

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

In the Matter of	)	
	)	
Second Periodic Review of the	)	MB Docket No. 03-15
Commission's Rules and Policies	)	RM 9832
Affecting the Conversion to	)	
Digital Television	)	
	)	
KMGH-DT, Denver, Colorado	)	FCC File No BFRCCCT-20050815ADV
KTSC-DT, Colorado Springs, Colorado	)	FCC File No BFRCCCT-20050815AOO
To: Office of the Secretary		
Attn: Chief, Media Bureau		

**JOINT REQUEST FOR APPROVAL OF DTV CHANNEL ELECTIONS**

McGraw-Hill Broadcasting Company, Inc. ("McGraw-Hill"), permittee of KMGH-DT, Denver, Colorado ("KMGH"), and Rocky Mountain Public Broadcasting Network, Inc. ("Rocky Mountain"), permittee of KTSC-DT, Pueblo, Colorado ("KTSC"), by their attorneys, hereby submit this Joint Request for Approval of DTV Channel Elections. KMGH serves as the ABC affiliate for the Denver Designated Market Area ("DMA"). KTSC serves as the PBS affiliate for the Colorado Springs-Pueblo DMA and is a satellite of Rocky Mountain's Denver parent station, KRMA-TV ("KRMA").

To advance the DTV transition in their markets in the most efficient manner, McGraw-Hill and Rocky Mountain elected their stations' analog channels of 7 and 8 respectively for post-transition operations. KMGH has operated on Channel 7 since 1953, while KTSC has operated on Channel 8 since 1971 and from its present location for almost four years. The existing Channel 7 and Channel 8 operations have not harmed the public. By their channel elections, McGraw-Hill and Rocky Mountain therefore seek merely to continue operating these stations' broadcast facilities on the same frequencies that they already use without incident.

Following notification from the Commission about its prediction of mutual interference, however, McGraw-Hill and Rocky Mountain promptly investigated the technical and operational aspects of their stations' channel elections – and options. After consideration of all relevant factors, the broadcasters concluded that the public interest would best be served by retaining their channel elections for KMGH and KTSC. Accordingly, the parties entered into the Interference Acceptance Agreement attached as Exhibit A, commissioned the Technical Statement of duTreil, Lundin & Rackley, Inc. attached as Exhibit B, and hereby request Commission approval of their DTV channel elections.

While both permittees are concerned about their stations' DTV facilities predicted inability to reach the entirety of those stations' baseline service populations, they conclude, as should the Commission, that other factors more than outweigh those concerns. McGraw-Hill and Rocky Mountain, therefore, submit that the Agreement does not raise irresolvable issues of concern for the Commission as enumerated in the Commission's August 2nd DTV Channel Election *Public Notice* (DA 05-2233). Moreover, as shown here, approval of the Agreement and the stations' respective channel elections would best serve the public interest and the goals of the DTV transition.

**I. Amount of Proposed Interference**

The Commission calculated that post-transition operation of KMGH on its elected Channel 7 would cause predicted interference to 33.5 percent of KTSC's service area population. The Commission calculated that post-transition operation of KTSC on its elected Channel 8 would cause predicted interference to 1.3 percent of KMGH's service area population. As discussed below, however, these levels of predicted interference grossly overstate the extent of new interference that would result from the proposed DTV channel elections.

## **II. Amount of Cumulative Interference**

The Technical Statement calculates that KMGH's post-transition operation on Channel 7 would receive cumulative interference from all DTV stations of 2.0 percent of its baseline service population. It also concludes that KTSC's post-transition operation on Channel 8 would receive cumulative interference from all DTV stations of 56.47 percent of its baseline service population.

## **III. Availability of In-Core DTV Channels**

The Commission assigned in-core DTV channels of 17 and 26 to KMGH and KTSC respectively. Nevertheless, numerous complicating factors affect these stations' DTV channel elections and make the assigned DTV channels much less desirable for post-transition operation. These factors, which are discussed in Section VI, are part and parcel of why the parties – independently of each other – elected their NTSC channels for their stations' post-transition operations and why use of those elected NTSC channels would best serve the public interest.

## **IV. Location of Interference**

Figure 1 of the Technical Statement demonstrates that the area of predicted interference caused by KMGH to KTSC occurs *entirely outside* of KTSC's DMA. Figure 3 confirms that the area of predicted interference caused by KTSC to KMGH occurs *entirely outside* of KMGH's DMA. Consequently, the DTV channel elections will not prevent local viewers in the Denver and Colorado Springs markets from receiving their local ABC and PBS affiliates' signals.

As also reflected in the Technical Statement, McGraw-Hill and Rocky Mountain note that KMGH and KTSC are fully spaced for DTV allocation purposes.

## **V. Viewers in the Loss Area Would Remain Very Well Served**

The Commission characterizes an area as “well served” if the residents in the area receive at least five full-power television services.<sup>1</sup> The Technical Statement confirms that both areas of predicted interference at issue here are well served. In particular, Figure 1 illustrates that the predicted KMGH-to-KTSC interference area would receive at least 13 other DTV services, including parent station KRMA and two other noncommercial television stations. Figure 3 confirms that the predicted KTSC-to-KMGH interference area would receive at least 10 other DTV services, including the ABC network’s local affiliate for the Colorado Springs DMA, KRDO-TV.

## **VI. Public Interest Considerations Compel the Commission’s Consent to the DTV Channel Elections.**

### **A. Operation of KMGH and KTSC on their Elected Channels Will Not Cause A Noticeable Loss of Service.**

Since KMGH and KTSC first signed on the air many decades ago, they have operated analog facilities on the very channels that the permittees now elect for the stations’ post-transition operations. That history and unique terrain issues demonstrate that the Commission’s prediction of mutual interference does not reflect the likelihood of any noticeable loss of service.

#### **1. Interference Areas Do Not Receive Analog Service Today.**

While the Commission predicted a sizeable loss of KTSC’s baseline service population, the fact is that the overwhelming majority of these residents cannot currently receive KTSC’s analog signal. Figure 4 of the Technical Exhibit illustrates the effect of the area’s severe terrain and interference from other NTSC and DTV services on the reception of KTSC’s signal in the

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<sup>1</sup> See, e.g. Amendment of Sections 73.606(b), Table of Allotments, Television Broadcast Stations; and 73.622(b), Table of Allotments, Digital Broadcast Television Stations (Asheville, North Carolina and Greenville, South Carolina), *Report and Order*, DA 03-2479, ¶ 4 (2003).

predicted interference area. These features preclude KTSC from delivering its analog signal to the great majority of the area and population within the predicted area of interference. A mere 18,200 persons out of KTSC's baseline service population of 1,167,552 persons – representing just 1.3 percent – will receive new interference from KMGH's digital operations on Channel 7.

Likewise, the mountainous terrain and other NTSC and DTV services in the area impede KMGH's ability to provide analog service to the area of KTSC-to-KMGH predicted interference. As reflected in Figure 5, the interference area today receives very little service from KMGH's analog signal on Channel 7. In particular, only 7,850 persons within KMGH's baseline service population of 2,956,719 persons – representing just 0.3 percent – will receive new interference from KTSC's digital operations on Channel 8. Consequently, the stations' DTV channel elections will result in *de minimis* losses of technical service.

## **2. KTSC Does Not Provide Non-Technical Service to the Denver Interference Area.**

Residents of the KMGH-to-KTSC predicted interference area, even if they could receive an analog signal from KTSC, simply do not watch that station. As the Figure 2 demonstrates, the predicted interference area lies entirely within the Denver DMA, as well as entirely within the service area of KTSC's parent station, KRMA. Rocky Mountain's KRMA provides essentially the same programming service as KTSC. In fact, the roughly five percent of KTSC's weekly programming that does not duplicate KRMA's programming is programming specifically produced for and directed at the Colorado Springs-Pueblo market.

Over-the-air viewers in the interference area are situated much closer to KRMA's transmitter and therefore receive a powerful signal from KRMA than KTSC. (The effect of antenna pointing also undercuts actual service from KTSC, because these Denver area residents point their antennas toward Denver, not Colorado Springs.) Residents in the effected area

accordingly tune to KRMA instead of KTSC for PBS programming service, and these viewers will continue to rely on KRMA regardless of the predicted interference to KTSC.

It is therefore irrelevant whether the population predicted to receive interference is 1% or 40% of KTSC's baseline service population because the permittee, Rocky Mountain, already serves those areas with essentially the same programming through another closer and more powerful full-power television station (KRMA). The 33.5 percent of the KTSC baseline service area population predicted to receive interference, therefore, does not point to an actual loss of service. The salient fact for the broadcasters here – and, they submit, for the Commission – is the nearly complete absence of interference from KMGH to the largely unduplicated service provided by Rocky Mountain's network. Accordingly, McGraw-Hill and Rocky Mountain submit that the extent of KMGH-to-KTSC predicted interference is not inconsistent with the Commission's goals or interference standards for DTV elections.

**3. KMGH Does Not Provide Non-Technical Service to the Colorado Springs Interference Area.**

The Colorado Springs television market has its own full-power ABC affiliate, KRDO-TV. As depicted in Figure 3, all areas of predicted interference caused by KTSC to KMGH occur within the Colorado Springs DMA and within the service area of KRDO-TV. As noted above, residents of the KTSC-to-KMGH interference area cannot receive KMGH's analog signal due to intervening terrain. Quite simply, residents of the interference area do not currently watch KMGH, and they instead watch, and will continue to watch, KRDO for ABC network service.

Consequently, not only would neither television station suffer a loss of viewers within its own market, but local viewers in Denver and Colorado Springs will retain their ability to receive their local ABC and PBS affiliates' signals. The Commission's calculation of predicted

interference from the DTV channel elections at issue here do not reflect or portend any actual loss of service.

**B. Rocky Mountain Can Ill-Afford to Operate KTSC on its Assigned DTV Channel.**

The continued use of VHF Channel 8 by KTSC would help to mitigate the already extensive financial, technical, and operational obstacles that Rocky Mountain faces in maintaining a regional public television station network in Colorado. Like any public broadcaster, Rocky Mountain must be a careful steward of its fiscal resources, a task made immensely more difficult for Rocky Mountain by the challenges of extensive mountainous terrain, vast plains, and varying climates throughout Colorado. Rocky Mountain succeeds in providing public television service to a majority of the state's residents through a network of four full-power television stations in Denver, Pueblo, Grand Junction, and Durango. Rocky Mountain has devoted substantial resources to the DTV transition, with total expenditures already totaling more than \$10 million for its four full-power television stations. Further significant expenses are anticipated to convert to DTV service Rocky Mountain's extensive television translator network, which provides service to countless residents whose access to over-the-air full-power signals are impeded by the state's geography.

Rocky Mountain has long planned for KTSC to return to its analog channel for post-transition operations, largely because of the immense cost savings associated with operating a VHF Channel (Channel 8) relative to the assigned UHF DTV Channel (Channel 26). Rocky Mountain sought and received a special federal grant for KTSC's DTV conversion through the Corporation for Public Broadcasting's ("CPB") Digital Universal Service Fund ("DUSF") program to permit it to build-out KTSC's DTV facilities on Channel 26 on a "low power" basis, consistent with the Commission's policies for low power DTV STAs.

As the Commission is well aware, CPB designed the DUSF program to provide funding for public DTV conversions.<sup>2</sup> In brief, the DUSF program places special emphasis on providing funding assistance to small and rural NCE stations that otherwise would be unable to pay for the costs of DTV conversion. It also provides grant awardees with the equipment needed to deliver basic DTV service to their local communities.

Rocky Mountain never intended to use DTV Channel 26 facilities for KTSC's post-transition operation, and, it therefore did not plan or seek funding for these facilities beyond that required to satisfy the Commission's build-out and replication deadlines. For Rocky Mountain now to switch to Channel 26 may result in additional – and unplanned – capital expenses of approximately \$1.5 million *as well as* additional – and unplanned – recurring expenses for power of approximately \$165,000 per year (representing a 500% increase). Forcing Rocky Mountain, at this late date in the transition, to use DTV Channel 26 for KTSC would impose an unreasonable and costly burden on a noncommercial educational licensee that already struggles against the geographical and topographical challenges in Colorado to serve its mission of providing the sole public television service to a rural area.

In its Fifth Report and Order on DTV conversion, the Commission recognized “that noncommercial stations, as a group, may have more difficulty with the transition to DTV than commercial stations,” and it therefore concluded that “noncommercial stations need and warrant special relief to assist them in the transition.”<sup>3</sup>

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<sup>2</sup> See <[http://www.cpb.org/about/corp/board/resolutions/0206\\_ddf.pdf](http://www.cpb.org/about/corp/board/resolutions/0206_ddf.pdf)> and Attachment 1, *CPB Resolution Authorizing DUSF Program*.

<sup>3</sup> *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order*, 12 FCC Rcd 12809, 12847-48, ¶ 93 (1997) (“*Fifth Report and Order*”).

For these reasons, Rocky Mountain submits that its special status as a noncommercial educational station provides a compelling and disparities consideration weighing in favor of KTSC's DTV channel election.

**C. The Permittees Knowingly Entered into the Agreement.**

After due consideration of the factors discussed above, McGraw-Hill and Rocky Mountain voluntarily and independently determined that their stations should retain their NTSC channel assignments and consent to the mutual interference. The parties most affected by the predicted interference, therefore, have analyzed all their options and concluded that mutual interference consents in the form of the Agreement reflect the most efficient allocation of rights, responsibilities, and resources. In light of the unusual, if not unique, circumstances presented in this case, the Commission should recognize the public interest benefits resulting from the voluntary solution reached at arms' length by the affected broadcasters here.

**Conclusion**

For these reasons, McGraw-Hill and Rocky Mountain respectfully submit that the Commission’s approval of the Interference Acceptance Agreement would serve the public interest. While very concerned about any instances of predicted interference, a consideration of all relevant factors led McGraw-Hill and Rocky Mountain independently to decide to retain the NTSC assigned channels for their television stations and enter into the Agreement. Most importantly for the permittees and the Commission, the parties have concluded that their DTV channel elections will result in new interference, on paper only, of 0.3 percent (KMGH) and 1.3 percent (KTSC) and no new loss of actual (non-technical) service for either television station.

Consequently, McGraw-Hill and Rocky Mountain respectfully request that the Commission approve the Agreement and grant the KMGH’s election of Channel 7 for post-transition operation and KTSC’s election of Channel 8 for post-transition operation.

Respectfully Submitted,

**ROCKY MOUNTAIN PUBLIC  
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**MCGRAW-HILL BROADCASTING  
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