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**RECEIVED**  
**FEB 28 2000**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

February 28, 2000

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445-12th Street, S.W.; Room TWD-204  
Washington, D.C. 20554

00-10

Attention: Video Services Division  
Mass Media Bureau

Re: **SUBMISSION OF CORRECTED COPIES**; Reply  
Comments of the Society of Broadcast Engineers,  
Incorporated and Motion for Acceptance of  
Late-Filed Reply Comments; MM Docket No. 00-10;  
Establishment of a Class A Television Service.

Dear Ms. Salas:

On Thursday, February 24, 2000, this office, on behalf of our client, the Society of Broadcast Engineers, Incorporated, tendered to your office an original and four copies of the Society's **Reply Comments**, together with an original and four copies of a **Motion for Acceptance of Late-Filed Reply Comments**. Unfortunately, due to clerical error on the part of the undersigned, the version of the Reply Comments filed was an incorrect version, and the Motion contained two typographical errors.

The original and four *corrected* copies of each document are attached hereto. Kindly substitute the attached documents for those tendered to your office previously. The undersigned regrets the error and any inconvenience caused as the result thereof.

Should any question arise concerning this request, kindly notify the undersigned counsel.

Yours very truly,

Christopher D. Imlay

No. of Copies rec'd  
List ABCDE

04

cc: Dane Ericksen, SBE  
enclosures

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

In the Matter of	)	
	)	
Establishment of a Class A	)	MM Docket No. 00-10
Television Service	)	MM Docket No. 99-292
	)	RM-9260

To: The Commission

**MOTION FOR ACCEPTANCE OF LATE-FILED REPLY COMMENTS**

The Society of Broadcast Engineers, Incorporated (SBE) hereby respectfully requests that the Commission accept and substantively consider the attached Reply Comments, which are being filed two days beyond the filing deadline, which was Tuesday, February 22, 2000. As good cause therefor, SBE states as follows:

1. These reply comments were drafted, approved for filing and tendered in the normal course through the FCC's ECFS late in the day on Tuesday, February 22. SBE's representative, a member of its Board of Directors, though experienced in use of the ECFS for tendering comments, was unable to access the ECFS despite six attempts on February 22; four attempts on February 23; one additional attempt today, February 24. In each case, the Commission's ECFS returned a "server error" message.

2. Today, February 24, Ms. Rosemary Muller confirmed for SBE's representative that there were indeed server errors, but that the ECFS was back on-line for all submissions *except* Adobe Acrobat. It was impossible to file except using this format document, because of the Canvas CAD program used in creating the four figures attached to the filing.

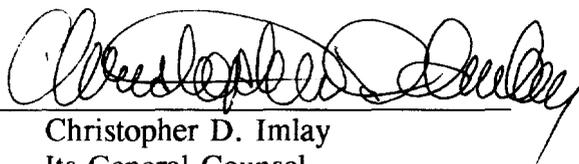
3. Accordingly, the document was printed from an Adobe Acrobat file and is being

tendered by undersigned counsel as soon as has been practical following confirmation of the Commission's server problem. As SBE has done all that could be done in order to avoid this problem, which was completely outside its control, good cause has clearly been shown for the acceptance of the filing.

It is therefore respectfully requested that the original and four copies of the SBE's Reply Comments in this proceeding appended to this Motion be accepted for filing and substantively considered in this proceeding.

Respectfully submitted,

**SOCIETY OF BROADCAST ENGINEERS, INC.**

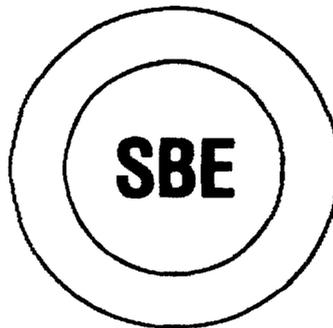
By:   
Christopher D. Imlay  
Its General Counsel

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February 24, 2000

**Reply Comments of the  
Society of Broadcast Engineers, Inc.**

**MM Dockets 00-010/99-292  
Class A TV**



February 22, 2000

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**SOCIETY OF BROADCAST ENGINEERS, INC.**  
Indianapolis, Indiana

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

In the Matter of	)	
	)	MM Docket No. 00-010
Establishment of a Class A	)	MM Docket No. 99-292
Television Service	)	RM-9260
	)	

To: The Commission

**Reply Comments of the Society of Broadcast Engineers, Inc.**

1. The Society of Broadcast Engineers, Incorporated (SBE), the national association of broadcast engineers and technical communications professionals, with more than 5,000 members world wide, hereby respectfully submits its reply comments in the above-captioned Order and Notice of Proposed Rule Making relating to Class A Television stations.

**1. The January 28, 2000, CBPA Deadline for Class A Applications Must Stand**

2. After reading the comments of the Community Broadcasters Association ("CBA"), and those filed by licensees of LPTV stations who would receive "windfall" profits for the suddenly greatly increased value of a formerly secondary Low Power Television ("LPTV") station upgraded to primary Class A status, it is clear that the LPTV community would have the Commission ignore the plain language of the Community Broadcasters Protection Act of 1999 ("CBPA"), which was intended to limit the right to upgrade to Class A status to a relatively small number of LPTV stations which, in the 90-day period prior to the Act's adoption (on November 29, 1999), could 1) certify they had been operating at least 18 hours per day; 2) certify that they had locally-originated at least 3 hours per week; and 3) certify compliance with all of the FCC Rules applying to LPTV stations. However, because the Act also provided an alternative "public interest, convenience, and necessity" criteria, CBA and numerous LPTV licensees have now submitted comments asking the Commission to, in effect, ignore the triad of qualifications spelled out in the CBPA, and instead to grant Class A status to LPTV stations that fully acknowledge that they do not meet the CBPA criteria, and even to TV Translator stations (which do not locally originate).

3. SBE submits that this would NOT reflect the intent of Congress. Had Congress intended that LPTV stations, and even TV Translator stations, be widely given the

tremendously valuable right to upgrade from secondary to primary status, it would not have written the above three requirements, complete with a retroactive clause, into the CBPA. Had Congress desired to open the Class A floodgates to LPTV stations, and even to non-locally originating TV Translator stations, it would have only included the ambiguous "public interest, convenience, and necessity" clause in the CBPA. The fact that Congress did include the triad of requirements, and made compliance retroactive, demonstrates that Congress only intended the upgrade-to-primary status to apply to those few LPTV stations that were already providing "niche" or special interest programming.

4. Some of the LPTV commentators even argued that it would be "unfair" to LPTV licensees if the Commission did not so loosely interpret the "public interest, convenience and necessity" clause to mean that TV Translator and LPTV stations could submit Class A applications indefinitely after the January 28, 2000, deadline given in the CBPA. At the eleventh-hour Congress has imposed on full-service NTSC and DTV stations the specter of potentially precluding Class A TV stations. Prior to the CBPA, full-service NTSC and DTV stations did not need to carefully review the filings of LPTV and TV Translator stations for impact to future plans, because those stations were secondary to full-service NTSC and DTV stations. But now all that is changed, and full-service NTSC and DTV stations suddenly find themselves forced to protect formerly secondary LPTV stations. Fairness demands that the Commission strictly interpret the CBPA to only apply to the relatively small number of LPTV stations that had actually been locally originating prior to the Act's adoption.

## **II. Over 1,600 LPTV/TV Translator Stations Have Filed COEs**

5. Contrary to LPTV Branch staff's informal estimate that only 200 to 400 LPTV stations nation wide would qualify for Class A status, and contrary to the claim made by CBA that the number of Class A applications will not be "overwhelming,"<sup>1</sup> the Commission's February 8 list<sup>2</sup> of stations filing a Certification of Eligibility ("COE") shows 1,616 such claims, most of which are in the top-100 TV markets, where upgrading to Class A primary will do the most damage to blind-sided full-service NTSC and DTV stations.

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<sup>1</sup> CBA comments , at Page 6.

<sup>2</sup> SBE notes that this list lacked such critical information as the channel number and geographic coordinates of the stations filing COEs, making it impossible for full-service stations to search that list by frequency (channel number) and by distance from an NTSC or DTV station's coordinates, to ascertain whether a primary, Class A station was proposed sufficiently close to a full-service station so that a new preclusion might be created.

6. SBE further notes that only 511 COE filers had letterized call signs with the "-LP" suffix; the other 1,105 stations claiming eligibility had conventional, alpha-numeric call signs. Although SBE realizes that there is no requirement for an LPTV station to request a letterized, "-LP," call sign, SBE believes that the vast majority of LPTV stations actually transmitting locally-originated programming, which is the whole public-interest justification for creating Class A TV, quickly converted to letterized call signs when that option became available in 1995.<sup>3</sup> Thus, SBE believes that a large percentage of the 1,105 stations with alpha-numeric call signs are in fact plain-vanilla TV Translator stations, hoping that the Commission will so liberally interpret the alternative "public interest, convenience and necessity" clause to allow a "land rush" of TV Translator stations, and LPTV stations unable to meet the 90-day, pre-CBPA local origination requirement, to secure an after-the-fact right to upgrade to Class A primary status. SBE submits that Congress never intended such a give away of a public resource.

### **III. Compliance with FCC Rules as of November 29, 1999, Meant No Predicted Interference to Full-Service NTSC and DTV Stations**

7. The third eligibility requirement for the precious right to upgrade to Class A status spelled out in the CBPA is compliance with all FCC Rules. This includes the rules requiring that secondary stations not interfere with full-service stations. For purposes of determining whether an LPTV station or TV Translator station would be eligible to file a displacement application without waiting for a filing window, the Sixth Report & Order to MM Docket 87-268 adopted a zero-person criteria for OET-69 studies; that is, if an LPTV station caused predicted interference to just one person in just one cell inside the protected contour of a full-service DTV station, then the LPTV station had to find a new channel. SBE suspects that very few of the licensees filing a COE have made such interference studies. For example, LPTV Station KNET-LP, NTSC Channel 25, Los Angeles, California, is on the list of stations filing a COE, whereas the attached OET-69 interference study, Figure 1, shows that station is predicted to cause unique interference to 8,331 persons inside the allotted facilities of Station KGTV-DT, Channel 25, San Diego, California, and interference to 35 persons for the permitted KGTV-DT facilities. Similarly, LPTV Station KSFV-LP, NTSC Channel 26, San Fernando Valley, California, is on the list of stations filing a COE, whereas the attached OET-69 interference study, Figure 2, shows that station to cause unique interference to 5,006,808 persons inside the allotted contour of Station KVCR-DT, Channel 26, San

<sup>3</sup> Pursuant to the June 2, 1994, First Report & Order to MM Docket 99-114.

Bernardino, California. These are perfect examples of why full-service DTV stations (and full-service NTSC stations) must have the right to file a Petition to Deny against COE filings: if, in fact, an OET-69 interference study shows that an LPTV station certifying eligibility for Class A status has erred in that claim<sup>4</sup>, then the COE is defective and the Commission has no authority<sup>5</sup> to grant the LPTV station upgrade to Class A.

8. At Page 7, Paragraph 9 of its comments, CBA urges the Commission to only consider "actual" interference rather than "predicted" interference as disqualifying. First, SBE notes that this would appear to be an admission of the third leg of the CBPA eligibility triad, which elsewhere in its comments CBA tries so hard to convince the Commission should be ignored, in favor of the ambiguous "public interest, convenience, and necessity" criteria. Second, SBE urges the Commission to reject an "interference complaint" based criteria, for four reasons: 1) it would be yet another "change the rules" modification<sup>6</sup>; 2) licensees of full-service NTSC stations would not have been put on notice that they needed to document such complaints, and could have easily failed to do so in the belief that if the problem ever became serious, the secondary nature of the interfering LPTV station meant that if on-off or other interference tests confirmed the interference, the offending LPTV station would either have to correct the interference, find another channel, or go dark; 3) for DTV stations, and especially in these early days when there are few viewers with DTV receivers, the lack of interference complaints doesn't mean that there are no LPTV-caused interference areas; and 4) in areas where an LPTV station ends up causing interference to a full-service DTV station, the fact that it is the full-service DTV signal that is the newcomer means that it will not be obvious whether the lack of DTV reception is due to inadequate signal strength, or due to LPTV interference. For these reasons the existing criteria of OET-69 predicted interference should remain the benchmark for determining compliance with the third-leg, "meets all FCC Rules," CBPA eligibility criteria.

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<sup>4</sup> As CBA notes in Page 5 of its comments, "The Class A application process is new to everyone, including both the Commission and licensees, so some innocent errors are likely." SBE notes that while such errors may indeed be innocent, that does not mean that they will be inconsequential. Indeed, an "innocent" error of failing to check to see if an existing LPTV facility is free of predicted interference to a full-service NTSC or DTV station can go to the very heart of an LPTV station's eligibility for Class A status.

<sup>5</sup> Surely neither the LPTV applicant, nor CBA, would dare argue that granting of Class A status to an LPTV station with non-zero, unique interference to a full-service NTSC or DTV station would be in the "public interest, convenience, or necessity."

<sup>6</sup> As noted in the comments of the Association of Federal Communications Consulting Engineers ("AFCCE"), it would be unfair to "change the rules in the eleventh hour."

**IV. SBE Agrees that the Commission Needs to Clarify Whether DTV Stations that Have Filed Rule Making Petitions to Change Their DTV Channel Need to File a Matching CP Application by the May 1, 2000, CBPA Deadline**

9. The AFCCE comments ask the Commission to clarify whether a full-service DTV station that has filed for a replacement DTV channel needs to file an application for construction permit for the proposed replacement channel prior to the May 1, 2000, CBPA deadline, even if the rule making petition is still pending, in order to maintain its maximization rights under the CBPA. SBE agrees that this is an issue that needs to be resolved, and well prior to the May 1, 2000, deadline.

**V. Summary**

10. Out of fairness to full-service NTSC and DTV stations, the Commission must strictly interpret the triad of eligibility criteria, and its retroactive nature, spelled out in the CBPA. Congress did not include these requirements only to have them ignored on a wholesale basis because it also provided an alternative "public interest, convenience, and necessity" clause. This alternative provision must be applied sparingly and carefully. The Commission must carefully weigh unduly limiting the ability of primary, full-service NTSC and DTV stations from fully meeting their public interest service obligations by potentially restricting their ability to provide reasonable transmission service.

List of Figures

11. The following figures or exhibits have been prepared as a part of these MM Docket 00-010/99-292 reply comments:

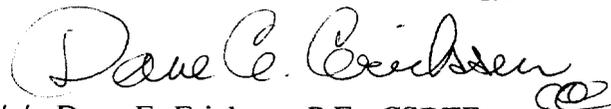
1. OET-69 interference study for Station KNET-LP, Los Angeles, California
2. OET-69 interference study for Station KSFV-LP, San Fernando Valley, California.

Respectfully submitted,

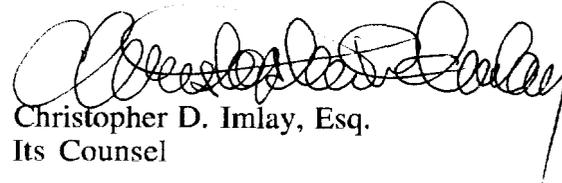
Society of Broadcast Engineers, Inc.



/s/ James (Andy) Butler, CPBE  
SBE President



/s/ Dane E. Ericksen, P.E., CSRTE  
Chairman, SBE FCC Liaison Committee

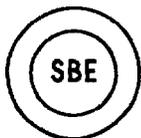
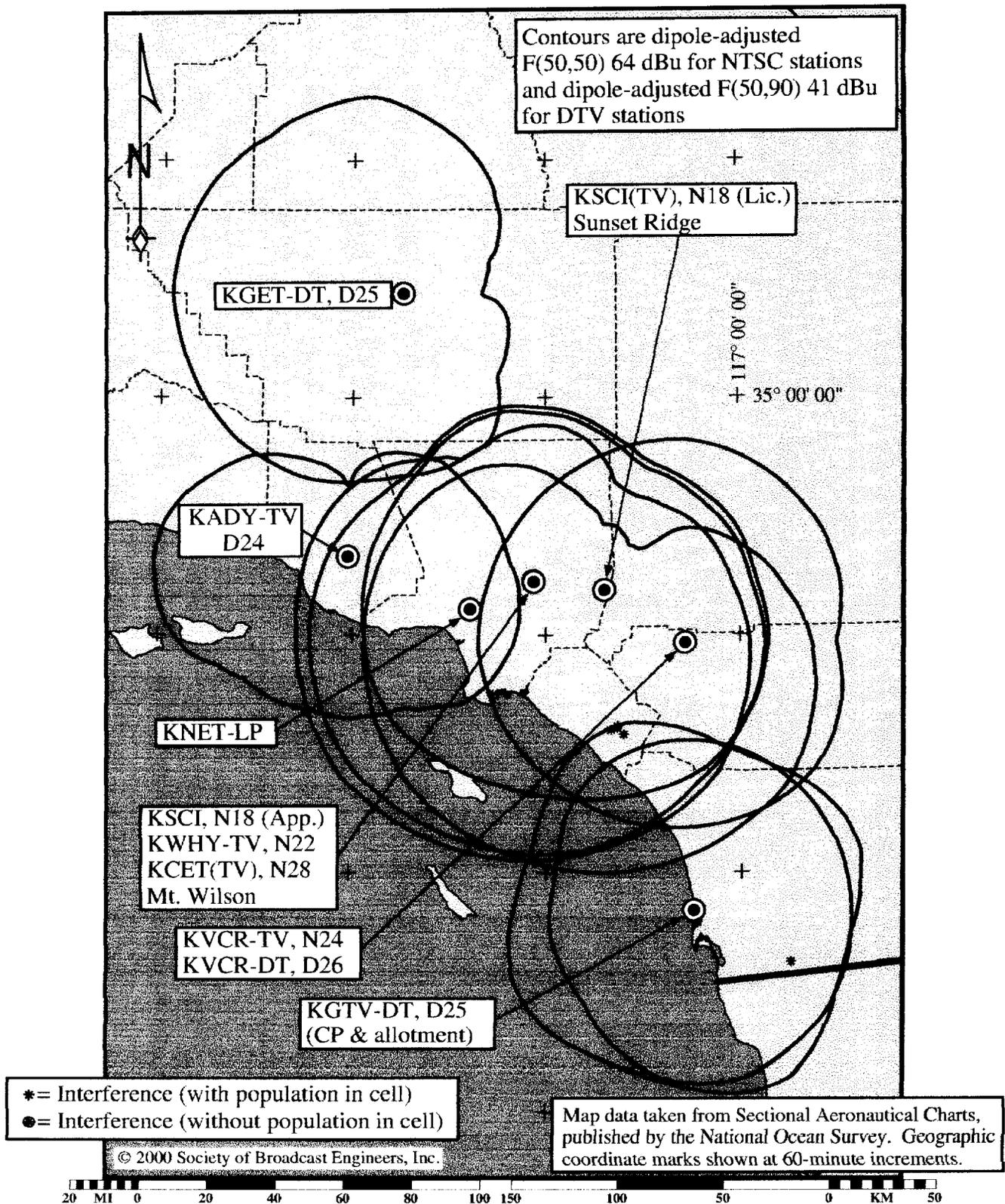


/s/ Christopher D. Imlay, Esq.  
Its Counsel

February 22, 2000

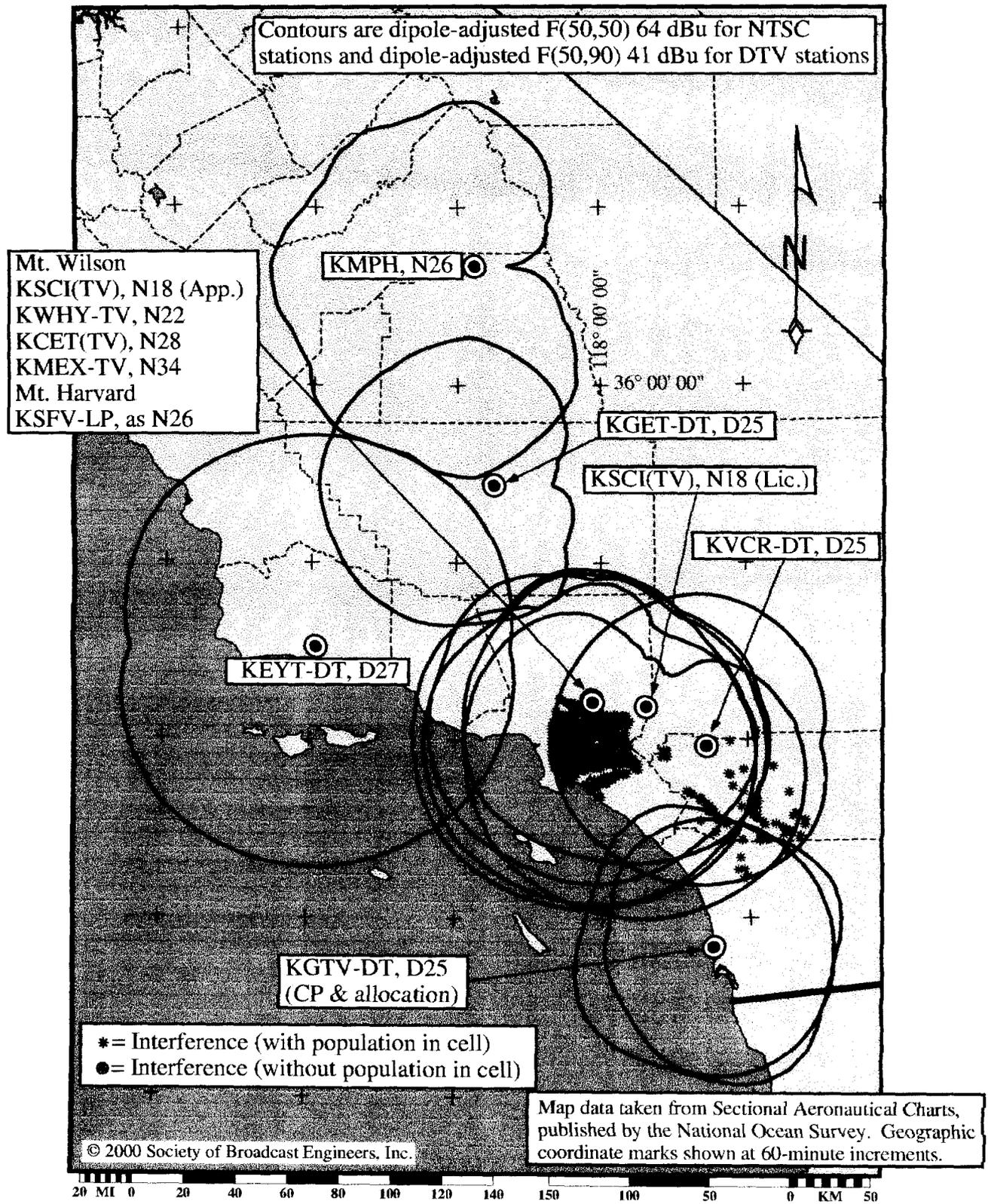
Booth, Freret, Imlay & Tepper  
5101 Wisconsin Avenue, NW, Suite 307  
Washington, D.C. 20016  
202/686-9600

OET-69 Allocation Conditions for  
KNEP-LP as NTSC Channel 25



SOCIETY OF BROADCAST ENGINEERS, INC.  
Indianapolis, Indiana

OET-69 Allocation Conditions for  
KSFV-LP as NTSC Channel 26



SOCIETY OF BROADCAST ENGINEERS, INC.  
Indianapolis, Indiana

OET-69 Interference Study for KNET-LP as NTSC Channel 25  
 FCC File No. BMPITL-JG601JK

Interference analysis  
 tvixstudy 2.3.1

Station parameters:

Station: N25 KNET-LP APP  
 City: LOS ANGELES, CA  
 Coordinates: N 34-06-35.0  
 W 118-23-25.0  
 Height AMSL: 490.0 m  
 Maximum ERP: 0.575 kW  
 Azimuth pattern: ANT-ODDJG0601JK  
 Orientation: 0.0  
 Elevation pattern: OET-69 generic  
 Service level: 72.8 dBu

Protected station		Base Pop	IX Change	%Base	Unique IX
N18 KSCI LIC	LONG BEACH, CA	12,106,267	326,232	2.7	0
N18 KSCI APP	LONG BEACH, CA	12,592,461	222,283	1.8	0
N22 KWHYTV LIC	LOS ANGELES, CA	12,402,357	75,001	0.6	0
N24 KVCRTV LIC	SAN BERNARDINO, CA	8,293,018	971,262	11.7	0
<b>D25 KGTV-DT CP</b>	<b>SAN DIEGO, CA</b>	<b>2,694,000</b>	<b>149,630</b>	<b>5.6</b>	<b>35</b>
<b>D25 KGTVDT allot</b>	<b>SAN DIEGO, CA</b>	<b>2,694,000</b>	<b>17,628</b>	<b>0.7</b>	<b>8,331</b>
N28 KCET LIC	LOS ANGELES, CA	12,652,249	114,952	0.9	0
D25 KGETDT allot	BAKERSFIELD, CA	545,000	-8,645	-1.6	0
D24 KADYDT allot	OXNARD, CA	1,513,000	37,757	2.5	0
D26 KVCRDT allot	SAN BERNARDINO, CA	8,702,000	75,746	0.9	0



**SBE Reply Comments to MM Docket 00-010/99-292 (Class A TV)**

**OET-69 Interference Study for KSFV-LP as NTSC Channel 26  
FCC File No. BMPTTL-JG601JI**

Interference analysis  
tvixstudy 2.3.1

Station parameters:

Station: N26 KSFV-LP APP  
City: SAN FERNANDO VALLEY, CA  
Coordinates: N 34-12-48.0  
W 118-03-41.0  
Height AMSL: 1680.0 m  
Maximum ERP: 9.33 kW  
Azimuth pattern: ANT-ACS16AR  
Orientation: 200.0  
Elevation pattern: OET-69 generic  
Service level: 72.9 dBu

Protected station		Base Pop	IX Change	%Base	Unique IX
N18 KSCI LIC	LONG BEACH, CA	12,106,267	326,232	2.7	0
N18 KSCI APP	LONG BEACH, CA	12,592,461	222,283	1.8	0
N22 KWHYTV LIC	LOS ANGELES, CA	12,402,357	75,001	0.6	0
N24 KVCRTV LIC	SAN BERNARDINO, CA	8,293,018	971,262	11.7	0
D25 KGTV-DT CP	SAN DIEGO, CA	2,694,000	149,595	5.6	0
D25 KGTVDT allot	SAN DIEGO, CA	2,694,000	9,297	0.3	0
N26 KMPH LIC	VISALIA, CA	1,134,700	21	0.0	0
N28 KCET LIC	LOS ANGELES, CA	12,652,249	114,952	0.9	0
N34 KMEXTV LIC	LOS ANGELES, CA	12,384,801	116,960	0.9	0
D25 KGETDT allot	BAKERSFIELD, CA	545,000	-8,645	-1.6	0
<b>D26 KVCRTV allot</b>	<b>SAN BERNARDINO, CA</b>	<b>8,702,000</b>	<b>5,082,554</b>	<b>58.4</b>	<b>5,006,808</b>
D27 KEYTDT allot	SANTA BARBARA, CA	1,276,000	87,855	6.9	0

