

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

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MAR 7 - 2002
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In Re:)
)
Amendment of Section 73.606(b))
of the Commission's Rules, the)
Table of Allotments for Analog)
Television Broadcast Stations, and)
Section 73.622(b), the Digital)
Television Table of Allotments)
(Jackson, Mississippi))

RM- _____

To: Chief, Allocations Branch
Mass Media Bureau

AMENDMENT TO PETITION FOR RULE MAKING

KM Communications, Inc. ("KM"), an applicant for a new commercial full power analog television station on Channel 51 at Jackson, Mississippi, by its counsel, and pursuant to Section 1.401 of the Commission's rules, 47 C.F.R. § 1.401, and the Commission's Public Notice opening a window for filing amendments to pending petitions for rule making proposing analog television allotments on Channel 59,¹ respectfully submits this amendment to the pending Petition for Rule Making filed on July 17, 2000 by KM and other parties proposing the substitution of analog Channel 59 for analog Channel 51 at Jackson, Mississippi (the "Channel 59 Petition"). By this amendment to the Channel 59 Petition, KM petitions the Commission to amend the analog and digital television ("DTV") Tables of Allotments to substitute DTV Channel 53 for analog Channel 51 at Jackson, Mississippi, and to authorize KM to amend its pending application for a construction

¹ See Public Notice, Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Requests for New NTSC Television Stations on Channels 52-29, DA 02-270 (released February 6, 2002)(the "Filing Window Public Notice").

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permit for a new television broadcast station on analog Channel 51 to specify operation on DTV Channel 53, without subjecting its application to any new competing applications. In support of this amendment to petition for rule making, KM respectfully submits the following:

1. KM has tendered for filing and has pending an application for a construction permit for a new commercial analog television station on Channel 51 at Jackson, Mississippi (File No. BPCT-960930LW, Facility ID No. 84477). Since the reference coordinates for Jackson are within the minimum co-channel separation distance for Zone II of 174.5 miles (or 280.8 kilometers) from New Orleans, Louisiana, one of the 30 designated television markets subject to the Commission's freeze in the advanced television ("ATV") proceeding (i.e., an "ATV freeze zone"),² KM specified a transmitter site outside of the ATV freeze zone in its application.

2. In the DTV proceeding, the Commission stated that it would open a filing window, announced by Public Notice, during which pending analog full power television applications in an ATV freeze zone that would conflict with a DTV station allotment, authorization, application or rule making proposal could be amended to eliminate the DTV conflict, or could file a petition for rule making for an alternate channel below Channel 60 if necessary to avoid the DTV conflict.³ The Commission previously issued a Public Notice implementing this decision, permitting ATV freeze

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

3 See Advanced Television Systems and Their Impact on 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, FCC 98-315, 13 FCC Rcd 23992, 14 CR 674 at ¶¶ 40-42 (1998)(the "DTV Second MO&O").

area applicants to file a petition for rule making to substitute a new channel below Channel 60.⁴ On July 17, 2000, the majority of the applicants for analog Channel 51 at Jackson, Mississippi (i.e., 7 out of the 9 mutually exclusive applicants, including KM, the "Joint Applicants")⁵ jointly and timely filed the Channel 59 Petition, proposing the substitution of analog Channel 59 for analog Channel 51 at Jackson, Mississippi, in response to the Amendment Public Notice.

3. The Commission also previously stated that it would require ATV freeze applicants to demonstrate that interference to a DTV station allotment, authorization, application or rule making proposal would be caused if the proposed channel substitution is not made.⁶ In the Channel 59 Petition and the Engineering Report attached thereto, KM and the other Joint Applicants demonstrated that their analog Channel 51 application proposals would cause interference to the co-channel DTV Channel 51 allotment for WLBT-DT, Jackson, Mississippi.⁷ However, KM and the Joint Applicants noted that WLBT-DT had filed and had pending a petition for rule making to

4 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)(the "Amendment Public Notice"); 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).

5 The Joint Applicants included KM, Fant Broadcast Development, L.L.C. (File No. BPCT-960722KJ), Marri Broadcasting, L.P. (File No. BPCT-960920LT), WinStar Broadcasting Corp. (File No. BPCT-961001UU), George S. Flinn, Jr. (File No. BPCT-961001UV), United Television, Inc. (File No. BPCT-961001UW) and Natchez Trace Broadcasting Company (File No. BPCT-960710KU).

6 See DTV Second MO&O at ¶ 42; see also, Amendment Public Notice at 4.

7 See Channel 59 Petition, Engineering Report at 1. Since DTV Channel 51 has been allotted to WLBT-DT at Jackson, which is the same channel and community as the current analog Channel 51 allotment at Jackson, an analog Channel 51 operation would obviously cause "widespread interference" to WLBT-DT. Id. Therefore, the Joint Applicants submitted that a detailed interference study should not be required, but would be submitted if requested by the Commission.

change its DTV allotment to another channel; KM and the Joint Applicants therefore requested that the Channel 59 Petition be held in abeyance, and if the WLBT-DT petition for rule making is ultimately successful, KM and the Joint Applicants would request the dismissal of the Channel 59 Petition and remain on the currently allotted analog Channel 51.⁸

4. In the recently completed Channel 52-59 reallocation proceeding,⁹ the Commission stated that any pending petitions for rule making for new analog television allotments proposing operation on Channel 59, which would include the Channel 59 Petition, would be dismissed, see Reallocation Order at ¶ 44, but that such parties may file an amendment to such petitions for rule making during a filing window ending March 8, 2002, to specify DTV operation on Channels 2-58 or analog operation on Channels 2-51.¹⁰ KM is submitting this amendment to the Channel 59 Petition, to propose the substitution of DTV Channel 53 (rather than analog Channel 59) for the currently allotted analog Channel 51 at Jackson, Mississippi. However, KM again reiterates the request that this amended petition for rule making be held in abeyance, and if the WLBT-DT petition for rule making is ultimately successful, KM would request the dismissal of this amended

8 The Commission has since issued a Notice of Proposed Rule Making on this proposed change in WLBT-DT's DTV allotment. 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 "WLBT-DT NPRM"). KM filed comments in support of the proposed change in WLBT-DT's DTV Channel 51 allotment, and the pleading cycle was completed on April 30, 2001, but no order has yet been adopted in that proceeding, which remains pending.

9 See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, Report and Order, FCC 01-364 (released January 18, 2002) (the "Reallocation Order")

10 See Reallocation Order at ¶¶ 45, 191; see also, Filing Window Public Notice at 1-2.

petition proposing the substitution of DTV Channel 53 and remain on the currently allotted analog Channel 51.¹¹

5. As required by the Filing Window Public Notice and Sections 73.610 and 73.623(c) of the Commission's rules, see Filing Window Public Notice at 3 and 47 C.F.R. §§ 73.610 and 73.623(c), attached hereto as Exhibit 1 is an allocation study which demonstrates that the proposed allotment of DTV Channel 53 to Jackson, Mississippi, at the reference coordinates for Jackson, meets all legal and technical requirements, including the minimum distance separation requirement to all other analog television, DTV and Class A television broadcast station allotments, authorizations and/or applications.

6. The Commission staff has also stated that all mutually exclusive applicants with pending petitions for rule making for Channel 59 must agree on and jointly propose any new alternate channel proposed to be substituted by an amendment to their pending petition for rule making, although the Reallocation Order as adopted by the full Commission does not expressly impose such a requirement.¹² However, KM notes that in response to the earlier Amendment Public Notice filing window, the nine mutually exclusive applicants for Channel 51 at Jackson could not agree on an alternate channel to propose to substitute, with seven of the nine applicants jointly filing the Channel 59 Petition and two of the nine applicants proposing a different channel. The two applicants that declined to join in the Channel 59 Petition instead wished to propose, and did

¹¹ KM notes that on July 17, 2000, KM filed an amendment to its pending application for analog Channel 51 at Jackson to demonstrate that, assuming that the DTV Channel 51 allotment of WLBT-DT is changed as proposed to another channel, KM's proposed analog Channel 51 operation would not cause interference to any DTV station allotment, authorization, application or petition for rule making (the amendment included a proposed change in site, among other changes, to meet the required interference protection requirements).

¹² See Filing Window Public Notice at 2; but see, Reallocation Order at ¶ 45.

propose, to substitute Channel 59 as the alternate channel for applications which they had pending for analog Channel 35 at Vicksburg, Mississippi, which is located only about 45 miles away from Jackson, Mississippi and in the same Designated Market Area (“DMA”) or local market, which would conflict with the Channel 59 Petition.

7. As a result of a settlement agreement, a construction permit for analog Channel 35 has now been granted to an entity in which KB Prime Media LLC (“KB”, or a party holding an attributable interest in KB), one of the nine Channel 51 at Jackson applicants (see File No. BPCT-19960710KY), holds a controlling 50% interest; KB also has a familial relationship with the controlling principal of an existing full power television station in the Jackson DMA, WDBD(TV), analog Channel 40/DTV Channel 41, Jackson, Mississippi. As a result, KB may prefer to not join in a joint petition for an alternate channel for Channel 51 at Jackson, in the hope that all of the pending applications are dismissed, eliminating a potential competitor to its authorized new station (as well as a family member’s existing full power television station) in the Jackson, Mississippi DMA . Such a result and the potential gaming of the Commission’s processes would not serve the public interest, and should not be permitted. KM intends to file a timely petition for reconsideration of the Reallocation Order on this point, asking that the full Commission clarify that joint petitions for making or amendments to petitions for rule making are not required, or to at least consider on a case-by-case basis whether to require all pending mutually exclusive applicants to join in any amendment to a petition for rule making proposing to substitute an alternate channel.

8. Therefore, KM respectfully requests that the Commission consider this amendment to the Channel 59 Petition and KM’s request for substitution of DTV Channel 53 for analog Channel 51 at Jackson, in conjunction with any other channel that other applicants may request, or at a minimum to consider either this DTV Channel 53 proposal or any alternate proposal as a

counterproposal.¹³ KM submits that the public interest would best be served if the Commission allows all proposals to proceed to the Notice of Proposed Rule Making stage, where alternate proposals may be considered as counterproposals, to determine the most preferential arrangements of allotments, rather than to dismiss the pending applications and remove the potential for a new television broadcast service for Jackson. Furthermore, KM notes, as discussed above, that in the event WLBT-DT succeeds in changing its DTV Channel 51 allotment to an alternate channel, no channel substitution may be necessary in the first instance, and any petitions for rule making proposing an alternate channel may be dismissed.

9. KM hereby states its present intention to amend its pending application for analog Channel 51 at Jackson to specify operation on DTV Channel 53, if DTV Channel 53 is substituted for analog Channel 51 as proposed herein, during the time period specified by the Commission in its allotment order, as required by the Commission. See Filing Window Public Notice at 2-3.

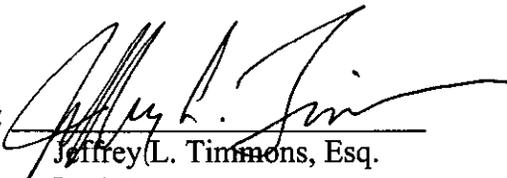
10. KM submits that this amendment to the Channel 59 Petition and the grant of the proposed substitution of DTV Channel 53 for analog Channel 51 at Jackson, Mississippi would serve the public interest by permitting the initiation of a new commercial television service serving Jackson, Mississippi and surrounding communities, without causing interference to any other existing station or any DTV station allotment, authorization, application or petition for rule making.

¹³ KM notes that this Amendment to Petition for Rule Making is being filed by overnight courier one day prior to the March 8, 2002 filing deadline as a precaution, since its counsel will be out of his office on a previously scheduled business trip on March 7 and 8, 2002, the last two days prior to the filing deadline, and to date there has been little or no meaningful discussion or consensus among the other applicants for Channel 51 at Jackson. If the other applicants are able to reach consensus on and jointly file an amendment to the Channel 59 Petition proposing a viable alternate channel, KM agrees that it would file a request to be included in any such joint filing, accompanied by the dismissal of this filing conditioned upon such inclusion.

11. Wherefore, the above premises being considered, KM respectfully requests that the Commission accept this amendment to the Channel 59 Petition for rule making; amend Section 73.606(b), the Table of Allotments for analog television broadcast stations, to delete analog Channel 51 at Jackson, Mississippi; amend Section 73.622(b), the DTV Table of Allotments, to add DTV Channel 53 at Jackson, Mississippi; and authorize KM to amend its pending application for Channel 51 at Jackson, Mississippi to specify operation on DTV Channel 53, without subjecting KM's application to any new competing applications.

Respectfully submitted,

KM Communications, Inc.

By: 
Jeffrey L. Timmons, Esq.
Its Attorney

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March 6, 2002 (for filing by overnight courier on March 7, 2002)

Amendment to Petition for Rule Making, Exhibit 1

Proposed Digital Television Channel 53 Spacing/Allocation Study

**T.Z. Sawyer Technical Consultants
Bethesda, Maryland**

Dataworld Digital TV Spacing Study

Title: Jackson, MS DTV Search

Latitude: N 32° 17' 56.0"

Channel: 53 Zone II (704-710 MHz) Digital

Longitude: W 90° 11' 06.0"

Database: FCC 2/26/2002 6:38:28 PM

Safety Zone: 120.0 km

Call	Auth	Licensee name	Chan	HAAT(m)	ERP	Latitude	Br-to	Dist	Req
City of License		St	FCC File Number	Zone	HAMSL(m)	Longitude	-from	(km)	(km)
KMCT-TV	LIC	LOUISIANA CHRISTIAN B/CASTING, I	39 +	152.0	562	N 32° 30' 21.0"	277.6	186.1	96.60
WEST MONROE		LA	BLCT-19860612KE	II	178.0	W 92° 08' 54.0"	96.6	89.53	CLEAR
WBXH-CA	CP	THE BOX WORLDWIDE LLC	39 -		140	N 30° 36' 50.0"	208.2	211.8	96.60
BATON ROUGE		LA	BMJPTTA-20010702ADK		167.4	W 91° 14' 02.0"	27.7	115.2	CLEAR
DA: PSI PSI-LP12ML @ 115.0°									
960724KR	APP	MISSISSIPPI AUTH ED TV	*45 o	113.0	589	N 31° 16' 00.0"	163.7	119.2	96.60
COLUMBIA		MS	BPET-19960724KR	III	183.0	W 89° 49' 56.0"	343.9	22.63	CLEAR
ALLOC		MISSISSIPPI AUTHORITY FOR EDUCAT	*45 o			N 31° 15' 15.0"	164.0	120.5	96.60
COLUMBIA		MS		III		W 89° 50' 08.0"	344.2	23.87	CLEAR
WKDH	CP	SOUTHERN BROADCASTING, INC.	45 +	491.0	1854	N 33° 47' 40.0"	31.3	195.0	96.60
HOUSTON		MS	BMPCT-20010207ABF	II	594.0	W 89° 05' 16.0"	211.9	98.37	CLEAR
DA: SWR SWMPS24ML-45 @ 80.0°									
WBXH-CA	LIC	THE BOX WORLDWIDE LLC	46 -		59.5	N 30° 36' 50.0"	208.2	211.8	96.60
BATON ROUGE		LA	BLTTL-19900410IC		168.0	W 91° 14' 02.0"	27.7	115.2	CLEAR
DA: BOG B24UT @ 150.0°									
PRM	ADD	Global Radio, Inc.	50 -			N 30° 25' 11.0"	199.3	220.6	96.60
PLAQUEMINE		LA		III		W 90° 56' 50.0"	18.9	124.0	CLEAR
ALLOC		HENRY J. MCGINNIS	51 o			N 32° 17' 54.0"	264.4	0.631	24.10
JACKSON		MS		II		W 90° 11' 30.0"	84.4	23.50	CoLoc
960722KJ	APP	FANT B/C DEVELOPMENT	51 o	180.0	5000	N 32° 17' 44.0"	266.3	5.716	24.10
JACKSON		MS	BPCT-19960722KJ	II	271.0	W 90° 14' 44.0"	86.3	18.40	CoLoc
960920LT	APP	MARRI BROADCASTING, LP	51 o	293.0	1510	N 32° 16' 53.0"	259.3	10.52	24.10
JACKSON		MS	BPCT-19960920LT	II	386.0	W 90° 17' 41.0"	79.3	13.60	CoLoc
960930LW	APP	KM COMMUNICATIONS, INC.	51 o	351.0	4000	N 32° 16' 53.0"	259.3	10.52	24.10
JACKSON		MS	BPCT-19960930LW	II	442.0	W 90° 17' 41.0"	79.3	13.60	CoLoc
961001UU	APP	WINSTAR BROADCASTING CORP	51 o	377.0	730	N 32° 16' 53.0"	259.3	10.52	24.10
JACKSON		MS	BPCT-19961001UU	II	468.0	W 90° 17' 41.0"	79.3	13.60	CoLoc
961001UV	APP	GEORGE S. FLINN, JR	51 o	377.0	724	N 32° 16' 53.0"	259.3	10.52	24.10
JACKSON		MS	BPCT-19961001UV	II	468.0	W 90° 17' 41.0"	79.3	13.60	CoLoc
961001UW	APP	UNITED TELEVISION, INC.	51 o	371.0	5000	N 32° 14' 26.0"	252.6	21.64	24.10
JACKSON		MS	BPCT-19961001UW	II	460.0	W 90° 24' 15.0"	72.5	2.460	CoLoc

Dataworld Digital TV Spacing Study

Title: Jackson, MS DTV Search
Channel: 53 Zone II (704-710 MHz) Digital

Latitude: N 32° 17' 56.0"

Longitude: W 90° 11' 06.0"

Safety Zone: 120.0 km

Database: FCC 2/26/2002 6:38:28 PM

Call City of License	Auth	Licensee name St	FCC File Number	Chan Zone	HAAT(m) HAMS(L)(m)	ERP (kW)	Latitude Longitude	Br-to -from	Dist (km)	Req (km)
960711LI JACKSON	APP	EDWARD I. ST. PE MS	BPCT-19960711LI	51 o II	146.0 228.0	5000	N 32° 33' 55.0° W 90° 04' 51.0°	18.2 198.3	31.12 -65.5	96.60 SHORT
DA: AND ODD960711LI @ 0.0°										
960710KU JACKSON	APP	NATCHEZ TRACE BROADCASTING COM MS	BPCT-19960710KU	51 o II	228.0 308.0	5000	N 32° 36' 51.0° W 90° 01' 00.0°	24.2 204.3	38.38 -58.2	96.60 SHORT
960710KY JACKSON	APP	KB COMMUNICATINS CORP MS	BPCT-19960710KY	51 o II	554.0 645.0	5000	N 32° 41' 25.0° W 89° 52' 06.0°	34.2 214.4	52.63 -44.0	96.60 SHORT
WJTV JACKSON	CP	MEDIA GENERAL COMMUNICATIONS, IN MS	BPCDT-19991025AEF	52 II	464.0 554.0	1000	N 32° 14' 26.0° W 90° 24' 15.0°	252.6 72.5	21.64 2.360	24.00 CoLoc
Digital channel										
PRM EL DORADO	ADD	Global Radio, Inc. AR		*52 o II			N 32° 46' 49.0° W 92° 24' 31.0°	285.0 103.8	215.6 109.6	106.0 CLEAR
960612KF NEW IBERIA	APP	IBERIA COMMUNICATIONS, LLC LA	BPCT-19960612KF	53 - III	303.8 312.1	5000	N 30° 20' 32.0° W 91° 58' 32.0°	218.5 37.6	275.9 31.28	244.6 CLEAR
DA: AND ATW30H3-HTP3-53H @ 0.0°										
WHBQ-TV MEMPHIS	CP	FOX TELEVISION STATIONS, INC. TN	BPCDT-19990929ABG	53 II	234.0 322.0	1000	N 35° 10' 29.0° W 89° 50' 43.0°	5.5 185.7	320.5 96.82	223.7 CLEAR
Digital channel										
WBIQ BIRMINGHAM	CP	ALABAMA EDUCATIONAL TELEVISION C AL	BPEDT-20011218ABF	53 II	365.0 555.0	31	N 33° 29' 04.0° W 86° 48' 25.0°	66.4 248.2	342.3 118.6	223.7 CLEAR
Digital channel										
WABG-TV GREENWOOD	CP	MISSISSIPPI BROADCASTING PARTNER MS	BPCDT-19991013ABI	54 II	572.0 607.0	1000	N 33° 22' 23.0° W 90° 32' 25.0°	344.6 164.4	123.7 13.68	110.0 CLOSE
Digital channel										
WUPL SLIDELL	LIC	VIACOM BROADCASTING OF SEATTLE, LA	BLCT-19950530KE	54 + III	213.0 219.0	4370	N 30° 17' 08.0° W 89° 54' 18.0°	173.1 353.3	224.8 118.8	106.0 CLEAR
DA: AND ODD950530KE @ 0.0°										
960920LV WIGGINS	APP	KB COMMUNICATIONS CORPORATION MS	BPCT-19960920LV	56 + III	609.0 680.0	5000	N 31° 07' 09.0° W 89° 38' 49.0°	158.7 338.9	140.4 43.80	96.60 CLEAR
ALLOC WIGGINS		KB COMMUNICATIONS CORPORATION MS		56 + III			N 30° 52' 54.0° W 89° 18' 44.0°	152.1 332.5	177.6 81.03	96.60 CLEAR
WTJP GADSDEN	LIC	TRINITY BROADCASTING NETWORK AL	BLCT-19860731KP	60 o II	352.0 623.0	5000	N 33° 48' 53.0° W 86° 26' 55.0°	63.2 245.2	387.3 290.7	96.60 CLEAR
DA: AND ODD860731KP @ 0.0°										

Dataworld Digital TV Spacing Study

Title: Jackson, MS DTV Search
Channel: 53 Zone II (704-710 MHz) Digital

Latitude: N 32° 17' 56.0°

Database: FCC 2/26/2002 6:38:28 PM

Longitude: W 90° 11' 06.0°
Safety Zone: 120.0 km

Call	Auth	Licensee name	Chan	HAAT(m)	ERP	Latitude	Br-to	Dist	Req	
City of License		St	FCC File Number	Zone	HAMSL(m)	(kW)	Longitude	-from	(km)	(km)
960725LB	APP	MARRI BROADCASTING, LP	61	o	136.0	1510	N 30° 44' 44.0°	130.5	262.8	96.60
MOBILE		AL	BPCT-19960725LB	III	151.0		W 88° 05' 40.0°	311.6	166.2	CLEAR

>> End of channel 53 Zone II study <<

CERTIFICATE OF SERVICE

I, Jeffrey L. Timmons, hereby certify that on this 6th day of March, 2002, copies of the foregoing "Amendment to Petition for Rule Making" have been served by overnight courier and then hand delivery or by U.S. priority mail, postage prepaid, upon the following:

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* denotes service by overnight courier then hand delivery