

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

TO: Marlene H. Dortch, Secretary

For transmission to: The Commission

PETITION FOR PARTIAL RECONSIDERATION

1. Surtsey Media, LLC (“Surtsey”) hereby seeks reconsideration of the technical facilities allotted to Station KFJX-DT, Pittsburg, Kansas, in the DTV Table of Allotments adopted in the Seventh Report and Order (“*Seventh R&O*”), FCC 07-138, released August 6, 2007, in the above-captioned proceeding.¹ While the Commission, in the *Seventh R&O*, did accede to Surtsey’s request, expressed in Comments (“Comments”) filed on November 21, 2006, for assignment of DTV Channel 13 for Station KFJX-DT (in lieu of DTV Channel 14), the facilities specified for Surtsey’s use of Channel 13 were substantially different from those which Surtsey had sought in its Comments. In this Petition Surtsey requests modification of the specified DTV facilities as set forth in greater detail below.

¹ The *Seventh R&O* was published in the Federal Register on September 26, 2007. 72 Fed. Reg. 54720. Accordingly, petitions for reconsideration of that decision may be filed between September 26 and October 26, 2007. See Sections 1.4(b) and 1.429(d) of the Commission’s rules.

Background

2. As set out in its Comments, the original construction permit for Surtsey's Station KFJX(TV) was issued in 2002. As a result, the station was not assigned a companion DTV channel; instead, the expectation was that it would simply flash-cut from analog to digital service on its originally-assigned channel, Channel 14. Use of Channel 14 for digital operation, however, carries with it a very substantial likelihood of interference caused to land mobile operation, including radio communications used by first responders, police and fire departments and hospitals. Within the area likely to be affected by a Channel 14 DTV KFJX operation there are more than 375 separately-licensed land mobile facilities. Accordingly, assignment of an alternate DTV channel was plainly in the public interest.

3. Also as set out in its Comments, an alternate channel was readily available, as Station KOAM-TV, Pittsburg, with analog operation on Channel 7 and digital operation on Channel 13, had chosen Channel 7 as its ultimate digital channel. The KOAM-TV licensee advised Surtsey that it would make available to Surtsey, at a reasonable price, the Channel 13 facilities with which KOAM-DT has been operating for several years already.

4. Accordingly, Surtsey proposed in its Comments that KFJX's digital allotment be modified to specify the facilities already authorized, installed and in operation for KOAM-DT.

As Surtsey stated in its Comments:

Since Surtsey's proposal contemplates that its DTV operation on Channel 13 would utilize the KOAM-DT facilities which have already been approved, constructed and successfully operated for a considerable time already, Surtsey does not believe that any engineering showing confirming its proposal's compliance with the Commission's technical rules is necessary here. Should the Commission determine that some such showing is in order, Surtsey will gladly submit one upon request.

Surtsey Comments at 5, n. 4. *See also id.* at 6 (“Station KOAM-TV has agreed to make its DTV Channel 13 transmission equipment – already installed and operational – available to Surtsey on terms which are attractive to Surtsey.”).

5. In the *Seventh R&O*, the Commission partially granted the relief which Surtsey had sought: it assigned DTV Channel 13 to KFJX. However, the technical aspects of the assignment – power and antenna type, site and height – were derived from the analog KFJX operation, and *not* those of the already authorized, existing and operating KOAM-DT facilities which Surtsey proposed to acquire and utilize.

6. Surtsey hereby seeks reconsideration of those specifications. In particular, Surtsey requests that its digital allotment be modified to reflect the existing KOAM-DT facilities. In the alternative, purely as an interim measure to accommodate possible concerns of the Commission’s staff, Surtsey requests that, at minimum, its digital allotment be modified to specify the KOAM-DT antenna site, type and height, with the understanding that, prior to February, 2009, it will be authorized to commence operation as of the DTV transition date (currently scheduled for February 19, 2009) with the full power currently utilized by KOAM-DT.

Argument

7. Surtsey understands that the Commission imposed limitations on the KFJX digital allotment because of concern about the freeze on television modifications which has been in place since August, 2004. *See* “Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes”, DA 04-2446, released August 3, 2004 (“*Freeze Notice*”). Because the analog operation of KFJX(TV) is limited by, *inter alia*, use of a tri-lobe directional antenna, use of the non-directional KOAM-DT facilities would extend the KFJX-DT signal

beyond the KFJX analog footprint, thereby increasing the station's service area beyond permitted replication limits and, thus, violating the freeze. Surtsey believes that any arguable freeze violation can and should be waived in view of the unique public interest considerations present here.

8. As an initial matter, it should be noted that, because Surtsey was in that small category of television permittees not assigned an initial companion digital channel, Surtsey was not given the opportunity to maximize its digital service, an opportunity which was accorded to the vast majority of existing television stations. The KOAM-DT facilities which Surtsey seeks would have been permitted pursuant to conventional maximization analysis – indeed, those facilities were already authorized (but to KOAM, not to KFJX). As a result, grant of the requested relief would simply give Surtsey the same maximization opportunity that was previously given to the rest of the stations in the Pittsburg market.

9. Moreover, to the extent that the freeze was imposed in order to “ensure a stable television database prior to the channel election process”, *Freeze Notice* at (unnumbered) 2, that goal has already been achieved, since the channel election process has been effectively completed. While some modifications to digital facilities will almost certainly be sought by various stations between now and February, 2009, Surtsey understands that assignment of the KOAM-DT facilities to KFJX now would *not* preclude or limit any other station in the vicinity of Pittsburg, Kansas from seeking to maximize its facilities. *See* attached engineering statement of John F.X. Browne. That is, grant of the relief sought would *not* adversely affect any other licensee, either now or at such time as the freeze is ultimately lifted.

10. Additionally, assignment of the KOAM-DT facilities to KFJX-DT would be consistent with the Commission's goal of a smooth transition to digital operation. After all, the

KOAM-DT facilities are already in place and in operation, serving the public.² The public, in turn, has come to rely on Channel 13 digital service throughout KOAM-DT's current service area.³ Forcing Surtsey to substantially reduce that service area would adversely affect the approximately 150,000 viewers to whom Channel 13 digital service has been available for years already.

11. According Surtsey the relief it seeks would not open any floodgates for similar applications. To the contrary, Surtsey is not aware of any other situations in which an existing DTV licensee is willing to turn its existing, already authorized digital operation over – lock, stock and barrel – to another licensee in the market. Should such other situations exist (and Surtsey doubts that there are many, if any), the Commission should encourage such arrangements, as they are obviously consistent with the goal of a seamless transition to digital for both the television industry and the viewing public.

² Needless to say, forcing Surtsey to install the allotment facilities contemplated by the *Seventh R&O* would be the antithesis of smooth, efficient transition. It would make no sense at all for Surtsey to acquire new equipment to install at its currently specified site and for KOAM-DT, in effect, to scrap its own equipment once the transition occurs. Further, the notion of constructing a whole new KFJX-DT Channel 13 facility would impose major coordination difficulties on both KOAM-DT and KFJX-DT in the period leading up to the transition. Since KOAM-DT would continue to operate on Channel 13 until the transition, KFJX-DT would not be able to test its new facilities unless KOAM-DT were to interrupt its own operations. Such interruptions would obviously be disruptive to KOAM-DT and to its viewers. The only way to avoid such interruptions to KOAM-DT would be to postpone testing of KFJX-DT's operation until post-transition, but such a delay would still not prevent possible service losses during the testing process. By contrast, allowing Surtsey to use the KOAM-DT facilities would afford everyone concerned – KFJX-DT, KOAM-DT and, most importantly, the viewing public – the simplest, most transparent transition. That transition would entail nothing more than changing the programming source input for the KOAM-DT transmission facilities from KOAM to KFJX. From the viewing public's perspective, such a change would be seamless.

³ Station KFJX(TV)'s programming is currently carried on one of the Channel 13 digital subchannels.

12. From a meeting with the Commission's staff in September, 2007, Surtsey understands that the staff would give favorable consideration to some immediate modifications of the KFJX-DT facilities, so long as the signal produced by those modified facilities would not exceed the analog footprint of the KFJX analog signal. The modifications acceptable to the staff would include specification of the KOAM-DT antenna site, antenna type and antenna height. As apparently contemplated by the staff, the modified KFJX-DT facilities would entail a substantial reduction in power in order to shrink the resulting service area into the KFJX analog footprint. According to Surtsey's consulting engineer, the power necessary to achieve that result would be approximately 170 watts, which would result in a population loss of 9.5% over KFJX's original TCD population (which was based on an ERP of 3.2 kW directional).

13. Surtsey would have no objection to such restrictions on its initial digital allotment, so long as Surtsey is given assurances that, prior to the final digital transition, it would be authorized to increase its power to the level currently utilized by KOAM-DT.⁴ In Surtsey's view, it is of the utmost importance that, when KFJX commences digital operation on Channel 13, viewers in the Pittsburg market will not suffer any loss of service on that channel.

⁴ Surtsey is, of course, extremely appreciative both of the staff's willingness to meet with Surtsey's representatives to discuss these matters, and also of the staff's recognition of Surtsey's predicament and the staff's cooperation in seeking a suitable resolution. Surtsey notes that, in view of the staff's expressions of support for allowing Surtsey to utilize the KOAM-DT facilities (whether or not with initially reduced power), Surtsey does not presently plan to place any orders for the new equipment which would be necessary if Surtsey were to proceed with the construction of the new facilities specified in the *Seventh R&O*. Surtsey understands that, if such new facilities were to be required to be built by February, 2009, then Surtsey would have to place its order for equipment no later than approximately November 1, 2007. In other words, by not ordering equipment now, Surtsey will likely be unable to complete construction of such new facilities by February, 2009. Since Surtsey understands that it will be permitted to utilize at least the KOAM-DT antenna, site and HAAT, that should not be a problem. However, if Surtsey's understanding proves to be wrong, it is important to recognize that some delay in construction of any "new" facilities will likely occur. Should such a situation arise, Surtsey will promptly notify the Commission and seek such relief as may be necessary and appropriate under the circumstances.

Since Channel 13 is currently occupied by KOAM-DT, and since it will continue to be occupied by KOAM-DT until the final transition date, any theoretical power limitation imposed on KFJX-DT's future operation is of limited consequence, as long as, when that transition date arrives and KFJX-DT starts operation, it will be able to do so with the full power already utilized by KOAM-DT.

14. Accordingly, Surtsey requests that the DTV allotment for KFJX-DT, Pittsburg, Kansas, be modified to specify the following facilities, which are the facilities currently specified in the KOAM-DT license (File No. BLCDT-20050719AGE):

Latitude:	37° 13' 15" North
Longitude:	94° 42' 25" West
Antenna:	ACS4EDTV CH13
HAAT:	302.4 meters
ERP:	6 kW

As indicated above, Surtsey would not object to an initial ERP specification of 170 watts, so long as Surtsey is assured that, prior to the final DTV transition, it will be authorized to increase the ERP to 6 kW.

Respectfully submitted,


/s/ Harry F. Cole
Harry F. Cole

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October 2, 2007



Engineering Statement
of
John F.X. Browne, P.E.
re:
KFJX-DT
Pittsburg, KS

Background

This firm previously analyzed the options for KFJX-DT to maximize its DTV power. In a report dated September 7, 2007, we determined that a 6 kW ERP would meet FCC post transition requirements. The report also indicated that several other DTV stations would receive interference within limits with the 6kW KFJX-DT proposal. From an inspection of the list in Table 2 of that earlier report, two stations were identified that might be a problem if they also decided to apply for post-transition maximization. Those two stations are WIBW-DT (Topeka, KS) and KEMV-DT (Mountain View, AR). In performing studies of these stations it was assumed that an omni-directional antenna was used at each station.

WIBW-DT

WIBW-DT will probably not be able to maximize. There is a Ch12 DTV station in Topeka and any maximization would cause that station excessive interference. Interference to KFJX-DT may also be an issue depending on the power level.



KEMV-DT

Studies indicate that KEMV-DT could possibly maximize to 16kW omni-directional before it would cause another station excessive interference (over the 0.5% interference that is speculated to be the interference criterion that the FCC will adopt post-transition). With KEMV-DT maximized to 16kW omni and KFJX-DT maximized to 6kW as proposed, the studies show that KEMV-DT would cause KFJX-DT 0.1% interference and KFJX-DT would cause KEMV-DT 0.138% interference. This is well below the proposed 0.5% interference level.

Conclusion

It is hard to predict with certainty the final configuration in each of the above cases as there could be other combinations of power levels and antenna patterns employed, but it appears KFJX-DT could maximize to 6kW omni, as proposed, and KEMV would also be able to maximize. KFJX-DT's maximized facility would not be the limiting factor for either of the facilities.

B**Certification**

I hereby certify that the foregoing report or statement was prepared by me but may include work performed by others under my supervision or direction. The statements of fact contained therein are believed to be true and correct based on personal knowledge, information and belief unless otherwise stated; with respect to facts not known of my own personal knowledge, I believe them to be true and correct based on their origin from sources known to me to be generally reliable and accurate. I have prepared this document with due care and in accordance with applicable standards of professional practice.



John F.X. Browne, P.E.
September 19, 2007