

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

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

**COMMENTS OF
COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA**

Community Television of Southern California ("CTSC"), licensee of noncommercial educational television Station KCET, Los Angeles, California, hereby submits these Comments pursuant to paragraph 16 of the Commission's *Seventh Further Notice of Proposed Rule Making* ("*Seventh Further Notice*")¹ in the above-captioned proceeding. These Comments request changes to certain data concerning Station KCET contained in Exhibit B of the *Seventh Further Notice*. The requested changes are set forth below.

Exhibit B indicates that Station KCET would operate on DTV Channel 28 with an ERP of 107 kW and Antenna ID No. 70604 at a HAAT of 913 meters. In its Form 381 for KCET, File No. BCERET-20041105ADB, CTSC certified that it would operate its post-transition DTV

¹ *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Seventh Further Notice of Proposed Rule Making, FCC 06-150, (rel. Oct. 20, 2006).

station at maximized facilities as authorized by the modified Construction Permit, File No. BMPEDT-20000428ADF, which was granted on April 2, 2003.

On January 21, 2005, CTSC elected DTV Channel 28 as Station KCET's post-transition DTV channel, File No. BFREET-20050121ALB. The FCC disapproved this election because it was projected to cause interference of 2.3% to the permitted 1000 kW facilities of Station KEYT-DT, Santa Barbara, California (see File No. BMPCDT-20010126ABE). On November 3, 2004, KEYT-TV had filed its Pre-Election Certification on Form 381 seeking replication facilities (see File No. BCERCT-20041103AJF).²

On August 15, 2005, CTSC filed a letter with the FCC³ arguing that, pursuant to the Commission's August 2, 2005 Public Notice,⁴ CTSC should be permitted to select DTV Channel 28 as its permanent DTV channel since it was a licensee with one in-core channel. Under that Public Notice, the Commission indicated that "the staff intends to approve such in-core elections if they do not cause more than 2% additional interference to other stations (based on their DTV replication facilities, not their maximized facilities)."⁵ Using an alternative, and more accurate, interference prediction methodology, as expressly permitted by the Commission,⁶ CTSC

² The FCC originally allotted KEYT-DT replication facilities of 668.8 kW ERP. *See In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd. 14693, Table 1 (1997). The table of allotments was later amended to give KEYT-DT replication facilities of 698.8 kW ERP. *See In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order 13 FCC Rcd. 7418, Appendix B (1998).

³ A copy of that letter is attached as Exhibit A.

⁴ DTV Channel Election: First Round Conflict Decision Extension and Guidelines for Interference Conflict Analysis, Public Notice, DA 05-2233 (August 2, 2005).

⁵ *Id.*

⁶ *In re Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 5946, 5972 ¶ 66 (2001) ("2001 DTV Report and Order").

demonstrated that the actual interference to Station KEYT-DT based on its maximized facilities at Channel 28 was less than 2%.

On September 15, 2005, the staff contacted CTSC's Consulting Engineer and indicated that it would not accept the showing using the alternative methodology to calculate interference, but that CTSC would be allowed to use DTV Channel 28 if it agreed to facilities that would permit it to only replicate its existing service area. Faced with the Hobson's Choice of selecting a less desirable DTV channel or reduced facilities, CTSC changed its election to specify DTV Channel 28 using replication facilities. However, CTSC also reserved its right to seek maximized facilities should circumstances permit.

On October 7, 2005, while Station KEYT-DT was still operating at 250 kW pursuant to Special Temporary Authority, CTSC wrote to the Commission and specifically requested that the FCC reinstate its original election for maximized facilities in the event that Station KEYT-DT did not build the 1000 kW facility by the "use it or lose it" deadline, July 1, 2006.⁷ On June 30, 2006, Station KEYT-DT applied to modify its construction permit to operate at 250 kW ERP.⁸ That application was granted on October 25, 2006. On November 2, 2006, Station KEYT-DT applied for a license to cover that construction permit.⁹

While Station KEYT-DT's 250 kW construction permit application was pending, it also filed a request for a waiver of the "use or lose" deadline.¹⁰ In that waiver, Station KEYT-DT

⁷ A copy of that request is attached as Exhibit B.

⁸ See FCC File No. BMPCDT-20060630ACN. This application modified KEYT's construction permit, File No. BMPCDT-20010126ABE, which authorized it to go to 1000 kW ERP.

⁹ See FCC File No. BLCDDT-20061102ABJ.

¹⁰ A copy of that waiver request is attached as Exhibit C. Given that Station KEYT-DT has obtained a construction permit for a 250 kW facility and has filed a license to cover that application, it is not clear that the waiver request remains valid or that Station KEYT-DT's 1000 kW proposal is entitled to protection.

indicated that it did not construct the full 1000 kW facility by the “use or lose” deadline because, unbeknownst to Station KEYT-DT’s new licensee, the electric company could not deliver sufficient power to the transmitter site for a 1000 kW station. However, Station KEYT-DT also indicated that it now planned to build a station with an ERP of only 698 kW, which would permit it to replicate the station’s analog service area, rather than the 1000 kW facility, which had limited CTSC’s ability to maximize its facilities on DTV Channel 28.¹¹

Because Station KEYT-DT did not build its proposed 1000 kW facility, CTSC urges the Commission to allow it to maximize the DTV facilities of Station KCET and operate with an ERP 190 kW from a HAAT of 913 meters.¹² As the attached Engineering Statement prepared by Hammett & Edison demonstrates, Station KCET-DT can operate with those facilities without causing more than 0.1% incremental interference to Station KEYT-DT or any other station.¹³ This incremental interference satisfies even the generally applicable 0.1% *de minimis* interference standard, much less the “relaxed” 2.0% *de minimis* standard applicable to licensees with just one in-core channel, such as CTSC.

While CTSC believes that Station KEYT-DT’s failure to construct its 1000 kW station by July 1, 2006 and its filing of an application for a license to cover its construction permit for the 250 kW facility should preclude it from protecting any service area beyond that of the authorized

¹¹ KEYT-DT’s Exhibit B allotment is for an ERP of 699 kW, rather than the 698 kW mentioned in its waiver request. The 0.0006 dB difference between these ERPs is insignificant, and references in these Comments to the 698 kW ERP sought in KEYT’s waiver request apply equally to the 699 kW ERP of Exhibit B. The Engineering Statement attached to these Comments (see *infra*) was prepared using the proposed 699 kW allocation.

¹² Operation with these facilities on DTV Channel 28 offer the same level of service as operation at 340 kW on DTV Channel 59. See Engineering Statement of Hammett & Edison at 3.

¹³ This level of interference was calculated using the same methodology normally employed by the FCC rather than the more accurate methodology used for CTSC’s August 15, 2006 submission. See Engineering Statement of Hammett & Edison at 3.

250 kW station,¹⁴ the attached Engineering Statement shows that Station KCET-DT can operate with an ERP of 190 kW whether Station KEYT-DT operates with an ERP of 250 kW, as currently authorized, or 698 kW, as sought in its waiver request. CTSC therefore respectfully requests that the Commission reinstate its election of maximized facilities and change Exhibit B to reflect this change.

¹⁴ When the Commission adopted the “use it or lose it” policy, it clearly indicated that licensees which did not build their authorized DTV facilities would lose any protection for any areas within the service contours of the unbuilt station that were not served by the station’s existing facilities. Thus, it stated that:

A station that fails to meet the above replication/maximization requirements will lose interference protection to the unused portion of the associated area as of the applicable interference protection deadline, ... In addition, a station failing to meet the above deadlines will lose the ability to “carry over” its interference protection to its unserved DTV service area on its post-transition channel ... Thus, for example, if a station subject to the July 1, 2006 deadline builds out only to 60 percent of its replicated service population by that date, it will lose interference protection on its digital allotment beyond that 60 percent service area,

In re Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, Report and Order, 19 FCC Rcd. 18279, 18319 ¶ 85 (2004)

In addition, the Commission made it clear that other applicants could seek to serve the area vacated by a station’s failure to build out to its replication area:

We have given broadcasters ample opportunities over the past years to expand their service areas, and advance warning that if they elect not to provide their viewers with DTV the Commission may ensure the area is served in other ways. Therefore, we will permit existing DTV stations seeking to expand their coverage area and Class A eligible stations on out-of-core channels to apply for unused spectrum within the core.

Id. at 18326 ¶ 109. In any event, Station KEYT-DT should be limited to replication facilities of 698 kW ERP, as requested in its waiver request and as listed in both the existing and the proposed DTV Table of Allotments.

Conclusion

Accordingly, CTSC requests that the Commission change Exhibit B to the *Seventh Further Notice* to indicate that Station KCET will operate on Channel 28 with an ERP of 190 kW from an HAAT of 913 meters using Antenna ID 33524.

Respectfully submitted,



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January 25, 2007

Certificate of Service

I, Cynthia T. Miller, do hereby certify that I have this 25th day of January, 2007, caused to be sent by first class mail, postage prepaid, the attached Comments of Community Television of Southern California to:

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