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FCC Mail Room

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Email: ernestsanchez2348@gmail.com

By Federal Express

December 15, 2014

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Attention: The Commission

Re: Eastern New Mexico University (KENW-TV, Portales, NM)
Petition for Emergency Relief

Dear Ms. Dortch:

Attached are an original and nine (9) copies of a Petition for Emergency Relief under 47 CFR § 1.1, § 1.2, § 1.102(b)(3) and § 1.115(h)(2).

Please contact me if you have any questions or wish to discuss any matters in this letter petition or the underlying waiver request.

Thank you for your attention to this matter.

Sincerely yours,

Ernest T. Sanchez
Counsel for Eastern New Mexico University licensee of KENW-TV, Portales, NM

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

In the Matter of

Eastern New Mexico University
Licensee of KENW-TV
Portales, New Mexico

Petition for Emergency Relief and Declaratory Ruling

Ernest T. Sanchez
Susan M. Jenkins
THE SANCHEZ LAW FIRM, P.C.
1155 F Street, N.W.
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Washington, D.C. 20004
202-237-2814
ernestsanchez2348@gmail.com
Its Attorneys

Filed: December 15, 2014

Petition for Emergency Relief

Eastern New Mexico University, licensee of noncommercial educational ("NCE") television station KENW-TV, files this Petition for Emergency Relief and Declaratory Ruling ("Petition") with the Federal Communications Commission, pursuant to the terms of sections 1.1, 1.2, 1.102(b)(3), and 1.115(h)(2) of the Commission's rules, 47 C.F.R. §§ 1.1, 1.2, 1.102(b)(3), and 1.115(h)(2). The Petition is filed to avert the pending displacement, on January 1, 2015, of KENW-TV from carriage within its home state of New Mexico on the two direct satellite companies, DirecTV and DISH. The declaratory relief sought, reassurance for these companies regarding the Commission's policy and enforcement intentions in cases such as this, is required so that New Mexico citizens may continue to access a public TV program service targeted to their communities and supported financially by the State itself and local residents in the New Mexico communities to which KENW (along with its translator and full-service satellite stations) are licensed. A coverage map which both lists and graphically illustrates the coverage of KENW-TV and associated translators is attached as Exhibit 1.

Factual Background. The factual background underlying and necessitating this Petition (which is supported by the Attached Declaration of Duane Ryan, KENW's General Manager) is as follows: KENW-DT (Facility I.D. # 18338), is one of New Mexico's three NCE public television stations, and the only one that serves the otherwise-underserved eastern third of the State of New Mexico. KENW-TV is operated by Eastern New Mexico University ("ENMU") located in Portales, NM, which is a State of New Mexico institution of higher learning. ENMU also has campuses in the city of Roswell and town of Ruidoso, NM.

After many years of KENW having been appropriately assigned by the Nielsen Company

("Nielsen") to the Albuquerque/Santa Fe Designated Market Area ("DMA"), ENMU received notice in 2011 from Nielsen that, despite the fact that KENW's city of license is Portales, in Roosevelt County, NM, the station would be reassigned from the Albuquerque/Santa Fe DMA to the Amarillo, TX DMA. At the time, since both the DISH and DirecTV satellite companies were willing to continue to carry KENW on the Albuquerque/Santa Fe satellite, reassignment did not adversely affect KENW. Since it was no longer necessary to force the issue with Nielsen, ENMU accepted this compromise at the time.

Now, however, inexplicably, both satellite companies have notified ENMU that effective January 1, 2015 they have decided to implement the reassignment, moving KENW to the Amarillo, TX satellite spot beam, a move that will have disastrous consequences for KENW itself, as well as those New Mexico citizens who rely on this station for public television service. ENMU students whose education is entirely or partially based on a distance-learning format transmitted through this educational television service will also be adversely affected. The proposed re-assignment will not only sever KENW from its satellite subscriber members, viewers, and students, but also from the state tax and local sources which substantially pay for the operation of the station and the University itself. Most of the population of Eastern New Mexico would lose satellite service for the public television programs, including locally-produced television programs, that they have paid for through state taxes and viewer contributions and that have been tailored to respond to local issues and needs, a devastating blow to New Mexico satellite televison viewers and taxpayers.

Discussion

No aspect of the public interest will benefit from the proposed reassignment. The West

Texas residents who subscribe to DirecTV or DISH almost certainly have no interest in a New Mexico public TV station since their own local institution of higher learning, Amarillo Junior College District, provides access to public television through KACV, locally known as "Panhandle PBS." Like ENMU, Amarillo Junior College is a government-supported institution of higher learning, paid for by in-state tax funds and local viewer support. KACV local programming will reflect the needs and interests of residents of this West Texas community, not New Mexico residents.

Nielsen's DMA reassignment will greatly erode the financial underpinnings of KENW and will disrupt the distance learning components of ENMU's educational mission. Satellite viewers in Eastern New Mexico will no longer have a reason to provide direct viewer support, while ENMU will lose the benefit of the financial support it receives from the New Mexico state government for its public television operations. Furthermore, public TV viewers in the Amarillo, TX DMA viewers are unlikely to fill that financial gap, since their taxes and viewer support dollars will continue to support their own local Panhandle PBS station, not KENW.

This unconsidered knee-jerk adherence to iron-clad DMA boundaries does not serve the public interest. In fact, important Congressional, Commission, and state-federal policies are undermined when local residents cannot be served by a broadcast TV station assigned to their community simply because they are DirecTV or DISH subscribers. For one thing, under section 309(k) of the Communications Act, 47 U.S.C. § 309(k), and section 73.3527 of the FCC Rules, 47 C.F.R. § 73.3527, it is a vital aspect of the public interest, convenience, and necessity for an NCE broadcast station to determine needs of its local community in matters of public interest so that these interests can be served and addressed through programming. KENW has zealously

adhered to those principles. Somewhat uniquely among rural public TV stations, it broadcasts a daily news program, staffed in large part with ENMU students who are studying broadcast communications. It also produces local public affairs programs. The Commission has, likewise, through its EEO enforcement program, stressed the importance for broadcast stations to train young people – including minority students and young women – for careers in broadcasting. ENMU puts those principles into practice every day, with a large and well-regarded hands-on academic program in radio and TV.

Similarly, the Commission has consistently upheld those policies of the Public Broadcasting Act that encourage public TV and radio stations to seek operating and program support from state governments, local underwriters, and viewers, while prohibiting advertising, 47 U.S.C. § 399B. If a sizable portion of viewers of a public TV station actually live in a different community, in a different state, with no ties to the station, its programming, or its licensee, the ability of that NCE station to secure public or private support will be severely diminished. This will happen to ENMU if KENW becomes more accessible to satellite subscribers in Texas than in New Mexico.

Ironically, the entire concept of the DMA was developed and exists to serve the needs of commercial TV stations and advertisers, needs that are far removed from the needs or experience of public broadcasters due to the § 399B ban on advertising. Public TV stations, their viewers, and their licensees are, in effect, innocent bystanders to the market-definition role of Nielsen DMAs. So long as an advertising ban remains in existence, Nielsen DMAs are irrelevant to public TV stations and the Commission should protect such stations from the kind of "collateral damage" presently facing ENMU and KENW. Whether the Commission might do so through

waiver or other case-by-case exemption or by rulemaking, such an exemption is logical and fair for NCE stations that derive no benefit from advertising and to which DMAs are irrelevant.

Additionally, the policies underlying the Public Broadcasting Act envision that all U.S. citizens, regardless of how rural or remote their residence, should have access to public radio and TV. For this reason, many state governments have provided financial support for their state university system to develop public TV networks, utilizing full-service "satellite" stations as well as translators, to bring public TV programming to every community, however small, throughout the state. New Mexico has chosen to do this as a matter of state educational policy. The FCC should not permit these various policies to be undermined by depriving those who live in counties that border state lines, simply because it benefits Nielsen and commercial TV stations to use neatly-compartmentalized DMAs to gather ratings data and link commercial stations with potential advertising clients. Furthermore, it is not only viewers in the border counties like Roosevelt, Curry, Quay, and Union who will be adversely affected. Residents of internal NM counties such as Chavez (Roswell), Eddy (Carlsbad), Lee (Lovington), and Lincoln (Ruidoso), who have ties to ENMU or KENW through satellite campuses, translator stations, or otherwise, will lose-- and be lost to KENW-- because they will remain in the Albuquerque/Santa Fe DMA.

ENMU and the New Mexico Congressional delegation (*see* Attachment 2) are in discussions with Nielsen, and we would hope that Nielsen executives might be willing to make an exception for a focused public TV station, like KENW, that would otherwise be moved outside of its target market (to use Nielsen's internal terminology). However, more time is needed for these discussions, especially given the upcoming holiday season and our deadline. The satellite companies are presently insisting that, effective January 1, 2015, KENW will be

shifted to the Amarillo DMA. While we are discussing this issue with representatives of DirecTV and DISH, we have so far we have failed to convince either one to postpone the proposed re-assignment of KENW. It seems that the two satellite companies are oblivious to the severe and irreparable harm to these NM citizens should they lose KNEW from its beloved New Mexico home to effective ignominious exile in Texas.

While ENMU waits for Nielsen to reconsider the proposed re-assignment, however, it faces the impending loss of satellite carriage in New Mexico in only three weeks. Once knocked off the NM satellite system, KENW will face an even greater struggle to get back on. As counsel for DirecTV acknowledged in his December 2nd letter, even if KENW is reassigned to Albuquerque in the 2015 carriage cycle, DirecTV may not have room to add KENW back into the Albuquerque local package. In other words, once KENW is knocked off the New Mexico satellite spot beams, there may be no way for its signal to be restored in the future. Urgent FCC administrative action is essential to prevent irreparable harm from being inflicted on ENMU by DirecTV and DISH while Nielsen reconsiders its reassignment.

This is where and why emergency action by the FCC is needed. DirecTV and DISH have each expressed concern to ENMU (Attachments 3 and 4) that they might violation federal law or FCC rules, or be sanctioned by the FCC if KENW is allowed to remain on Albuquerque satellite coverage while this matter is being considered by Nielsen and the Commission. This Petition for Emergency Relief requests that, on an emergency basis, the Commission reassure DirecTV and DISH that neither will be penalized if they continue the KENW carriage status quo until a longer-term solution can be developed. Inasmuch as the satellite company concern may involve the compulsory copyright license, ENMU is willing to provide a royalty-free copyright license or

possible indemnification against any legal risk that might attach to a short-term waiver.

Conclusion

In recent years, nearly all public broadcasters, ENMU among them, have reported lower levels of underwriting funds and donations, reflecting the national economic downturn. KENW cannot afford to lose satellite coverage within its own state and its own focused primary coverage area. It urges the Commission to reassure DISH and DirecTV that they may each safely retain KENW on the Albuquerque/Santa Fe New Mexico satellite service while the underlying DMA issue is resolves. The grant of this Petition will further Commission and Congressional policies that favor the provision of in-state programming for persons residing within the DMA who would otherwise not have access to such in-state programming serving local interests. On behalf of KENW, Eastern New Mexico University, and the people of New Mexico who rely on satellite television service, we respectfully request that the Commission rule favorably on KENW's Emergency petition without delay.

Respectfully submitted,

Ernest T. Sanchez

Susan M. Jenkins
THE SANCHEZ LAW FIRM, P.C.
1155 F Street, N.W.
Suite 1050
Washington, D.C. 20004
202-237-2814
ernestsanchez2348@gmail.com

Counsel for
Eastern New Mexico University
Licensee of KENW-TV

Date: December 15, 2014

Declaration of Duane Ryan, General Manager, KENW-TV

DECLARATION IN SUPPORT OF PETITION FOR EMERGENCY RELIEF

On behalf of KENW-TV licensed to Eastern New Mexico University, Duane Ryan, KENW-TV General Manager, hereby declares, under penalty of perjury, as follows:

1. I have reviewed the Petition for Emergency Relief, to which this Declaration is attached, and the factual statements contained in the Petition are true and correct. to the best of my knowledge, information, and belief.

EASTERN NEW MEXICO UNIVERSITY

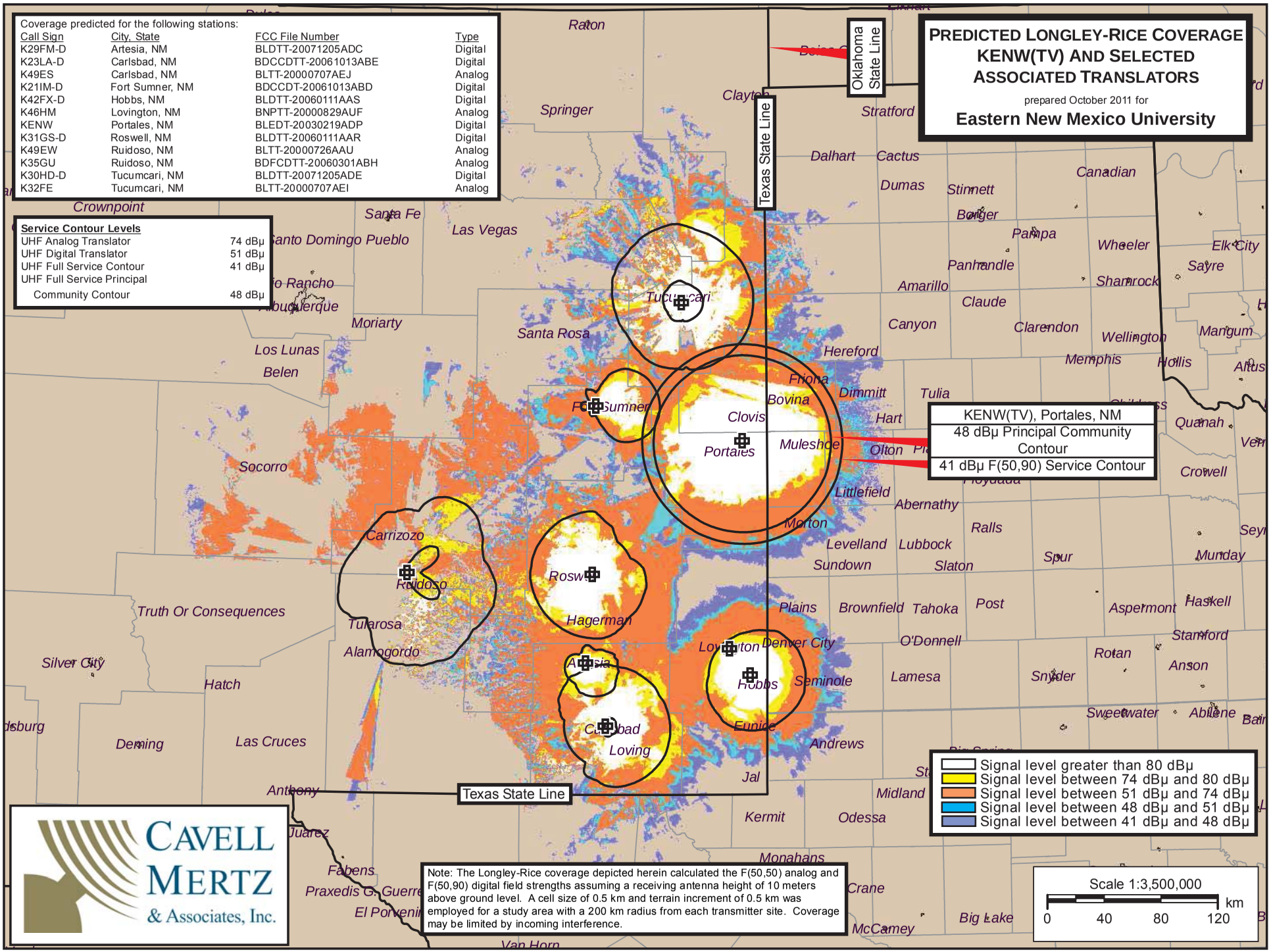
Duane W Ryan

By: DUANE W. RYAN

Title: KENW-TV General Manager

Date: December 11, 2014

Attachment 1
Coverage Map - KENW TV and Translators


Coverage predicted for the following stations:
Call Sign | City, State | FCC File Number | Type
K29FM-D | Artesia, NM | BLDTT-20071205ADC | Digital
K23LA-D | Carlsbad, NM | BDCCDTT-20061013ABE | Digital
K49ES | Carlsbad, NM | BLTT-20000707AEJ | Analog
K21IM-D | Fort Sumner, NM | BDCCDT-20061013ABD | Digital
K42FX-D | Hobbs, NM | BLDTT-20060111AAS | Digital
K46HM | Lovington, NM | BNPTT-20000829AUF | Analog
KENW | Portales, NM | BLEDT-20030219ADP | Digital
K31GS-D | Roswell, NM | BLDTT-20060111AAR | Digital
K49EW | Ruidoso, NM | BLTT-20000726AAU | Analog
K35GU | Ruidoso, NM | BDFCDTT-20060301ABH | Analog
K30HD-D | Tucumcari, NM | BLDTT-20071205ADE | Digital
K32FE | Tucumcari, NM | BLTT-20000707AEI | Analog
Service Contour Levels
UHF Analog Translator 74 dBμ
UHF Digital Translator 51 dBμ
UHF Full Service Contour 41 dBμ
UHF Full Service Principal Community Contour 48 dBμ
PREDICTED LONGLEY-RICE COVERAGE
KENW(TV) AND SELECTED ASSOCIATED TRANSLATORS
prepared October 2011 for
Eastern New Mexico University
Oklahoma State Line
Texas State Line
KENW(TV), Portales, NM
48 dBμ Principal Community Contour
41 dBμ F(50,90) Service Contour
Signal level greater than 80 dBμ
Signal level between 74 dBμ and 80 dBμ
Signal level between 51 dBμ and 74 dBμ
Signal level between 48 dBμ and 51 dBμ
Signal level between 41 dBμ and 48 dBμ
Scale 1:3,500,000
0 40 80 120 km
Note: The Longley-Rice coverage depicted herein calculated the F(50,50) analog and F(50,90) digital field strengths assuming a receiving antenna height of 10 meters above ground level. A cell size of 0.5 km and terrain increment of 0.5 km was employed for a study area with a 200 km radius from each transmitter site. Coverage may be limited by incoming interference.
CAVELL MERTZ & Associates, Inc.
Raton
Springer
Clayton
Stratford
Dalhart
Cactus
Dumas
Stinnett
Canadian
Crownpoint
Santa Fe
Las Vegas
Santo Domingo Pueblo
Albuquerque
Moriarty
Los Lunas
Belen
Socorro
Tucumcari
Santa Rosa
Fort Sumner
Clovis
Portales
Muleshoe
Hereford
Friona
Bovina
Dimmitt
Tulia
Hart
Olton
Littlefield
Abernathy
Morton
Levelland
Lubbock
Sundown
Slaton
Plains
Brownfield
Tahoka
Post
Spur
Ralls
Crowell
Quanah
Munday
Haskell
Stamford
Aspermont
Roswell
Hagerman
Carrizozo
Ruidoso
Truth Or Consequences
Tularosa
Alamogordo
Silver City
Hatch
Deming
Las Cruces
Anthony
Juarez
Fabens
Praxedis G. Guerrero
El Porvenir
Artesia
Carlsbad
Loving
Lovington
Denver City
Hobbs
Seminole
Jal
Andrews
Midland
Odessa
Kermit
Monahans
Crane
Big Lake
McCamey
Van Horn
Lamesa
Snyder
O'Donnell
Rotan
Anson
Sweetwater
Abilene
Amarillo
Claude
Canyon
Clarendon
Wellington
Memphis
Hollis
Altus
Panhandle
Pampa
Wheeler
Elk City
Sayre
Shamrock
Mangum
Texas State Line

Attachment 2
Congressional Delegation Letter to Nielsen Company

Congress of the United States

Washington, DC 20510

December 11, 2014

Mr. Mitch Barns
Chief Executive Officer
Nielsen
85 Broad Street
New York, NY 10004

Dear Mr. Barns:

We are writing today in support of public broadcaster KENW's request that Nielsen change the station's market of origin status to the Albuquerque - Santa Fe TV market, or "designated market area" (DMA).

Operated by Eastern New Mexico University, KENW is a public broadcast station that serves most of eastern New Mexico. In addition to providing Public Broadcasting Service (PBS) content for the general public, KENW broadcasts instructional programs for primary and secondary schools as well as telecollege courses for local colleges and universities. KENW's broadcast center also provides opportunities for college students to train for careers in telecommunications. KENW is the only full-power TV station in the eastern side of the state and delivers Emergency Alert System (EAS) alerts for inclement weather and other emergencies. KENW has served TV viewers in eastern New Mexico with an over-the-air broadcast signal for over 40 years.

Nielsen provides a variety of services and tools to understand consumer behavior and facilitate advertising, including a Directory of TV Stations to help guide advertising on commercial television. Nielsen's market of origin designation for KENW in the directory affects this non-commercial station's ability to reach satellite TV viewers in eastern New Mexico. This is due to how federal law such as the STELA Reauthorization Act of 2014 (PL 113-200) and Federal Communications Commission regulations incorporate and use Nielsen's DMA boundaries and market of origin designations. In general, a station based in one DMA would not be carried by direct satellite broadcast in another DMA. While most areas of New Mexico are located within the Albuquerque - Santa Fe DMA and thus receive New Mexican television programming, some residents live in counties that Nielsen includes in Texas TV markets.

Our understanding is that Nielsen would normally designate KENW's market of origin as Amarillo, Texas since the station is headquartered in Roosevelt County, which Nielsen includes in the Amarillo DMA. Yet KENW successfully petitioned Nielsen in 2007 to designate it as an Albuquerque-Santa Fe DMA station. This has allowed KENW to be available via DirecTV and DISH Network to viewers living throughout eastern New Mexico

where the bulk of KENW's audience lives. In 2011, however, Nielsen re-designated KENW's market of origin as the Amarillo DMA. This Nielsen decision could now lead to satellite TV subscribers in eastern New Mexico losing access to KENW beginning in January.

We do not believe that Nielsen intended for such a negative impact for KENW and its satellite TV viewers to result from the decision to change the station's market of origin designation. We therefore ask you to consider granting KENW's request for a market of origin designation change on an urgent basis.

Thank you for your consideration and reply.

Sincerely,

Tom Udall
United States Senator

Stevan Pearce
United States Representative

Martin Heinrich
United States Senator

Ben Ray Luján
United States Representative

Michelle Lujan Grisham
United States Representative

Attachment 3
December 2, 2014 Letter from Counsel for DirecTV

HWG | HARRIS, WILTSHIRE & GRANNIS LLP

1919 M STREET, NW
SUITE 800
WASHINGTON DC 20036

TEL +1 202 730 1300
FAX +1 202 730 1301
HWGLAW.COM

ATTORNEYS AT LAW

December 2, 2014

BY ELECTRONIC AND FIRST CLASS MAIL

Ernest Sanchez, Esq.
Sanchez Law Firm P.C.
2300 M Street, N.W., Suite 800
Washington, D.C. 20037
202-237-2814

Re: DIRECTV Carriage of KENW

Dear Mr. Sanchez:

My client, DIRECTV, asked me to write to you to memorialize its position with respect to carriage of your client, KENW. As I understand it, Nielsen Media Research had for many years assigned KENW to the Albuquerque-Santa Fe Designated Market Area ("DMA"). Recently, however, it reassigned KENW to the Amarillo DMA, effective January 1, 2015.

Because KENW will no longer be "local" to Albuquerque, DIRECTV may not continue to offer KENW as a local signal in that market. The Copyright Act permits DIRECTV to carry local broadcast signals without clearing the copyright for individual works contained in the broadcast signal. 17 U.S.C. § 122. This statutory license, however, applies only to DIRECTV's carriage of broadcast signals "into the station's local market." *Id.* § 122(a)(1). The Communications Act contains a parallel restriction. 47 U.S.C. § 338(a)(1). Beginning on January 1, therefore, DIRECTV may no longer lawfully include KENW in its slate of local Albuquerque stations.

I wanted to also call to your attention to another matter. While KENW is no longer "local" in Albuquerque, several other stations have asserted must-carry rights there for the first time. At the moment, the number of stations asserting carriage rights in Albuquerque meets or exceeds capacity on the satellite spot beam over which DIRECTV offers Albuquerque local service. I understand that KENW has asked or will ask Nielsen Media Research to reassign it to Albuquerque once again. Should that happen during the 2015 carriage cycle, DIRECTV may not have room to add KENW back into the Albuquerque local package. In such an eventuality, DIRECTV would of course be happy to work with you to seek a mutually agreeable solution.

Should you have any questions regarding this matter, please do not hesitate to call.

Sincerely,

Michael Nilsson
Counsel to DIRECTV

Attachment 4
October 24, 2014 Letter from DirecTV

DIRECTV

Via FedEx (575-562-2112)

October 24, 2014

KENW-DT
52 Broadcast Center, ENMU
1500 S. Avenue K
Portales, NM 88130
Attn: Duane Ryan

Re: KENW-DT (DMA: Amarillo, TX)

Dear Mr. Ryan:

We are in receipt of your letter dated September 30, 2014 requesting mandatory carriage for KENW-DT in the Albuquerque, NM local market. You have stated in your letter that a majority of the KENW viewers are located in the Albuquerque DMA. KENW, however, has been reassigned to the Amarillo, TX DMA as of the 2011-2012 Nielsen Directory of TV Stations. Pursuant to the Copyright Act, 17 U.S.C. § 122(j), and the FCC's rules, 47 C.F.R. § 76.66, Amarillo is KENW's "local market" as of January 1, 2015. Accordingly, DIRECTV is unable able to continue carriage of KENW in the Albuquerque DMA, and, as of such date, will cease carriage of KENW in Albuquerque.

DIRECTV will recognize KENW's 2015 election letter for carriage in the Amarillo, TX DMA as of January 1, 2015. However, DIRECTV has a reasonable basis to believe that KENW does not provide a "good quality" signal to our Amarillo, TX local receive facility. 47 C.F.R. § 76.66(g). The station may, however, deliver a good quality signal to such local receive facility via an alternate means. Technical questions and those related to delivery to the Amarillo, TX local receive facility can be forwarded to Locals-Technical@directv.com.

General correspondence should be directed to Locals-Business@directv.com or:

DIRECTV
Local-Into-Local
2260 E. Imperial Highway, Mail Stop N321
El Segundo, CA 90245

Sincerely,

Karen Griet
Sr. Manager, Content & Programming
310-964-4732
krgriet@directv.com

Attachment 5
October 7, 2014 Letter from DISH

dish

October 7, 2014

Duane W. Ryan
52 Broadcast Center, ENMU
1500 S. Avenue K
Portales, NM 88130

Re: Mandatory Carriage Election
KENW – Albuquerque-Santa Fe DMA

Dear Mr. Ryan:

We received KENW's letter, postmarked September 29, 2014, electing mandatory carriage for the upcoming election cycle commencing on January 1, 2015 and ending on December 31, 2017. It does not appear that your station is assigned to the Albuquerque-Santa Fe DMA as listed in your election. As such, your election is rejected on this basis pursuant to federal regulations.

Sincerely,

Teresa Cain
Sr. Program Manager
Programming Dept.

Certificate of Service

I, Ernest T. Sanchez, certify that I have today filed in the FCC ECFS System on this 31th day of December, 2014, a copy of the attached Petition for Emergency Relief on behalf of Eastern New Mexico University.

Ernest T. Sanchez
Counsel for Eastern New Mexico University
Licensee of KENW-TV, Portales, NM