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Before the
Federal Communications Commission
Washington, D.C.

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APR 20 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

MM Docket No. 87-268

To: *The Commission*

PETITION FOR RECONSIDERATION

Zavaletta Broadcasting of Pueblo ("Zavaletta") hereby seeks reconsideration of the Federal Communications Commission's ("Commission") *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24 (released February 23, 1998) ("*MO&O*"), in the above-captioned proceeding.

I. Background

On September 20, 1996 Zavaletta filed an application for a new commercial broadcast television station to operate on Channel 26 at Pueblo, Colorado.¹

¹ See Application of Zavaletta Broadcasting of Pueblo for a New Commercial Broadcasting Television Station in Pueblo, Colorado, BPCT- 960920YN (filed September 20, 1996). Zavaletta's application included a request for waiver of the Commission's order in *Advance Television Systems and Their* (continued...)

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In its *Sixth Report and Order* in this proceeding, 12 FCC Rcd 14588 (1997), the Commission noted that, in its *Sixth Further Notice of Proposed Rulemaking*, it stated that it would not accept additional applications for new NTSC stations that were filed after September 20, 1996.² The Commission also indicated, however, that it would continue to process applications already on file and those that were filed on or before September 20, 1996, because the Commission did not believe that these applications would have a "significant negative impact" on the development of the DTV Table of Allotments. *Sixth Report and Order*, 12 FCC Rcd at 14635, ¶104. Additionally, the Commission expressly stated that it would "maintain and protect" vacant allotments that are the subject of pending applications, and that such action would ensure that parties who have invested in new stations might continue pursuing their station projects. *See id.* at 14639, ¶ 112. Zavaletta's applica-

¹ (...continued)
Impact on the Existing Television Broadcast Service, RM-5811, 1987 FCC LEXIS 3477 (July 17, 1987), 52 Fed. Reg. 28346 (1987) ("Freeze Order").

² *See Sixth Report and Order*, 12 FCC Rcd at 14636, ¶ 104; *Sixth Further Notice of Proposed Rulemaking*, 11 FCC Rcd 10968, 10992 ¶60 (1996) ("*Sixth Further Notice*"). Specifically, the Commission stated that it would not accept additional applications for NTSC stations that were filed after 30 days from the publication of the *Sixth Further Notice* in the Federal Register. A summary of the *Sixth Further Notice* was published in the Federal Register on August 21, 1996. *See* 61 Fed. Reg. 43209 (1996).

tion was filed by the September 20, 1996 cutoff date and therefore Zavaletta's application was entitled to protection pursuant to the *Sixth Report and Order*.

II. The MO&O Failed to Protect Zavaletta's Pending Application.

In its recent *MO&O*, the Commission repeatedly confirmed that it fully intended to protect pending NTSC applications filed by the September 20, 1996 deadline. *See, e.g., MO&O* at ¶¶ 571, 575, 608, 627. Nevertheless, the DTV Table set forth in the *MO&O* fails to protect Zavaletta's pending application for a new commercial broadcast television station on Channel 26 at Pueblo, Colorado. As stated above, Zavaletta's application for the Channel 26 facility at Pueblo was on file with the Commission by the September 20, 1996 filing deadline. In its *Sixth Further Notice*, the Commission noted that there were more than 300 applications then on file which, if processed, would result in more than 100 new NTSC stations. *Sixth Further Notice*, 11 FCC Rcd at 10992, ¶60. The Commission further stated:

As we process the applications on file now and those that are filed before the end of this filing opportunity, we will continue our current policy of considering requests for wavier of our 1987 Freeze Order on a case-by-case basis.

Id. (emphasis added).³ The Commission failed to provide any notice that an application would be considered to be "pending" only if it had been formally "accepted for filing," or if the application did not include a request for waiver of the 1987 Freeze Order.⁴ Indeed, in the *MO&O*, rather than "considering requests for waiver of the 1987 freeze Order on a case-by-case basis" as the Commission stated it would in its *Sixth Further Notice*,⁵ the Commission simply disregarded all applications that contained a request for waiver of the 1987 Freeze Order in establishing the DTV Table, and treated such applications as if they never had been filed.⁶

The Commission's failure to protect Zavaletta's pending application for the new station on Channel 26 at Pueblo, Colorado is flatly inconsistent with the

³ The Commission reiterated this statement in its *Sixth Report and Order* at ¶104.

⁴ On the contrary, the Commission's clear proposal was not to accept any additional applications for new NTSC stations that were filed after the September 20, 1996 filing deadline. See *Sixth Report and Order*, 12 FCC Rcd at 14635, ¶ 104 (citing *Sixth Further Notice*, 11 FCC Rcd at 10992, ¶ 60).

⁵ *Sixth Further Notice*, 11 FCC Rcd at 10992, ¶ 60.

⁶ The Commission repeatedly states throughout the *MO&O* that applications containing such waivers had not been accepted, no action had been taken on the waiver request, and that the subject channel was used for DTV purposes. See, e.g., *MO&O* at ¶¶ 608 and 627; see also *id.* at ¶ 575 (indicating that certain pending applications were not protected because they were filed for stations in areas where the Commission did not allow the filing of new applications).

statements the Commission made in its *Sixth Further Notice and Sixth Report and Order*, and the Commission neglected to provide any explanation for its failure to consider Zavaletta's pending application in establishing the DTV Table. Therefore, for this reason alone, the DTV Table contained in the *MO&O* should be revised to accommodate Zavaletta's pending application for a new commercial broadcast television on Channel 26 at Pueblo, Colorado.

III. The Commission Should Substitute DTV Channel 45 for the Existing DTV Channel 26 Allotment at Pueblo, Colorado or, Alternatively, Zavaletta Should be Permitted to Amend its Pending NTSC Application to Specify Channel 45 as an Available Alternative Channel.

In this case, the previous NTSC allotment of Channel 26 at Pueblo, Colorado that was the subject of Zavaletta's application is short-spaced to a co-channel DTV allotment for educational station KTSC in Pueblo, 50.5 km from the transmitter site proposed in Zavaletta's application. Even if the Commission should determine that its failure to consider Zavaletta's pending application for a Channel 20 NTSC facility at Pueblo does not constitute a sufficient basis, in itself, for granting reconsideration of the DTV allotment of Channel 20 at Pueblo, the Commission has stated throughout this proceeding that it intends to give broadcasters the flexibility to develop alternative allotment plans where they do not result in additional interference to other stations and/or allotments. In order to accommodate Zavaletta's pending application, Zavaletta respectfully requests that the Commission change the DTV

allotment for Station KTSC from Channel 26 to Channel 45. As demonstrated in the attached engineering statement, the substitution of DTV Channel 45 for Channel 26 will result in only negligible interference to any other station and will provide 99.4% of Station KTSC's existing service area.

Alternatively, in the event the Commission elects not to substitute DTV Channel 45 for Channel 26 at Pueblo, Zavaletta requests that it be permitted to amend its pending application to specify operation on Channel 45. As demonstrated in the attached engineering statement, NTSC channel 45 will cause only negligible interference to any other DTV or NTSC facility. The proposed substitution of DTV Channel 45 for Channel 26 at Pueblo or, alternatively, permitting Zavaletta to amend its pending NTSC application to specify operation on Channel 45 at Pueblo, would effectuate the Commission's pronouncements in its *Sixth Further Notice and Sixth Report and Order* that it would protect those pending NTSC applications that were filed on or before September 20, 1996.

IV. The Proposals Set Forth Herein Would Provide Substantial Public Interest Benefits.

The substitution of DTV Channel 45 for Channel 26 at Pueblo or permitting Zavaletta to amend its pending application to specify an available alternative NTSC channel at Pueblo would serve the public interest by promoting the

emergence and development of new networks. The Commission has long espoused the goal of removing barriers that would inhibit the development of new networks.⁷

The successful emergence of new networks, however, depends in large part upon their ability to attract and retain local affiliates, which is the life blood of any national network. Moreover, for emerging networks, it is critical that they be afforded the opportunity to compete for affiliates as quickly as possible. Indeed, the large financial losses that confront any national network in its initial years of operation can be stemmed only by obtaining additional affiliates to carry the emerging network's programming. In many markets, however, there simply are not enough stations to provide affiliates for emerging networks in addition to those of the more established networks. Thus, the Commission should make the requested change in the DTV Table which, by permitting an additional broadcast station to serve the Pueblo, Colorado television market, will help promote emerging networks.

WHEREFORE, in light of the foregoing, Zavaletta Broadcasting Company respectfully requests that the Commission GRANT reconsideration of its *MO&O* by substituting DTV Channel 45 for the existing DTV Channel 26 allotment

⁷ See *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d 318, 333 (1970); *Fox Broadcasting Co. Request for Temporary Waiver of Certain Provisions of 45 C.F.R. §73.658*, 5 FCC Rcd 3211, 3211 (1990), waiver extended, 6 FCC Rcd 2622 (1991).

at Pueblo, Colorado or, alternatively, permit Zavaletta Broadcasting Company to amend its pending NTSC application to specify operation on NTSC Channel 45.

Respectfully submitted,
Zavaletta Broadcasting of Pueblo

By: 
Joseph A. Zavaletta, Sr., M.D. -TWP
Managing General Partner

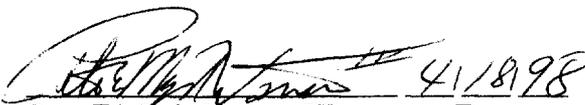
Date: April 20, 1997

Engineering Statement
Pueblo, CO Channel 26
Wes, Inc. Broadcast Consultants

The program used to demonstrate interference and service replication percentages in this study was the OET FLR program, OET Bulletin 69, running on our own Sun Microsystems computers. These computers have been verified to give identical results to the runs generated by OET. The spacing programs are our own proprietary programs utilizing the FCC broadcast database and DTV database.

Due to a digital channel 26 being assigned to Pueblo, CO, 50.5 km away, a study was conducted to propose moving the digital channel 26 to channel 45. The study showed that it would receive a 99.4% match rather than a 99.7% and would cause negligible interference (<0.1%) to any digital or NTSC stations. The Digital 45 would still receive a large increase over there current Pueblo Channel 8's current NTSC population coverage.

Should the Commission prefer moving the proposed NTSC channel 26 in Pueblo, CO, the TV channel spacing study shows channel 45 open to such a change. The OET FLR study shows that Pueblo 45 would retain excellent coverage and would not cause any interference to digital or NTSC stations.


Pete E Myrl Warren, III Date

Whose qualifications are a matter of
record with the Commission

Pueblo, CO, Digital Channel 26 moved to Digital Channel 45

Run begins Sat Apr 18 13:27:21 1998, host providence

Analysis of: 8N CO PUEBLO

	POPULATION	AREA (sq km)
within Noise Limited Contour	1793379	33404.4
not affected by terrain losses	1197887	29846.1
lost to NTSC IX	576612	3510.1
lost to additional IX by ATV	0	0.0
lost to all IX	576612	3510.1

Analysis of: 45A CO PUEBLO

HAAT 727.0 m, ATV ERP 532.7 kW, direction 160.0 degrees T, F/B = 28.8 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	1793379	33404.4
not affected by terrain losses	1410722	30211.2
lost to NTSC IX	0	0.0
lost to additional IX by ATV	719757	1813.2
lost to ATV IX only	719757	1813.2
lost to all IX	719757	1813.2
percent match ATV/NTSC	99.4	98.9

Analysis of: 53N CO CASTLE ROCK

	POPULATION	AREA (sq km)
within Noise Limited Contour	1796690	12532.7
not affected by terrain losses	1675121	10439.2
lost to NTSC IX	12579	64.3
lost to additional IX by ATV	0	0.0
lost to all IX	12579	64.3

Analysis of: 46A CO CASTLE ROCK

HAAT 193.0 m, ATV ERP 128.8 kW, direction 330.0 degrees T, F/B = 11.1 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	1796690	12532.7
not affected by terrain losses	1686704	10925.4
lost to NTSC IX	0	0.0
lost to additional IX by ATV	6242	301.4
lost to ATV IX only	6242	301.4
lost to all IX	6242	301.4
percent match ATV/NTSC	99.9	98.7

Finished Sat Apr 18 13:36:12; run time 0:08:30

36901 calls to Longley-Rice; path distance increment 1.00 km

Pueblo, CO, Digital Channel 26 as it presently is.

Run begins Sat Apr 18 12:23:03 1998, host gilwell

Analysis of: 8N CO PUEBLO

	POPULATION	AREA (sq km)
within Noise Limited Contour	1793379	33404.4
not affected by terrain losses	1197887	29846.1
lost to NTSC IX	576612	3510.1
lost to additional IX by ATV	0	0.0
lost to all IX	576612	3510.1

Analysis of: 26A CO PUEBLO

HAAT 727.0 m, ATV ERP 364.3 kW, direction 160.0 degrees T, F/B = 28.8 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	1793379	33404.4
not affected by terrain losses	1482962	30564.2
lost to NTSC IX	632215	649.9
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	632215	649.9
percent match ATV/NTSC	99.7	99.6

Analysis of: 53N CO CASTLE ROCK

	POPULATION	AREA (sq km)
within Noise Limited Contour	1796690	12532.7
not affected by terrain losses	1675121	10439.2
lost to NTSC IX	12579	64.3
lost to additional IX by ATV	0	0.0
lost to all IX	12579	64.3

Analysis of: 46A CO CASTLE ROCK

HAAT 193.0 m, ATV ERP 128.8 kW, direction 330.0 degrees T, F/B = 11.1 dB

	POPULATION	AREA (sq km)
within Noise Limited Contour	1796690	12532.7
not affected by terrain losses	1686704	10925.4
lost to NTSC IX	0	0.0
lost to additional IX by ATV	0	0.0
lost to ATV IX only	0	0.0
lost to all IX	0	0.0
percent match ATV/NTSC	100.0	100.0

Finished Sat Apr 18 12:32:35; run time 0:07:37

33528 calls to Longley-Rice; path distance increment 1.00 km

***** DTV TO NTSC CHANNEL SPACING STUDY *****

Job title: Pueblo 26 DTV
 Channel: 45
 Database file name: c:\tvsrc\tv980408.edx

Latitude: 38 44 44
 Longitude: 104 51 39

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
53o	KWHD	7718	CASTLE ROCK	CO	2	L	13.0	78.3	96.6	-18.3
59o	KPXC	7719	DENVER	CO	2	L	359.4	103.2	96.6	6.6
31o	KDVR	7927	DENVER	CO	2	L	343.6	113.9	96.6	17.3
31o	KDVR	7928	DENVER	CO	2	A	343.6	113.9	96.6	17.3
59o	KPXC	7942	DENVER	CO	2	C	343.5	107.5	96.6	10.9
59o	KUBD1	7943	EVERGREEN	CO	0	C	339.3	97.1	96.6	0.5

***** End of channel 45 study *****

Study Title: Pueblo DTV 26 MOVED TO DTV 45
Pueblo, CO Channel 45

DTV Study Station, Transmitter Coordinates: 38-44-44 N 104-51-39 W
Study distance: 300 km

DTV TO DTV STUDY RESULTS
City of License ST Chan Distance Bearing Req. Dist Diff.

Castle Rock CO 46 78.34 13.14 88.50 -10.16

Station is short-spaced to 1 station.

***** TV CHANNEL SPACING STUDY *****

Job title: Pueblo 26 DTV
 Channel: 45
 Database file name: c:\tvsrc\tv980408.edx

Latitude: 38 44 44
 Longitude: 104 51 39

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
53o	KWHD	7718	CASTLE ROCK	CO	2	L	13.0	78.3	31.4	46.9
59o	KPXC	7719	DENVER	CO	2	L	359.4	103.2	95.7	7.5
31o	KDVR	7927	DENVER	CO	2	L	343.6	113.9	95.7	18.2
31o	KDVR	7928	DENVER	CO	2	A	343.6	113.9	95.7	18.2
59o	KPXC	7942	DENVER	CO	2	C	343.5	107.5	95.7	11.8
59o	KUBD1	7943	EVERGREEN	CO	0	C	339.3	97.1	95.7	1.4

***** End of channel 45 study *****

Pueblo 26's site (NTSC)

Computing Tools FCC Database Reports Rev 1.4
 Digital TV Stations within 300.000 of 038-21-30 104-33-24
 Accuracy and completeness of these results is NOT assured.

St City	channel	latitude	longitude	distance, (km),	bearing (degrees)
CO Colorado Springs	10	38-44-41	104-51-41	50.451,	328.22899
CO Montrose	13	38-31-02	107-51-12	288.372,	273.50645
KS Goodland	14	39-28-09	101-33-20	288.030,	64.65083
CO Boulder	15	39-40-18	105-13-12	156.709,	338.49312
CO Denver	16	39-43-46	105-14-08	163.166,	338.88662
CO Denver	17	39-43-46	105-14-12	163.201,	338.85511
KS Colby	17	39-15-25	101-21-10	295.637,	70.28007
CO Denver	18	39-43-49	105-15-00	163.707,	338.49010
CO Denver	19	39-40-18	105-13-12	156.709,	338.49312
CO Fort Collins	21	40-38-32	104-49-05	254.559,	354.93285
CO Colorado Springs	22	38-44-43	104-51-40	50.490,	328.28930
CO Glenwood Springs	23	39-25-05	107-22-01	270.729,	295.75569
CO Sterling	23	40-34-57	103-01-56	279.614,	27.97927
CO Colorado Springs	24	38-44-45	104-51-38	50.517,	328.37289
CO Pueblo	26	38-44-44	104-51-39	50.504,	328.33111
CO Longmont	29	40-05-47	104-54-04	195.234,	351.23712
CO LA Junta	30	37-59-06	103-32-19	98.366,	114.91496
CO Denver	32	39-43-45	105-14-12	163.172,	338.85117
CO Denver	34	39-43-59	105-14-12	163.574,	338.90626
CO Denver	35	39-43-48	105-14-02	163.172,	338.94176
CO Broomfield	38	39-40-55	105-29-49	167.995,	331.00528
CO Glenwood Springs	39	39-32-49	107-19-24	273.734,	298.81865
CO Denver	40	39-35-59	105-12-35	148.977,	337.67512
CO Pueblo	42	38-22-25	104-33-27	1.697,	357.54088
CO Denver	43	39-40-24	105-13-03	156.802,	338.59175
CO Castle Rock	46	39-25-58	104-39-18	119.580,	355.90898
CO Leadville	49	39-14-52	106-17-28	180.138,	303.23787
CO Lamar	50	38-05-14	102-37-02	172.479,	100.04796
CO Denver	51	39-43-59	105-14-12	163.574,	338.90626

End of report.

Study Title: Pueblo 26 moved to NTSC 45
Pueblo, CO Channel 45

NTSC Study Station, Transmitter Coordinates: 38-21-30 N 104-33-24 W

Study distance: 300 km

NTSC TO DTV STUDY RESULTS

City of License	ST	Chan	Distance	Bearing	Req. Dist	Diff.
Broomfield	CO	38	167.99	331.01	96.60	71.39
Castle Rock	CO	46	119.58	355.91	88.50	31.08
Denver	CO	43	156.80	338.59	96.60	60.20
Leadville	CO	49	180.14	303.24	96.60	83.54
Pueblo	CO	42	1.70	357.54	<24.1	22.40

Station is in the clear!

Pueblo, CO, Channel 26 moved to Channel 45 with 5 MW omni-directional

Run begins Sat Apr 11 16:14:28 1998, host gilwell

Analysis of: 45N CO PUEBLO

	POPULATION	AREA (sq km)
within Noise Limited Contour	595409	29970.0
not affected by terrain losses	579774	24623.2
lost to NTSC IX	518	32.3
lost to additional IX by ATV	0	4.0
lost to all IX	518	36.3

Finished Sat Apr 11 16:19:02; run time 0:03:32

17322 calls to Longley-Rice; path distance increment 1.00 km

***** TV CHANNEL SPACING STUDY *****

Job title: Pueblo, CO
Channel: 45
Database file name: c:\tvsvr\tv980408.edx

Latitude: 38 21 30
Longitude: 104 33 24

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
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***** End of channel 45 study *****