

ORIGINAL

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

In the Matter of )  
)  
Amendment of Section 73.622(b), )  
Table of Allotments, )  
Digital Television Broadcast Stations )  
(Jackson, Mississippi) )

MM Docket No. 01-43  
RM-10041

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To: Chief, Video Services Division

**REPLY COMMENTS OF KM COMMUNICATIONS, INC.**

1. KM Communications, Inc. ("KM"), an applicant for a new analog commercial television station on Channel 51 at Jackson, Mississippi (File No. BPCT-960930LW, Facility ID No. 84477), by its counsel, and pursuant to Sections 1.415 and 1.420 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.420, respectfully submits these Reply Comments in support of the amendment of Section 73.622(b) of the Commission's rules, 47 C.F.R. § 73.622(b), the Digital Television ("DTV") Table of Allotments, proposed by the Notice of Proposed Rule Making<sup>1</sup> in the above-captioned proceeding. In support of these Reply Comments and the proposed DTV channel substitution for Jackson, Mississippi, KM submits the following:

**I. Introduction**

2. The NPRM was adopted in response to a petition for rule making filed on May 1, 2000 (the "Petition") and supplemented on January 2, 2001 (the "Supplement") by Civic License

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<sup>1</sup> See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Jackson, Mississippi), MM Docket No. 01-43, RM-10041, Notice of Proposed Rule Making, DA 01-388 (Video Services Division, released February 20, 2001)(the "NPRM").

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Holding Company, Inc. (“Civic”), the licensee of WLBT-TV, analog Channel 3, Jackson, Mississippi (Facility ID No. 68542, “WLBT”). The NPRM and the Petition propose the substitution of DTV Channel 9 for the DTV Channel 51 currently allotted to Jackson, Mississippi as the second paired DTV channel for WLBT.

3. On April 13, 2001, KM timely-filed Comments in support of the substitution of DTV Channel 9 for DTV Channel 51 at Jackson, Mississippi, as proposed by Civic. In its Comments, KM noted that it is one of nine applicants for a construction permit for a new analog television station on Channel 51 at Jackson, Mississippi, which would be precluded by the current DTV Channel 51 allotment for WLBT. However, in response to a Commission Public Notice,<sup>2</sup> KM and six of the other eight applicants for analog Channel 51 collectively filed a Petition for Rule Making proposing that analog Channel 59 be substituted for analog Channel 51 at Jackson.<sup>3</sup> Unfortunately, two of the nine applicants for analog Channel 51, KB Prime Media LLC (“KB Prime”) and Edward I. St. Pe (“St. Pe”), did not join in the Analog Channel 59 Petition.

4. The Analog Channel 59 Petition also noted that Civic’s Petition to change its DTV Channel 51 allotment was pending, and specifically requested that the Analog Channel 59 Petition be held in abeyance pending action on Civic’s Petition, noting that the proposed change in the

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<sup>2</sup> See Public Notice, Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations, DA 99-2605 (released November 22, 1999); see also, Public Notice, Window Filing Opportunity For Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000, DA 00-536 (released March 9, 2000)(together, the “Window Public Notice”). In the Public Notice, the Commission allowed applicants for new analog television stations on allotments that conflicted with DTV allotments an opportunity to file an amendment to their application and/or a petition for rule making to change the analog allotment to a channel below Channel 60 which would not conflict with any DTV station allotments, authorizations, applications or allotment petitions.

<sup>3</sup> See Petition for Rule Making filed July 17, 2000 (the “Analog Channel 59 Petition”).

analog Channel 51 allotment would not be necessary if DTV Channel 9 was substituted for DTV Channel 51 at Jackson. KM asserted in its Comments that grant of the Petition and the proposed substitution of DTV Channel 9 for DTV Channel 51 at Jackson as the second paired DTV channel for WLBT would serve the public interest and would be the most preferential arrangement of allotments. In addition to the public interest benefits that Civic has identified in its Petition and the Supplement, the proposed substitution would permit the processing and grant of one of the pending analog Channel 51 applications without a change of the analog channel, which in turn would permit the dismissal of the Analog Channel 59 Petition.

5. KM also asserted in its Comments that the public interest would be better served by authorization of a new analog television station on Channel 51, as would be possible if the proposed DTV channel substitution is made, rather than on Channel 59, since Channel 51 is within the “core” channels (i.e., Channels 2 to 51), and would prevent another station being authorized in the non-core Channels 52 to 59. Channels 52 to 59 are the subject of a pending rule making proceeding considering the reallocation and auction of that spectrum for other purposes,<sup>4</sup> so the public interest would be served by minimizing the number of new television stations authorized in that spectrum. Allowing the authorization of the new analog television station on Channel 51 would also serve the public interest by resolving the potential conflict that likely will arise due to the fact that only seven of the nine applicants joined in the Analog Channel 59 Petition, with the remaining two applicants (KB Prime and St. Pe) not in agreement with the proposed channel substitution.

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<sup>4</sup> See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, Notice of Proposed Rule Making, FCC 01-91 (released March 28, 2001, the “Channel 52-59 NPRM”).

6. Two pleadings were filed that opposed the DTV channel substitution proposed by the NPRM and the Petition.<sup>5</sup> Blailock seeks to ensure that its Class A-eligible Low Power Television station WBMS-LP, analog Channel 10, Jackson, Mississippi, is afforded whatever protection to which it may be entitled from the proposed first-adjacent DTV Channel 9 allotment change proposed by Civic. VCA - - which is owned partly by KB Prime and would buy out St. Pe in the Vicksburg analog Channel 35 proceeding - - counterproposes that DTV Channel 9 be allotted as a new DTV allotment to Vicksburg, Mississippi. As demonstrated herein, Civic's proposed DTV channel change for WLBT may be made in compliance with the protection required to WBMS-LP, and should be preferred over the proposed DTV Channel 9 allotment for Vicksburg.

## **II. Protection of Class A-Eligible LPTV Station WBMS-LP**

7. KM fully supports any interference protection to which WBMS-LP may be entitled as a Class A-eligible LPTV station. However, based on its review of the Blailock Comments, KM does not believe that the substitution of DTV Channel 9 for DTV Channel 51 at Jackson, as proposed by Civic, is precluded by WBMS-LP. The interference protection that proposed changes to the DTV table of allotments must demonstrate to Class A stations is based on the desired-to-undesired ("D/U") signal ratios of Section 73.623(c)(2) of the Commission's rules. See 47 C.F.R. § 73.623(c)(2). Under Section 73.623(c)(2), a DTV allotment change proposal is permitted to cause up to 2% new interference to other existing stations. Id.

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<sup>5</sup> See Comments in Opposition to Rule Making filed by Gene A. Blailock ("Blailock") on April 13, 2001 (the "Blailock Comments"), and Counterproposal filed by Vicksburg Channel 35 Associates, LLC ("VCA") on April 13, 2001 (the "VCA Proposal").

8. The engineering submitted by Blailock demonstrates that Civic's proposal fully complies with Section 73.623(c)(2), since the new interference predicted by Civic's proposed DTV Channel 9 allotment at Jackson, with 3.2 kilowatts ("kw") effective radiated power ("ERP") and an antenna height above average terrain ("HAAT") of 610 meters, see NPRM at ¶ 4, to WBMS-LP's currently licensed 0.1 kw ERP parameters, is limited to a population loss of only 1.04% (2,378 persons), which is less than the 2% allowed by Section 73.623(c)(2). See Blailock Comments, Engineering Statement at 3, Table I. Even at the higher 3.0 kw ERP proposed for WBMS-LP in a pending LPTV application, the interference is limited to a population loss of 1.4% (4,770 persons), again within the 2% allowance. Id.

9. Since this is an allotment proceeding, the Commission must consider only the allotment parameters proposed in the NPRM, and not other parameters that Civic may specify in an application based on the new allotment. If Civic wishes to try to "maximize" its DTV facilities on Channel 9, it would be subject to demonstrating that its proposal satisfies any interference protection requirements to all other relevant stations, including WBMS-LP, at that time. However, KM notes that there likely is a ready solution that would permit Civic to file to maximize a DTV Channel 9 allotment for WLBT, such as for 20 kw ERP and a nondirectional antenna, and for WBMS-LP to upgrade its proposed 3 kw ERP, without causing interference problems to each other: **co-location**.

10. On VHF Channels 9 and 10 in Zone II, such as Jackson, first-adjacent channel DTV and analog stations may be located within 11 kilometers ("km") of each other (otherwise, they must be separated by 125 km or more). See § 73.623(d)(2). In addition, a lower first-adjacent DTV Channel 9 allotment, as proposed by Civic for WLBT, must satisfy only a -14 dB D/U signal ratio with respect to an upper first-adjacent analog Channel 10 station, such as WBMS-LP. See § 73.623(c)(2). As a practical matter, this means that WLBT's ERP must be less than roughly 25

times the ERP of WBMS-LP, which if WBMS-LP increases power to 3 kw ERP would be satisfied as long as WLBT's ERP was less than about 75 kw. The 20 kw that WLBT seeks, and indeed the 30 kw ERP maximum that would be permitted WLBT at its 610 meters antenna HAAT, see 47 C.F.R. § 73.622(f)(7)(i), are well within this -14 dB D/U signal ratio requirement with respect to WBMS-LP's proposed 3 kw ERP operation.

11. Furthermore, at an appropriate height on the WLBT tower (which from the Antenna Structure Registration appears to be owned by WLBT), the protected contour that WBMS-LP could achieve at 3 kw ERP could meet and exceed its currently-licensed protected service area.<sup>6</sup> KM encourages Civic and Blalock to explore whether co-location would permit mutually beneficial improvements of their station, a potential "win-win" situation for all parties. But regardless of whether either station is able to improve its coverage by increasing its ERP, the DTV Channel 9 allotment at 3.2 kw ERP and 610 meters antenna HAAT proposed by Civic and the NPRM fully protects the currently authorized 0.1 kw ERP licensed operation of WBMS-LP, to the extent that it may be entitled as a Class A-eligible LPTV station.

### **III. VCA's Proposed DTV Channel 9 Allotment For Vicksburg Must Be Dismissed Or Denied**

12. VCA either lacks standing to file a counterproposal for a new DTV Channel 9 allotment for Vicksburg or else the VCA Proposal is defectively inconsistent (as well as misleading), depending on which way one views the pleading, and in either case must be dismissed or denied in favor of the DTV channel change for WLBT.

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<sup>6</sup> For example, at 3 kw ERP and 600 meters antenna HAAT from the WLBT tower, the protected contour for WBMS-LP would extend about 47 km, and the WLBT tower is located only about 28 km from the furthest point of the currently licensed WBMS-LP protected contour.

13. VCA describes its proposal as a “*replacement* channel for the Vicksburg NTSC operation”, see VCA Proposal at 1 (emphasis added; VCA has only a pending application for analog Channel 35 at Vicksburg, not a station in “operation”), yet it does not propose the corresponding deletion of the current analog Channel 35 allotment for Vicksburg that it supposedly would replace, nor does VCA request the dismissal of its pending and conflicting petition for rule making to substitute analog Channel 59 for the current analog Channel 35 allotment to Vicksburg.<sup>7</sup> VCA should not be permitted to tie up multiple channels by pursuing several different alternative channels for its pending Vicksburg analog Channel 35 application simultaneously.

14. If VCA is proposing to substitute a DTV Channel 9 allotment for the current analog Channel 35 allotment for Vicksburg, it should have stated so explicitly -- as KM has noted, the VCA Proposal as filed appears to propose only the new DTV Channel 9 allotment for Vicksburg, without the corresponding deletion of the analog Channel 35 allotment for Vicksburg that should have accompanied a channel substitution proposal - - and requested dismissal of the conflicting VCA Channel 59 Petition. Instead, the VCA Proposal appears to be purposefully vague, in a veiled attempt to keep alive its multiple allotment change proposals, and should be dismissed.

15. VCA attempts to mislead the Commission when it states that the Commission has announced that it “will not process” analog petitions for rule making such as the VCA Channel 59 Petition, and that it has been “left without a channel for its proposed new service to Vicksburg.” See VCA Proposal at 3 (citing the Channel 52-59 NPRM). The Commission has not decided that analog allotment petitions on Channel 59 will never be processed, but rather has only directed the Mass

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<sup>7</sup> See Petition for Rule Making filed by VCA on April 24, 2000, and amended on July 17, 2000, proposing the substitution of analog Channel 59 for analog Channel 35 at Vicksburg (together, the “VCA Channel 59 Petition”).

Media Bureau to suspend processing of such analog allotment petitions while the Channel 52-59 NPRM rule making proceeding is pending. See Channel 52-59 NPRM at ¶ 24. The Commission also expressly permitted parties, such as VCA, with a pending petition to substitute analog Channel 59 for another analog allotment, such as the VCA Channel 59 Petition, to file “limited amendments to specify another channel”. Id.

16. The fact that VCA did not avail itself of that provision and file its proposal for DTV Channel 9 as an amendment to the VCA Channel 59 Petition belies its suggestions that the VCA Proposal is for a “replacement channel” for the Vicksburg analog Channel 35 allotment. Even if VCA had sought to file its DTV Channel 9 proposal as an amendment to the VCA Channel 59 Petition it would have to be dismissed as defective. The VCA Channel 59 Petition was filed because VCA’s application for analog Channel 35 at Vicksburg was subject to the Commission’s freeze in the advanced television (“ATV”) proceeding (i.e., it was within the “ATV freeze zone” for New Orleans, Louisiana),<sup>8</sup> and therefore VCA was required to file an amendment or a petition for rule making for an alternate channel which protected all analog and DTV stations, allotments and proposals. See Window Public Notice at 1-4.

17. The Commission very clearly stated in the Window Public Notice that petitions for rule making such as the VCA Channel 59 Petition, as well as any amendment to it that VCA may seek to file (including the VCA Proposal, if VCA had attempted to file it as a proposal for a “replacement channel” for analog Channel 35 at Vicksburg), must protect “DTV stations”, where “the term ‘DTV stations’ [] includes DTV authorizations, applications, allotments *and rule making proposals.*” Id. at 3-4 (emphasis added). Accordingly, since Civic’s Petition to substitute DTV

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See Advanced Television Systems, Mimeo No. 4074, 52 Fed. Reg. 28346 (1987).

Channel 9 for DTV Channel 51 at Jackson is a “DTV rule making proposal” that VCA would be required to protect, the VCA Proposal would be defective as an amendment to the VCA Channel 59 Petition or as a proposed “replacement channel” for its pending analog Channel 35 Vicksburg application, and must be dismissed or denied.

18. Alternatively, if VCA was proposing a new DTV Channel 9 allotment for Vicksburg, it again should have stated so explicitly, but likely did not since such a proposal would also be defective, and clearly less in the public interest than Civic’s proposed DTV channel change for WLBT. First, if the VCA Proposal is for a new DTV Channel 9 allotment at Vicksburg, VCA would continue to be an applicant for the current analog Channel 35 allotment at Vicksburg (indeed, one with a settlement pending which if granted would result in VCA holding a construction permit for analog Channel 35 at Vicksburg). Due to the Commission’s television duopoly restrictions, VCA could not expect to be a successful applicant for a new vacant DTV Channel 9 allotment for Vicksburg, since even if VCA were the successful high bidder for the DTV Channel 9 permit its long-form application could not be granted under the multiple ownership rules (absent a waiver or dismissal of the analog Channel 35 application, and VCA has committed to neither). As a result, the Commission should find that VCA lacks standing to file the VCA Proposal.

19. Even assuming for the moment that VCA had standing, Civic’s proposal should be favored over the VCA Proposal, as better serving the public interest. The Commission’s public interest determinations and policies adopted in the DTV proceeding favoring the choice of a second paired DTV channel for existing full power analog television stations over proposals for new allotments, in the past in the context of pending petitions for new analog allotments, should be extended to a petition for a new DTV allotment. Such a preference would serve the public interest

by ensuring that the DTV service provided by existing analog stations will best replicate their existing analog service areas, which in turn would promote the Commission's DTV transition goals.

**IV. Conclusion**

20. Wherefore, the above-premises being considered, KM supports the proposed substitution of DTV Channel 9 for DTV Channel 51 at Jackson, Mississippi, as the second paired DTV channel for WLBT, and submits that the public interest would be best served thereby since the proposed DTV channel change would also facilitate the resolution of the pending applications (including KM's application) for a construction permit for a new commercial television station on analog Channel 51 serving Jackson, Mississippi.

Respectfully submitted,

**KM Communications, Inc.**

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April 28, 2001

**CERTIFICATE OF SERVICE**

I, Jeffrey L. Timmons, hereby certify that on this 28<sup>th</sup> day of April, 2001, copies of the foregoing "Reply Comments of KM Communications, Inc." have been served by Airborne Express and then hand delivery (marked with an "\*" ) or by United States priority mail, postage prepaid, upon the following:

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