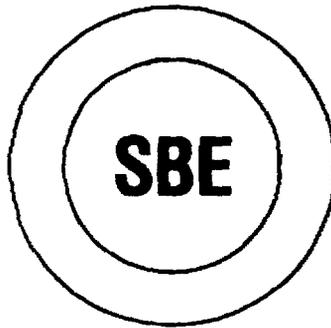


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OFFICE OF THE SECRETARY

Reply Comments of the
Society of Broadcast Engineers, Inc.

MM Dockets 00-~~10~~10/99-292
Class A TV



February 20, 2000

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SOCIETY OF BROADCAST ENGINEERS, INC.
Indianapolis, Indiana

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

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FEB 24 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Establishment of a Class A) MM Docket No. 00-04
Television Service) MM Docket No. 99-297
) 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 so clearly 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

list² 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.

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 1995.³ 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-criteria CBPA "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

² 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.

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

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 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 claim⁴, then the COE is defective and the Commission has no authority⁵ 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, elsewhere in its comments CBA tries so hard to convince the Commission should be ignored, in favor of the interpret-as-you-see-fit "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" modification⁶; 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

⁴ 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.

⁵ 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."

⁶ 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."

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.

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

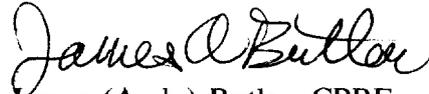
10. Out of fairness to full-service NTSC and DTV stations, the Commission must strictly interpret the triad of eligibility criteria, and its retroactive nature, so clearly spelled out in the CBPA. Congress did not include these requirements only to have them ignored on a wholesale basis because it also provided an alternative "public interest, convenience, and necessity" clause. This alternative provision must be applied sparingly and carefully. The Commission must weigh the rights of existing NTSC and DTV stations, which have invested tens to hundreds of times more capital in their primary television facilities, against any rights of LPTV licensees, who knew from the outset that they were buying into a secondary facility. LPTV licensees granted upgrades to Class A are receiving a windfall; the Commission should therefore strictly interpret the provisions of the CBPA, so as to minimize this give away of public resources.

List of Figures

11. The following figures or exhibits have been prepared as a part of these MM Docket 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,

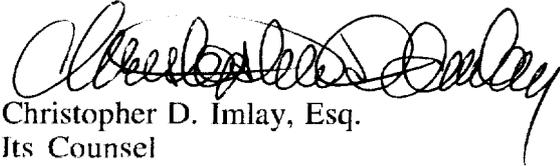
Society of Broadcast Engineers, Inc.



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



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

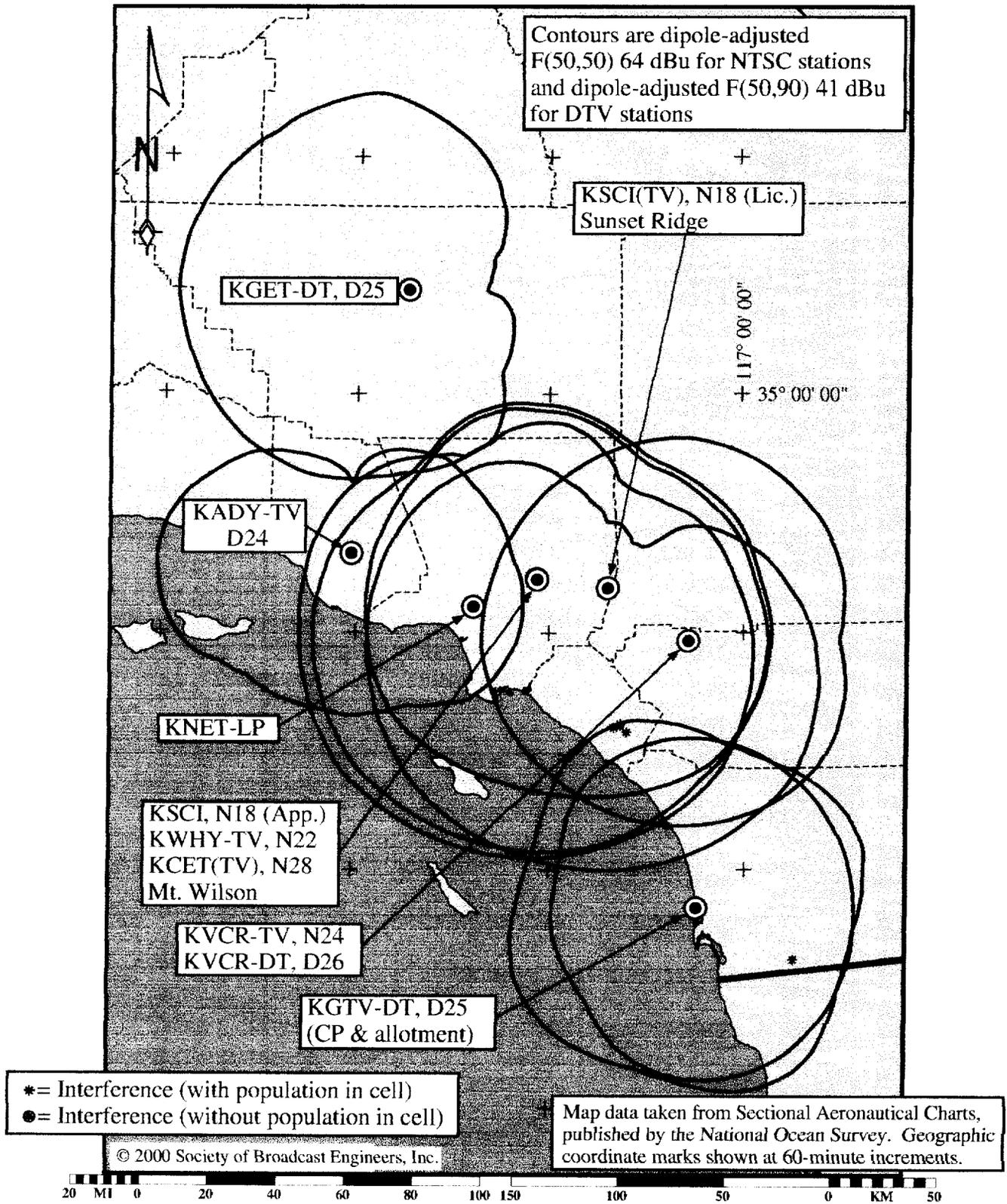


/s/ Christopher D. Imlay, Esq.
Its Counsel

February 20, 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



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

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

Interference analysis
tvixstudy 2.3.1

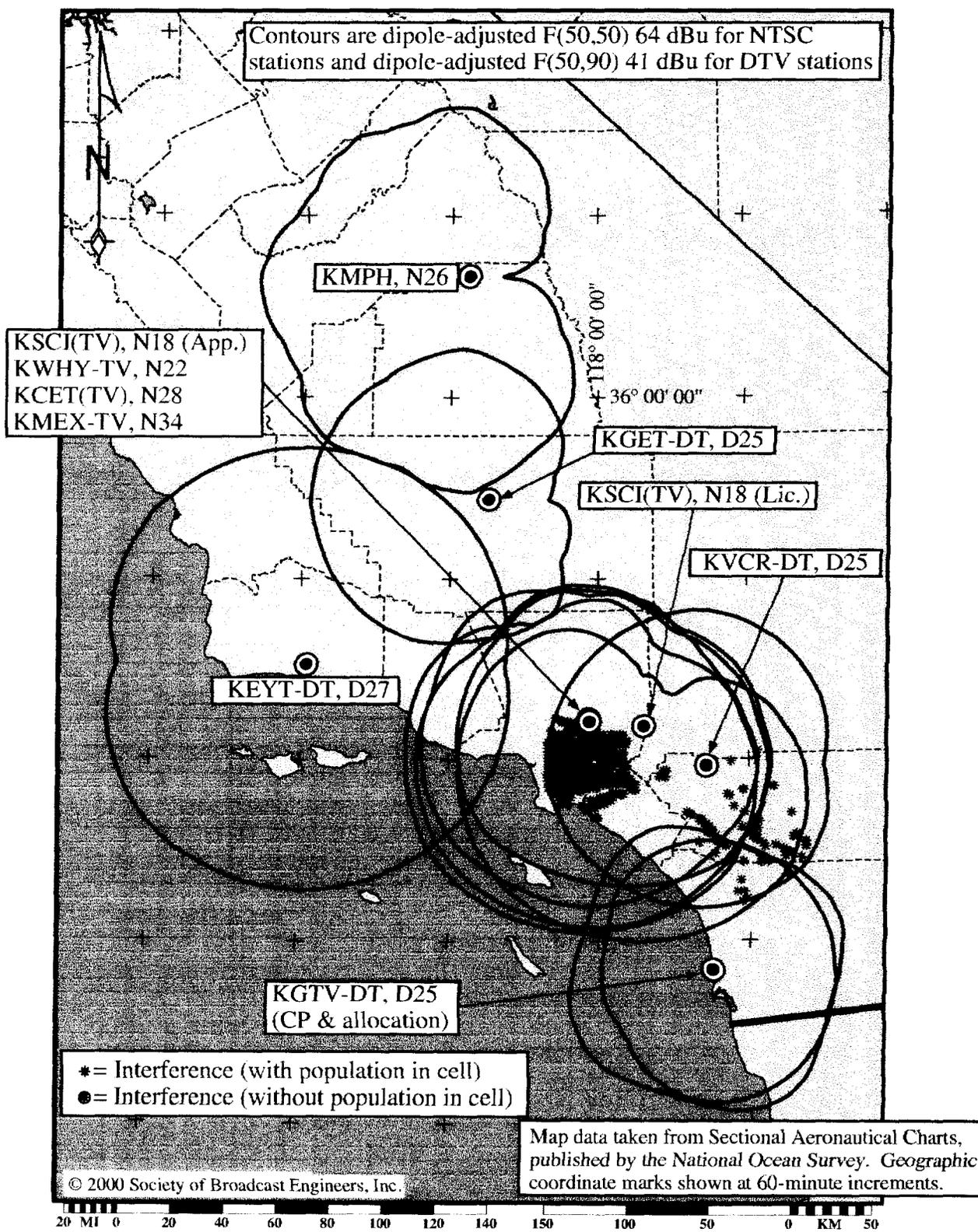
Station parameters:

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
D25 KGTV-DT CP	SAN DIEGO, CA	2,694,000	149,630	5.6	35
D25 KGTVDT allot	SAN DIEGO, CA	2,694,000	17,628	0.7	8,331
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



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



SOCIETY OF BROADCAST ENGINEERS, INC.
Indianapolis, Indiana

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. BMDPTL-JG601J1**

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 KGTVDT 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
D26 KVCRDT allot	SAN BERNARDINO, CA	8,702,000	5,082,554	58.4	5,006,808
D27 KEYTDT allot	SANTA BARBARA, CA	1,276,000	87,855	6.9	0

Note: The results of the OET-69 algorithm are dependent on the use of computer databases, including terrain, population, and FCC engineering records. FCC Rules Section 0.434(e) specifically disclaims the accuracy of its databases, recommending the use of primary data sources (i.e., paper documents), which is not practical for DTV interference analyses. Further, while Hammett & Edison, Inc. endeavors to follow official releases and established precedents on the matter, FCC policy on DTV analysis methods is constantly changing. Thus, the results of OET-69 interference and coverage studies are subject to change and may differ from FCC results.

