

July 7, 2006

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Via ECFS

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Attention: Video Division, Media Bureau

Re: KUPN(TV), Sterling, Colorado
Facility ID No. 63158
MB Docket No. 03-15
Request for Waiver of the July 7, 2006 Maximization Deadline

Dear Ms. Dortch:

Channel 20 TV Company ("Channel 20"), the licensee of analog television station KUPN(TV), Sterling, Colorado, and permittee of digital television station KUPN-DT, Sterling, Colorado ("KUPN"), requests a waiver of the July 7, 2006 maximization interference protection deadline for KUPN.

KUPN has been operating as a satellite station of KTVD(TV), Denver, Colorado, Facility ID No. 68581 ("KTVD"), licensed to Twenver Broadcast, Inc. ("Twenver"), which was commonly owned with Channel 20. On June 26, 2006, Twenver sold KTVD to Multimedia Holdings Corporation. As a satellite station, special treatment would have been available to KUPN with regard to the July 7, 2006 interference protection deadline.¹ In fact, on the advice of FCC staff, KUPN submitted notification on February 10, 2005 of its intent to "flash cut" to digital service at the end of the transition. See Exhibit 1. The Commission has not yet responded to or issued a decision with respect to KUPN's flash cut notification.

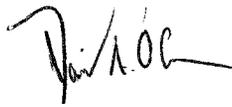
¹ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, MB Docket No. 03-15, FCC 04-192, para. 104 (rel. Sept. 7, 2004) ("*Second Periodic Review*"); see also *DTV Channel Election Issues — Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*, Public Notice, DA 06-1255 (rel. June 14, 2006); *DTV Channel Election Issues — Media Bureau Extends Filing Deadline for Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline to July 7, 2006*, Public Notice, DA 06-1372 (rel. June 29, 2006).

KUPN intends to expend the resources necessary to comply with the February 17, 2009 conversion deadline. However, as a satellite station, KUPN's ability to construct digital facilities was impaired by the "Lake Cedar" issues that encumbered KTVD and other Denver television stations.² Considering KUPN's very recent change from satellite to full-service station and the multitude of adjustments necessary to accommodate this transition, Channel 20 is now unable to build maximized digital facilities in time to meet the July 7, 2006 deadline. Thus, because of the unique circumstances presented by this situation, KUPN requests a waiver of the July 7, 2006 maximization deadline.

In the event there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for Channel 20 TV Company

Enclosure

cc: Shaun Maher, Video Division

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² See FCC File No. BEPCDT-20050819ABV (accepted for filing Aug. 22, 2005). An update on the status of the Lake Cedar proceeding is attached hereto as Exhibit 2.

EXHIBIT 1

O'Connor, David (WAS - X71889)

From: O'Connor, David (WAS - X71889)
Sent: Thursday, February 10, 2005 8:50 PM
To: 'form382@fcc.gov'; 'form382@fcc.gov'
Subject: KUPN, Flash-cut notification

Attachments: KUPN(TV).pdf



KUPN(TV).pdf
(182 KB)

Reference Information:

Call Sign: KUPN(TV)
Community: Sterling, Colorado
Licensee: Channel 20 TV Company ("Channel 20")
Facility ID No. 63158
NTSC Channel: 3
DTV Channel: 23

This e-mail confirms that Channel 20 has elected to "flash-cut" on satellite station KUPN, as described in the attached letter to the Commission dated today, with a copy to Nazifa Naim. This filing is being made in conformance with the Commission's Public Notice dated February 1, 2005 (DA 05-273).

Thank you for your consideration.

Respectfully submitted,

David O'Connor
Counsel for Channel 20 TV Company

Holland + Knight

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be available to protect confidentiality.

February 10, 2005

DAVID A. O'CONNOR
202-828-1889

Internet Address:
doconnor@hklaw.com

VIA HAND DELIVERY

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
236 Massachusetts Ave., NE, Suite 110
Washington, DC 20002
Attention: Video Division, Media Bureau

Re: KUPN(TV), Sterling, CO
Facility ID No. 63158
Notification of "Flash-Cut" Decision

Dear Ms. Dortch:

On behalf of Channel 20 TV Company, the licensee of analog television station KUPN(TV), Sterling, Colorado and permittee of digital television station KUPN-DT, Sterling, Colorado ("KUPN"), and pursuant to the *Report and Order* in the Commission's Second DTV Periodic Review proceeding (MB Docket No. 03-15, FCC 04-192, rel. Sept. 7, 2004), we hereby notify the Commission that KUPN-DT intends to "flash-cut" to digital transmission at the end of the DTV transition. KUPN is operated as a satellite of television station KTVD-TV, Denver, Colorado.

Pursuant to the *Report and Order*, satellite stations are permitted to surrender a paired channel and elect to flash-cut at the end of the transition, provided such stations notify the Commission of their flash-cut decision by the initial channel election deadline. Accordingly, we hereby notify the Commission that KUPN has elected channel 23 on its FCC Form 382 filed today, and effectively surrenders use of and any rights to channel 3 at the end of the digital transition. KUPN will continue to operate its analog station on channel 3 until the end of the transition.

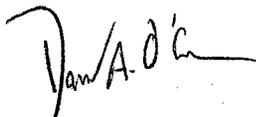
An FCC Form 162 is enclosed, along with a copy of the filing to be date-stamped. Please date-stamp the extra copy and return it to the courier.

Federal Communications Commission
February 10, 2005
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In the event there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "D. A. O'Connor", written over a horizontal line.

David A. O'Connor
Counsel for Channel 20 TV Company

Enclosure

cc: Nazifa Naim (FCC)
form382@fcc.gov (via e-mail)

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EXHIBIT 2

**STATUS REPORT ON LAKE CEDAR GROUP
MULTI-USER TOWER ON LOOKOUT MOUNTAIN
AS OF JUNE 30, 2006**

The Commission is well aware of the long history of the Lookout Mountain zoning litigation, as set forth in prior requests for extension of time to construct, and will not be repeated here. The recent status is as follows:

On September 17, 2003, the City of Golden, CARE and other parties (the "Plaintiffs") filed a Complaint with the District Court, County of Jefferson, Colorado, seeking review of the Jefferson County Board of Commissioners' grant of Lake Cedar's rezoning application, along with a claim for preliminary and permanent injunction and declaratory relief (Case No. 03 CV 3045). Lake Cedar filed a motion seeking dismissal of the injunction claims and the declaratory judgment claim. On December 12, 2003, the Court dismissed the declaratory judgment claim but allowed the injunction claims to proceed. Lake Cedar filed an Answer to the Complaint on December 22, 2003.

On January 16, 2004, Plaintiffs filed a Motion to Stay the Effect of the Zoning Resolution and for Preliminary Injunction seeking to enjoin the Board from issuing development and building permits and seeking to enjoin Lake Cedar from continuing development and construction of the new tower. Plaintiff's Motion also sought to stay the effect of the Board's August 19, 2003 grant of rezoning. After pleadings were filed, a one-day hearing on the Motion was heard on March 26, 2004 at the conclusion of which District Judge R. Brooke Jackson entered a preliminary stay order enjoining the County from allowing Lake Cedar to begin construction of its proposed multi-user telecommunications tower pending: (1) the County permitting Plaintiffs to respond in a meaningful way to certain so-called "late-filed" documents; and (2) the County receiving and considering competent evidence on the "guy wire failure" issue.

In accordance with the Court's order, after notice as provided by law, the Jefferson County Board of Commissioners held further hearings on August 12 and August 17, 2004 for the taking of evidence and the hearing of argument on the two issues specified by the Court and on August 31, 2004, for the purpose of rendering a decision. On August 31, the Board found that "the applied for rezoning is in its [*sic*] best interest of the health, safety, morals, convenience, order, prosperity and welfare of the residents of Jefferson County" and unanimously voted to adopt the resolution approving the rezoning of the Lookout Mountain site to accommodate the Lake Cedar tower as proposed in the Site Development Plan.

On September 3, 2004, Lake Cedar filed with the Court a Status Report requesting confirmation that the County's further hearing and decision complied with the Court's order of March 26, 2004 and, therefore, the stay order was lifted by its own terms. Jefferson County on September 7, 2004 joined in the Lake Cedar Status Report stating "the Board believes it has fully complied with the Court's 'stay order,' and agrees [with Lake Cedar] that the stay order should be vacated" and sought the Court's "guidance with regard to scheduling further proceedings. . .

.” By handwritten order of September 13, 2004, Judge Jackson ruled that “the parties may re-brief the issue and/or set another hearing. The Court will not lift the stay based upon the defendant’s request alone (without complying w/ C.R.C.P. 121 §1015(8) either).”

On September 20, 2004 Lake Cedar filed a Motion to Lift Stay which was joined in by the County and opposed by Plaintiffs. On September 29, 2004, Plaintiffs filed a Motion for Leave to File an Amended Complaint. After the receipt of other pleadings, Judge Jackson, on October 25, 2004, issued an Order stating:

The [Jefferson County] Board has since conducted additional hearings and has reaffirmed its decision to permit Lake Cedar to proceed with construction. Lake Cedar wants the preliminary injunction lifted. Plaintiffs oppose the motion. They note that the Board has not yet certified a record of its additional hearings. They argue that the certified record will demonstrate that the Board has still not received competent evidence concerning the guy wire issue, and that it makes no sense to dissolve the preliminary injunction with a permanent injunction hearing yet to come.

Given plaintiffs’ representation as to what the certified record will demonstrate concerning the guy wire issue, the Court at this time denies the motion to lift the stay. I caution plaintiffs, however, to keep in mind the narrow focus of the remand order and the limited jurisdiction of courts in respect to review of administrative action under C.R.C.P. 106(a)(4).

The Court directs the Board to certify the record as soon as possible, and it directs the parties to set a permanent injunction hearing promptly after the record is certified. If it appears that the plaintiffs are not complying with the latter direction, the Court may reconsider this order. To the extent plaintiffs’ motion for filing a certification of record is not rendered moot by the foregoing direction to the Board, it is denied. The Court’s intent is that the Board certify a record of the proceedings on remand, as a supplement to the record previously certified.

Plaintiffs’ motion for leave to amend the complaint is denied.

The Jefferson County Board of Commissioners certified the record of the proceedings on remand and the issues concerning whether the Court should issue a permanent injunction prohibiting the Board from allowing construction of the proposed tower was fully briefed by the parties. Counsel for appellant City of Golden set a permanent injunction hearing for July 22, 2005.

By Order of May 4, 2005, noting that the rule governing the appeal does not permit the submission of new evidence and that it had the record and the parties’ briefing of the legal arguments, the Court found “that another hearing would not be of material assistance to the Court in resolving the issues presented. Accordingly the Court vacates the scheduled July 22, 2005 hearing.”

The May 4 Order points out that the briefs of plaintiffs with regard to their request for a permanent injunction now refer to that portion of §15.F.2.b(2) of the County's regulation which states that "Where more than one tower is located on a site, the set back between such towers shall be sufficient to prevent multiple failures in the event one tower fails." The Order summarizes plaintiffs' argument as follows:

Plaintiffs envision three scenarios in which they say the "multiple tower failure" problem could occur: (1) the new 730-foot tower could fall onto the existing Channel 4 tower that is 683 feet away; (2) the new tower or its guys could sever the guy wire of the Channel 4 tower, which might fall on an occupied home that is within 200 feet of the base of that tower; (3) Channel 4 tower could fail and sever the guy wires supporting the new tower. However, to the extent that these scenarios do not threaten harm to any person or to any property other than the towers themselves, as appears to be the case with number 3 and possibly number 1, they do not support the plaintiffs' position. The towers are the property of television stations or their Lake Cedar consortium. It is explicit in the first sentence of §15.F.2.b.(2), and at least implicit in the remainder, that the purpose of the regulation is the protection of the public and the protection of property other than the property of the tower owners. Plaintiffs are not in a position to assert potential damage to the towers of owners as a basis to resist construction of the new tower.

Plaintiffs' argument is perhaps best stated in their description of scenario number 2:

As is evident from the Lake Cedar site plan, the guy wires supporting the Channel 4 tower are even closer to the base of the HDTV Tower mast: a distance of only 220 feet. R. 13178. (Set Back drawing); R. 15208 (Barrett Presentation) & R. 15287 (Setback Drawing). Lake Cedar's own witnesses have acknowledged in written and oral testimony that the Channel 4 tower guy wires are within the radius of debris fall and failure of the HDTV Tower. R. 13392 (Malouf Report) & R. 15945 (Malouf testimony)(testimony that conservatively estimated tower fall debris radius is 80% of tower height, which in this case, is 584 feet). *Failure of the HDTV Tower or its guy wires during the construction could sever the east guy wires of the Channel 4 tower, which would likely cause the 843 foot Channel 4 tower to fall to the west, where the nearest occupied home is only 200 feet from the base of that tower (well within the 80 percent of tower height that Lake Cedar's witnesses admit constitutes the 'fall zone')*. R. 13178. (Emphasis added by Court).

The key conclusion is that failure of the new tower could sever the east guy wires of the Channel 4 tower, which in turn would 'likely' cause the Channel 4 tower to fall to the west, which in turn might impact an occupied home. The citations to the record are to maps and the Malouf report and testimony. However, there is no express support in these

portions of the record for plaintiffs' conclusion. Plaintiffs apparently infer that the Channel 4 guy wire could be severed, and if so, that the Channel 4 tower would likely fall into the area where there is an occupied home. However, the inference is neither an obvious nor a necessary one from the evidence cited.

* * *

Because the Court cannot find from the record that the Board has received 'competent evidence' on this point, the Court must one again remand the case to the Board for the consideration of further evidence. The remand is a limited one, and the Court does not invite either party to invent new arguments not previously addressed. If competent evidence is presented to the Board that the tower set back is sufficient to prevent multiple tower failures from impacting occupied dwellings, and the Board once again affirms the rezoning decision, then the Court will lift the stay and deny a permanent injunction. If such evidence cannot be presented, then Court will grant the injunction. I do not like having this case dragging out any longer, but the law is what it is. The Court orders that the remand proceed in an expeditious manner so that the matter can e resolved as soon as possible.

The Court made it clear that the above issue is the only issue remaining for the Board of County Commissioners to decide.

Pursuant to the Court's Order, the Board of County Commissioners held two additional hearings and received evidence on the multiple tower failure issue. At the conclusion of the hearings, Commissioner McCasky stated: "Thank you. Mr. Chairman. After both hearings, I'd move that this board find that the tower setback is sufficient to prevent multiple tower failure from impacting dwellings occupied by persons other than the tower owner." Thereupon, the two other Commissioners voted "no" without comment. No further decision or resolution by the Board of County Commissioners was issued.

The matter went back to Judge Jackson and on May 23, 2006 he issued an order remanding the matter to the Board of County Commissioners for the third time. The Order states:

Competent evidence was presented [by Lake Cedar] that multiple tower failures would not impact dwellings occupied by anyone other than Lake Cedar. The County's planning and zoning provided such evidence. Lake Cedar's structural engineer provided similar evidence. A significant factor was that Lake Cedar, by its evidence, had acquired or leased all dwellings within the range of what theoretically could be impacted by a multiple tower failure. According to Lake Cedar's evidence, no one who is not associated with Lake Cedar will occupy any of these dwellings until the new tower is erected and the existing towers are removed.

The Board and the plaintiffs assert in their response to Lake Cedar's motion that competent evidence also presented that multiple tower failure could still impact occupied dwellings. The Court Disagrees. The contract 'evidence' consists largely of statements of counsel and

speculation that Lake Cedar might have cut some side deals that would permit homeowners in the potential impact zone to remain in their homes, or that homeowners might force themselves back into the impact zone upon the expiration of leases. Neither a lawyer's argument nor speculation constitutes competent evidence. The Court has compared the actual deeds and leases with the parties' comments about them and finds that the documents are consistent with Lake Cedar's characterization. (Citations omitted).

After making additional findings favorable to Lake Cedar, Judge Jackson stated "that the majority's vote [the Commissioners' 2 to 1 defeat of Commissioner McCasky's motion] is not supported by competent evidence of record." The Court noted that the resolution of this issue does not resolve the case stating:

The remand order instructed that if competent evidence were presented that multiple tower failure would not impact occupied dwellings, "*and the Board once again affirms the rezoning decision*" (emphasis added by the Court), the Court would lift the stay and deny a permanent injunction. The message was, and is, that the Board must either affirm or reject the proposed rezoning. The Board is entitled to make the decision, but it is also obligated to make the decision.

* * *

There does not appear to be a need for additional evidence. The record is voluminous, and all interested parties on both sides of the debate have been given an ample opportunity to be heard. The responsibility of the Board now is to review the record and then make a decision on the proposed rezoning. Whatever decision is made must be supported by an explanation of the basis of the decision, which need not be expressed in legalistic terms." Only by that means can the interested parties know what the reasons for the decision were. Likewise, only by that means can whichever party is aggrieved by the decision, and ultimately the Court, make an informed decision as to whether the record contains competent evidence supporting the decision. So long as there is competent evidence, it makes no difference that there may be competent evidence to the contrary. The Court will affirm whatever decision is made, so long as it can be shown that there is competent evidence in the record that supports the decision.

The Court remanded the case to the Board for the third time stating: "whether the Board takes further argument or evidence is for the Board to determine. The Court directs the Board to proceed with all due speed to bring this matter to a conclusion."

As of June 30, 2006, the Board has yet to act on the remand.

When the permanent injunction is lifted, it is expected that Jefferson County will formally approve the Lake Cedar Site Development Plan and record it. All other steps in the Site Plan approval process have been completed. At that time, Lake Cedar will file for the necessary building permit. All documentation for the building permit is complete and ready for filing.

Neither will be issued, however, until the Court's injunction is lifted. Construction will start as soon as is reasonably practical after the required permits are issued (weather permitting).

The status of the design and equipment is as follows:

Tower: the purchase contract has been signed and the tower design work has been completed and paid for.

Antennas/Transmission Line: the purchase contract with Dielectric Corp. for the antennas has been signed and the design completed and the antennas are ready for manufacture. The transmission line has been purchased and is in storage.

Building/Site Preparation: the general contractor contract with Calcon Construction has been signed. Construction documents are complete and have been filed with the local authorities which have completed review. All significant materials and services bids are complete and subcontractors selected. The structural steel for the tower has been purchased. The Site Plan is complete, including location of access passages for trucks and materials and construction can proceed with minimal notice.

It should be noted that Lake Cedar has placed in escrow, for the benefit of the County, \$551,113 to guaranty the removal of the existing towers and buildings and \$831,942 to guaranty completion of the quasi-public improvements required by the Site Development Plan at the site.

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