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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAR 12 2004

Federal Communication Commission
Bureau / Office

In the Matter of)
)
Amendment of Section 73.622(b))
Digital Television Table of Allotments)
Anchorage, Alaska)

MM Docket No. 04-____
RM-____

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MAR 17 2004

Federal Communications Commission
Office of the Secretary

To: Chief, Allocations Branch

**SECOND AMENDMENT TO
JOINT PETITION FOR RULE MAKING**

Channel 2 Broadcasting Company (“Channel 2 Broadcasting”), licensee of NBC-affiliated, commercial, analog television station KTUU-TV, Channel 2, Anchorage, Alaska, and permittee of unbuilt digital television station KTUU-DT, Channel 18, Anchorage, Alaska; Alaska Public Telecommunications, Inc. (“Alaska Public Telecom”), licensee of PBS-affiliated, noncommercial educational, analog television station KAKM(TV), Channel 7, Anchorage, Alaska, and permittee of unbuilt digital television station KAKM-DT, Channel 24, Anchorage, Alaska; and Smith Television License Holdings, Inc. (“Smith Television”), licensee of ABC-affiliated, commercial, analog television station KIMO(TV), Channel 13, Anchorage, Alaska, and permittee of unbuilt digital television station KIMO-DT, Channel 30, Anchorage, Alaska, (each, a “Joint Petitioner” and collectively, the “Joint Petitioners”), by their attorneys, and pursuant to Section 1.401 of the Commission’s rules, hereby jointly further amend the Joint Petition for Rule Making (“Joint Petition”) filed by Channel 2 Broadcasting and Alaska Public Telecom on February 20, 2003 (the “Original Joint Petition), as amended by Channel 2 Broadcasting, Alaska Public Telecom, and Smith Television on July 24, 2003 (the “First Amended Joint Petition”)(the Original Joint Petition, as amended by this Second Amendment, the “Second Amended Joint Petition.”). By this Second Amended Joint Petition, the Joint

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Petitioners continue to urge the Commission to amend Section 73.622(b) (Digital Television Table of Allotments) of the Commission's rules and regulations as follows:

<u>Community</u>	<u>Current Allotment</u>	<u>Proposed Allotment</u>
Anchorage, AK	18, 20, 22, *24, *26, 28, 30, 32	*8, 10, 12, 20, 22, *26, 30, 32

Introduction

1. This Second Amended Joint Petition results from numerous, informal, very helpful, discussions with the staff of the Video Services Division of the Commission's Media Bureau's relating to (a) the power levels earlier proposed by the Joint Petitioners, and (b) the two conditions proposed in the First Amended Joint Petition. The purpose of this Second Amended Joint Petition is to meet or moot, as the case may be, any concerns that the Bureau's staff may have had.

2. As relates to proposed power levels, and as shown in the three Engineering Statements which comprise Exhibit A attached hereto, the Joint Petitioners hereby delete their prior power level requests, and substitute the following requests:

For KAKM-DT, to operate on Channel 8 with 50 kW ERP from the F.A.M. Tower Site. This power level has been agreed to by Alaska Broadcast Television, Inc. ("ABT"), applicant for a new noncommercial analog television broadcast station on Channel 9, Anchorage, Alaska (FCC File No. BPET-19961115KE), as evidenced by Section 2 of the Settlement Agreement ("Settlement Agreement") which was filed with the Commission on March 2, 2004 under ABT's and Alaska Public Telecom's "Joint Request for Approval of Agreement" ("Joint Request") which, if granted, will result in the dismissal of Alaska Public Telecom's application for Channel 9 and the grant of ABT's application for the same channel. The Joint Request, including the Settlement Agreement, is attached hereto as Exhibit B.

For KTUU-DT, to operate on Channel 10 with 27kW ERP from the Frank A. Mengel Broadcast Site (the "F.A.M. Tower Site"). (Since the attached Engineering Statement for KTUU-DT demonstrates that its DTV proposal, as contained herein, will not cause prohibited interference to either ABT's proposed analog use of Channel 9 or to Alaska Public Telecom's proposed use of Channel 9, the Commission may adopt the requested Notice of Proposed Rule Making without having to await action on the Joint Request filed by ABT and Alaska Public Telecom.)

For KIMO-DT, to operate on Channel 12 with 50 kW ERP from the F.A.M. Tower Site. Site").

3. The Bureau also requests that the following two proposed conditions be deleted from the First Amended Joint Petition:

"(1) Under the DTV allotments approved herein for KTUU-DT and KIMO-DT, each station will be permitted to seek to increase power above the 15 kilowatts authorized herein from the F.A.M. Tower Site simply upon application for modification of their respective digital authorizations, and neither KTUU-DT nor KIMO-DT shall be required to petition for any type of rule making as a condition to the filing or grant of such application for increased power; provided, that the station seeking to increase digital power demonstrates, through measurements or other appropriate methodology, that its operation at the increased power will not result in more than a 2% increase in interference to the population served by KTVA(TV) and that KTVA(TV) will not in the aggregate receive interference in excess of 10% of its population.

"(2) Notwithstanding the DTV allotments approved herein for KTUU-DT and KIMO-DT at 15 kilowatts of power from the F.A.M. Tower Site, the protected digital contour of each station shall be deemed to be that contour generated by each station at 100 kW of power from the F.A.M. Tower Site and neither station shall be under any present or future requirement to increase its facilities above 15 kilowatts in order to preserve such protection until one calendar year after KTVA(TV) has ceased operating in the NTSC mode on Channel 11."

The Bureau's staff has stated that Condition No. 1 is not necessary and that Condition No. 2 is not acceptable.

Discussion

4. Joint Petitioners hereby delete from their rule making proposal Condition No. 1 based on the Bureau staff's assurances that each Joint Petitioner will continue to have the right to seek to maximize power at any later time simply upon application for modification so long as such increased power will not result in more than a 2% increase in interference to the population served by the pertinent station or stations to be protected and that such pertinent station or stations will not in the aggregate receive interference in excess of 10% of their respective populations, unless the affected station or stations agree(s) to accept interference above these limits. Furthermore, the Joint Petitioners understand that, given the uniqueness of the topography of the Anchorage television market, the Commission will be open to giving due consideration (without any present assurances of favorable action) to the filing of actual measurements and other appropriate evidence in determining whether a grant of such applications is necessary or appropriate to better serve the public interest.

5. With respect to the second condition, the Joint Petitioners essentially asked the Commission to treat these DTV channel reallocations as "initial" DTV allotments so that each of the three stations would be protected out to its existing NTSC contours unless and until the FCC requires full replication. The Bureau has stated that such a proposal is not acceptable. The problem posed by the staff's position is that if the rule making reaches fruition and the stations are constructed in accordance with the rule making, each of the Joint Petitioners would be assuming the risk that it might be precluded from improving its coverage of the Anchorage

television market if any first adjacent NTSC or DTV channel station were to move transmitter sites and/or increase power and/or antenna height.

6. Having said that, and given the need to move this Joint Petition matter along, realistically the Joint Petitioners have no alternative and thus hereby delete the second condition from their proposal. They remain hopeful, however, that if a genuine issue of adequate DTV coverage of Anchorage by their DTV stations emerges, the FCC will act quickly to insure that the public interest is well served through these three DTV stations. While the Joint Petitioners are committed to commencing digital broadcasts as expeditiously as possible, they are, and have been throughout this proceeding, very concerned regarding issues of coverage and signal penetration.

7. As the Commission knows, the Joint Petitioners are all members of the Anchorage Broadcast Television Consortium (the "Consortium"), which includes the six NTSC VHF commercial and noncommercial television broadcast stations licensed to serve the Anchorage television market. As the Commission is aware, Anchorage's unique and difficult geography, consisting of a vast geographic area and extremely rugged topography, has posed many hurdles to the implementation of digital service by the Anchorage licensees. With the failure of the Consortium's earlier plans to collocate its members' digital facilities, the Joint Petitioners now seek to commence digital operations from their existing commonly owned analog transmitter site. However, given the F.A.M. Tower Site's location 12 miles north of Anchorage as well as the height of the existing tower, the Joint Petitioners have determined that digital operation from the F.A.M. Tower Site on their authorized UHF channels will simply not provide the necessary effective and reliable digital coverage of Anchorage and certainly not of the full Anchorage "television market" given its uniquely challenging terrain. Indeed the

Commission is well aware of the uniqueness of the Anchorage television market. *See Wrangell Radio Group*, 75 FCC 2d, 9 (1980) (noting that “Alaska’s unique terrain, its remoteness and isolation, justify special treatment regarding its television situation”), *David E. Hilliard, Esquire*, 55 RR 2d 1005 (1984) (stating “We are cognizant of the significant broadcast related problems faced by the State of Alaska resulting from its unique demographic and geographic characteristics. In consideration thereof we have historically treated Alaska in a special manner and we intend to do so in the future.”).

8. For this reason, each of the Joint Petitioners intends to return to the Commission to seek appropriate increases in power if circumstances warrant. As the Commission has recognized throughout the DTV proceeding, “the implementation of DTV will be a dynamic process and . . . mechanisms would be needed to accommodate changes that will occur.” *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, ¶ 303 (1998). In that same proceeding, the Commission also noted, “[t]hroughout this proceeding, we have stated that we intend to provide broadcasters with the flexibility to develop alternative allotment approaches and plans. We specifically stated that we would consider alternative allotment/assignment plans that are the result of negotiations and coordination among broadcasters and other parties within their communities.” *Id.* at ¶ 187 (footnote omitted). Petitioners’ proposal is entirely consistent with these statements. *See also id.* at ¶ 84 (noting that “[i]n certain instances, grants for increased power may be conditioned on validation of performance through field measurements of actual station operation . . .”).

9. The Joint Petitioners note that with the addition of Smith Television to this Joint Petition as amended, an additional member of the Consortium has been added to this plan to

collocate facilities in order to reduce individual costs and to aid in the prompt implementation of a comprehensive plan to provide DTV service to the Anchorage market. This additional Consortium member is a co-owner of the F.A.M. Tower Site, from which it currently operates its analog facilities along with the other Joint Petitioners. Thus, it will be much more financially efficient for Joint Petitioners to collocate at their owned, analog site than to attempt individually to locate and obtain permission to use disparate sites elsewhere. Accordingly, the Joint Petitioners reiterate the request made in the Original Joint Petition that the Commission act as promptly as possible to grant this Joint Petition as amended. None of the Joint Petitioners is presently aware of any objections to the modified proposals contained herein.

10. Should the Commission allot the channels requested in this Second Amended Joint Petition, each Joint Petitioner will promptly apply for modification of its DTV construction permit and undertake to build and operate its DTV station if its modification application is granted.

Conclusion

For the foregoing reasons, the Joint Petitioners respectfully renew their request that the Commission promptly initiate the rule making requested in this Second Amended Joint Petition by adopting a Notice of Proposed Rule Making which proposes to substitute:

(i) DTV Channel 8 for DTV Channel 24 at Anchorage as the digital television channel assigned to KAKM-DT with an ERP of 50 kW operating from the F.A.M. Tower Site;

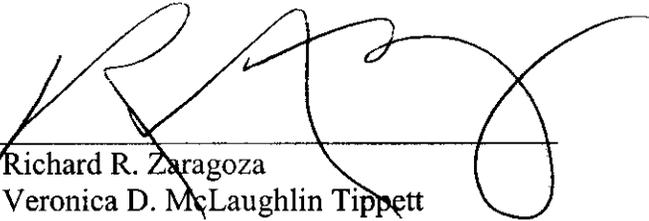
(ii) DTV Channel 10 for DTV Channel 18 at Anchorage as the digital television channel assigned to KTUU-DT with an ERP of 27 kW operating from the F.A.M. Tower Site; and

(iii) DTV Channel 12 for DTV Channel 30 at Anchorage as the digital television channel assigned to KIMO-DT with an ERP of 50 kW operating from the F.A.M. Tower Site, and to modify the Joint Petitioners' respective digital construction permits accordingly.

Respectfully submitted,

Channel 2 Broadcasting Company
Alaska Public Telecommunications, Inc.
Smith Television License Holdings, Inc.

By:



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