

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

|  |   |                      |
|--|---|----------------------|
| Unlicensed Operation in the TV Broadcast Bands | ) | ET Docket No. 04-186 |
|  | ) |                      |
| Additional Spectrum for Unlicensed Devices     | ) | ET Docket No. 02-380 |
| Below 900 MHz and in the 3 GHz Band            | ) |                      |

To: The Secretary

**COMMENTS**

KJLA, LLC ("KJLA"), the licensee of Station KJLA(TV), Ventura, California, by its attorneys, hereby responds to the Commission's request in the *Further Notice of Proposed Rulemaking*<sup>1</sup> for further comment on the Commission's proposal to allow unlicensed operation in television bands at locations where frequencies are not in use by licensed services. In these Comments, KJLA wishes to focus attention on the important public service broadcast television stations provide to their viewers, and on the Commission's responsibility to protect and promote that public service. As the Commission considers what rules to apply to the use of the television spectrum by operators of low power devices, it must ensure that such operations merely supplement rather than disrupt traditional broadcast television's use of available spectrum. In order to do this, KJLA agrees with other broadcasters that the Commission must institute a licensing scheme for non-broadcast uses of the broadcast television spectrum. A

---

<sup>1</sup> See *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket Nos. 04-186 and 02-380, 21 FCC Rcd 12266 (2006) ("*FNPRM*").

geographic-based licensing system for low power device operations in the television bands will help protect television stations from harmful interference without imposing undue burdens on either the Commission or industry. In support thereof, KJLA states as follow.

#### **I. Protecting Local Broadcast Television Service**

While advocates of using television spectrum for low power devices claim that such use will promote spectrum efficiency and technological advancement, KJLA submits that opening the door to alternative, non-broadcast uses of the television bands will prove a Pandora's Box if care is not taken to protect the provision of basic broadcast television service to viewers. Before the Commission allows any uses – licensed or unlicensed – of the television spectrum for low power device operations, it must ensure that over-the-air television reception will not be compromised in any way by interference from these devices. KJLA broadcasts programs in both Spanish and English. As such, KJLA has a special interest in protecting over-the-air viewers from aggressive use of the television spectrum by non-broadcasters.

As noted by various parties in other proceedings, while over-the-air viewership falls somewhere between 15 and 20 percent in the population at large,<sup>2</sup> approximately one in three Spanish-language households receive their programming exclusively over-

---

<sup>2</sup> See National Telecommunications and Information Administration, Notice of Proposed Rulemaking, 71 Fed. Reg. 42067 (July 25, 2006) ("NTIA NPRM") at 42071 (citing legislative history to the DTV Transition Act, H.R. REP. NO. 109-362, at 201 (2005) (Conf. Rep.), for 14.86% over-the-air statistic, and the *GAO Subsidy Program Report* for 19%).

the-air.<sup>3</sup> Moreover, the number of Hispanics relying exclusively upon over-the-air service may be increasing rather than decreasing.<sup>4</sup>

Two important factors help explain the high incidence of over-the-air viewership among Hispanics. First, broadcast television historically has been the only substantive source of quality Spanish-language programming, and it remains the best source of such programming today. Second, in sharp contrast to the many other video programming providers in the market, over-the-air television is free.

Nearly 50 percent of Hispanic households exclusively watch Spanish-language programming. While cable and satellite providers have begun to focus on the Hispanic market, until recently their Spanish-language offerings were minimal, giving Latino viewers little incentive to pay for cable or satellite when over-the-air television better served their needs.

In addition to the superior quality of broadcast programming, it is also a bargain. While the costs of subscription services continue to rise,<sup>5</sup> over-the-air television remains free to the public. Given an increasingly expensive video marketplace, the well-documented correlation between over-the-air viewership and lower income households is

---

<sup>3</sup> See, e.g., *Comments of Univision Communications Inc.*, MB Docket No. 04-210 (Aug. 11, 2004) ("*Univision OTA Comments*") at 8 (noting that 33% of Hispanic households nationwide receive programming solely over-the-air); *Reply Comments of Univision Communications, Inc.*, MB Docket No. 04-210 (Sept. 7, 2004) ("*Univision OTA Reply Comments*") at 4 (noting that in addition to 33% of Hispanics who receive all their programming over-the-air, another 7%, comprised of DBS subscribers, receive their local programming exclusively over-the-air).

<sup>4</sup> See *Univision OTA Comments* at 9; *Univision OTA Reply Comments* at 4.

<sup>5</sup> See, e.g., *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 19 FCC Rcd 1606 (2004) at ¶ 10 (noting high costs of cable television).

hardly surprising.<sup>6</sup> The fact that broadcast television is free together with the traditional role of broadcasters in providing Spanish-language programming go a long way in explaining why Hispanics represent a large, concentrated segment of the remaining over-the-air audience.

Given the continued reliance of the population at large and, in particular, Spanish-language viewers, on over-the-air reception, KJLA urges the Commission to adopt strong interference protection standards for any uses of the television spectrum by low power device operators, and to enforce those standards. The Commission must perform adequate field-testing of the experimental methodologies and strategies proposed and incorporate the results into any final rules to establish absolute protection from new harmful interference. Otherwise, such use of the television bands, however innovative, will have the unintended consequence of interfering with TV channel transmission and ultimately, hamper the public's TV reception.

KJLA also submits that protection is needed for ENG operations as wireless microphones and equipment operate at low power and on unused channels. The presence of other low power devices operating in "unused" spectrum could have a detrimental impact on the use of wireless microphones utilized in covering news, sports and other community events.

## **II. Licensing Low Power Device Operations in Television Bands**

As noted by the Commission in the *FNPRM*, many parties contend that a licensing scheme is essential to device operators taking seriously their obligation to o

---

<sup>6</sup> See, e.g., *Comments of The Association of Public Television Stations*, MB Docket No. 04-210 (Aug. 11, 2004) ("*APTS OTA Comments*") at 9.

ensure that their devices do not interfere with the signals of local television stations.<sup>7</sup>

Upon authorization of use of the television spectrum, a variety of aftermarket accessories will no doubt be introduced allowing unscrupulous operators, both fixed and portable, to exceed the power limit and to defeat channel protection mechanisms. The eligibility requirements, regulation of conduct and threat of sanctions attendant to a licensing regime constitute significant preventive and punitive checks on such unscrupulous behavior. While a licensing scheme may impose additional costs on the Commission and industry, such costs are appropriate and necessary in the public interest, given the paramount importance of protecting broadcast television stations from harmful interference from low power devices using television spectrum.

Morover, the Commission can devise a geographic-based licensing system that will impose minimal administrative burdens on the Commission and limited costs on low power device operators. As recognized by the Commission in other contexts, a licensing approach that permits technically-qualified operations throughout a licensed geographic area without prior Commission approval avoids the administrative burdens of site-based licensing and reduces the associated transactional and operational costs for licensees.<sup>8</sup>

KJLA agrees with other broadcasters that the Commission should adopt a Designated Market Area-based ("DMA") approach to licensing low power device operations in the television bands. Under a multi-stage, DMA-based licensing scheme, the Commission should first acknowledge the primacy of broadcast television vis-à-vis

---

<sup>7</sup> See *FNPRM* at ¶ 30.

<sup>8</sup> See, e.g., *Amendments of Part 1, 21. 73, 74, and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) at ¶ 53.

the television spectrum by permitting broadcasters to maximize their service areas by applying for (i) a co-channel license to serve the remainder of their DMA, (ii) a modified license to expand their DTV service contour in accordance with DTV interference-protection rules, or (iii) both.

This DMA approach to licensing television stations tracks marketplace reality by aligning service areas with designated local markets. DMA-wide licensing also accords with the recent technological innovations, acknowledged and encouraged by the Commission in its Distributed Transmission System proceeding, enabling broadcasters to move beyond the constraints of traditional transmission facilities through a network of wide area, low power transmitters.<sup>9</sup>

Such an approach also places broadcast television on a par with cable and satellite by providing for DMA-wide licensing of a television station, just as cable and satellite are entitled to carry a station throughout that station's entire DMA. This, in turn, serves the public interest by potentially granting over-the-air viewers throughout a DMA access to stations heretofore available only to cable and satellite subscribers. KJLA wishes to take note of the critical importance of this. As a Station licensed to a community on the fringe of its DMA, KJLA has suffered from the unwillingness of cable operators to provide it with carriage, even on a must-carry basis. By being able to improve coverage, KJLA, and like positioned stations, who are often the Stations with unique formats and program offerings, can offer their specialized programming not only to greater numbers of over-the-air viewers but also to those who rely on cable television to deliver programming to their homes.

---

<sup>9</sup> See *Digital Television Distributed Transmission System Technologies*, Clarification Order and Notice of Proposed Rulemaking, 20 FCC Rcd 17797 (2005).

Next, after television stations have been given the opportunity to maximize their services, the Commission should allow new entrants to apply for licenses for low power device operations in the television bands. Device operators who meet the requisite eligibility requirements and interference protection standards would be entitled to a license permitting them to operate anywhere within their respective DMA on a secondary basis and without prior Commission approval. Finally, the Commission should allow for certain fixed use by low power devices on an unlicensed and secondary basis in selected DMAs and on selected frequencies, provided that the Commission can assure itself and broadcasters that the devices will not cause interference to broadcast television stations or other services.

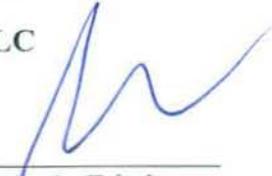
### **CONCLUSION**

Any rules devised by the Commission to permit low power devices to use the broadcast television spectrum must first and foremost ensure that incumbent broadcast operations are fully protected from harmful interference from such devices. Those viewers who still receive television signals over the air, including a disproportionately large percentage of Spanish-speaking viewers, must not have their reception of local television signals compromised by errant low power device operations. The Commission must not place its otherwise laudable interest in promoting new technologies and efficient use of the spectrum above these viewers' access to the news and public affairs programming available on their local television stations. KJLA submits that applying licensing requirements to most low power device operations represents a necessary means of ensuring compliance with the Commission's interference protection standards. The DMA-based licensing approach set forth above imposes minimal burdens and costs

and acknowledged the primacy of broadcast television vis-à-vis the television bands while allowing for innovative use of available spectrum by qualified low power device operators.

Respectfully submitted,

**KJLA, LLC**

By: 

Barry A. Friedman  
Thompson Hine LLP  
1920 N. Street, N.W.  
Washington, D.C. 20036  
(202) 331-8800  
Its Attorneys

Dated: January 31, 2006