

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

In the Matter of	)	
	)	
Amendment of Section 76.51	)	
Of the Commission's Rules	)	CS Docket No. 00-1
	)	
To Include Merced and Porterville,	)	
California in the	)	
Fresno-Visalia-Hanford-Clovis	)	
Television Market	)	

**COMMENTS OF KSEE LICENSE, INC.**

KSEE License, Inc. ("KSEE License"), licensee of television station KSEE(TV) ("Station KSEE"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, respectfully submits these comments in the above-captioned proceeding.<sup>1</sup> This rulemaking was initiated by the Federal Communications Commission ("FCC" or "Commission") to determine whether to add the communities of Merced and Porterville, California to the hyphenated broadcast television market of Fresno-Visalia-Hanford-Clovis, California ("Fresno-Visalia market").<sup>2</sup> KSEE License urges the FCC to add the communities of Merced and Porterville, California as designated communities to the Fresno-Visalia market. Station KSEE is licensed by

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<sup>1</sup> KSEE License respectfully requests the Commission's consent to file these comments on February 8, 2000. No party to this proceeding will be prejudiced by the filing delay of one day, and all parties will have ample opportunity to review these comments and file reply comments in a timely fashion.

<sup>2</sup> Amendment of Section 76.51 of the Commission's Rules to Include Merced and Porterville, California in the Fresno-Visalia-Hanford-Clovis Television Market, CS Docket 00-1, *Notice of Proposed Rule Making* (rel. Jan. 7, 2000) ("NPRM").

the Commission to Fresno, California, located in the Fresno-Visalia market.<sup>3</sup> The prior owner of Station KSEE was a party to the original Joint Petition requesting the rule change proposed in the instant proceeding.<sup>4</sup> KSEE License, Inc. is submitting these comments in support of the addition of Merced and Porterville as designated communities in the Fresno-Visalia market.

Television stations licensed to any designated community in a hyphenated market are entitled to territorial exclusivity rights<sup>5</sup> and, in some cases, syndicated programming exclusivity rights<sup>6</sup> and network non-duplication rights<sup>7</sup> against television stations located within a certain specified distance of the station and against other television stations licensed to other designated communities in that market. These rules ensure that all competitors in a given market are treated equally with respect to programming exclusivity. Merced and Porterville are located physically in the Fresno-Visalia DMA, but are not designated communities in the Fresno-Visalia hyphenated market because television stations KNSO(TV), licensed to Merced, and KPXF(TV),

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<sup>3</sup> Station KSEE also is assigned by Nielsen to the Fresno-Visalia Designated Market Area (“DMA”).

<sup>4</sup> A Joint Petition for Rule Making (“Joint Petition”) was filed by Pappas Telecasting Inc., licensee of Station KMPH(TV), Visalia, California, Retlaw Enterprises, Inc., licensee of Station KJEO(TV), Fresno, California, and San Joaquin Communications Corp., licensee of Station KSEE, on March 16, 1988.

<sup>5</sup> A commercial television station in a designated community in a hyphenated market may secure exclusivity for non-network programming against a television station licensed to another designated community in the same hyphenated market, regardless of the distance between the stations. See 47 C.F.R. § 73.658(m).

<sup>6</sup> Where a commercial television station in a designated community in a hyphenated market holds syndicated exclusivity rights for a particular program, as a general matter, upon appropriate notification, a cable system in a designated community in the hyphenated market may not carry that program as broadcast by any other television signal. See 47 C.F.R. § 76.151.

<sup>7</sup> Where a commercial television station in a designated community in a hyphenated market holds network non-duplication rights for a particular program, as a general matter, upon

licensed to Porterville, were not licensed to those communities until after the creation of the Fresno-Visalia market.

Television stations KNSO(TV) and KPXF(TV) in Merced and Porterville serve the same market and compete directly with television stations in the designated communities in the Fresno-Visalia market. As the Commission has noted, Stations KNSO and KPXF will compete for audiences and advertisers throughout much of the proposed combined market area.<sup>8</sup> In addition, the actual signal coverage of stations in the Fresno-Visalia market exceeds the predicted coverage, meaning that the actual area of common coverage of designated stations in the Fresno-Visalia market and stations licensed to Merced and Porterville is far greater than predicted. This high level of common coverage demonstrates that all television stations in the designated communities in the Fresno-Visalia market face direct competition for revenue and audience share from the television stations in Merced and Porterville. However, because Merced and Porterville are each more than 35 miles from Fresno, the Commission's rules prevent Station KSEE from asserting territorial exclusivity rights, syndicated programming exclusivity rights, or network non-duplication rights against Station KNSO or Station KPXF.<sup>9</sup> Station KSEE would be able to assert these exclusivity rights if Merced and Porterville were added as designated communities in the hyphenated Fresno-Visalia market. As the Commission has stated, adding a designated community to a hyphenated market can equalize competition where all the stations in

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appropriate notification, a cable system in any designated community in the hyphenated market may not carry that program as broadcast by any other television signal. See 47 C.F.R. § 76.92.

<sup>8</sup> NPRM at ¶13.

<sup>9</sup> See 47 C.F.R. § 73.658(m).

a given area compete for economic support, but portions of the market are located beyond the Grade B contours of some stations in the area.<sup>10</sup>

Television stations in Merced and Porterville should be subject to the same rules regarding programming exclusivity that govern television stations located in designated communities of the Fresno-Visalia market. Accordingly, the Commission should add Merced and Porterville as designated communities to the Fresno-Visalia market in order to extend application of the Commission's territorial exclusivity rule, network non-duplication rules, and syndicated programming exclusivity rules to Station KNSO, Station KPXF(TV), and any other broadcast television stations that in the future may be licensed to the communities of Merced or Porterville. Unless Merced and Porterville are added to the hyphenated Fresno-Visalia market, television services in these communities could adversely affect the non-network programming marketplace in the Fresno-Visalia market.

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<sup>10</sup> NPRM at ¶ 3, citing Cable Television Report and Order, 36 FCC 2d 143, 176 (1972).

Based on the foregoing, KSEE License, Inc. urges the Commission to add the communities of Merced and Porterville to the Fresno-Visalia market in order to reflect market realities and ensure that all competitors in the market are treated equally with respect to programming exclusivity.

Respectfully submitted,

**KSEE LICENSE, INC.**

By: \_\_\_\_\_

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