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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
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445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Comments in MB Docket No. 87-268

Dear Ms. Dortch:

Pacifica Broadcasting Company ("Pacifica") and Oceania Christian Church ("OCC") file these *ex parte* comments in furtherance of their efforts to resolve certain questions relating to the post-digital transition operation of noncommercial Station KALO(TV), Honolulu, which is licensed to Pacifica.

By way of background, KALO is presently licensed to operate, as an analog station, on Channel *38. Initially, KALO was assigned DTV Channel *39. However, in April, 2004, Pacifica filed a petition for rule making (File No. RM-10966) in which it proposed to substitute DTV Channel *10 for *39. As set forth in Pacifica's Petition for Rule Making, the station's ability to utilize *39 was limited by the adjacent channel allotment of Channel 40 for Station KITV-DT, which was also allotted to Honolulu. In order to assure its ability to serve the public with maximum potential service, Pacifica proposed the Channel *10 substitution. That proposal was adopted by the Commission in a Report and Order ("*R&O*"), DA 04-3815, in MB Docket No. 04-192 (released December 7, 2004). As set forth in Paragraph 4 of the *R&O*, the accepted specifications for that substitute channel included DTV power of 25 kW and antenna height of 577 meters.

The substitute channel was not automatically included in the DTV table, however, because the Pre-Election Certification Form (FCC Form 381) – by which Pacifica was required

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to certify to the Commission concerning its anticipated DTV facilities – was required to be filed in November, 2004, a month *prior to* release of the *R&O*. Since, at the time of that initial certification, Pacifica had no DTV authorization or application, it was required to specify use of its “allotted replication facilities”, which at that particular time meant Channel *39.

In February, 2005, Pacifica attempted to submit its First Round Election (FCC Form 382). By that time the *R&O* had been issued and the correct channel to specify in Form 382 was *10. However, the Commission’s electronic filing system would not accept *10 because that did not match the station’s assigned channel according to the system’s database (which Pacifica understands was based on the November, 2004 certifications). After several conversations and email exchanges with the Commission’s staff about this conundrum, a member of the Commission’s staff performed a manual “work-around” to revise the database to reflect that KALO’s elected DTV channel was *10. (It appears that the additional technical specifications relative to KALO’s DTV operation – including power and HAAT – may not have been included in the database as part of this work-around.)

Pacifica had, in May, 2000, filed an application (File No. BPEDT-20000501AFZ) for a DTV construction permit, specifying DTV Channel *39. It duly amended that application in early 2005 to reflect the substitute channel. In May, 2005, however, Pacifica was contacted by a member of the Commission’s staff who requested further information about the station’s proposed signal strength over the Commission’s monitoring station at Waipahu, Hawaii. An amendment containing the requested information was filed in June, 2005. In June, 2006, following informal inquiries about the status of the modification application by counsel for Pacifica, Pacifica was informally advised by the Commission’s staff that the staff believed that a further power reduction would be necessary in order to protect the monitoring station. In December, Pacifica submitted a further amendment aimed at affording such protection. However, in early 2007, the Commission’s staff advised that even that further amendment did not appear to be adequate; accordingly, it was suggested that it might be more advisable for Pacifica to identify an alternate DTV channel, one which would not present the problem of potential interference to the Commission’s monitoring station.

At that suggestion, Pacifica conferred with its consulting engineer and examined the available alternatives. The first and most obvious alternative was a “swap” of DTV channels with Station KUPU(TV), Waimanalo, Hawaii, which is licensed to OCC. KUPU was originally authorized *after* the initial DTV Table of Allotments was released. It therefore was not initially assigned any companion channel and is currently not expected to commence digital operation until the end of the digital transition. Moreover, because KUPU’s analog channel is Channel 56 – *i.e.*, a channel which will not be available for television use following the transition – KUPU has tentatively been assigned Channel 38 as its ultimate DTV channel. Since KALO currently operates analog on Channel *38, a swap of DTV channels would permit KALO to operate on DTV 38 (subject to a noncommercial reservation), while KUPU could utilize DTV 10. Unfortunately, Pacifica’s consulting engineer has advised that use of DTV 10 by KUPU could result in interference to the operation of Station KMEB(TV), Wailuku, Hawaii. But Pacifica’s

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consulting engineer has determined that Channel 13 would be available to KUPU, post-transition, with no apparent risk of interference.

Pacifica has conferred with OCC, which has agreed to relinquish Channel 38 to KALO for DTV operation, and to accept Channel 13 as an alternate channel. Accordingly, both Pacifica and OCC now propose that channel swap, which contemplates that Pacifica will be assigned DTV Channel *38, to be operated from the existing KALO transmitter site, while OCC will be assigned DTV Channel 13, to be operated from the existing KUPU transmitter site.

The proposed channel changes would be consistent with the justifications for alternative channel assignments described in the Seventh Further Notice of Proposed Rule Making in *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MB Docket No. 87-268, FCC 06-150, released October 20, 2006, at ¶¶25-27. KALO has been unable to construct *any* DTV facilities – indeed, its application for initial DTV construction permit has not even been granted yet – because of concerns about interference to the Commission’s Waipahu monitoring station. Through the substitution of DTV *38 for DTV *10 in Honolulu (for KALO’s use), that problem would be resolved. The collateral substitution of DTV 13 for DTV 38 for KUPU would not cause any disruption because KUPU has thus far been unable to commence DTV operation on its currently designated DTV channel (*i.e.*, 38), an inability arising both from KALO’s on-going use of Channel 38 for its analog operation (which operation obviously precludes KUPU’s simultaneous use of the channel) and also from the fact that KUPU cannot currently file for a digital construction permit because it does not have a final digital allotment. Additionally, KUPU fits in the category of new licensees unable to use their existing analog channels for DTV use because of technical difficulties – in this case the difficulty being that KUPU’s analog channel – 56 – will be unavailable for television use following the final digital conversion.

This swap will serve the public interest by eliminating the now-years-long uncertainty concerning the status of KALO’s digital allotment. That uncertainty arose through no fault of Pacifica. Rather, it began when the *R&O* modifying KALO’s digital channel was released shortly *after* the initial DTV Table of Allotments was announced. The uncertainty was further complicated by the Commission’s determination, several months *after* the release of the *R&O*, that operation of KALO on DTV *10 could interfere with the Waipahu monitoring station. And the uncertainty was complicated yet more when, notwithstanding Pacifica’s good faith efforts to reduce power as suggested by the Commission’s staff, the staff ultimately suggested that some alternate channel should be considered. As a result, KALO is effectively without a DTV channel that it is confident that it can utilize.

The proposed swap would enable KALO to “flash-cut” from analog to digital operation on *38 with a minimum of disruption and a minimum of delay. No new transmitter site or antenna would be necessary.

For its part, OCC would not be adversely affected at all by the swap. Because the DTV channel it was allotted is already assigned for analog use and will therefore likely be unavailable

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to it for digital use until the final conversion, OCC does not expect to be able to commence digital operation until that point. Thus, any delay encountered in formalizing and effectuating the swap will not alter its situation in that regard. Moreover, according to Pacifica's consulting engineer, no technical considerations would preclude KUPU's use of digital Channel 13 in Waimanalo.

Accordingly, Pacifica Broadcasting Company and Oceania Christian Church respectfully request that the post-transition DTV Table of Allotments be revised to assign Channel *38 for use by KALO-DT in Honolulu, and Channel 13 for use by KUPU-DT in Waimanalo. The site to be used by KALO-DT is the site currently specified in KALO's analog license (File No. BLET-20020520ABM), *i.e.*, N 21° 23' 33", W 158° 5' 43", with the currently licensed antenna pattern. The site to be used by KUPU-DT is the site currently specified in KUPU's analog license (File No. 20061227AAA), *i.e.*, N 21° 19' 23", W 157° 40' 53".¹

Please direct any questions regarding this matter to the undersigned.

Sincerely,

/s/
Harry F. Cole

*Counsel for Pacifica Broadcasting Company
and Oceania Christian Church*

cc (via email): Monica Desai, Chief, Media Bureau
Eloise Gore, Assistant Division Chief, Policy Division, Media Bureau

¹ Kevin Fisher, the consulting engineer who has been assisting the parties in their analysis of their DTV situation, has been out of town and, as a result, no technical showing is currently available for inclusion with the instant request. It is anticipated that such a showing (to include, *inter alia*, suggested power levels for the two DTV operations) will be prepared and submitted shortly as a supplement to this request.