

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

_____)
In the Matter of)
)
) MB Docket No. 07-91
Third Periodic Review of the Commission's)
Rules and Policies Affecting the Conversion)
to Digital Television)
_____)

To: The Commission

Comments of LeSEA Broadcasting Corporation

LeSEA Broadcasting Corporation (“LeSEA”) hereby files comments in response to the Notice of Proposed Rulemaking in the *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television* Commission’s (“*Third DTV Periodic Review NPRM*”) issued on May 18, 2007 in which the Commission requested comment on the procedures and rule changes necessary to complete the nation's transition from analog to digital television (“DTV”).¹ LeSEA respectfully requests that the Commission implement rules, policies and procedures as discussed below that will permit the orderly and efficient transition of fully operational DTV stations to the station’s current analog channel.

Background

LeSEA’s wholly owned subsidiaries are the licensees of eight (8) full power television stations.² At the end of the digital transition, seven of those eight stations will remain on their current digital channel. For KWHB-DT, Tulsa, OK, however, LeSEA has chosen the station’s

¹ *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, FCC 07-70 (rel. May 18, 2007) (“*Third DTV Periodic Review NPRM*”).

² KWHB, Tulsa, OK; KWHD, Castle Rock, CO; KWHE, Honolulu, HI; KWHH, Hilo, HI; KWHM, Wailuku, HI; WHME, South Bend, IN; WHNO, New Orleans, LA; and WHMB, Indianapolis, IN.

current analog channel, channel 47, as its post-transition channel because it greatly reduced interference concerns and permitted wider latitude for a planned expansion or maximization of KWHB-DT's facilities to deliver more digital service to the public.³ The FCC has now issued the final DTV Table of Allotments, but LeSEA must now await the to-be-announced application procedures so that a construction permit can be obtained to move KWHB-DT to channel 47. Due to the need of KWHB-DT to retune its digital transmitter to its post-transition channel, and the technical limits of its current equipment and size of its transmitter building, KWHB-DT (and the other stations in similar situations) will need significant flexibility in discontinuing digital and analog operations and completing construction on its post-transition channel prior to February 17, 2009.

I. An expedited process should be immediately established for review and grant of construction permits for DTV channel changes consistent with the final DTV Table of Allotments.

For the benefit of KWHB-DT and many other stations that still must file applications to obtain digital permits consistent with the final DTV Table of Allotments, the FCC should simply issue an interim policy setting forth the procedures for such applications rather than wait until the adoption of a report and order in this proceeding. Now that the final DTV Table of Allotments has been issued, there is no reason for any further delay in allowing stations to file for those permits. Each additional day that it takes before permits can be filed for or issued risks placing permittees in situations where there is not enough time to manufacture or receive ordered equipment, schedule tower crews, and make other necessary tower site preparations to install digital equipment by the February 17, 2009 deadline. Further delay presents the real possibility that (i) viewers will be disenfranchised when they lose analog service by law on the deadline

³ See BFRECT-20050210ANA.

without any replacement digital service, and (ii) permittees will suffer financial loss and legal liability due to loss of advertising and programming revenue.

LeSEA fully supports the Commission's conclusion in the *Third DTV Periodic Review NPRM*,⁴ that there is a need for expedited processing for construction permits for stations like KWHB-DT to build their DTV facilities on their post-transition channel. LeSEA supports the Commission's suggestion that FCC Forms 301 and 340 be modified to identify those applications eligible to be expedited, and believes that a forty-five (45) day or shorter window for filing for an expedited construction permit is reasonable. However, LeSEA further recommends that the rulemaking also include a direction to the Commission staff to process such applications within thirty (30) days of their filing so that permits can be issued quickly and permittees can place equipment orders and schedule tower crews to enable construction by the transition deadline.

II. Stations that have fully built on their pre-transition DTV channels should be permitted to build on their post-transition channels at a Lower ERP than listed in the new DTV Table of Allotments without losing the right to maximize later.

KWHB-DT's currently authorized digital facilities were fully constructed on channel 48, its pre-transition digital channel.⁵ However, the ERP of this fully built facility is lower than the ERP set forth in the final DTV Table of Allotments for KWHB-DT on channel 47. When building this facility, LeSEA faced a dilemma. It could purchase a transmitter with limited power capabilities (but enough to fully build the station on channel 48) or it could spend hundreds of thousands more for a transmitter that had power capabilities that it hoped to, but might never be permitted to use in a maximized operation, and that it is not currently capable of

⁴ *Third DTV Periodic NPRM*, ¶94.

⁵ The license to cover was granted on March 7, 2006 (See File No. BLCDDT-20060126AKB).

housing.⁶ At the time, because of the potential risk that maximized facilities would not ultimately be allowed depending upon the final resolution of the table of allotments, LeSEA prudently purchased the smaller transmitter so it could achieve the ERP for its current digital facilities, and then built the facilities by the previously mandated July 1, 2006 deadline.

Because LeSEA has complied with all Commission deadlines in building its DTV facilities, it and other stations that timely built full digital facilities should be permitted, if necessary, to obtain new permits with ERPs consistent with the new DTV Table, but construct their digital facilities on their post-transition channels at a power slightly lower than the permit without facing the possible sanction prohibiting them from later maximizing. For example, allowing such stations to construct at an ERP of 60% of that in the new DTV Table of Allotments would have a very small impact on the actual coverage contour and the digital transition, and position LeSEA and others to avoid potentially wasteful expenditures now that can only be made based upon guesses as to what the expansion/maximization allowances and procedures will be.⁷

LeSEA, like perhaps many others, has a situation that warrants such flexibility. KWHB-DT's current operation on channel 48 is authorized at 29 kW ERP. LeSEA may be able to come close (accounting for antenna gain) to reaching the higher 50 kW ERP for KWHB-DT set forth in the now final DTV Table of Allotments using its current digital transmitter retuned to channel 47, but it could fall short of reaching this power output without acquiring a new transmitter.

⁶ The transmitter building for KWHB currently houses the NTSC transmitter and the small digital transmitter. However, the building is not large enough to house both the analog transmitter and a larger, more powerful digital transmitter.

⁷ In the 7th DTV R&O, the FCC reiterated that it would decide the post-transition expansion/maximization rules in a later proposed rulemaking proceeding. *See* 7th DTV R&O, ¶91. Based on recent timelines for rulemaking proceedings, an outcome from such a rulemaking process is not likely until the eve of the transition.

Allowing maximization protection proposed by the 60% coverage option outline above would enable LeSEA and others that previously fully built digital facilities on another channel to transition to their new digital channels with minimal expense, and avoid significant expenditures on a new transmitter capable of achieving both the full final table of allotments power and any maximized power that may or may not be permitted in the future. Absent such protection, LeSEA would not be able to determine what transmitter to purchase (with hundreds of thousands of dollars at stake) and still would not be able to house a new, larger DTV transmitter until it removed its analog transmitter.

Alternatively, the FCC should permit LeSEA and others similarly situated to seek expanded facilities now so that equipment can be ordered and transmitter housing facilities constructed to support delivery of expanded service by transition deadline. KWHB-DT's new channel 47 facilities in the final DTV Table present LeSEA with an opportunity to save money and time, and expand KWHB-DT's coverage to better serve the public. The proposed approach would be a limited exception to the FCC's announced tentative proposal not to allow the filing of applications for expanded or maximized facilities at this time.

The exception would be narrow – permitting stations in KWHB-DT's situation that desire to later maximize to file permit modification applications for expanded facilities, subject to showings that (i) no new interference issues will arise (ii) a manufacturer has committed to timely providing the necessary equipment, and (iii) the transition will not be adversely affected. Permits could be issued on an expedited basis, and stations would then build those facilities by the February 17, 2009 deadline. Such an approach would save money and deliver broader digital service to the public more quickly.

III. The Commission should be flexible in permitting an early termination of analog service so that equipment can be retuned and/or replaced, or at least a reduction in analog service to preserve resources for the transition.

KWHB-DT's situation underscores the need for the Commission to be flexible with the timing of individual station transitions to digital. If KWHB-DT and other stations like it are given no leeway to deviate from their full ERP without a potential maximization penalty, they will have to turn off their NTSC transmitters early so that they can be removed to make room for the larger DTV transmitter. Indeed, even if KWHB-DT's current DTV transmitter can be used, it will need to be retuned to KWHB-DT's post-transition channel. While the retuning itself is not a lengthy process, there are hundreds of stations that will need to be retuning and/or installing new equipment to transition⁸ and only a limited number of technical crews available, presenting scheduling conflicts.

LeSEA suggests that the Commission permit licensees whose post-transition channel is the same as their NTSC channel, a period of up to six (6) months but not less than ninety (90) days prior to February 17, 2009 to cease either analog or digital broadcasting in order to permit either the replacement or retuning of equipment. This cessation period will be necessary to assure that broadcasters can schedule a crew to retune their DTV transmitter or install new equipment. Further, LeSEA suggests that the cessation of NTSC broadcasting for those whose NTSC channel is their post-transition channel be permitted without the need to seek an STA. Rather, the licensee should simply be required to give notice to a designated Commission staff person via email.

In connection with any analog cessation, the FCC should make clear in this proceeding, or in the parallel proceeding on cable issues, that stations transitioning from analog to digital-

⁸ See Final DTV Table of Allotments released August 6, 2007.

only under this policy be entitled to immediate carriage rights for their remaining digital-only operation on local cable systems, upon simple notice to the cable operator that their analog transmission has been replaced by digital-only operations. This “short-cut” will avoid the necessity of new time-consuming elections and a minimum 30-day gap in cable carriage resulting from the current digital-only election rules, which can be made only 60 days in advance of digital only operations, but do not become “effective” until 90 days after the election is made. In association with this policy, the FCC should waive requirements on cable systems to provide the normal 45-day advance subscriber notice of channel line-up changes.

Furthermore, the FCC should move immediately to conclude its stalled proceedings regarding carriage of digital-only stations on DBS systems during the transition period. At present, unlike for cable systems, there are no rules in place allowing elections by digital-only stations on DBS systems for carriage during the transition.⁹ This carriage “gap” threatens a loss of station access to those who subscribe to DBS service for local television viewing, and is completely at odds with Congressional and Commission objectives to ensure that viewers do not lose access to local television as a result of the transition.

Finally, due to the extremely high cost of operating both NTSC and DTV transmitters and the relatively small impact of reductions in power on station coverage (an estimated 3-10%), LeSEA urges the Commission to adopt a liberal policy that stations not affiliated with the four major networks be allowed to reduce power on their analog channels by as much as 50% until the digital transition via a simple notice to the Commission. Such relief would allow significant monetary savings, and bolster television station’s resources for the digital transition.

⁹ See 47 C.F.R. 76.66, *et. seq.*

IV. Conclusion.

In conclusion, LeSEA respectfully requests that the Commission consider and adopt these suggestions to facilitate an efficient, cost-effective and timely digital television transition.

Respectfully submitted:

LeSEA Broadcasting Corporation

by: 

Mark A. Balkin

Joseph C. Chautin, III

Hardy, Carey, Chautin & Balkin, LLP

1080 West Causeway Approach

Mandeville, LA 70471

(985) 629-0777 *tel*

(985) 629-0789 *fax*

Counsel for LeSEA Broadcasting Corporation

Dated: August 15, 2007