

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

In the Matter of )  
 )  
Reallocation and Service Rules for the ) GN Docket No. 01-74  
698-746 MHz Spectrum Band )  
(Television Channels 52-59) )

To: The Commission

**COMMENTS OF THE KM COMPANIES**

1. KM Communications, Inc. ("KM") and KM LPTV of Atlanta, L.L.C. ("KM-Atlanta", and with KM, the "KM Companies"), by its counsel, and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.<sup>1/</sup> In the NPRM, the Commission solicited comments on its proposals for the reallocation of television Channel 52-59 and service rules for the use of that spectrum for other purposes and services.

2. KM-Atlanta is the licensee of Class A-eligible Low Power Television ("LPTV") station WSKC-LP, which operates on analog Channel 59 serving Atlanta, Georgia. KM is an applicant for five new LPTV stations on television Channels 52-59 in Arizona, Indiana or Texas. KM is also an applicant for a new analog full power television station on Channel 51 at Jackson, Mississippi, for which KM and most of the competing applicants have jointly-filed a petition for rule making to change the analog channel allotment from Channel 51 to Channel 59, in order to avoid a

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<sup>1/</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 "NPRM").

conflict with a co-channel digital television (“DTV”) Channel 51 allotment for television station WLBT(TV), Jackson, Mississippi. Due to these interests, the KM Companies have an interest in this proceeding.

3. **LPTV Station Operation On Channels 52-59 During The DTV Transition.** The KM Companies agree with the Commission that LPTV stations should be permitted to continue to operate on television Channels 52-59 on a secondary basis through the end of the DTV transition (whether that is December 31, 2006 or some later extended date), provided that the secondary LPTV station does not cause actual interference to a primary user of the spectrum. See NPRM at ¶ 18. This permitted operation should extend to displacement applications by existing LPTV stations, as well as applications for new LPTV stations, since any LPTV station authorized on Channels 52-59 would be on a secondary basis, and subject to the requirement to protect primary users of the spectrum. Negotiated interference agreements should also be permitted, id., although as practical matter it is unlikely that any primary licensee authorized by the Commission to use the spectrum would ever enter into such an agreement.

4. **Treatment Of Class A-Eligible LPTV Stations On Channels 52-59.** In its discussion of television Channel 52-59 reallocation and transition issues affecting LPTV stations, id. at ¶¶ 17-18, 27-28 and 36, the Commission did not specifically address the proposed treatment of Class A-eligible LPTV stations.<sup>1/</sup> Although the Commission may not grant a Class A license to LPTV

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<sup>2/</sup> The Class A television service was established by an act of Congress as a new class of television service in which certain eligible LPTV stations are entitled to a measure of “primary” status, with one limited exception with respect to certain future changes by DTV stations that may be necessary to resolve technical problems. The Commission has implemented the Class A statute through a rule making proceeding. See Establishment of a Class A Television Service, MM Docket No. 00-10, Report and Order, FCC 00-115, 15 FCC Rcd 6355, 20 CR 154 (2000)(the “Class A

stations on television Channels 52-59 that are otherwise eligible for the new primary Class A status,<sup>1/</sup> the Commission is required by statute to “act to preserve the service area of [LPTV] licensees pending the final resolution of a Class A application.” See 47 U.S.C. § 336(f)(1)(D).

5. Since this statutory requirement is not limited to Class A-eligible LPTV stations on any specific channels, Congress clearly intended for the Commission to act to preserve the service area of *all* Class A-eligible LPTV stations, including those on television channels 52-59,<sup>1/</sup> such as

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Order”); Memorandum Opinion and Order on Reconsideration, FCC 01-123 (released April 13, 2001)(the “Class A Reconsideration Order”).

<sup>3/</sup> See 47 U.S.C. § 336(f)(6)(A). In the Class A television proceeding, the Commission decided that Class A-eligible LPTV stations on television Channels 52-59 may not convert to Class A status until such stations find a channel within the “core” spectrum (i.e., television Channels 2-51). See Class A Order at ¶ 103.

<sup>4/</sup> In the Class A television proceeding, the Commission declined to protect the service area of Class A-eligible LPTV stations on television Channels 52-59, as required by Section 336(f)(1)(D) of the Communications Act of 1934, as amended (the “Act”), electing instead to preserve the service area of such stations only once such stations have filed an application to modify to a core channel. See Class A Order at ¶ 104; Class A Reconsideration Order at ¶ 87. The KM Companies have

KM-Atlanta's Class A-eligible LPTV station WSKC-LP, analog Channel 59, Atlanta, Georgia. The same public interest benefit that Congress intended by ensuring the preservation of Class A-eligible LPTV stations, based on the valuable local programming provided by such stations as specified in the statutory eligibility requirements for a Class A license, also supports the preservation of such Class A-eligible LPTV stations during the television Channel 52-59 reallocation process and any service rules adopted in this proceeding. As such, Class A-eligible LPTV stations should not be displaced by, and should be protected from harmful interference from, any new licensees of the 698-746 megahertz ("MHz") spectrum, on the same basis as a full power television station.

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disagreed with the Commission on this point, believing that the concern of Congress in Section 336(f)(1)(D) was to protect the service to the public provided by Class A-eligible LPTV stations rather than solely some specific technical service parameters. Therefore the KM Companies are evaluating whether to petition for further review of the Class A Reconsideration Order on this point.

6. This requirement to protect Class A-eligible LPTV stations during the television Channel 52-59 reallocation is also required by Section 337(e)(2) of the Act, 47 U.S.C. § 337(e)(2). Section 337(e)(2) requires the Commission, after its reallocation of the 746-806 MHz spectrum (television Channels 60-69), to “seek to assure, consistent with the Commission’s plan for allotments in the [DTV] service, that each qualifying [LPTV] station is assigned a frequency below 746 megahertz to permit the continued operation of such station.” Id. In this statute, Congress defined a “qualifying” LPTV station in essentially the same terms as the criteria for eligibility for Class A status.<sup>4/</sup>

7. In short, Congress has twice expressed its intention that the Commission ensure the survival and protection of LPTV stations that provide a certain level of local programming service, including expressly in the context of the Commission’s reallocation of the spectrum traditionally used for television broadcasting in Section 337(e)(2). In neither case did Congress limit the class of LPTV stations entitled to such protection based on their channel, and therefore neither should the Commission. Class A-eligible or qualifying LPTV stations provide a local programming service that Congress has determined serves the public interest and is entitled to protection, and must be protected

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<sup>5/</sup> Compare § 336(f)(2)(A)(i) and § 337(e)(2). In both cases, Congress has expressed its intent that the Commission protect LPTV stations that have been broadcasting at least 18 hours per day, with an average of at least 3 hours per week of locally-produced programming, and that have complied with the Commission’s rules for LPTV stations. Id.

during this television Channel 52-59 reallocation proceeding in the same manner and to the same extent as other primary (i.e., full power) television stations.

8. **Treatment Of Pending Full Power Analog Proposals For Channel 59.** In the NPRM, the Commission first announced that it was directing the Mass Media Bureau to suspend processing of petitions for rule making to amend the television table of allotments or applications for construction permit for television stations on Channel 59, and solicited comment on the treatment of such proposals. See NPRM at ¶ 24. KM is an applicant for a construction permit for a new full power analog television station on Channel 51 at Jackson, Mississippi, and along with most of the competing applicants for that allotment has filed and has pending a joint petition for rule making to substitute analog Channel 59 for the current Channel 51 allotment. The KM Companies request that in the event that the Commission elects to limit the technical parameters of such proposals for new full power television stations on Channel 59, or eliminate them entirely, that petitioners such as KM and the other competing applicants in Jackson be permitted an opportunity to file an amendment to their long-pending applications and/or their petition for rule making that would be compliant with whatever new or amended rules that may be adopted in this proceeding.

9. WHEREFORE, the above-premises being considered, the KM Companies respectfully request that the Commission adopt rules for the reallocation of television Channels 52-59 that are consistent with the Comments of the KM Companies submitted herein.

Respectfully submitted,

**KM Communications, Inc.**  
**KM LPTV of Atlanta, L.L.C.**

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