KENNETH E. HARDMAN

MOIR & HARDMAN
ATTORNEYS AT LAW
1828 L STREET, N.W., SUITE 901
WASHINGTON, D.C. 20036-5104
FACSIMILE: (202) 833-2416
kenhardman@attglobal.net

DIRECT DIAL: (202) 223-3772

February 2, 2001

NOTICE OF EX PARTE PRESENTATION

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 - 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: Establishment of a Class A Television Service,
MM Docket No. 00-10

Dear Ms. Salas:

Jeffrey L. Timmons and Kenneth E. Hardman, representing KM Communications, Inc., met on February 1, 2001, with Susan Eid, Legal Advisor to Chairman Michael K. Powell, concerning KM Communications, Inc.'s Petition for Reconsideration of the *Report and Order* in the above-referenced rulemaking proceeding. Enclosed is a written summary of the issues discussed in the meeting, a copy of which was provided to the participants.

Very truly yours,

KM COMMUNICATIONS, INC.

By: Kenneth E. Hardman

Kenneth E. Hardman

One of its Attorneys

Enclosure

KM COMMUNICATIONS, INC.
CLASS A LPTV RECONSIDERATION ISSUES
MM Docket No. 00-10

KM Communications, Inc. is a woman and minority owned broadcasting company operating four LPTV stations in major markets, with four full power TV and three full power FM broadcasting permits (several of which are constructed and licensed), and interests in additional permits and/or applications for permits. All LPTV stations are eligible for Class A. However, certain issues addressed in the *Report and Order* need to be clarified in order to prevent unintended adverse consequences:

1. *Interpretation of the DTV Maximization Provisions of CBPA.* The language of ¶53 of the *Report and Order* suggests that Class A licensees must nonetheless protect DTV stations that seek to maximize service areas, "regardless of the existence of 'technical problems'" that cause the DTV service area modification. In light of the explicit language of Section 336(f)(1)(D), the Commission should clarify on reconsideration that *only* an appropriate showing of technical necessity will justify a DTV station's alteration of the service area as reflected in that station's May 1, 2000 maximization application.

2. *Grandfathered Waivers.* There is a potentially significant internal inconsistency in the intended scope of the types of interference waivers grandfathered for purposes of Class A applications between the Commission's discussion in ¶76 of the *Report and Order* and the text of rule sections 73.6013 and 73.623(c)(2) through (c)(4). The *Report and Order* authorizes "*all means of interference analysis* afforded to afforded to LPTV stations in the DTV proceeding, *including* the Longley-Rice terrain-dependent propagation model". (Emphasis added). Section 73.623(c)(2) through (c)(4) by its terms authorizes expressly authorizes *only* the Longley-Rice terrain-dependent analysis.

3. *Class A Frequency Offset Operation.* The Commission declined to require Class A stations to convert to frequency offset operation as a condition of being granted Class A status. *Report and Order* at ¶26. While the decision not to *require* offset operation is understandable, in light of the potential technical difficulty in certain situations and the potential economic impact, such operation should nonetheless be required where an adversely affected broadcasting station is willing to pay the cost of the modification. Such a requirement is appropriate to preclude anti-competitive mischief by the LPTV licensee in particular markets.

4. *Incorporation of Achernar Decision.* In the *Report and Order* the Commission ruled that Class A stations would be required to protect full service applicants that have completed "all processing short of grant necessary to provide a reasonably ascertainable Grade B contour," but declined to grandfather "pending rule making petitions for new or modified NTSC channel allotments or full service applications that were not accepted for filing by November 29[, 1999]". *Report and Order* at ¶44. However, the Commission's decision in *Achernar Broadcasting Company,* 15 FCC Rcd 7808 (FCC 2000), which was issued after the *Report and Order,* interpreted the CBPA and held that in certain circumstances a pending proposal for a channel change nonetheless could be grandfathered where the "reasonably ascertainable Grade B contour standard" was met. That interpretation should be codified in the Class A rules.