

June 28, 2006

VIA ECFS

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
ATTN: Video Services Division

Note: Exempt From Filing Fees

Re: **Request for Waiver of July 1, 2006 DTV Replication/Maximization Deadline**  
Noncommercial Educational Station KRMA-TV/DT, Denver, CO  
Facility ID: 14040 / FRN: 0001615582  
**MB Docket No. 03-15**

Dear Ms. Dortch:

On behalf of Rocky Mountain Public Broadcasting Network, Inc. (“RMPBN”), licensee of noncommercial educational station KRMA-TV, Denver, Colorado, and pursuant to the FCC Public Notice in DA 06-1255, *DTV Channel Election Issues – Compliance with the July 1 Replication/Maximization Interference Protection Deadline* (June 14, 2006), we hereby request a waiver of the July 1, 2006 replication requirements. As discussed below, this waiver request is submitted out of an abundance of caution due to the recent filing of KRMA-TV Third Round Channel Election and its possible effects on the station’s replication requirements.

In its *Second DTV Periodic Review Report and Order*,<sup>1</sup> the Commission adopted a July 1, 2006 replication/maximization protection deadline for noncommercial DTV licensees. The Commission stated that, in cases where a station was unable to meet the applicable deadline due to “circumstances beyond a station’s control,” it would “grant extensions of the applicable replication or maximization interference protection deadline on a six-month basis if good cause is shown.”<sup>2</sup>

RMPBN certified that it would operate post-transition “replication” facilities for KRMA-DT in its November, 2004 Pre-Election Certification. See FCC File No. BCERET-

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<sup>1</sup> Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279 (rel. Sept. 7, 2004) (“*Report and Order*”).

<sup>2</sup> *Id.*, ¶ 87.

20041105ADV. At that time, RMPBN planned to return to KRMA-TV's NTSC Channel 6 for post-transition DTV operation, and made its First Round Channel Election accordingly in FCC File No. BFREET-20050131AQI. That meant, among other things, that it would be subject to an 80% replication requirement at the July 1, 2006 deadline.<sup>3</sup>

However, unforeseeable circumstances beyond RMPBN's control have recently forced RMPBN to reconsider its post-transition DTV channel and transmitter site plans. RMPBN's construction permit for KRMA-DT, as granted by the FCC in July, 2003 in File No. BMPEDT-20030728AJU, specified use of a tower site at Mount Morrison outside of Denver. Unfortunately, a protracted legal battle over the zoning and permissible use of that site has prevented RMPBN from building out its authorized DTV facility for KRMA-TV. RMPBN holds a construction permit to relocate its KRMA-TV NTSC Channel 6 facility to the same site, and the FCC recently granted tolling of that permit (and those of two co-located noncommercial FM stations) due to the administrative hearings and rulings which continue to preclude construction.<sup>4</sup> In the meantime, RMPBN has built out its KRMA-DT digital facility on DTV Channel 18 at an alternate downtown Denver site pursuant to a grant of Special Temporary Authorization ("STA") in FCC File No. BDSTA-20030224ADA.

In May of this year, a Colorado Appeals Court decision dealt a serious set-back to RMPBN's plans to construct its dual analog-digital facilities for KRMA-TV at Mount Morrison by reversing a lower court decision which had affirmed a local Board of Commission's approval to permit the tower construction. As a result of the continuing delays that the legal proceedings will impose on the build-out at that site, and in the interest of expediting its DTV transition, RMPBN recently prepared and submitted two additional FCC filings for KRMA-DT: (1) a minor modification of construction permit application, to specify use of the current downtown STA site (rather than troubled Mt. Morrison site) at an ERP of 18 kW and a HAAT of 178 meters (FCC File No. BMPEDT-20060526ADW); and (2) a Third Round Channel Election of KRMA-TV's current DTV Channel 18, to replace its current post-transition designation of low VHF Channel 6 (FCC File No. BTREET-20060526ADT).

The FCC has already acted quickly in processing and granting, as of June 15, 2006, the May 26 application which modified the KRMA-DT construction permit to specify use of the current downtown STA site. The new permit does not expire until December 16, 2006. The modifications also included an increased ERP (and slightly reduced antenna height) as compared to the existing operation under the STA in place for KRMA-DT. Operation pursuant to the now-granted modified permit will allow RMPBN to meet the 80% replication standard required of stations that receive a DTV channel designation on a channel that is not their current DTV channel (as presently applies to KRMA-TV given its current channel designation is its initially approved election of NTSC Channel 6).

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<sup>3</sup> Id.

<sup>4</sup> See FCC File Nos. BPET-19990107KE, BPED-20030728AJV, and BPED-20030728AFL.

Due to the timing of the recent judicial action affecting the site plans, and of the resulting modification of permit filing (as filed one month ago, and granted one week ago), RMPBN will not have sufficient time to complete the now authorized power upgrade at the existing site, as required to meet the 80% replication level, by July 1. In particular, it will take approximately 12 weeks for delivery of the new DTV transmitter that will be needed to produce the increased power output. Nonetheless, pursuant to the policies set forth in the above-referenced June 14, 2006 Public Notice, RMPBN does not require a waiver with respect to the 80% replication standard because of the December 15, 2006 expiration date of its modified DTV permit.

However, RMPBN recognizes that waiver of the replication deadline for KRMA-TV may become necessary if and when the FCC approves the station's recent third round DTV channel election of Channel 18. Should that occur, KRMA-TV will hold a post-transition channel designation for its *existing* DTV channel, requiring construction of "full, authorized DTV facilities,"<sup>5</sup> which FCC staff has confirmed requires 100% analog replication. In that event, even after RMPBN completes the recently authorized power upgrade at its existing site (as needed to reach 80% replication, as explained above), the KRMA-DT operation will still fall short of 100% replication.

RMPBN submits that a waiver would be justified in that circumstance by the long-running, yet recently complicated, Denver-area tower site issues, which have been outside of RMPBN's control and have forced a re-thinking of KRMA-TV's permanent digital conversion plans. Notably, those circumstances have prevented use of the long-planned Mt. Morrison site for KRMA-TV/DT and resulted in the need for RMPBN to request, within the last six weeks, a change to KRMA-DT's post-transition channel election. As explained above, the re-election filing could in turn increase the station's replication percentage requirements, while at the same time RMPBN is left to examine new technical and power options at a site which until recently it did not intend to utilize as a permanent DTV facility location. A waiver would allow RMPBN to preserve its ability to further modify the KRMA-DT facility at the downtown site, or perhaps even some other site, to provide greater levels of replication on DTV Channel 18. In light of recent events, RMPBN continues to investigate the availability of various options for increasing KRMA-DT's coverage, and therefore will require a waiver to preserve its interference and replication protection for KRMA-TV/DT in the event that Channel 18 is designated as its permanent post-transition DTV channel.

RMPBN is a noncommercial educational broadcaster and operates station KRMA-TV/DT on a noncommercial educational basis. RMPBN is therefore exempt from filing fees pursuant to Section 1.1114 of the FCC's Rules, and exempt from regulatory fees pursuant to Section 1.1162 of the FCC's Rules. The applicant certifies that no party to the waiver request is subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

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<sup>5</sup> Second Periodic Review, ¶ 78.

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Should any questions arise concerning this waiver request, kindly contact this office.

Very truly yours,



Todd D. Gray

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Public Broadcasting Network, Inc.

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