

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.622(b))	
Table of Allotments,)	MM Docket No. 01-43
Digital Television Broadcast Stations.)	RM-10041
(Jackson, Mississippi))	

To: Chief, Video Services Division

REPLY COMMENTS OF

VICKSBURG CHANNEL 35 ASSOCIATES, LLC

Vicksburg Channel 35 Associates, LLC ("VCA") hereby files these Reply Comments in regard to the proposal set forth in the Notice of Proposed Rule Making, DA 01-388 (released February 20, 2001) ("NPRM"), to allot DTV Channel 9 at Jackson, Mississippi, as a replacement for DTV Channel 51 as the paired DTV channel for station WLBT-TV, Jackson, Mississippi. In response to the NPRM, VCA, an applicant for a new NTSC facility on Channel 35, Vicksburg, Mississippi, submitted a Counterproposal proposing that DTV Channel 9 be allotted to Vicksburg, Mississippi. The Commission should put VCA's Counterproposal out for public comment, at which point the parties may address the issues surrounding the relative merits of those proposals in greater detail. By the instant Reply Comments, however, VCA clarifies

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several issues raised in the Reply Comments submitted by KM Communications, Inc. ("KM"), which VCA only received this morning.¹

First, VCA addresses KM concerns that VCA's Counterproposal is somehow seeking a new or different channel than it has otherwise sought for use at Vicksburg.² As VCA stated in its Counterproposal, if the proposal set forth therein is adopted, VCA will amend its pending application to specify the facility requested on DTV Channel 9 and, if authorized, will construct and place the station into operation. It is clear from VCA's Counterproposal for the allotment of DTV Channel 9 at Vicksburg, Mississippi, that the current analog Channel 35 allotment for Vicksburg will be deleted from the NTSC Table of Allotments, as well as the fact that the pending petition for rule making to substitute Channel 59 for the current NTSC Channel 35 allotment at Vicksburg will be dismissed. The first paragraph of the Counterproposal states "DTV Channel 9 can be allotted to Vicksburg, Mississippi . . . and would provide a replacement channel for the Vicksburg NTSC operation, which has been left with no channel allotment."³ It then sets out the proposed channel allotments for Vicksburg -- showing only a proposed Channel 9. Thus, VCA's proposal is clear, and KM's confusion inexplicable.

Second, contrary to KM's assertions, VCA believes that it is entitled to file a counterproposal in this proceeding. VCA is a very unique category of applicant created only one

¹ See Reply Comments, KM Communications, Inc., MM Docket No. 01-43, RM-10041 (submitted April 30, 2001).

² See Petition for Rulemaking filed by VCA on April 24, 2000, as amended July 17, 2000, proposing the substitution of NTSC Channel 59 for NTSC Channel 35 at Vicksburg.

³ See Counterproposal, Vicksburg Channel 35, LLC, MM Docket No. 01-43, RM-10041 (submitted April 13, 2001).

month ago with the release of the Commission's 52-59 NPRM.⁴ Yet that NPRM lacks clarity as to the status of applicants with pending petitions for rule making that seek operation on Channel 59. The Commission's NPRM fails to address when applicants will be permitted to amend their pending applications or petitions for rule making, and exactly which authorizations or applications those applicants will be required to protect from harmful interference. The Commission has failed to provide any guidelines for the amendment of pending petitions or applications, and has indefinitely suspended the processing of analog allotment petitions for rule making proposing Channel 59, such as VCA's pending petition for Channel 59 at Vicksburg, Mississippi. There is nothing in the 52-59 NPRM that states that VCA would have to protect the WLBT's proposal when VCA amends its Channel 59 proposal.

VCA timely submitted an acceptable proposal for Channel 59 in the filing window that closed on July 17, 2000.⁵ Surely the Commission does not expect to place applicants such as VCA who complied with the Commission's November 22, 1999 Public Notice but chose channel 59 as their alternate channel, to stand in line behind those who also filed by the July 17, 2000 deadline, but chose channels other than 59. The Commission can only treat these Channel 59 applicants equitably by treating them as well or better than applicants who filed during the filing window which closed on July 17, 2000. It is not clear that WLBT's petition was one that had to be protected in that window, as it was only a petition for rulemaking and not yet a formal "proposal" as issued by the FCC. Given the tremendous uncertainty surrounding the status of the

⁴ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), Notice of Proposed Rule Making, FCC 01-91 (released March 28, 2001) ("52-59 NPRM").

⁵ See Public Notice, DA 99-2605 (released November 22, 1999), as extended by Public Notice, DA 00-536 (released March 9, 2000).

now-frozen applicants specifying Channel 59, the filing and consideration of the Counterproposal is certainly reasonable.

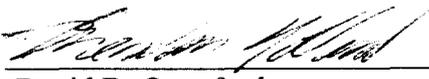
The Commission must consider the relative merits of both Civic License Holding Company, Inc.'s ("Civic") proposal for WLBT and VCA's Counterproposal. Upon further review, the Commission may have concerns regarding Civic's proposal to substitute DTV Channel 9 for DTV Channel 51 as WLBT's paired digital channel. Therefore, it should be prepared to address the relative merits of that proposal and the Counterproposal of VCA. Moreover, the Counterproposal provides a potential for resolution to the particularly vexatious issue of the Vicksburg Channel 59 proposal.

CONCLUSION

Accordingly, the Commission should place VCA's Counterproposal on public notice so that the parties may address the relative merits of Civic's proposal and VCA's Counterproposal.

Respectfully submitted,

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Dated: April 30, 2001

CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary in the law firm of Shaw Pittman, hereby certify that on this 30th day of April, 2001, caused to be served by first class United States mail, postage prepaid, a copy of the foregoing “**Reply Comments of Vicksburg Channel 35 Associates, LLC**” on the following:

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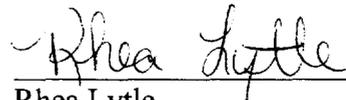
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