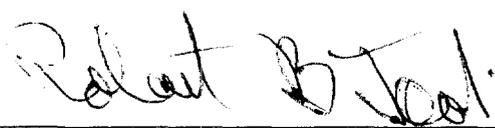
1. Golden Orange supports an aggressive construction schedule which will offset any possible disincentives for any individual broadcaster to begin DTV transmissions quickly. Pragmatically, however, the primary prospective obstacle to the early commencement of DTV service is local ordinances and regulations. The experience of Golden Orange in the planning and construction of broadcast facilities impels the conclusion that the timing of such construction should not be held hostage to the vagaries of local ordinances and regulations. Whatever the merits of such local requirements, the delays and the uncertainty of the process render almost impossible the attainment of the type of

transition contemplated by the Commission. Attached hereto as Appendix I are "Comments" which reflect (a) on a first-hand basis an example of a problem confronted by Golden Orange relating to its efforts to obtain approval for a television booster site -- after having previously obtained a construction permit from the FCC and (b) specific views of Golden Orange as to questions raised in the NPRM.

2. The shift to DTV will entail widespread construction and modification of existing television facilities -- the effect of which will also impact on radio and other communication services housed on television towers. New tower construction and/or modification of towers and transmitting facilities will immediately confront local ordinances and regulations. The NPRM proposals are carefully circumscribed to accommodate legitimate local interests. To effectuate an orderly transition to DTV and to ensure a minimum of interruption to other broadcast and communication services, FCC preemption is necessary.

Respectfully submitted,

GOLDEN ORANGE BROADCASTING CO., INC.

By: 

Robert B. Jacobi
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1333 New Hampshire Ave., N.W., Suite 600
Washington, D.C. 20036
(202) 452-4810

Its Attorneys

October 30, 1997

APPENDIX I

***COMMENTS OF
GOLDEN ORANGE BROADCASTING CO., INC.***

BEFORE THE

Federal Communications Commission

In the Matter of:

Request for Comments in relation to FCC-97-296, Preemption of State and Local Zoning and Bond Use Restrictions on the Site, Placement and Construction of Broadcast Station Transmission Facilities.

MM Docket No. 97-182

Comments of Golden Orange Broadcasting Co., Inc. with respect to preemption of State and Local permitting.

Golden Orange Broadcasting Co., Inc. ("Golden Orange"), licensee of independent UHF Television Broadcast Station KDOC-TV, Anaheim, California, hereby submits its comments to the Commission's instant Request for Comments. In support thereof, the following is set forth.

1. Golden Orange is in agreement with the National Association of Broadcasters (NAB) as they have expressed concern over problems with implementing the new Digital Television (DTV) service. We anticipate many stations will have to construct a new tower in order to initiate DTV service to their communities. Additionally we believe that many radio stations sharing tower space with existing television stations will be displaced causing them to seek new towers in order to remain on the air.
2. Golden Orange is concerned that the local permit process has become so cumbersome, time consuming, and expensive that it would constitute a serious impediment to the successful roll-out of DTV service to the public. Especially in the more congested urban areas the local governments have instituted standards of conformity which seldom take into account the necessities of the broadcasters serving the community. Broadcasting is an uncommon industry, and unfortunately requires a tower in order to operate. Most of the forms relating to construction issues are inapplicable to broadcast projects, meaning a special hearing will be necessary to educate the agents of City Hall as to the technical necessities.
3. Local governments are becoming more and more concerned with their city image, and require that all projects be evaluated for aesthetics. Golden Orange has learned that attempting to penetrate an esthetic bias with a tower request can become a futile exercise.

4. The following is a brief chronicle of our experience in attempting to obtain local permits to build a booster transmitter station in Los Angeles.

KDOC-TV was granted a *construction permit* to build a **booster station** in the San Fernando Valley portion of Los Angeles after negotiation of a lease agreement with the landowner. The site already contained a large wooden tower suitable for our use. We were told that the requested addition was so small that we would not need a conditional use permit (CUP). Delays in obtaining a permit from the city, however, stretched from 1989 through January 1992. At this time we were informed that we would have to obtain a *conditional use permit* and hold hearings on the proposal.

KDOC won approval in all the hearings we faced and we consented to every condition or impact mitigation provision which was advanced. We purchased equipment, conducted survey and soil testing, filed FAA documents, hired an urban planning consultant, attended meetings with anyone who requested, and made revisions to our plans to meet the concerns of all parties. We applied for two separate CUP's taking us to the middle of 1993 before we were eventually denied use of the site.

KDOC can see no reason, given the early successes in the public hearings, why the project was eventually denied other than a personal vendetta on the part of the city councilman for the district involved. The project was such a small, almost invisible, addition to an existing tower, but you would have thought that the antenna was an eleven story building. It eventually became clear that if we had only made a small campaign contribution the outcome would have been different.

5. The following is a brief chronicle of our experience in attempting to obtain local permits to build a necessary microwave tower for signal relay to our transmitter site.

Golden Orange contacted the City of Irvine prior to purchasing a building in the industrial area of the city for relocation of the KDOC studios. After discussions with planning officials we were issued (paid for) a letter verifying that a CUP would not be needed for the tower and satellite dishes we proposed and that we could consummate our deal for the new building.

We then paid for the tower engineering and prepared to move the station from Anaheim to the new building in Irvine. At this time we began to encounter resistance for building permits, because staff felt that we needed a CUP prior to issuing the actual building permits. From December 10, 1993 through January 25, 1995, KDOC was locked in a struggle with the city to accomplish permitting which officials earlier had told us was not necessary. We were forced to conduct hearings and faced up to 26 conditions added over the months to satisfy neighbors and planners. We had to hire architects, urban planning consultants, (city friendly) project managers, and landscape designers. It became clear that the city was not candid with us initially and that the only issue in their minds was the aesthetics. The form was far more important than the function, and the

scenic nature of the corridor into their city could not be compromised by what they regarded as ugly towers or dishes.

Over a two year period we bowed to their every demand and condition. This led to more conditions. The city even managed to identify reasons for including all of the station's facilities under a "blanket" requirement for a use permit. They eventually made us aware that they would be happier if KDOC had not come to their city. We seemed to always be in violation of some provision of the city codes. Inspectors had no mercy. We actually were cited for violation of an ordinance which prohibits the display of an "unauthorized logo" on the microwave dish. The red lightning bolt displayed on all Andrew Corp. microwave dishes was not acceptable to the city, and we had to hire a tower climber to hang out over the front of the dish (100 ft. above the ground) and cut off the symbol.

6. KDOC engineers attended a local area planning committee meeting with all Los Angeles area TV stations on September 26th. Representatives from the local Forestry office of the BLM were present, and indicated a willingness to work with the stations during the conversion. That was just public relations talk, however, because when pressed on just how they would be able to help facilitate the permits, they said that they could not cut corners and that they think it will take about a year for each station to secure a permit for Mt. Wilson, and longer if several stations apply at once. They have now extended their permit requirement to private land sections of Mt. Wilson. It is becoming clear that the DTV conversion process will not receive any special consideration, with the only relief being if the BLM finds more staff to handle the applications.

Consequently, Golden Orange is not optimistic with respect to local and regional planning and permitting procedures. Without some relief or limitations we believe that unacceptable delays will be imposed upon licensees attempting to convert their stations to digital. It is likely that stations in the Los Angeles metro area will suffer a one or two year delay in permitting alone. Local authorities have in our experience exceeded all reasonable limits on their power and their concerns are far too myopic. We recommend that the FCC take steps to insure the wider issue of effective and early DTV conversion. This must be achieved with a high degree of efficiency, least all the station's planning and engineering staff be siphoned into unnecessary struggles with city hall.

From our recent experiences the following comments were developed:

A. Should FCC actions address state or local authorities failing to act within specific time periods?

Absolutely! In the competitive marketplace significant time delays can be devastating, especially when predicted time frames are extended by bureaucratic delays. For DTV conversion, the delays could effect the entire marketplace for several years.

B. Are existing laws, ordinances, and procedures likely to impede accelerated DTV build-out?

By the experience of KDOC over the past eight years, this would clearly be the case. With a lack of federal guidelines or preemption of control, our experience suggests that a city can always find new ways to frustrate an otherwise straight-forward process. Their resistance to change is founded on entirely local issues, resulting in harm to the greater global public benefit.

C. What is a reasonable extent for preemption?

Golden Orange recommends that specific guidelines be given to agencies administering leases on federal lands. We can see no reasonable basis for one agency of the government to frustrate the plans and goals of another or to use their process requirements to impede the will of Congress. There is no excuse for the government not to work in concert to facilitate the conversion to DTV as early as possible.

We believe that any station attempting to comply with the conversion to DTV ought to expect a minimum of paperwork. We applaud the FCC's reduction in document complexity and the efforts taken to streamline license processing. Golden Orange believes everyone has the right to receive free TV signals, and supports the provisions of the *Communications Act* which secure homeowners right to install a small dish or receiving antenna on his roof. In like manner, we would encourage the FCC to include some time and issues limitations on the cities and other agencies in order to facilitate DTV conversion.

We believe that local residents in close proximity with potential direct impact to broadcast projects ought to have reasonable control over aesthetic factors affecting them. We also believe that the FCC should offer some guidelines on just what constitutes close proximity and direct impact and the nexus for being affected by the proposed construction. Realizing that while aesthetics are frequently at odds with the technical requirements of a broadcast facility, the form must of necessity follow function. The FCC must acknowledge that a TV tower will not often win a beauty contest, and that towers are hard to hide. Perhaps the FCC could provide some persuasive limitations on the use of aesthetics as cause for denial or delay of permits for DTV conversions or displacements.

D. What constitutes reasonable time frames?

Our urban planning consultants agree that if a local authority has specific guidelines which preclude their ability to create delays and expand the issues without restraint, ninety (90) days would be sufficient time to address all relevant issues.

E. What is the most appropriate role for the FCC in resolving disputes?

It is certainly in the public's interest for all parties to work harmoniously in resolving disputes related to conversion. The most efficient way for the FCC to facilitate conversion is to set reasonable guidelines for local agencies to follow by which their interests are protected and improved service to the public is insured. Golden Orange believes that the FCC has neither the staff nor the legal authority to be drawn into various disputes around the country as a mediator or arbitrator. For this reason we would caution that the rules governing permit handling to be specific and unambiguous. In this way the standards can be administered through the various building departments which our consultants describe as "generally pretty objective."

Conclusion:

Golden Orange agrees that the expedited implementation of DTV service is of critical importance. We do not see relief from the extensive burden of local regulation in order to achieve this goal, however. Our past experience gives rise to the new fear that significant regulatory delays will be encountered especially in the metro areas in obtaining the permits needed for construction. The most time consuming permit to obtain is a *conditional use permit*, which has the effect of creating protracted land-use disputes with all the neighbors.

Golden Orange believes that the FCC should provide notice to local jurisdictions that implementation of DTV conversion is a legal and necessary activity, in order to limit the public discussion as to whether the activity will be permitted at all. Permits or licenses issued by local authorities presume the activity to otherwise be illegal. We ask that the exemptions and limitations issued by the FCC restricting zoning and other land use control devices be specific and unequivocal. Finally, we recommend that maximum delays induced by local permit processing be specified so as to restrict local discussion to the significant issues and to eliminate political interference.

Respectfully submitted

GOLDEN ORANGE BROADCASTING CO., INC.

By: Calvin C. Brack

Calvin C. Brack
Chief Executive Officer

(October 27, 1997)