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February 15, 2007

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12 Street, S.W.
Washington, DC 20554

Dear Ms. Dortch:

Re: MB Docket No. 05-317
KDLH(TV), Duluth, Minnesota, Facility ID No. 4691
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

Malara Broadcast Group of Duluth Licensee, LLC (“Malara”), licensee of KDLH(TV) and permittee of KDLH-DT, Duluth, Minnesota, Facility ID No. 4691 (“KDLH”), by its attorneys, hereby requests a six-month waiver (“Testing Waiver”) of the July 15, 2007 digital signal testing implementation date (“July Deadline”) to temporarily preclude satellite subscribers from conducting a digital signal strength test of KDLH for purposes of obtaining a distant network signal. The Testing Waiver is sought pursuant to Section 339(a)(2)(D) of the Communications Act (“Section 339”), as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”), and the relevant releases of the Federal Communications Commission (“Commission”).¹ KDLH’s digital signal coverage area presently

¹ See 47 U.S.C. § 339(a)(2)(D), as amended by Section 204 of SHVERA; Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, Order, MB Docket No. 05-317, DA 06-801 (rel. May 1, 2006) (“Waiver Order”); TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005 or February 15, 2007, DA 05-2979, Public Notice (rel. Nov. 17, 2005) (“Waiver PN”).

NYC:724349.1/TCM001-218325

is limited due to the need to obtain international coordination and due to its use of a side-mounted antenna. For these and other reasons set forth herein, Malara submits that grant of a Testing Waiver is consistent with Section 339 and is in the public interest.

Section 339 provides that a station may obtain a Testing Waiver if “the station’s digital signal coverage is limited due to the unremediable presence of one or more” statutory criteria.² One criterion is “the need for international coordination or approvals.”³ KDLH-DT currently has pending an application seeking to modify its DTV construction permit (“CP Application”).⁴ Malara believes that the FCC has not yet granted the CP Application because of a pending request to Industry Canada for international coordination. KDLH cannot complete construction of its planned DTV facilities until Industry Canada and the FCC approve the CP Application. Therefore, because KDLH’s DTV signal is limited due to the need for international coordination, the Commission should grant a Testing Waiver.⁵

KDLH’s present use of a side-mounted antenna provides further reason to grant the Testing Waiver. In addition to international coordination delays, Section 339 provides that the Commission may grant a Testing Waiver if “the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna.”⁶ KDLH-DT presently is unable to serve 28.7% of the area predicted to be served by the facilities set forth in its CP application in part because its antenna is side-mounted.⁷ As set forth in the CP Application, KDLH plans to top-mount its antenna but cannot do so because the CP Application has not been coordinated with Industry Canada.⁸ In sum, because KDLH’s signal

² 47 U.S.C. § 339(a)(2)(D)(viii).

³ 47 U.S.C. § 339(a)(2)(D)(viii)(I).

⁴ FCC File No. BMPCDT-20060619AAE.

⁵ Although the CP Application remains pending, KDLH has begun preparations for construction. Specifically, KDLH now has the antenna on-site and has attempted to schedule a tower construction crew. Although weather delays have prevented further progress, KDLH diligently has prepared itself to complete construction of its facilities as soon as the CP Application is granted.

⁶ 47 U.S.C. § 339(a)(2)(D)(viii)(V)

⁷ See Engineering Statement at 1 and Figure 1. KDLH also is relocating its antenna to a new tower.

⁸ KDLH-DT will share this antenna with station KBJR-DT, D19, Superior, Wisconsin.

coverage temporarily is “limited” due to its side-mounted antenna, the Commission should grant a Testing Waiver.⁹

Grant of a Testing Waiver also is in the public interest because it will have only a short-term, temporary effect on satellite subscribers within KDLH-TV’s coverage area. KDLH-DT will be able to reach many these subscribers at the end of the analog transition through the eventual operation of the CP Application facilities from a top-mounted position on a new tower. Because these satellite subscribers soon will receive KDLH-DT, the Commission should delay testing that potentially could permit subscribers to receive distant digital signals indefinitely, well-beyond the short-term period during which they could not receive KDLH-DT over-the-air.¹⁰

For all of the reasons set forth herein, Malara respectfully requests that the Commission grant a Testing Waiver for KDLH-DT.

⁹ Malara believes that it need only show that its coverage is “limited,” as set forth in Section 339(a)(2)(D)(viii). However, in its *Waiver Order*, the Commission stated that it expected a showing consistent with Section 339(a)(2)(D)(viii), which states that a station experiences “a substantial decrease” in its coverage area. Malara believes that this Commission interpretation may place too much emphasis on the “substantial decrease” phrase without affording adequate weight to the preceding phrase, which requires only that the signal coverage be “limited.” To the extent that the Commission applies its *Waiver Order* interpretation of the “substantial decrease” phrase to the instant request, Malara submits that an area difference of 28.7% is a “substantial decrease.”

¹⁰ At a minimum, the Commission should clarify that the term of any permissible distant signal delivery is limited so that satellite subscribers no longer may receive distant network signals after they are capable of receiving local digital signals over-the-air.

Ms. Marlene H. Dortch
February 15, 2007
Page 4

Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Stuart Shorenstein".

Stuart A. Shorenstein, Esq.

Attachment (Engineering Statement)

Station KDLH-DT • D33/TCD33 • Duluth, Minnesota

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of Malara Broadcast Group of Duluth Licensee, LLC, licensee of Stations KDLH(TV), NTSC Channel 3, and Permittee of Station KDLH-DT, D33/TCD33, Duluth, Minnesota, to prepare an engineering exhibit in support of comments to MB Docket 05-317, pertaining to the Satellite Home Viewer Extension and Reauthorization Act (SHVERA) of 2004, in support of waiver of satellite subscriber digital signal testing of the KDLH-DT signal.

KDLH-DT STA Facilities

Although KDLH-DT holds a construction permit (CP) for 505.5 kW effective radiated power (ERP) omnidirectional at 608.0 m AMSL/302.0 m HAAT on the KDLH tower,* those facilities have not been built; the current KDLH-DT operation is pursuant to Special Temporary Authority (STA), FCC File Number BDSTA-20030838BIX, also on the KDLH tower, with an omnidirectional ERP of 66.1 kW, using a lower-height side-mounted antenna at 584.7 m AMSL/279.0 m HAAT. Further, KDLH-DT has a pending application, FCC File Number BMPCDT-20070519AAE, to relocate the station 0.7 km to the KBJR-TV tower, and operate using a new top-mounted, omnidirectional transmitting antenna, to be shared with Station KBJR-DT, D19, Superior, Wisconsin. The proposed KDLH-DT operation would have an ERP of 381 kW omnidirectional at 618.5 m AMSL/331.9 m HAAT. Although the new antenna is on-site, weather delays and the availability of tower construction crews have so far prevented the installation of that new antenna, and it is conceivable that the new RFS antenna may not be installed until late Spring, or even early Summer, 2007. Thus, the low-power, lower-height KDLH-DT STA operation will likely need to continue for several more months.

Because of the necessity of the continued STA operation, it would be inappropriate to base KDLH-DT signal strength measurements at the locations of potential direct broadcast satellite (DBS) subscribers on the lower power and lower height STA operation. As shown by the attached Figure 1, the STA operation has 28.7% less coverage based on land area, and 16.6% less coverage based on population (2000 Census), than the proposed operation on the KBJR tower. Therefore, a waiver is appropriate to delay KDLH-DT signal strength measurements for SHVERA purposes until such time as KDLH-DT is operating with its higher power facilities on the KBJR tower.

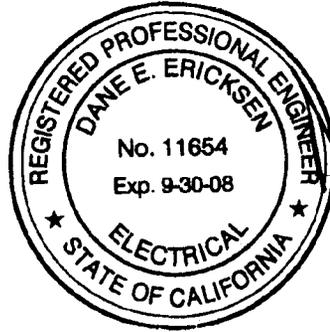
* FCC File Number BPCDT-19991028ADK.

Figure List

In carrying out these engineering studies, the following attached figure was prepared under my direct supervision:

1. Map showing the KDLH-DT STA and proposed DTV coverage contours.

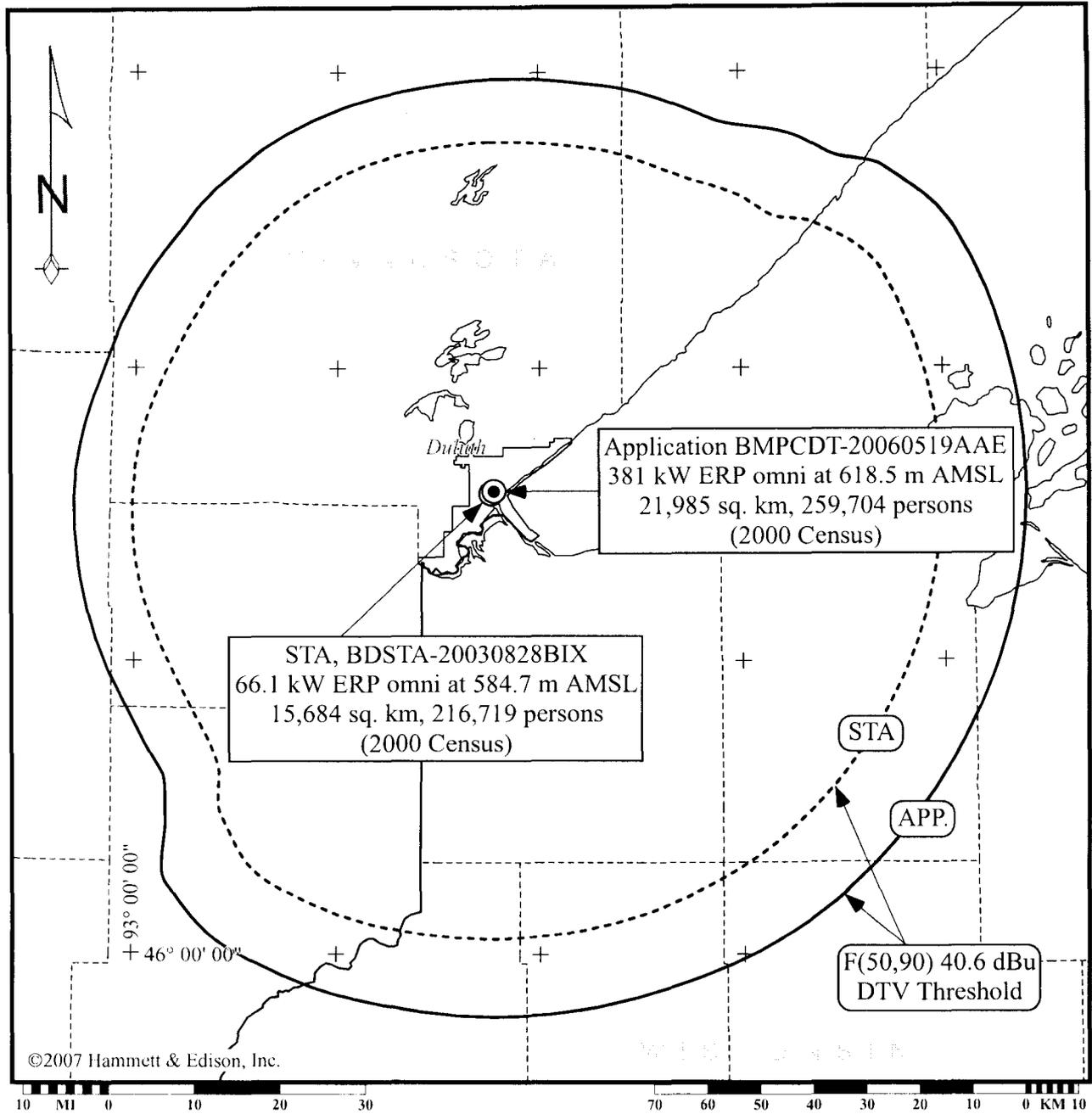
February 14, 2007



[Handwritten Signature]
Dane E. Ericksen, P.E.

Station KDLH-DT • D33/TCD33 • Duluth, Minnesota

STA vs Applied-For Coverages



Lambert conformal conic map projection. Map data taken from Sectional Aeronautical Charts, published by the National Ocean Survey. Geographic coordinate marks shown at 30-minute increments. City limits shown taken from U.S. Census Bureau TIGER/Line 2000 data.