

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73 622(b),)	MM Docket No. 01-43
Table of Allotments,)	RM-10041
Digital Television Broadcast Stations.)	
(Jackson, Mississippi))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 23, 2003

Released: October 1, 2003

By the Chief, Video Division:

1. At the request of Civic License Holding Company, Inc. ("Civic"), licensee of station WLBT-TV, NTSC channel 3, Jackson, Mississippi, the Commission has before it the Notice of Proposed Rule Making, 16 FCC Rcd 4408 (2001), requesting the substitution of DTV channel 9 for station WLBT-TV's assigned DTV channel 51. Comments were filed by George S. Flinn, Jr. ("Flinn"), Gene A. Blalock ("Blalock"), licensee of station WBMS-LP, Jackson, Mississippi, KM Communications, Inc. ("KM"), an applicant for a new analog TV station operating on channel 51, Jackson, Mississippi, and Civic.¹ In response to the *Notice*, Vicksburg Channel 35 Associates, LLC ("VCA"), an applicant for a new NTSC facility on channel 35, Vicksburg, Mississippi, filed a counterproposal requesting the allotment of DTV channel 9 to Vicksburg, Mississippi.² Civic, Blalock, KM and VCA filed reply comments.³

¹ Civic's comments were limited to stating its confirmation to construct and operate station WLBT-TV on DTV channel 9

² Vicksburg requested dismissal of its counterproposal after the record closed. Therefore, the comments and responses relating to Vicksburg's proposal will not be discussed and the counterproposal is dismissed. In accordance with Section 1.420(j) of the Commission's Rules, Vicksburg submitted a statement that it has not received any consideration, directly or indirectly, in exchange for the withdrawal of its counterproposal

³ After the record closed CivCo, Inc., (successor-in-interest to Civic License Holding Company, Inc.) filed a Section 1.65 Supplement and Blalock filed a response. CivCo filed its late-filed comments pursuant to the provisions outlined in Section 1.65 of the Commission's rules. Section 1.65 permits the filing of information that indicates a substantial change of decisional significance in a pending application in a Commission proceeding. Civic's pleading includes a DTV Interference Agreement between Civic, LibCo, licensee of station KAIT-TV, Jonesboro, Arkansas; and WTVA, licensee of station WTVA-TV, Tupelo, Mississippi. Specifically, the agreement states that CivCo, LibCo and WTVA will accept certain mutual interference among their respective digital television stations. The agreement indicates that CivCo plans to operate on DTV channel 9 with 20 kW ERP and 610 meters antenna HAAT. However, our engineering analysis finds that the proposed maximization of DTV channel 9 with 18 or 20 kW ERP is unacceptable for consideration. The studies indicate that operating at the higher powers, DTV channel 9 would cause harmful interference to the licensed facility of station KNOE-TV, Monroe, Louisiana. In addition, CivCo maximization proposals do not meet the maximum height/power limits as set forth in Section 73.622(f) of the Commission's rules. In light of our findings, CivCo's supplement and Blalock response are moot.

2. KM and Flinn filed comments stating that they support Civic' s channel substitution proposal noting that they are among the 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-TV. KM contends that the public interest would be served by adopting Civic' s proposal since channel 51 is within the "core" channels. Allowing station WLBT-TV to operate on DTV channel 9, according to KM, would facilitate the resolution of the pending applications for a new commercial television station on analog channel 51 serving Jackson, Mississippi.

3 Blailock, the licensee of station WBMS-LP, states that he has filed a Statement of Eligibility for Class A Low Power Television Station Status and the statement was accepted on the Commission' s Public Notice, DA 00-1224, dated June 2, 2000, acknowledging that WBMS-LP is entitled to file a Class A application.⁴ Blailock opposes the allotment of DTV channel 9 at Jackson because of the adverse impact the substitution will have on the existing service provided by WBMS-LP. He further notes that Civic has filed an amendment to its application for DTV channel 9 proposing to increase its ERP to 20 kW and to change to a non-directional antenna. Blailock submits that using standard FCC curves, the protected contour for WBMS-LP is 68 dBu and the interference of WLBT-DT is 80 dBu. The overlapping of those contours, Blailock asserts, will result in significant loss of service for its facility. Blailock argues that WBMS-LP is entitled to protection within its "Protected Contour" of 68 dBu (F50/50) since Civic' s proposed change is not required due to "technical problems...requiring an engineering solution" within the meaning of the Community Broadcasters Protection Act of 1999, 47 U.S.C. Section 336(f)(1)(D). Blailock concludes that given the lack of a technical compulsion, Civic' s channel substitution proposal should be denied.

4. In response to Blailock opposition, Civic reiterates its intention to seek authority to maximize its facilities to 20 kW ERP. Civic states the source of its interest in substituting DTV channel 9 for DTV channel 51 is the ability to maximize facilities and that it worked to submit the petition and maximization request by May 1, 2000, in order to meet the deadline established by Congress for broadcasters to specify protected maximized facilities. Civic also amended its comments stating that it will seek authority to increase power to 18 kW ERP, instead of 20 kW ERP. Civic argues that operating on channel 9 at 3.2 kW will not provide adequate service replication. More importantly, Civic states, " it will not seek the substitution of channel 9 unless assured that the maximization application will be granted."

DISCUSSION

5. Generally, the Commission will not consider a petition to add an allotments contingent

⁴ On January 15, 2003, the Commission approved Blailock application (BLTVA-20010712AHC) to convert to Class A status.

upon the grant of another application.⁵ We will only consider the allotment parameters proposed in the Notice of Proposed Rule Making, and not the parameters that a petitioner (as Civic does in this proceeding) may specify in an application for an un-allotted channel. Additionally, Civic has clearly stated that it does not intend to pursue the proposed channel substitution of channel 9 unless it is assured that the maximized facility can be granted. Although, an allotment proceeding is not the appropriate vehicle for consideration of the grant-ability of a modification application, we note that Civic's maximization proposal would cause harmful interference to the licensed facility of station KNOE-TV, Monroe, Louisiana. Thus, the proposed modification is not grantable. Based upon Civic's unqualified statement that it would not construct a DTV facility on channel 9 at the lower power specified in its petition, Civic's petition will be dismissed. See, e.g., Joshua Tree, California, 4 FCC Rcd 3801 (1989), Bridport, Vermont, 5 FCC Rcd 6172 (1990), and paragraph 2 of the Appendix to the *Notice*. Since we are dismissing Civic's proposal, we need not address the issues raised by Blailock.

6. In view of the above, IT IS ORDERED, That the Petition for Rule Making filed by Civic License Holding Company, Inc. (RM-10041), requesting the substitution of DTV channel 9 for station WLBT-TV's assigned DTV channel 51 at Jackson, Mississippi, IS DISMISSED.

7 IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8 For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

⁵ See Cut and Shoot, Texas, 11 FCC Rcd 16383 (1996)