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

In the Matter of )  
 )  
Advanced Television Systems )  
and Their Impact upon the Existing ) MM Docket No. 87-268  
Television Broadcast Service )

**ORDER**

Adopted: February 17, 2000

Released: February 23, 2000

By the Commission:

1. In this Order, we dismiss a Petition for Reconsideration or Clarification of the *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders (Second MO&O)* in the digital television (DTV) proceeding<sup>1</sup> that was filed by KB Prime Media, LLC (KB). In the *Second MO&O*, the Commission confirmed, revised and clarified certain aspects of its policies relating to channel allotments for DTV service in response to requests from petitioners. KB's petition requests that the Commission either reconsider or clarify those portions of the *Second MO&O* that address applications for new analog ("NTSC") television stations within the areas defined in the Commission's 1987 *Order (Freeze Order)* freezing acceptance of new NTSC stations in certain areas.<sup>2</sup> In particular, KB seeks reconsideration to the extent that the *Second MO&O* does not provide for the Commission to consider on a case-by-case basis individual short-spacing waiver requests by pending applicants for new NTSC stations in the "freeze areas."

2. In the *Second MO&O*, the Commission found it desirable to provide applicants

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<sup>1</sup> See *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348 (1998).

<sup>2</sup> See *Order*, RM-5811, adopted July 16, 1987, Mimeo No. 4074 (released July 17, 1987), 52 FR 28346 (1987). In the *Freeze Order*, the Commission stated that it would cease accepting applications for new stations on vacant NTSC allotments in areas around the 30 most congested TV markets in order to preserve spectrum for advanced television service.

seeking to operate new NTSC stations in the freeze areas with options to pursue their applications wherever such options would not conflict with NTSC or DTV stations (including DTV allotments, authorized or requested increases in DTV allotment facilities and proposals for new or modified DTV allotments). It therefore adopted the suggestion of several of the petitioners to allow parties whose applications for NTSC stations in the freeze areas conflict with DTV stations (as above) to request a change in the NTSC channel they seek or to amend their application to eliminate all such conflicts. To implement this policy, the Commission stated that in a subsequent Public Notice, the Mass Media Bureau would announce a window of time during which petitions to amend the NTSC Table of Allotments or amendments to freeze-waiver applications could be filed. It indicated that parties that had filed applications for new NTSC stations using allotments in the freeze areas would be permitted to amend their applications if such amendment would eliminate interference to DTV service predicted using the criteria set forth in Section 73.623(c) of the rules. Such amendments could include changes in the ERP, directional antenna pattern, antenna height or site location requested in the application, but the amendment must conform to pertinent NTSC requirements. The Commission stated that the application amendment could also specify DTV operation. It further stated that a petition for rule making to change the channel of an NTSC allotment filed during this window must also include a showing that interference to a DTV station would be caused if the requested channel change is not made.

3. In its petition, KB states that the *Second MO&O* is silent as to how petitions for rule making seeking replacement channels will be processed. It observes that the rules currently require that new allotments meet minimum spacing requirements.<sup>3</sup> KB argues that if the mileage separation rules are applied to applicants, such as itself, that need to locate substitute channels, those applicants may be precluded from locating such substitute channels, and thus the new broadcast voices they seek to establish may be precluded. KB further contends that strict application of the mileage separation rules is contrary to the public interest and the precedent established by the Commission in the DTV allotment proceeding. In this regard, it submits that the initial DTV allotments for existing television stations were not based on mileage separations, but rather were based on interference considerations.<sup>4</sup> It also notes that engineering criteria are to be used with regard to any changes for stations in the initial DTV Table of Allotments. KB further observes that in the proceeding to reallocate channels 60-69, the Commission specifically stated that, with respect to applicants for new television stations on those channels, it would "consider individual short-spacing waiver requests on a case-by-case basis in conjunction with affording an opportunity for amendment of applications to seek channels below 60."<sup>5</sup> It contends that since applications for NTSC channels below channel 60 will be dismissed if they are in conflict with DTV stations, they are in the same regulatory status as applicants for NTSC stations

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<sup>3</sup> See 47 CFR Sections 73.610 and 73.623(d), new analog and digital allotments, respectively.

<sup>4</sup> See *Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), paras. 193-196.

<sup>5</sup> See *Memorandum Opinion and Order* in ET Docket No. 97-157, 13 FCC Rcd 21578 (1998), at para. 11.

in channels 60-69. KB therefore asserts that the Commission should afford applicants for NTSC stations on channels below channel 60 the same flexibility it has afforded applicants for NTSC stations on channels 60-69, allowing substitute channels based on interference considerations, rather than mileage separations.

4. The Mass Media Bureau issued a Public Notice on November 22, 1999, DA 99-2605, announcing the filing window opportunity for modification of pending requests for new NTSC stations to eliminate technical conflicts with DTV stations and to move from channels 60-69. That Public Notice also describes the criteria for acceptability that will apply to the various types of requests that may be submitted during the window. In particular, it indicates that each application submitted during the window opportunity must conform with all pertinent legal and technical requirements in the FCC rules, including criteria for interference protection to both NTSC and DTV services. With regard to technical requirements, all applications must meet the minimum distance separations between NTSC stations as provided in Section 73.610 of the rules, and must protect DTV stations from interference as provided in Section 73.623(c), but without the allowance to create *de minimis* interference as defined in Section 73.623(c)(2). The same criteria for technical acceptability will apply to all amended applications and petitions submitted by applicants, regardless of whether the applicant had originally sought an NTSC allotment on a channel below channel 60, or in the range of channels 60-69. As provided in Section 1.3 of the rules, the Commission will consider individual requests for waiver of these provisions.<sup>6</sup> We therefore find KB's request that we consider individual requests by pending applicants for new NTSC stations in areas affected by the Freeze Order, and collaterally that we afford pending applicants for NTSC stations on channels below 60 in freeze areas the same flexibility afforded applicants for stations on channels 60-69, to be moot.<sup>7</sup>

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<sup>6</sup> See 47 CFR Section 1.3.

<sup>7</sup> We note that in a footnote to its petition, KB states that if the Commission clarified the issues set forth therein in a manner that addresses KB's concerns in a Public Notice announcing the filing window for modification of pending requests for new NTSC stations, the petition would be moot and could be dismissed.

5. Accordingly, IT IS ORDERED that pursuant to Sections 1.429(b) and (i) of the Commission's rules, 47 CFR Sections 1.429(b) and 1.429(i), the Petition for Reconsideration or Clarification of the *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87-268 submitted by KB Prime Media, LLC IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary