

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)
(Tyler, Texas))
)

MM Docket No. 01-244
RM-10234

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS OF CIVIC LICENSE HOLDING CO., INC.

Civic License Holding Company, Inc. ("Civic"), licensee of KLTU(TV), Tyler, Texas ("KLTU"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. § 1.415), hereby respectfully submits these comments regarding the above-captioned *Notice of Proposed Rule Making* ("Notice") released by the Commission on September 19, 2001. The *Notice* seeks comment on Civic's request, as set forth in its *Petition for Rule Making* filed May 1, 2000 ("*Petition*"), that the Commission amend Section 73.622(b), the DTV Table of Allotments, by substituting Channel 10 as the station's paired DTV allocation for the transition period in lieu of Channel 38, as originally allotted. By these comments, Civic confirms its continuing interest in the channel change and requests that the Commission grant the proposed amendment to the DTV Table of Allotments in light of the resulting public interest benefits.

The Commission has mandated that all full-power television stations convert to digital and has assigned stations a paired channel for their "DTV" broadcasts. Digital television offers broadcasters exciting opportunities, but stations in small markets face construction burdens not equally shared by larger market broadcasters. To best meet the challenging demands of the

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Commission's implementation of digital television, KLTV-DT has identified the proposed alternate DTV channel as offering improved signal coverage for viewers and permitting more efficient operation. Significantly, the new channel will reduce potential tower structural loading problems and permit the station to transmit digitally from its existing tower, thereby hastening KLTV's commencement of DTV service.

Civic intends to construct and operate Station KLTV-DT on Channel 10, as proposed. Upon approval of the channel change, Civic will commence efforts to obtain authorization to construct KLTV-DT. Proposed operation of KLTV-DT on Channel 10 complies with the Commission's rules and will not impermissibly impact any full power or Class A television station. Channel 10 operation is predicted to displace KLGV-LP, a low power television ("LPTV") station serving Longview, Texas, but displacement of secondary LPTV stations due to DTV channel changes is authorized under the Commission's rules. The Commission's implementation of digital television has displaced numerous LPTV stations. Unlike a number of these LPTV stations that have terminated service altogether, however, KLGV-LP can continue broadcasting by operating on an available alternative channel. Accordingly, the proposed KLTV-DT channel substitution will serve the public interest by hastening the implementation of DTV while preserving the service of KLGV-LP.

I. THE DTV TRANSITION.

The FCC is requiring existing full-power television stations to convert from analog to digital broadcasting. DTV promises to provide viewers with enhanced features such as super-high quality audio and video as well as multicast television programming. The conversion of the nation's television stations to digital, however, is a tremendous task. Broadcasters must construct all new digital stations at their own expense with costs often reaching millions of

dollars. To avoid loss of service to viewers, the FCC is requiring stations to broadcast both in analog on their existing channel and in digital on a new channel for the duration of the DTV transition period.

At the time that the Commission assigned stations these second channels for digital broadcasting, it promised broadcasters the flexibility to develop alternate allotment proposals in recognition of the intricacies of DTV operations and the need for stations to maximize service efficiently.¹ In response, at least 141 stations have proposed alternative DTV channels, finding that the new channels would facilitate their construction of DTV facilities and expedite the DTV transition.²

To have enough spectrum to assign a second channel to all full power television stations, the FCC determined that it would need to displace many LPTV and translator stations.³ The FCC stated in April 1999, “We estimate that about 35 to 45 percent of the LPTV stations will have to either change their operation or cease operation to protect DTV service,”⁴ a percentage that translates into nearly 2,000 LPTV stations.⁵ The FCC’s decision to give priority to DTV stations is consistent with its longstanding policy that LPTV service is secondary to full-power broadcast service:

From its creation by the Commission in 1982, the low power television service has been a “secondary spectrum priority” service whose members

¹ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, ¶ 172 (1997) (“*Sixth Report and Order*”).

² The Commission’s web site lists the proposed channel changes. See Federal Communications Commission, *Petitions to Change DTV Channels* (visited Nov. 13, 2001) <<http://www.fcc.gov/mmb/vsd/files/dtvchan.html>>.

³ *Sixth Report and Order* at ¶ 141.

⁴ Federal Communications Commission, *TV Translators and the DTV Transition* (visited Nov. 13, 2001) <<http://www.fcc.gov/oet/faqs/dtv-tvtx.html>>.

⁵ See Broadcast Station Totals as of March 31, 1999, 1999 FCC Lexis 1534 (April 12, 1999).

“may not cause objectionable interference to existing full-service stations, and . . . must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs.”⁶

In implementing digital television, the Commission consistently has affirmed the secondary status of LPTV and TV translator stations⁷ in accordance with the clear priorities in implementing this novel and critical service:

As secondary operations, low power stations must give way to new operations by primary users of the spectrum, including in this case new full service DTV stations operated by existing broadcasters under our DTV implementation plan. While we recognize the important services low power stations provide, we must ensure that our goals for the implementation of DTV are achieved before taking any additional steps to minimize the impact on these secondary operations.⁸

These policies apply to DTV channel change proceedings with equal force. The Commission’s rules state that changes in the DTV Table of Allotments may be made “without regard to existing or proposed low power TV or TV translator stations.”⁹

Given the extensive displacement of LPTV stations, the Commission adopted a number of procedural and technical measures designed to mitigate LPTV hardship.¹⁰ Nonetheless,

⁶ In the Matter of Establishment of a Class A Television Service, *Memorandum Opinion and Order on Reconsideration*, FCC 01-123, MM Docket No. 00-10. ¶ 2 (April 13, 2001) (citing An Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, *Report and Order*, 51 R.R. 2d 476, 486 (1982)) (emphasis added).

⁷ *Sixth Report and Order* at ¶ 141; 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, ¶ 106 (1998) (“*MO&O on Reconsideration of Sixth Report and Order*”); Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, ¶ 88 (1998) (“*Second MO&O on Reconsideration of Fifth and Sixth Report and Orders*”).

⁸ *MO&O on Reconsideration of Sixth Report and Order* at ¶ 106 (emphasis added).

⁹ 47 C.F.R. § 74.702(b). See Amendment of Section 73.622(b) Table of Allotments Digital Television Broadcast Stations (Salt Lake City, Ogden and Provo, Utah), *Report and Order*, 15 FCC Rcd

displaced LPTV stations must relocate to other channels at their own expense, much like broadcasters must convert to DTV at their own expense.¹¹ While broadcasters are not required to compensate LPTV stations, the Commission encouraged broadcasters to coordinate their DTV construction schedules with affected LPTV stations.¹²

II. THE KLTV-DT CHANNEL CHANGE WILL HASTEN COMMENCEMENT OF DTV SERVICE.

The proposed KLTV-DT channel change will facilitate the station's efforts to commence digital operations and provide viewers in the local communities with new digital service. At the same time, KLTV, like many small market stations, is concerned about the disproportionate burden of delivering these new services. The Tyler-Longview, Texas DMA, which KLTV serves, is ranked 108th in the United States.¹³ The Commission has recognized the unique difficulties faced by small-market broadcasters and implemented certain rules and policies to assist small market stations in coping with the DTV transition.¹⁴ Accordingly, KLTV, like many

10568 (2000); Amendment of Section 73.622(b) Table of Allotments Digital Television Broadcast Stations (Richmond, Virginia), *Report and Order*, 15 FCC Rcd 23770 (2000).

¹⁰ Reallocation of Television Channels 60-69, The 746-806 MHz Band, *Report and Order*, 12 FCC Rcd 22953, ¶ 25 (1998) (stating that the Commission "adopted a number of rule changes in the *DTV Proceeding* to mitigate the impact on these stations" including permitting LPTV stations that are displaced by new DTV stations to apply for replacement channels and changes to the technical rules). See *Sixth Report and Order* at ¶¶ 142, 144-145 (e.g., adopting channel displacement relief for LPTV stations, deleting taboo restrictions on the use of a channel seven channels below or fourteen channels above the channel of another LPTV station, permitting LPTV and translator stations to agree to accept interference).

¹¹ See *MO&O on Reconsideration of Sixth Report and Order* at ¶ 127 ("We do not believe that it is appropriate to require broadcasters to implement DTV and at the same time require them to compensate secondary low power stations that are affected by this required implementation.").

¹² *Id.* at ¶ 119.

¹³ BROADCASTING & CABLE YEARBOOK 2001, B-235 (2001).

¹⁴ For example, the Commission adopted a staggered DTV construction schedule in which the larger market stations would lead the way in the DTV transition (Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 FCC Rcd 12809, ¶ 78 (1997) ("*Fifth Report and Order*")) and will extend the construction deadline for stations facing

stations, sought an alternative DTV channel that might allow for improved service and operating efficiencies, and identified Channel 10 as the best allotment for hastening the commencement of DTV service.

A. The Proposed Channel Substitution Will Accelerate KLTV's DTV Conversion by Resolving Technical Problems and Improving Service to Viewers.

Grant of the proposed channel substitution will resolve specific technical problems in constructing DTV facilities and hasten the commencement of KLTV-DT's service. Operation on Channel 10 would allow KLTV to use a single antenna and transmission line for both the analog and digital stations, an arrangement not permitted if KLTV-DT operates with the initially allotted channel. The existing antenna structure from which KLTV broadcasts was designed for a single TV antenna and transmission line. By substituting Channel 10 for KLTV-DT, the station can continue using a single, dual-channel antenna and transmission line. Without the proposed channel change, Civic would be forced to use separate antennas and transmission lines to support analog and digital broadcasts. Moreover, the new VHF transmission antenna, which offers equivalent performance on any two VHF channels, would have less weight and wind-load than the current analog antenna. Accordingly, by operating on Channel 10, Civic can continue using the existing structure and avoid reinforcing the existing tower or constructing a new one.¹⁵ The Commission has identified the construction of new towers and the upgrade of existing ones as some of the "most significant issues in converting to digital broadcasting,"¹⁶ and has gone so far

financial hardship (Federal Communications Commission News Release, "*FCC Acts to Expedite DTV Transition and Clarify DTV Build-Out Rules*" (rel. Nov. 8, 2001)).

¹⁵ A second tower would be rendered superfluous when the station resumes single channel operation.

¹⁶ *Fifth Report and Order* at ¶ 92.

to establish a DTV Tower Strike Force.¹⁷ The proposed KLTV-DT channel substitution thus would enable Civic to address these “most significant” issues and commence DTV broadcasts at least six months faster than if the station remains on its currently allotted channel.

Operation on the proposed Channel 10 also would improve signal coverage for viewers in the Tyler-Longview, Texas DMA, thus ensuring effective service replication. By broadcasting in analog and digital with a single, top-mounted VHF transmission antenna, the station can deliver virtually duplicative analog and digital service patterns, thereby offering a uniformity of reception not otherwise possible.¹⁸ Furthermore, various industry DTV reception tests have shown that a higher percentage of viewers can reliably receive signals from stations broadcasting on high-band VHF channels than on UHF channels. The channel change proposal also would permit KLTV to reduce the impact of DTV build-out and operating costs through more efficient operations. Thus, grant of the channel substitution will serve the public by allowing for enhanced service and more efficient use of the broadcast spectrum.

The proposed amendment to the DTV Table of Allotments is in full compliance with the Commission’s rules. As demonstrated in the *Petition*, KLTV-DT’s proposed service area encompasses the community of license as required,¹⁹ and the proposed allotment parameters conform with the Commission’s *de minimis* interference standard.²⁰

¹⁷ The Commission said that the DTV Tower Strike Force would “aid local authorities and broadcasters by providing expedited answers to questions related to the process of assessing tower modification or construction and to facilitate the deliberations of reviewing entities” and thereby facilitate the transition to DTV. “*Commission Creates DTV Tower Strike Force to Target Potential Problems in Implementing Digital Television*,” FCC News Report No. MM 98-6 (May 29, 1998).

¹⁸ Side-mounted UHF transmission antennas diminish the ability of those viewers located in areas on the opposite side of the tower to receive a replicated signal.

¹⁹ 47 C.F.R. §73.623(c)(1).

²⁰ 47 C.F.R. §73.623(c)(2). See *Petition* at 2, Technical Exhibit.

Civic hereby reconfirms its desire and intent to construct and operate Station KLTU-DT on Channel 10 as proposed. Upon the Commission's adoption of changes in the DTV Table of Allotments as described in the *Notice*, Civic promptly will commence efforts to obtain authorization to construct KLTU-DT on Channel 10 at the parameters proposed in the *Petition* and in accordance with applicable Commission rules and policies governing construction and commencement of operation.

B. KLGU-LP Can Continue Broadcast Service on Channel 36.

Grant of the KLTU-DT channel change and the subsequent operation of KLTU-DT on Channel 10 will displace LPTV station KLGU-LP (Longview, Texas). Under the Commission's rules, the displacement of an LPTV station does not prevent the substitution of a new DTV channel for a full-power television station,²¹ and, in any event, KLGU-LP is not prejudiced by this displacement. The LPTV station can continue its operations on an alternative channel – specifically Channel 36 – and KLGU-LP's programming service thus would be preserved. As demonstrated in the attached Technical Exhibit, KLGU-LP may relocate service to Channel 36 in full compliance with the Commission's rules.²² KLGU-LP may transmit from its existing tower and at its existing antenna height. The power levels suggested in the Technical Exhibit are not obligatory but demonstrate that KLGU-LP actually can improve its service pattern. To claim this available channel, KLGU-LP need only file a displacement application, which the Commission would process promptly.²³

²¹ 47 C.F.R. § 74.702(b).

²² Technical Exhibit (*attached* as Exhibit A).

²³ “If no other prior requests for that channel had been made within the same area and the application is acceptable for filing, the Commission would propose to grant the application. Assuming no negative comments or petitions to deny, the request would be granted at the end of the 30 day period.” *MO&O on Reconsideration of Sixth Report and Order* at ¶ 97; *see also* 47 C.F.R. § 73.3572 (a)(4)(i).

Civic identified this suitable replacement channel for KLGV-LP at its own expense and has attempted for some time to work with the LPTV station's licensee, International Broadcasting Network ("IBN"), to facilitate relocation. IBN, however, has resisted Civic's overtures, making plain that it does not wish to operate KLGV-LP on another channel.²⁴ Given the Commission's rules regarding the priority of channel changes for full-power television stations, Civic cannot understand why IBN has refused to consider KLGV-LP's relocation to an alternative channel. Indeed, it is difficult to imagine, up to this point, what more Civic reasonably could have done to accommodate the concerns of a secondary station. Nonetheless, whatever IBN's position, the fact remains that Channel 36 remains available to KLGV-LP, and there is no reason why viewers should lose the LPTV station's programming service.

CONCLUSION

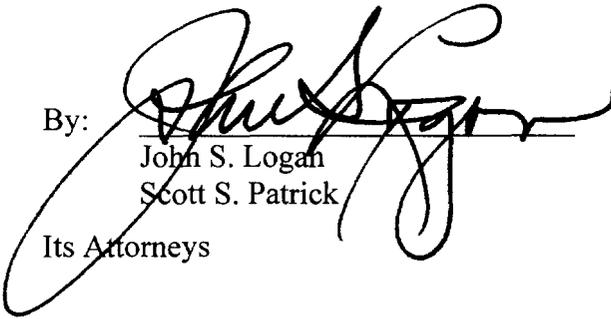
THEREFORE, for the reasons previously set forth in Civic's previous filings in this proceeding and stated herein, Civic respectfully requests that the Commission promptly adopt the changes proposed in the *Notice* and amend Section 73.622(b) of its Rules to substitute Channel 10 for Channel 38 for use by KLTV-DT at the specified reference point in Tyler, Texas. Grant of the proposed channel substitution will achieve an efficient use of the broadcast spectrum, expedite the commencement of KLTV-DT's service to the public, improve signal

²⁴ When Civic filed the *Petition*, it had not considered that the proposed channel change would displace KLGV-LP. As noted in Civic's supplemental filing, the Commission later notified Civic informally of the potential displacement. After that, Civic and IBN began discussions about KLTV-DT's channel change and KLGV-LP's relocation. Service of IBN technically was not required for a petition to amend the DTV Table of Allotments (*see* 47 C.F.R. § 1.401(d)), and, in any event, IBN was not prejudiced as it had ample notification well before the release of the *Notice* (*see* Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Farmington, Grass Valley, Jackson, Linden, Placerville and Fair Oaks, California, Carson City and Sun Valley, Nevada), *First Report and Order*, 10 FCC Red 9938, n.2 (M. M. Bur. 1995) (where compliance with Section 1.401(d) is required, the Commission will look to whether a party is prejudiced)). Civic has since provided IBN with copies of all documents it has filed with the Commission in this proceeding.

coverage, and, so long as KLGV-LP relocates to the specified replacement channel, preserves programming services.

Respectfully submitted,
CIVIC LICENSE HOLDING CO., INC.

By:



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Dated: November 13, 2001

EXHIBIT A

Technical Exhibit

TECHNICAL STATEMENT
DISPLACEMENT CHANNEL FOR KLGV-LP
LONGVIEW, TEXAS

This statement will discuss a suggested displacement television channel for low powered television station (LPTV) KLGV-LP on Channel 10 at Longview, Texas. As stated below, Channel 36 could be allocated with facilities that would have a greater predicted coverage area than that presently licensed.¹

At the existing KLGV-LP transmitter site and radiation center, Channel 36 (with a "zero" frequency offset) could be authorized with at least a visual peak effective radiated power of 10 kilowatts employing a non-directional antenna. The protected contour for suggested Channel 36 facility would completely encompass the protected contour of the existing Channel 10 facility as shown on the attached map. Also, the population (2000 Census) residing within the protected contours would increase from the existing Channel 10 49,200 persons to the proposed Channel 36 114,500 persons.

The proposed Channel 36 with the aforementioned facilities would be fully in compliance with the Commission's NTSC allocation criteria.² As for DTV, a Section 74.706 contour overlap waiver to KDFI-DT on Channel 36 at Dallas and KARD-DT on Channel 36 at West Monroe, Louisiana would be required. However, the FCC accepted OET-69 interference calculation procedure indicates that only *de minimis* interference would be actually caused to these

¹ KLGV-LP is licensed on Channel 10 with a maximum peak visual effective radiated power of 0.12 kW with a Scala directional antenna (parameters obtained from the Commission's CDBS).

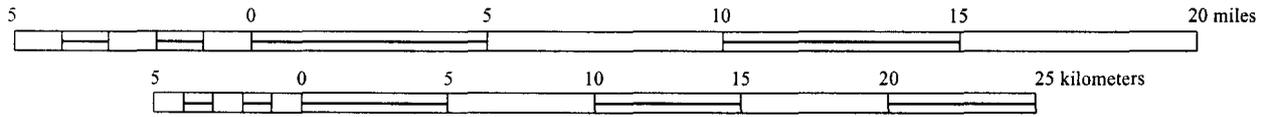
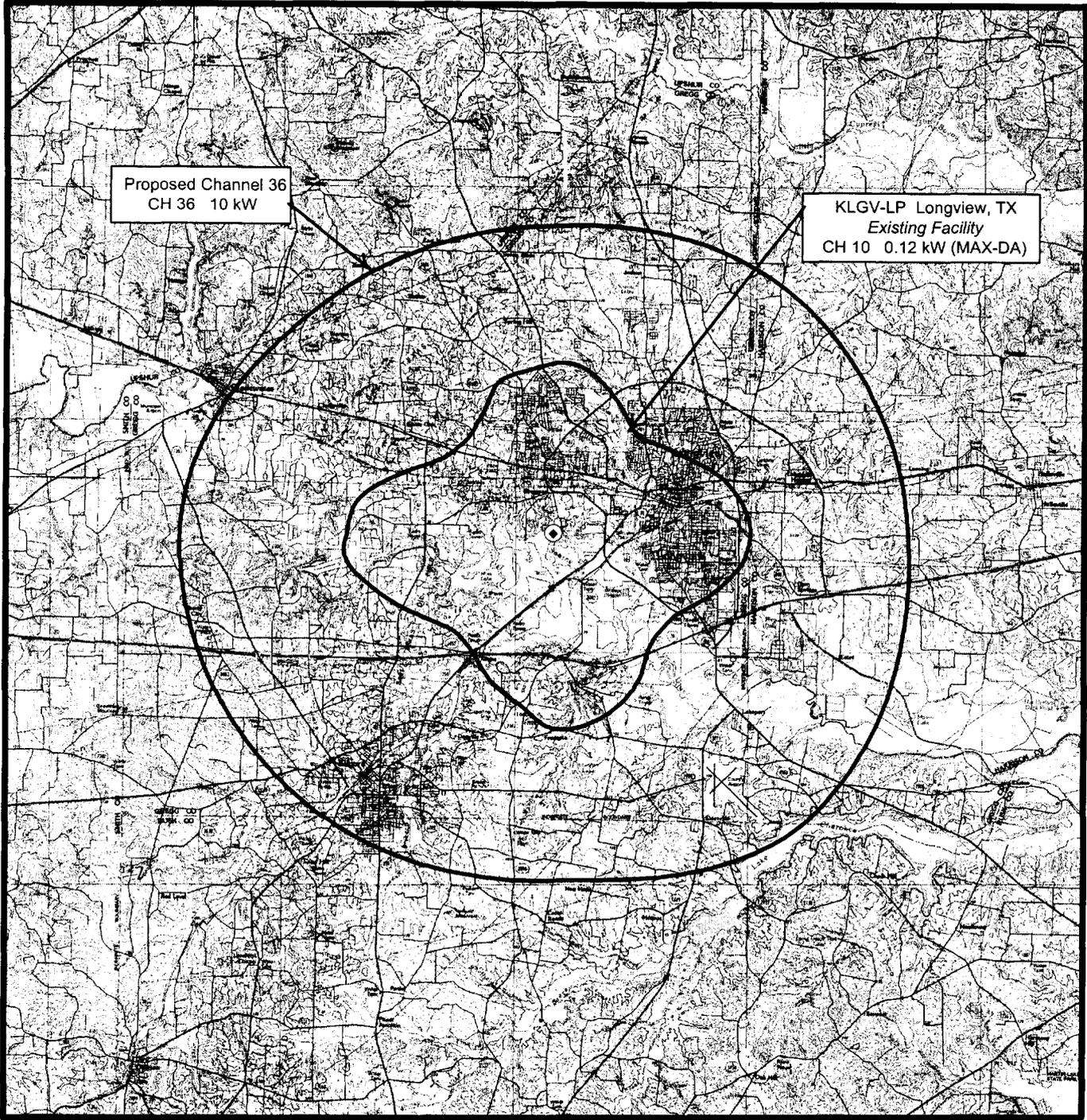
stations. Therefore, KARD-DT and KDFI-DT will not be an allocation concerns.

Charles A. Cooper

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November 12, 2001

² It is noted that the application for Channel 35 at Marshall (FCC File Number BPCT-19960723KZ) has been dismissed by the Commission and therefore, is no longer an allocation concern.



LPTV PROTECTED COVERAGE CONTOURS

PREPARED FOR
COSMOS BROADCASTING

du Treil, Lundin & Rackley, Inc., Sarasota, Florida

CERTIFICATE OF SERVICE

I, Alicia R. Harris, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 13th day of November, 2001, the foregoing "COMMENTS OF CIVIC LICENSE HOLDING COMPANY, INC." were served via first class mail to the following:

Paul J. Broyles
President
International Broadcasting Network
P.O. Box 691111
Houston, TX 77269

A handwritten signature in cursive script, reading "Alicia R. Harris", is written over a horizontal line.

Alicia R. Harris