BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

To: The Secretary

COMMENTS

Sunbelt Multimedia Co. ("Sunbelt"), the licensee of KTLM(TV), Rio Grande City, Texas ("KTLM" or the "Station"), by its attorneys, hereby submits these Comments in the above-referenced proceeding in which the Commission has requested comment on its proposals concerning the final phases of the transition to digital television ("DTV"), the introduction of DTV service and the recovery of spectrum at the end of the DTV Transition.[1] In these Comments, Sunbelt addresses the Commission's treatment of DTV stations experiencing financial difficulties. Specifically, Sunbelt opposes the Commission's proposal to eliminate its current test for financial hardship and institute a new test requiring either proof of bankruptcy or audited financial statements for the past three years. Sunbelt believes that the Commission's existing financial hardship standard does a

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1 *See 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, released May 18, 2007.

better job of identifying financially distressed licensees than the proposed test. Accordingly, Sunbelt proposes that the Commission allow those digital stations that have consistently shown that the costs of the DTV Transition constitute a serious financial hardship to continue to operate below full power until the transition deadline, February 18, 2009, while still receiving interference protection, pursuant to the existing financial hardship standard. In support thereof, Sunbelt states as follows.

In *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, the Commission announced its decision to grant DTV extension requests for Stations experiencing financial difficulties vis-à-vis the DTV Transition.[2] The Commission acknowledged that, "particularly for stations in smaller markets, the capital costs of conversion may be very high relative to the station's anticipated revenue," and the Commission set forth the criteria such Stations should focus upon to demonstrate qualifying financial hardship.[3] The Commission adopted a rigorous standard – requiring itemized estimates of costs and detailed explanations of Stations' financial conditions – in order to ensure that those Stations qualifying for financial hardship extensions would do so based on their "financial status over an economically significant period of time" rather than on the basis of a temporary economic downturn or

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2 *See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Memorandum Opinion and Order on Reconsideration, MM Docket No. 00-39, 16 FCC Rcd 20594 (2001) ("*DTV Financial Hardship Order*").

3 *Id.* at 20611.

financial setback.[4] The Commission codified this standard in Section 73.624(d)(3)(ii)(C) of the Commission's Rules.[5]

As the licensee of a Station in a small rural market who has applied for and been granted a number of authorizations to continue to operate its DTV Station below full power,[6] Sunbelt submits that the financial hardship standard set forth in the *DTV Financial Hardship Order* successfully identifies on those Stations that genuinely are unable to meet the financial demands of the DTV Transition. More importantly, the Commission's financial hardship-based grant of DTV extensions and STAs to operate below full power have allowed Stations that might otherwise have missed the DTV Transition altogether to proceed with the Transition at a reasonable pace, one that reconciles technological advancement with the financial realities of small market broadcasting. In Sunbelt's case, the series of STAs granted by the Commission permitting KTLM to conduct its digital operations below full power have lent regulatory certainty and financial stability to what would otherwise be an intolerably bumpy DTV Transition.

In connection with its effort to tighten the standard for extensions of DTV construction deadlines, in the *NPRM* the Commission now proposes to eliminate the existing financial hardship standard and replace it with the following, narrower test:

> [I]n seeking a DTV extension, we propose that the licensee/permittee of a station may show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years... Stations seeking an extension

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4 *Id.*

5 47 C.F.R. § 73.624(d)(3)(ii)©

6 *See, e.g.*, BEDSTA-20060630AFQ. KTLM was recently granted a "use or lose" waiver, based on financial hardship, for a six-month period after providing evidence to the Commission of the required financial hardship showing. *DTV Build-Out*, 22 FCC Rcd 9750, 9760 (2007).

> based on financial considerations would either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years.[7]

Sunbelt opposes this test because it will generally bar a number of licensees who have legitimately qualified for the financial hardship extension in the past and continue to do so now. By reducing the pool of eligible licensees to those who are in bankruptcy or otherwise have audited financial statements for the past three years, the Commission's proposed test categorically excludes Stations that have managed to stay out of bankruptcy but do not have sufficient financial resources to warrant an unnecessary and prohibitive expenditure on audited financial statements.[8] In other words, the audited financial statement requirement has the unintended effect of immediately disqualifying the very Stations who most need a financial hardship extension – those struggling Stations whose financial resources are sufficiently limited that they cannot afford to maintain an initial, let alone running audited financial statements. Should not these Stations be obligated to spend their money on Station operations as opposed to audited financials whose only purpose is to evidence their financial difficulties.

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7 *NPRM* at ¶ 81.

8 Further, even if a licensee wished to secure an audited financial statement on a rush basis, it could not be done. In order to prepare audited financials, auditors have to review at least one year's prior financials and ensure that financial records are otherwise in order and can be tested. While costs vary with the size and complexity of the entity, initial audited financial statements can cost $50,000.00 and higher. In order to prepare three years' of audited financial statements would be a practical impossibility and an insurmountable financial obligation for a party. Sunbelt submits that unless the Commission can show that a licensee that does not possess audited financial statements at this time can secure audited financial statements in a reasonable time and at a reasonable expense, it should not demand one year of audited financials, let alone three.

Rather than adopt this burdensome test. Sunbelt urges the Commission to use the instant rulemaking proceeding as an opportunity to ensure that Stations such as KTLM continue to enjoy regulatory certainty and financial stability until the end of the DTV Transition. In short, Sunbelt requests that the Commission permit Stations demonstrating financial hardship, pursuant to the standards adopted in the *DTV Financial Hardship Order*, to continue operating their DTV facilities below full power until the end of the DTV Transition, without losing any of their interference protection rights.[9] Further, Sunbelt requests that Stations that have already received a financial hardship waiver be permitted to continue it based on a certification of no material change in finances.

Assured of their continuing ability to operate their DTV facilities at reduced power without losing their protection rights. small, financially-constrained broadcasters will be able to focus their energy and resources on securing the long-term success of constructing their DTV facilities over the next 552 days and, thereby, ensuring their post-Transition DTV operations.

Wherefore, Sunbelt Multimedia Co. respectfully opposes the revised financial hardship standard proposed in the *NPRM* and requests that the Commission permit Stations demonstrating financial hardship under the existing standard to continue to operate their DTV facilities below full power. without losing interference protection

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[9] This would be similar in nature to the "use or lose" waivers until February 17, 2007 recently granted by the Commission. *See, e.g., DTV Build-Out, supra* at ¶¶ 79 et seq.

rights, until the end of the DTV Transition.

Respectfully submitted,

SUNBELT MULTIMEDIA CO.

By: ______________________

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