

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Advanced Television Systems) MB Docket No. 87-268
and Their Impact upon the)
Existing Television Broadcast)
Service)

To: The Commission

COMMENTS

To preserve existing television service to viewers in the post-transition environment, Midwest Television, Inc. (“Midwest”), licensee of CBS affiliate KFMB-TV/DT San Diego, California (“KFMB”), respectfully requests amendment of its proposed final DTV allotment to specify a power level of 11.1 kW effective radiated power (“ERP”) using KFMB’s existing non-directional antenna.¹

I. Introduction

During the channel election process, KFMB requested and obtained a tentative channel designation (“TCD”) to relocate its channel 55 DTV operations to its analog channel 8 at the conclusion of the DTV transition. Although the Commission’s *Seventh Further Notice of Proposed Rulemaking* (“*Further NPRM*”) appropriately proposes a channel 8 allotment for KFMB, it specifies a very low power level of 5.42 kW ERP. As discussed below, without

¹ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Seventh Further Notice of Proposed Rulemaking, MB Docket No. 87-268, FCC 06-150 (rel. Oct. 20, 2006) (“*Seventh FNPRM*”). As discussed in the attached engineering statement of Hammett & Edison, Inc., the equivalent ERP for the so-called “replication directional antenna pattern” would equal 14.9 kW. Because KFMB intends to continue use of its non-directional, top-mounted antenna, these comments seek an allotment of 11.1 kW ERP based on such non-directional antenna operation.

amendment, adoption of that allotment would abruptly cut off over-the-air television service to nearly 109,000 viewers at the conclusion of the DTV transition.

In its pre-election certification, Midwest mistakenly certified that it would operate KFMB at maximized facilities at the conclusion of the transition.² Although typically a certification of “maximization” would result in an allotment *larger* than a station’s analog service area, KFMB’s “maximized” DTV service area is actually smaller than its analog service area. Specifically, its “maximized” facility on Channel 55 allows KFMB to serve only 2,922,585 viewers,³ a 3.7% reduction as compared to the existing analog service, which reaches 3,034,719 viewers.

This anomaly is due to the combination of three factors: first, the out-of-core, UHF allotment provided to KFMB during the transition; second, the relatively low height (226 meters HAAT) of KFMB’s antenna; and third, the Commission’s decision to impose a “power cap” of 1,000 kW ERP on stations with UHF allotments. In order to replicate its channel 8 analog service on channel 55, at a height of 226 m HAAT, KFMB would have needed to operate at 2,272 kW ERP, which was not permissible due to the power cap. Accordingly, KFMB’s “maximized” DTV service on channel 55 reaches fewer viewers than does its analog service on channel 8.

During the DTV transition, the continued availability of KFMB’s analog service has mitigated the harm to the public of KFMB’s smaller DTV service area. Once the transition is over and analog service is terminated, however, it is crucial that *all* existing viewers of KFMB’s analog service have access to its digital service. As discussed in the attached

² See FCC File No. BCERCT - 20041102ADJ.

³ See FCC File No. BPCDT - 20000501ADY.

engineering statement of Hammett & Edison, a final DTV allotment of 11.1 kW non-directional is necessary to achieve this public interest goal.

The proposed amendment in KFMB's final DTV allotment will uphold the Commission's guiding principle that stations should, at a minimum, be allowed to replicate existing analog service. As the Commission explained in the *Sixth Report and Order*, the Commission seeks to replicate station's analog service to "ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over the air."⁴

The factors discussed above, including the UHF power cap and the low HAAT, frustrated achievement of the Commission's goal of allotting DTV channels so as to enable DTV service to replicate stations' Grade B analog service contours. This proceeding provides an opportunity to remedy that problem in the final DTV allotments and satisfy the Commission's aspiration that "most DTV broadcasters eventually will replicate their NTSC service areas with DTV service."⁵ By returning to its in-core VHF channel for its post-transition digital operations, KFMB can ensure that viewers of its analog signal are not cut off after the transition. In other words, a final DTV allotment of 11.1 kW ERP (non-directional) would permit KFMB, a station

⁴ *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd 14588, 14605 ¶ 29 (1997). See also *Review of the Commission's rules and Policies Affecting the Conversion to Digital Television*, Report and Order and Further Notice of Proposed Rulemaking, MM Dkt. No. 00-39, 16 FCC Rcd 5946, 5954, ¶ 18 (2001) ("*First Periodic Review*") ("We established replication as a goal in the creation of the initial DTV Table of Allotments.").

⁵ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, MB Dkt. No. 03-15, 18 FCC Rcd 1279, 1289, ¶ 30 (2003); see also *First Periodic Review* at ¶ 22 ("we continue to want to assure that viewers do not lose service").

whose DTV service during the transition has been constrained temporarily, to maintain its service to all of its viewers.

Moreover, the allotment proposed by KFMB fully complies with the Commission's interference standard. As demonstrated in the attached engineering statement, no existing TCDs will receive greater than 0.1 percent interference from the proposed modification. Indeed, the maximum amount of interference that the proposed modification would cause is only 0.09 percent interference. Consequently, no impermissible interference would be caused by grant of the requested modification.

* * *

To protect existing television viewers from loss of service, and to uphold the principle that stations should, at a minimum, be permitted to maintain replication service in the post-transition environment, Midwest respectfully requests that the Commission amend its proposed allotment to specify operation at 11.1 kW (assuming non-directional antenna operation) on channel 8.

Respectfully submitted,



Jennifer A. Johnson
Matthew S. DelNero
Eve R. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue NW
Washington, DC 20004
(202) 662-6000

Counsel for Midwest Television, Inc.

January 25, 2007

Attachment 1