

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

To: Secretary, FCC
For: The Commission

COMMENTS OF HUBBARD BROADCASTING, INC.

Hubbard Broadcasting, Inc. ("Hubbard"), hereby respectfully submits these comments through counsel in response to the May 18, 2007 *Notice of Proposed Rulemaking* ("Notice") in the Third Periodic Digital Television ("DTV") Review proceeding.¹ Hubbard owns the licensees of twelve full power television stations in the United States and is affiliated with a thirteenth station.² Hubbard welcomes the opportunity to inform the Commission of the many challenges to broadcasters presented by the February 17, 2009 DTV transition deadline. Hubbard has made substantial efforts, at significant expense, to comply with the mandates of the DTV transition, and it is ready to make final efforts to complete the DTV transition in a timely manner, but Hubbard will need flexible regulatory treatment in order to do so in an orderly way that best preserves service to the public, as discussed below.

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

² They are: KAAL-TV, Austin, MN; KOB-TV, Albuquerque, NM; KOBF-TV, Farmington, NM; KOBG-TV, Silver City, NM; KOBRTV, Roswell, NM; KRWF(TV), Redwood Falls, MN; KSAX-TV, Alexandria, MN; KSTC-TV, Minneapolis, MN; KSTP-TV, St. Paul, MN; WDIO-TV, Duluth, MN; WHEC-TV, Rochester, NY; WIRT(TV), Hibbing, MN; and WNYT-TV, Albany, NY. Hubbard also is the licensee, through subsidiaries, of four radio stations.

Hubbard believes that the kinds of operational, service and technical challenges described in these comments are representative of the problems faced by many television broadcasters striving to conclude the DTV transition timely. After more than 20 years of proceedings to reach this point, it is clear that the Commission must be as flexible as possible in the rules and policies it adopts in order to complete the transition efficiently. A primary goal of Congress in setting a “hard” date of February 17, 2009 was to complete the transition with a minimum of interruption to broadcast services to the public. To carry out that goal, the Commission will need to ensure that it does not straightjacket broadcasters. Broadcasters will need regulatory relief, not burdens, to complete the transition in a timely manner.

I. The Commission Should Lift the Filing Freeze Promptly, or Alternatively, Adopt a More Flexible Waiver Policy as We Approach the End of the Transition

As an initial matter, Hubbard is troubled by the lack of any discussion in the *Notice* concerning the ongoing filing freeze and when it will end. The freeze has been in place since August 3, 2004 and has now entered its fourth year.³ It has prevented many stations from making necessary modifications to their facilities. For example, Hubbard’s station KAAL(TV), Austin, Minnesota (“KAAL”) would need to expend considerable resources to remain at its current tower site. Hubbard could better serve its community of license from an alternative site that it has identified. However, Hubbard has been prevented from applying for a transmitter site move due to the filing freeze. Further information regarding KAAL’s situation is provided below.

The public policy reasons for the continuing freeze, *i.e.*, facilitating the DTV channel election process and maintaining a stable database while a new DTV Table was being developed,

³ See *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (MB 2004).

appear to have long since passed, given that all stations have elected a post-transition channel and the Commission has now issued the final DTV Table.⁴ Therefore, Hubbard urges the Commission to lift the filing freeze upon the effective date of an Order adopted in this proceeding or sooner.

If the Commission declines to lift the freeze prior to the end of the DTV transition, Hubbard encourages the Commission at the very least to adopt a flexible waiver policy as we approach the end of the DTV transition. Hubbard submits that under such a flexible waiver policy, waivers should be issued promptly upon a showing that: 1) the proposal would cause no more than 0.5% interference⁵ to any protected facility, including stations protected to their fully maximized facilities because they have met the required 80%/100% coverage criteria; and 2) the proposed facilities would serve at least 95% of the service population authorized in the newly adopted DTV Table of Allotments. KAAL would satisfy this waiver criteria as explained below. Other Hubbard stations in need of regulatory flexibility also are discussed below.

II. Additional Flexibility Is Needed to Complete the DTV Transition

A. KAAL(TV), Austin, MN

KAAL operates its licensed analog facilities on Channel 6 and has a pending license application for its DTV facilities on Channel 33. However, KAAL elected Channel 36 for its post-transition DTV operations and the newly adopted DTV Table of Allotments reflects this election. Moving to Channel 36 could be a relatively simple process if the Commission is

⁴ *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, MB Docket No. 87-268, FCC 07-138, ¶¶ 7, 90, App. B (rel. Aug. 6, 2007).

⁵ Hubbard supports the Commission's proposal to adopt a 0.5% interference criteria post-transition. *Notice* ¶ 104. This level of interference allowance is consistent with the criteria currently used to measure LPTV/TV translator interference and it is rational to allow a "rounding down" to zero.

flexible in its approach to the filing freeze, or it could be extremely difficult, with substantial loss of service to viewers, if the Commission is rigidly inflexible.

KAAL could provide a better signal from an alternative tower site but is prevented from applying for authority to do so owing to the filing freeze. Absent the freeze, KAAL would simply apply to move to an alternative tower site on which another broadcast station already is operating on digital Channel 36 but which is returning to its analog channel for post-transition operations. KAAL has substantially negotiated a tower lease agreement with that broadcaster. Accordingly, KAAL effectively would “step into the shoes” of the other broadcaster by moving to that tower without any loss in service to viewers. KAAL cannot complete the process because of the filing freeze. Allowing KAAL to do so also would avoid the need to unnecessarily construct Channel 36 facilities on its present site and provide improved service to the public.

In contrast, requiring KAAL to construct Channel 36 facilities at its present site would undermine the public interest because it would significantly reduce service to Channel 6 analog viewers. This is because the Channel 6 KAAL facilities are located on the same tower as the current Channel 33 KAAL DTV facilities and both facilities would need to be dismantled in advance of the transition date while the new Channel 36 DTV facilities were constructed on the tower. This would be an engineering nightmare. Service to both analog and digital KAAL viewers would need to be significantly reduced or terminated while the digital Channel 36 facilities were constructed, representing loss and disruption to the public. Moreover, due to the harsh winter weather in Minnesota, this work would need to begin well before October 2008, meaning a substantial loss of important network programming for KAAL's viewers for a significant period of time. Then in the future, if KAAL moved a Channel 36 operation to the new site, viewing would be disrupted again. Thus, an inflexible approach to the filing freeze

would create this scenario. In contrast, a flexible waiver approach as described above would permit KAAL to relocate to the proposed tower with *no* loss or disruption of service to either analog or digital KAAL viewers, because if KAAL is permitted to relocate to the proposed site for its channel 36 post-transition DTV operation, then KAAL can maintain its current analog operation on channel 6 and current DTV operation on channel 33 at the present KAAL site until the end of the transition.⁶

The Commission has proposed some flexibility in its “expedited processing” procedures but Hubbard believes these proposals are inadequate. Specifically, in Paragraph 94 of the *Notice*, the Commission has proposed:

to offer expedited processing to stations that timely apply for a CP to build their post-transition channel, provided that their application (i) does not seek to expand the station’s facilities beyond its new DTV Table Appendix B facilities; and (ii) specifies facilities that match or closely approximate those new DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that deviate no more than five percent from those Appendix B facilities with respect to predicted population.

Hubbard believes that these proposals are too restrictive and do not offer sufficient flexibility to allow many broadcasters to timely complete the DTV transition. First, it makes little sense to continue the freeze after the adoption of an Order in this proceeding because the DTV Table Appendix B will be out of date as soon as the Commission allows applicants to file post-transition channel applications that deviate from the Appendix B facilities by up to five percent. The rationale of a “stable DTV Table” will simply disappear because the database will no longer be static.

⁶ Eventually there will be a disruption to KAAL service when both the present analog (6) and digital (33) operations cease at the end of the transition, because the Channel 36 DTV operation does not serve all of the 6 and 33 service areas.

Second, the proposed flexibility should not be limited to those stations that are “unable” to build precisely the facilities specified in Appendix B — the Commission should also grant such flexibility where construction of the precise facilities specified in Appendix B makes no economic sense, is technically infeasible, or would not offer the most DTV service to viewers. In those situations, stations should be able to propose facilities that deviate no more than five percent from their Appendix B predicted population number and comply with the interference criteria.

Finally, the Commission should clarify that a station proposing to move to a new tower but substantially retain a similar population and coverage area is covered by the flexible approach proposed in Paragraph 94 of the *Notice*. Such stations should not be deemed to be seeking an “expansion” of service but a lateral move. Thus, if a station proposes to move to a new tower, it must be predicted to serve 95% or more of the same number of viewers (as opposed to the same actual viewers), and continue to meet current community of service obligations and the 0.5% interference criteria, in order to benefit from this flexible approach.

Finally, if the Commission did not lift the freeze or waive it for KAAL’s proposed antenna move, KAAL would need to remain operating on its current digital Channel 33 for a period of time after February 17, 2009 while it completes construction of the digital Channel 36 facilities. This would necessitate the grant of a Special Temporary Authority (“STA”), representing processing burdens to the Commission, irrational costs to KAAL and disruption of service to viewers. However, if the Commission insists on such an approach, then KAAL supports the proposal in the *Notice* to allow stations to remain on their current digital channel for a temporary period after February 17, 2009, provided the station satisfies the 0.5% interference criteria and serves the same area and population.

B. KOBF-TV, Farmington, NM (“KOBF”)

KOBF is a full power satellite station of KOB-TV, Albuquerque, NM. It operates on analog Channel 12 and digital Channel 17 but has been approved to “flash cut” digital Channel 12 for its post-transition operations.

KOBF will need to switch to a back-up transmitter on analog 12 as it begins to convert its primary transmitter to digital format. Although Hubbard does not anticipate any problems, it is possible that KOBF may require a brief STA to remain on digital Channel 17 after February 17, 2009 until the conversion of the Channel 12 transmitter to digital format is completed.

KOBR(TV), Roswell, NM, also a satellite station of KOB-TV, is in the same situation and may require similar regulatory relief. Neither station would cause harmful interference (*i.e.*, above 0.5%) to other allotments. Therefore, Hubbard urges the Commission to adopt rules and policies in this proceeding that permit such STA operations as necessary to complete the transition.

C. KSAX-TV, Alexandria, MN (“KSAX”)

KSAX, a full power satellite station of KSTP-TV, operates on analog Channel 42 and digital Channel 36, but has elected Channel 42 as its post-transition DTV Channel. The newly adopted DTV Table of Allotments reflects this election.

To complete the transition, KSAX will need to operate the DTV Channel 36 facilities at reduced power pursuant to STA for approximately one month prior to February 17, 2009, while the station installs its Channel 42 transmitter, to be provided by WHEC-TV, a commonly owned sister station in the Hubbard group. Because WHEC will be using that transmitter until the end of analog operations on February 17, 2009, KSAX will commence Channel 42 DTV operations on February 18, 2009 but at reduced power. KSAX therefore will need an STA to operate at reduced power for approximately 30-60 days until it has completed installation of the permanent

DTV Channel 42 transmitter. KSAX therefore requests that the Commission provide regulatory flexibility by allowing a post-transition STA while fully protecting KSAX's replicated facilities, and also by extending the KSAX DTV Channel 42 Construction Permit, to the extent necessary.

D. KSTC-TV, Minneapolis, MN ("KSTC")

KSTC currently is licensed to operate its analog facilities on Channel 45. KSTC is a Category 2 station, with its current licensed digital facilities on channel 44 and its post-transition digital channel is 45 according to the newly adopted DTV Table.

Hubbard has determined that it may not be possible for KSTC to complete the construction of Channel 45 DTV facilities prior to February 17, 2009 without significantly disrupting its analog Channel 45 operations as well as its DTV Channel 44 operations. Accordingly, Hubbard supports the Commission's proposal in the *Notice* to allow stations to use their pre-transition DTV channel on a temporary basis.⁷ This regulatory flexibility would allow KSTC to remain on Channel 44 after February 17, 2009 until the station is able to take down the analog Channel 45 facilities and replace them with the digital Channel 45 facilities. Hubbard supports the use of an STA as the vehicle for issuing such authorizations and also supports the requirement that the station serve at least the same area and population that receives their current analog and DTV service so that over-the-air viewers will not lose service.

KSTC has completed an interference analysis that shows *de minimis* interference (less than 0.5%) to other pertinent surrounding post-transition DTV allotments if KSTC were to operate its Channel 44 digital transmitter for a period of time during the post-transition conversion process. Hubbard anticipates that it will need approximately 120 days to complete

⁷ *Notice* ¶ 90.

the transition for KSTC, at which time it would cease operations on Channel 44 and commence fully maximized DTV operations on Channel 45.

To the extent that the Commission does *not* grant an STA for Channel 44 post-transition operations as described above, KSTC would need to reduce power significantly (below 80%, and possibly well below 80% authorized ERP) on its analog Channel 45 in order to prepare for the transition. Reduced power operations would need to commence months in advance of February 17, 2009, pursuant to STA, resulting in significant loss of service for analog viewers and creating transmitter space problems in the KSTC transmitter building.

This scenario would be further complicated because the KSTC post-transition DTV Channel 45 facilities would need to operate at reduced power for several months after the transition, thus requiring a further STA and causing a loss of service to digital viewers.

Importantly, none of these steps would be necessary if the Commission were to grant an STA for post-transition operations on DTV Channel 44. Such an STA would allow the station to remove the analog Channel 45 facilities in a seamless fashion with no resulting loss in analog or digital service, no significant interference to other stations and less processing by the Commission's staff.

In any of the above scenarios, KSTC would continue to provide a signal that at the very least observes its current community of license service obligations.

E. KSTP-TV, St. Paul, MN (“KSTP”)

Currently, KSTP is licensed to operate its analog facilities on Channel 5 and its digital facilities on Channel 50. KSTP is a Category 3 digital station, meaning that it has been approved to move to a completely new channel, Channel 35, for its post-transition operations. Moving to a completely new channel presents substantial challenges in order to complete the DTV transition

in a timely manner, and therefore, Hubbard requests that the Commission provide particular flexibility to stations like KSTP that are in this situation.

KSTP is working with a transmitter manufacturer to determine if the current digital Channel 50 solid-state transmitter can be converted reasonably to Channel 35 DTV operations. If so, KSTP would need to operate its Channel 50 digital facilities at approximately 50% power for a period of time prior to the transition date while it converted half of its Channel 50 transmitter and RF system to Channel 35 operations. On the transition date, KSTP would then turn on the newly converted Channel 35 portion of the digital transmitter and shut off the Channel 50 portion of the transmitter. Following the transition, KSTP would need to operate its Channel 35 digital facilities at approximately 50% power while it completed construction of the Channel 35 facilities using the remaining portions of the Channel 50 equipment.

If the Channel 50 transmitter cannot be reasonably converted to Channel 35 operations, KSTP would need to install a new transmitter for Channel 35. However, the station would need to remove half of the Channel 50 transmitter in order to make room for the Channel 35 transmitter in the KSTP transmitter building. Therefore, KSTP would need an STA to operate at approximately 50% power on Channel 50 for roughly 60 days prior to the end of the transition. KSTP also would need an STA to operate its post-transition Channel 35 facilities at approximately 50% power, for about 60 days after February 18, 2009, while the station completes construction of its permanent Channel 35 facilities.

In any of the above scenarios, KSTP would continue to provide a signal that at the very observed its current community of license service obligations.

III. Broadcasters' Efforts to Complete the Transition May Be Impeded by Events Beyond Their Control

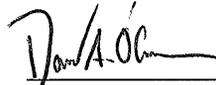
Finally, a timely completion of the transition by all Hubbard stations is contingent on several events that are beyond the control of Hubbard. For example, Hubbard has ordered antennas for all of its stations well in advance, but timely installation of those antennas is contingent on timely delivery of those antennas by the manufacturers. In addition, tower riggers have been scheduled well in advance to install the antennas, however, timely installation of the antennas is contingent on the riggers performing their obligations as scheduled and on weather conditions, which could be extremely adverse in locations such as Minnesota and northern New York during Winter 2008-2009 where Hubbard operates television stations. Moreover, some Hubbard stations share tower space with other broadcasters, and coordination efforts with those broadcasters will be ongoing and complex. Hubbard requests that any rules or policies adopted in this proceeding provide maximum flexibility for broadcasters to resolve any unforeseen circumstances as we approach the end of the DTV transition.

As demonstrated by the specific circumstances of several Hubbard television stations, application and processing flexibility by the Commission will be essential to them to observe the DTV transition timely. Undoubtedly, many other television station licensees share problems and challenges similar to the Hubbard stations. The flexibility proposed by Hubbard would conserve the resources of the Commission and broadcasters and would help prevent service disruptions

and outright service losses to the public.

Respectfully submitted,

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