

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

MM Docket No. 01-54
RM-9918
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To: Chief, Video Services Division
Mass Media Bureau

REPLY COMMENTS OF IDAHO INDEPENDENT TELEVISION, INC.

Idaho Independent Television, Inc. ("IIT"), licensee of KTRV(TV), Nampa, Idaho, by its attorneys and pursuant to the Commission's *Notice of Proposed Rule Making* ("Notice") in the above-captioned proceeding,¹ hereby respectfully submits these reply comments in support of IIT's proposal to amend Section 73.622(b), the DTV Table of Allotments, by substituting Channel 13 as the station's paired DTV allocation for the transition period in lieu of Channel 44, as originally allotted. By these reply comments, IIT urges the Commission to grant the proposed channel substitution for KTRV-DT, to deny the Comments filed by State Board of Education, State of Idaho ("State Board of Education Comments"),² and to deny the Comments in Opposition filed by Oregon Public Broadcasting ("OPB Comments").³

¹ Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Nampa, Idaho), *Notice of Proposed Rule Making*, MM Docket No. 01-54, RM-9918 (rel. Feb. 23, 2001) ("Notice").

² Comments filed by State Board of Education, State of Idaho, in MM Docket No. 01-54, RM-9918 on April 13, 2001 ("State Board of Education Comments").

³ Comments in Opposition filed by Oregon Public Broadcasting in MM Docket No. 01-54, RM-9918 on April 16, 2001 ("OPB Comments").

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BACKGROUND

In response to KTRV(TV)'s Petition for Rule Making filed November 1, 1999, as amended March 17, 2000 and May 5, 2000 ("Petition"), the Commission issued the above-captioned *Notice* proposing the substitution of Channel 13 for Channel 44 for KTRV-DT. In its Amendment filed on March 17, 2000, IIT demonstrated that the proposed channel substitution would comply with the Commission's two percent *de minimis* interference standard under Section 73.623(c)(2)⁴ and the community coverage requirement under Section 73.623(c)(1),⁵ the only relevant criteria for evaluating DTV channel substitution requests. In the *Notice*, the Commission agreed that the proposed channel change would comply with its two percent interference standard.⁶ On April 13, 2001, IIT filed comments in response to the *Notice* in support of the proposed channel substitution and stated its intention to construct the proposed facilities.

I. THE KTRV-DT PROPOSAL COMPLIES WITH THE APPLICABLE TWO PERCENT INTERFERENCE STANDARD.

In its Comments, the State Board of Education, licensee of KIPT(TV), Twin Falls, Montana, argues that KTRV-DT's proposed channel substitution should be denied because it does not meet the two percent criterion for *de minimis* impact. IIT disagrees. Two separate consulting engineers and the Commission have determined that the KTRV-DT proposal fully complies with the Commission's two percent criterion and thus is grantable.

⁴ Idaho Independent Television, Amendment to Petition for Rule Making filed March 17, 2000. See 47 C.F.R. § 72.623(c)(2)(2000) ("Amendment").

⁵ 47 C.F.R. § 73.623(c)(1) (2000).

⁶ *Notice* at ¶ 3.

In its Petition and Amendment, IIT evaluated the impact of the proposed DTV channel change and found that the substitution would comply with the Commission's two percent *de minimis* standard. Pursuant to the State Board of Education's Comments, IIT once again evaluated the impact of the proposed DTV channel substitution with the assistance of a different engineering firm and again found that the proposal would comply with the two percent *de minimis* standard.⁷ As the attached Technical Statement demonstrates, IIT's consulting engineer completed the interference calculations in accordance with OET-69 and found the interference from the KTRV-DT proposal to KIPT's analog service population to be *less than one percent*.⁸ The discrepancy between the State Board of Education's conclusion and those of IIT's engineers and the Commission suggests that the State Board of Education's analysis program is not compliant with OET-69 as required by Section 73.623(c)(2). The State Board of Education's engineering statement did not provide sufficient details of their program (*i.e.* the TA Services HDTV computer program), so the source of their error is unclear.⁹ Nevertheless, IIT is confident in its analysis and re-analysis that the proposed KTRV-DT channel substitution complies with the Commission's rules and thus is grantable.

II. THE COMMISSION ALREADY HAS DETERMINED THAT DTV INTERFERENCE TO LESS THAN 2% OF A SERVICE POPULATION IS *DE MINIMIS*.

The State Board of Education and OPB raise ancillary arguments regarding the *de minimis* interference resulting from KTRV-DT's proposed channel substitution. The State Board of Education discusses the effects of interference with regard to the second primary service and

⁷ See Exhibit A (Technical Statement of du Treil, Lundin and Rackley) ("Technical Statement").

⁸ See *id.*

⁹ See *id.*

the lack of cable television service in the area. OPB concedes that KTRV-DT's proposed channel substitution would "result in less than 1% interference to the signal of OPB's station"¹⁰ but argues that the Commission should not apply its rules to rural areas.

It is unnecessary for IIT to address the substance of these arguments because the Commission already has determined that the applicable interference standard in DTV channel substitution requests is the two percent *de minimis* standard. The State Board of Education's and OPB's arguments should be dismissed as irrelevant to the analysis of whether KTRV-DT's channel substitution proposal complies with the Commission's rules.

The Commission's standard provides a bright line rule whereby any interference below the threshold of two percent of the population of a station's service area will be considered *de minimis*. As the Commission stated, the "*de minimis* standard for permissible new interference is needed to provide flexibility for broadcasters in the implementation of DTV."¹¹ "Under this new *de minimis* standard, stations will be permitted to increase power or make changes in their operation, such as modification of their antenna height or transmitter location, where the requested change would not result in more than a 2 percent increase in interference to the population served by another station."¹² As a result, any interference resulting from a DTV channel change proposal that complies with the two percent *de minimis* standard is considered

¹⁰ OPB Comments at p. 1.

¹¹ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, ¶ 80 (1998) ("*Reconsideration of Sixth Report and Order*").

¹² *Id.*

acceptable.¹³

Moreover, the Commission previously decided that it would not consider any factors in conjunction with the two percent interference standard:

We therefore believe that our 2 percent *de minimis* standard will provide major relief for stations seeking to increase their facilities. We do not find that a more complicated standard that would take into account aggregate interference, include different levels of interference and geographic considerations, or limit interference increases to only NTSC stations, as suggested in the recent filings, is necessary. Such a standard would also be more complex and difficult for broadcasters and the Commission to apply and administer.¹⁴

Accordingly, the Commission already has rejected the State Board of Education's and OPB's contention that a different standard should apply to rural areas and has consistently applied its existing rules in numerous DTV channel change proceedings in rural areas.¹⁵ By asking the Commission to deny a compliant channel substitution proposal solely on the basis of other criteria, the State Board of Education and OPB essentially are requesting that the Commission disregard its own rules and reconsider its decision in the *Reconsideration of Sixth Report and Order*. The time for such a challenge has long since passed, and this proceeding is not the appropriate forum in which to raise such arguments. The Commission already has rejected arguments similar to those of the State Board of Education and OPB about loss of service in

¹³ Black's Law Dictionary defines the phrase *de minimis non curat lex* as "The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles." BLACK'S LAW DICTIONARY 431 (6th ed. 1990).

¹⁴ *Reconsideration of the Sixth Report and Order* at ¶ 81.

¹⁵ See, e.g., *Reno, Nevada*, MM Docket No. 00-234 (rel. Mar. 6, 2001); *Orono, Maine*, MM Docket No. 00-243 (rel. Mar. 6, 2001); *Hastings, Nebraska*, MM Docket No. 00-241 (rel. Mar. 6, 2001); *Lead, South Dakota*, MM Docket No. 00-235 (rel. Feb. 26, 2001); *Sheridan, Wyoming*, MM Docket No. 00-184 (rel. Feb. 1, 2001).

balancing the importance and burden of implementing digital television service.¹⁶ Moreover, as stated in the IIT Petition, the public interest would be served by permitting KTRV to operate analog and digital facilities on adjacent channels. The Commission has recognized co-located, adjacent-channel analog and digital facilities minimize potential interference, and the opportunity to share certain transmission equipment will reduce the build-out impact on this small market station.¹⁷ Operation on the VHF channel also would improve coverage availability for viewers throughout the mostly rural market. The public interest would be served by the more efficient use of the broadcast spectrum offered by the DTV channel change. Given these significant benefits, it would be unreasonable for the Commission to deviate from its rules and deny the KTRV-DT channel substitution. Accordingly, the Commission must deny the State Board of Education Comments, deny the OPB Comments, and should grant KTRV-DT's proposed channel substitution.

CONCLUSION

In light of the foregoing and for the reasons previously set forth in the Petition, the Commission should deny the State Board of Education Comments, deny the OPB Comments and grant IIT's proposed channel substitution for KTRV(TV). IIT respectfully requests that the Commission promptly adopt the changes proposed in the *Notice* and amend Section 73.622(b) of

¹⁶ *Reconsideration of the Sixth Report and Order* at ¶¶ 78-86.

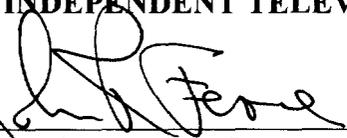
¹⁷ *Id.* at ¶¶ 92, 95.

its Rules to substitute Channel 13 for Channel 44 for use by KTRV-DT at the specified reference point in Nampa, Idaho.

Respectfully submitted,

IDAHO INDEPENDENT TELEVISION, INC.

By:



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Dated: May 1, 2001

EXHIBIT A
Technical Statement

TECHNICAL STATEMENT
SUPPORTING THE REPLY COMMENTS OF
IDAHO INDEPENDENT TELEVISION, INC.
STATION KTRV
NAMPA, IDAHO

This Technical Statement has been prepared to support the reply comments of Idaho Independent Television, Inc., licensee of television station KTRV at Nampa, Idaho. Station KTRV proposes to change its digital television (DTV) allotment from channel 44 to channel 13 (RM-9918, BPRM-20000412AAG, Facility ID 123162, BPCDT-19991028ADO, Facility ID 28230). The Federal Communications Commission (FCC) issued a Notice of Proposed Rule Making (NPRM) in MM Docket No. 01-54 for the proposed KTRV DTV allotment channel change.

The State Board of Education, State of Idaho, licensee of television station KIPT on analog (NTSC) channel 13 at Twin Falls, Idaho, and Oregon Public Broadcasting, licensee of television station KTVR on analog channel 13 at La Grande, Oregon, filed comments in the NPRM opposing KTRV's proposed DTV allotment channel change. This Technical Statement supports KTRV's reply comments to KIPT's and KTVR's opposition.

The proposed KTRV DTV allotment on channel 13 is adjacent channel to KTRV's analog operation on channel 12. The proposed KTRV channel 13 DTV operation is based on a non-directional effective radiated power (ERP) of 17 kilowatts (kW) and antenna height above average terrain (HAAT) of 829 meters. The proposed DTV allotment is based on use of the current analog transmitter site (43-45-18, 116-05-52). The proposed DTV

allotment antenna center of radiation is 2220 meters above mean sea level (AMSL).

The KIPT opposition claims excessive interference is caused to KIPT analog service based on use of a "HDTV" computer program offered by TA Services in Boulder, Colorado. The KIPT opposition alleges that 2,422 people or 2.4% of its analog service population will receive interference from the proposed KTRV channel 13 DTV operation. The KIPT comments indicate that it believes the TA Services HDTV program is compliant with the FCC's OET-69 Bulletin. From the information provided in the KIPT comments it is not known whether the TA Services study uses a radial or grid basis, and if a grid basis, it is not known what the grid size is.

Interference calculations have been made using the procedures outlined in the FCC's OET-69 Bulletin. Calculations have been made using a 2 kilometer grid and a 1 kilometer grid. The computer program operates on a UNIX based system and is believed to provide calculations virtually identical to those from the computer program employed by the FCC in its processing of DTV and analog (NTSC) proposals. Using a 2 kilometer grid, the proposed KTRV channel 13 DTV allotment causes interference to 645 people (0.64%) within the KIPT analog service population (101,087 people). Using a 1 kilometer grid, the proposed KTRV DTV allotment causes interference to 656 people (0.65%) within the KIPT analog service population (100,941 people). In either

case, the proposed interference caused to KIPT analog service complies with the FCC's "2% de minimis"¹ standard.

The KTVR opposition alleges that the proposed KTRV channel 13 DTV operation will cause interference to 290 people (0.74%) within the KTVR analog service population. KTVR bases its calculations on use of the TA Services program and acknowledges that the proposed KTRV DTV allotment complies with the FCC's "de minimis" interference standards. It appears that KTVR only considered its current license operation on channel 13 (7.24 kW, 787 m) in its comments and not the significantly higher powered proposed KTVR analog operation on channel 13 (100 kW, 780 m, BPET-20010111ABP)

Calculations have been made using the procedures outlined in the FCC's OET-69 Bulletin with 2 kilometer and 1 kilometer grids. Using a 2 kilometer grid, the proposed KTRV channel 13 DTV operation causes interference to 128 people (0.17%) within the present KTVR analog service population (76,268 people) and to 188 people (0.15%) within the proposed KTVR analog service population (128,275 people). Using a 1 kilometer grid, the proposed KTRV DTV operation causes interference to 128 people (0.17%) within the present KTVR analog service population (76,286 people) and to 190 people (0.15%) within the proposed KTVR analog service population (128,282 people). In either case, the proposed interference caused to KTVR's present and proposed operations complies with the FCC's "2% de minimis" standard.

¹The definition of the Latin word "de minimis" is small or unimportant. Also short for "de minimis non curat lex" (the law does not bother with trifles).

Nampa, Idaho

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In summary, the KTRV proposal meets the FCC's standards for a change in DTV allotment channel. If there are questions concerning this technical statement, please communicate with the office of the undersigned.

A handwritten signature in black ink that reads "John A. Lundin". The signature is written in a cursive, flowing style.

John A. Lundin

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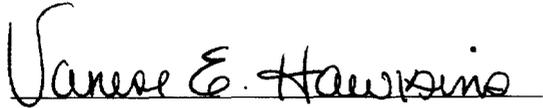
April 25, 2001

CERTIFICATE OF SERVICE

I, Vanese Hawkins , a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 1st day of May, 2001, the foregoing "REPLY COMMENTS OF IDAHO INDEPENDENT TELEVISION, INC." were served via first class mail to the following:

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