

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

To: Office of the Secretary

**REPLY COMMENTS OF SMITH MEDIA LICENSE HOLDINGS, LLC**

Smith Media License Holdings, LLC (“Smith”), licensee of KEYT-DT (Santa Barbara, California), by its counsel, hereby replies to the comments of Community Television of Southern California (“CTSC”), licensee of KCET-DT (Los Angeles, California), in the Seventh Further Notice of Proposed Rulemaking in the above-referenced proceeding.<sup>1</sup>

In its comments, CTSC requested expansion of the KCET-DT post-transition allotment beyond what was set forth in the *FNPRM*. It does not appear to Smith that KCET-DT qualifies for allotment expansion, however, as the station is not operating in digital on its post-transition channel nor is authorized yet to do so.<sup>2</sup> In any event, Smith cannot consent to KCET-DT’s expansion at this time.

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<sup>1</sup> 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) (“*FNPRM*”).

<sup>2</sup> *See id.*, ¶ 28.

For reasons beyond Smith's control, and as detailed in Smith's request for waiver of the "use-it-or-lose-it" deadline,<sup>3</sup> KEYT-DT cannot replicate analog service during the transition because the local utility company's transformer is at capacity. Moreover, until analog service is terminated, the extent to which KEYT-DT can increase power and replicate service post-transition will not be known with reasonable certainty. As such, Smith only can speculate about the impact of KCET-DT's proposed expansion on the KEYT-DT service area, so Smith has good reason to be concerned that viewers in KEYT(TV)'s market – especially those viewers in mountainous Ventura County – could lose relied-upon service as a result of KCET-DT's proposed expansion. At some point within the next two years, Smith obviously will be able to confirm KEYT-DT's post-transition power and can make a meaningful decision about whether to consent to the KCET-DT expansion. Accordingly, the Commission should continue to protect the KEYT-DT post-transition allotment in the same manner as it protects other allotments set forth in the *FNPRM*.

Perhaps anticipating this response from Smith, CTSC further argues that the Commission nonetheless only should protect KEYT-DT's existing service area (rather than that certified) so as to clear the way for KCET-DT's expansion. Smith, of course, along with the licensees of 395 other stations, timely filed a request for waiver of the "use-it-or-lose-it" deadline, and the Commission is bound to protect the KEYT-DT certified service area during the pendency of this waiver request.<sup>4</sup> For the Commission to accept CTSC's argument, it would have to disavow this

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<sup>3</sup> See Smith's Request for Waiver of the Replication/Maximization Interference Protection Deadline, MB Docket No. 03-15 (submitted July 7, 2006).

<sup>4</sup> See DTV Channel Election Issues – Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline, *Public Notice*, 21 FCC Rcd 6540, 6544 (MB 2006) ("The filing of a request to waive

promise and impermissibly pre-judge the outcome of the KEYT-DT waiver request (and, for that matter, the waiver requests of the 395 other similarly situated parties).<sup>5</sup>

Even assuming *arguendo* that the Commission is willing to pre-judge matters, the Commission still could not grant the KCET-DT allotment expansion, so it is somewhat peculiar that CTSC would raise the prospect. Much like Smith, CTSC has not constructed full power facilities but has a pending request to extend the time in which to comply.<sup>6</sup> However, unlike Smith, CTSC manifestly does not meet the requirement that circumstances preventing full power construction are “beyond the licensee’s control.”<sup>7</sup> CTSC is not prevented from maximizing KCET-DT, but, by its own admission, it instead “is deciding whether to build its maximized facilities.”<sup>8</sup> With the appropriate denial of the CTSC extension request, the KCET-DT maximized permit will have expired and CTSC would have no basis for asserting rights to an expanded DTV allotment.

CTSC is attempting in this rulemaking to expand service to those who never have received it at the expense of those who *are* relying upon existing service. Regardless of whether

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the replication/maximization interference protection deadline will toll automatically the deadline pending consideration of the request.”).

<sup>5</sup> See West Palm Beach, Florida, *Memorandum Opinion & Order*, 6 FCC Rcd 6975, ¶ 2 (1991) (noting Commission policy not to pre-judge the merits of any waiver that may come before it).

<sup>6</sup> In this instance, in the form of a DTV extension request. See FCC File No. BEPEDT-20060123AFG.

<sup>7</sup> Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 FCC Rcd 12809, ¶ 77 (1997); see also Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 20594, ¶ 44 (2001).

<sup>8</sup> FCC File No. BEPEDT-20060123AFG, Explanation for Seeking Construction Permit Extension.

this particular allotment expansion even is permissible at this stage, Smith cannot consent to such a possibility at this time. Once Smith can determine the permissible post-transition ERP of KEYT-DT, it can respond meaningfully to any request for consent. Accordingly, Smith respectfully urges the Commission to continue to protect the KEYT-DT certified facilities and the allotment set forth in the *FNPRM*.

Respectfully submitted,

SMITH MEDIA LICENSE HOLDINGS, LLC

/s/

By \_\_\_\_\_  
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February 26, 2007

CERTIFICATE OF SERVICE

I, Rayya K. Khalaf, a secretary at the law firm of Dow Lohnes PLLC, do hereby certify that on this 26th day of February, 2007, I caused a copy of the foregoing "Reply Comments of Smith Media License Holdings LLC" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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