

July 7, 2006

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: MB Docket No. 3-15: Request for Waiver of the Replication/  
Maximization Interference Protection Deadline for Colorado Public  
Television (CPT), licensee of KBDI-TV (Channel 12) and  
KBDI-DT (Channel 38), Denver - Broomfield, Colorado

Dear Mrs. Dortch:

By this letter, Colorado Public Television (CPT) requests a waiver of the July 1, 2006, Replication/Maximization Interference Protection Deadline for the above-referenced DTV station. (*See, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, at Paragraph 78 (2004); see also Public Notice DA 06-1255 (June 14, 2006).)

As discussed in detail below, a waiver is warranted here because the commencement of full-power operations by CPT on its current DTV channel 38 allocation would waste a noncommercial educational station's valuable public resources at a time when CPT is in the process of concluding a Negotiated Channel Election Arrangement with another noncommercial broadcaster, Nebraska Educational Telecommunications (NET), that would allow CPT to request the FCC to have its permanent DTV channel allocation changed to Channel 13.

To understand the evolution of this request, which CPT will file with the FCC when the Agreement is agreed to and signed by both parties, requires some detailed background.

CPT's original six-phase DTV conversion plan was prepared in 1999. It called for KBDI to elect its current analog channel, channel 12, for its final DTV channel assignment. CPT also prepared a substantial public fundraising plan (\$3.5 million) to complete the conversion.

For economic and engineering reasons it was and remains important for KBDI to be able to stay on a VHF channel. KBDI's transmitter site is at 11,200 feet, which makes a full power UHF transmitter considerably more expensive than one for use at a lower elevation.

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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CPT had planned to accept the FCC's allocation of channel 38 as a temporary assignment, while it continued to broadcast the KBDI analog service on channel 12, and to apply for allocation of DT-12 in the First Round of the DTV Channel Election process.

CPT had studied the FCC's table of DTV allocations and determined that there would be no interference questions regarding the use of channel 12 for KBDI's DTV service. There were no DT channel 12 assignments, nor any DT channel assignments for adjacent channels 11 and 13, close enough to cause interference. There was a DT channel 11 assignment to KDEV-DT, a commercial station in Cheyenne, Wyoming. But CPT reasonably assumed that the KDEV DTV transmitter and tower would be constructed and located to serve Cheyenne in much the same fashion as the KDEV analog channel 33 had been, and in that case there would be no interference issue with KBDI using channel 12 for its DTV service.

Accordingly, from 1999 to 2004, CPT proceeded with implementation of the first four phases of its DTV conversion plan according to the initial design. It also proceeded with its fundraising efforts, which were closely tied to and explained to private and federal funders in terms of the six-phase conversion plan.

Included in that plan, in Phase Three, was the replacement of KBDI's existing, but highly antiquated channel 12 transmitter with a new analog transmitter that would carry the channel 12 analog service through the transition period and then be converted to channel 12 DTV service in Phase Six, at the time of the final conversion. Phase Three was completed in 2002.

Phase Four of the plan called for the acquisition of a smaller power interim channel 38 transmitter, which was to be used to meet the FCC's deadline for commencing DTV transmission in 2004. KBDI planned to use that new transmitter throughout the transition. Phase Four was completed in 2003.

The costs of Phases Three and Four of the CPT DTV plan were met in large part by federal grants from the Public Telecommunications Facilities Program ("PTFP") of the National Telecommunications Information Administration of the Department of Commerce, and the Digital Distribution Fund ("DDF") of the Corporation for Public Broadcasting ("CPB"). Those grants, totaling \$0.742 million, and matched by another \$0.550 million raised in the community by CPT, were premised on CPT's plans for the conversion of the new analog channel 12 transmitter to DT channel 12.

Meanwhile, without CPT's knowledge, KDEV, a commercial television station licensed to Cheyenne, Wyoming, had applied to the FCC to locate its DT transmission site not in Wyoming, but in Colorado, with the apparent intent of allowing KDEV to add much of the Denver Metropolitan area to its DT service profile. CPT was surprised to find that the FCC had granted Denver Broadcasting, Inc., licensee of KDEV, its requested move to a site 45 miles south-southwest of Cheyenne, its city of license. This site, just west of Fort Collins, CO is 57 miles north of Denver and 43.5 miles north of Broomfield, CO, KBDI's city of license. KDEV began its DTV channel 11 service from its transmission site in Colorado in 2004.

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CPT discovered the site relocation and the existence of the new DT channel 11 propagation pattern only after KDEV-DT had been constructed and was operating. At that point it became clear to CPT that there would now be an interference issue with CPT's DT channel 12 plan. CPT had no direct recourse as to KDEV, because the FCC had approved the DTV channel 11 transmission site relocation to Colorado.

At the point CPT discovered the KDEV channel 11 interference problem, CPT faced a choice. It could accept the DT channel 38 allocation as the permanent KBDI DT assignment. Or it could find an alternative frequency to use other than channel 12, that would save federal taxpayer funds and the public and private contributions that CPT had received.

CPT discovered the channel 11 problem only shortly before the FCC's deadline for the first round of DTV channel assignments. With inadequate time to develop a clear alternative plan CPT could only file a notice of intent to develop an alternative plan to use channel 13.<sup>1/</sup> CPT has been working on that alternative plan ever since.

If CPT were to accept channel 38 permanently, its financial loss, and therefore the public's loss, would be great. CPT would have to both dispose of its recently purchased new channel 12 analog/digital transmitter and purchase yet another channel 38 transmitter. The new channel 38 transmitter is incapable of being upgraded to full power. It therefore would not meet FCC service requirements. The cost of acquiring a new channel 38 transmitter would be on the order of \$1.2 million, a 34 percent increase in the total CPT digital conversion budget. The return on the disposal of the new channel 12 transmitter would be a fraction of its original cost. Together these two events would constitute a large financial burden for CPT, and they also would be wasteful of the investment of federal funds in the prior transmitter purchases.

Using channel 13 was potentially far less costly. If CPT could use channel 13 for its DTV assignment, it would be able to convert its new analog channel 12 transmitter to that frequency, just as it had planned to do for DT channel 12.

DT channel 13 was allocated to Nebraska Educational Telecommunications in Alliance, Nebraska. CPT began working with NET to find a way that KBDI could use DT channel 13 in Colorado while avoiding unacceptable interference to NET's use of DT channel 13 in Nebraska. Because CPT and NET are both noncommercial, educational (NCE) licensees they have common interests in serving the public and not wasting public resources.

It took until mid-2006 for CPT to find an antenna design for CPT's proposed DT Channel 13 service in Colorado that would meet the proper interference prevention standards. NET has reviewed that design and agrees that it will be possible for KBDI's DT channel 13 to operate in

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<sup>1/</sup> CPT requested Channel 13 in the first round of channel elections but its request was denied on procedural grounds, since KBDI had not filed an agreement freeing that channel See In re Negotiated Channel Election Arrangements, MM No. 03-15, DA 05-1619 (rel. June 8, 2005), at n.8.

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Colorado without causing undue interference with the NET channel 13 digital service from KTNE, Alliance, Nebraska. The two licensees are in the process of finalizing a Negotiated Channel Election Arrangement certifying that agreement, and they will be submitting it to the FCC shortly.

KBDI's specific request at this time is that it be allowed to operate KBDI-DT, channel 38, at the present 42 kW ERP without jeopardizing its 1000 kW authorization, until the question of whether KBDI can obtain an authorization for channel 13 is finally settled. This interim ERP provides coverage to over 80% of KBDI's base population.

For the reasons stated above, many of which involved circumstances beyond CPT's control, the public interest would be served by granting Colorado Public Television additional time to comply with the replication/maximization deadline.

Should the FCC seek further information in connection with this request, please contact the undersigned or Willard Rowland, KBDI President, using the contact information below. For engineering questions, please contact Byron St. Clair, Engineering Consultant to KBDI, whose contact information is also provided below.

Sincerely,

/s/

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Frank W. Lloyd  
Counsel for Colorado Public Television

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