

October 19, 2007

VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
ATTN: Video Services Division

Note: Exempt From Filing Fees

Re: **Request for Further Waiver of Replication/Maximization Requirements**
Noncommercial Educational Station KETC-DT, St. Louis, MO
Facility ID: 62182 / FRN: 0002549566
MB Docket No. 03-15

Dear Ms. Dortch:

On behalf of St. Louis Regional Educational and Public Television Commission (“KETC”), licensee of noncommercial educational television station KETC-DT, St. Louis, Missouri, we hereby request a further waiver of the DTV replication requirements. On June 28, 2006, KETC requested a waiver of the July 1, 2006 deadline (a copy of which request is attached for the convenience of the Commission), which request was granted for a six-month period by the Commission in its *Order*, FCC 07-90 (released May 18, 2007) (the “*Extension Order*”). That waiver expires on November 18, 2007. KETC hereby seeks a further waiver, this time on a permanent basis.

In its *Second DTV Periodic Review Report and Order*,¹ the Commission adopted a July 1, 2006 replication/maximization protection deadline for noncommercial DTV licensees. The Commission stated that, in cases where a station was unable to meet the applicable deadline due to “circumstances beyond a station’s control,” it would “grant extensions of the applicable replication or maximization interference protection deadline on a six-month basis if good cause is shown.”²

¹ Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279 (rel. Sept. 7, 2004) (“*Report and Order*”).

² *Id.*, ¶ 87.

As explained below, and as accepted by the Commission in the *Extension Order*, a waiver of this deadline is justified due to a change in KETC's DTV channel election and replication plans, the fact that KETC has fully constructed its authorized DTV facilities that provide coverage to 97.2% of the replication population, and the reality that achieving coverage of the last 2.8% of the population would be recklessly and unnecessarily expensive.

Background

In its November, 2004 Pre-Election Certification, KETC certified that it would operate post-transition "replication" facilities for KETC-DT. *See* FCC File No. BCERET-20041101AEJ. At the time it made that certification, KETC fully intended and expected to return to its NTSC channel 9 for DTV use at the end of transition. That meant, among other things, that it would be subject to an 80% replication requirement at the July 1, 2006 deadline.³ Accordingly, in January of 2005, KETC elected its NTSC Channel 9 as its First Round Channel Election. *See* FCC File No. BFREET-20050105AAG.

However, KETC's election of its NTSC Channel 9 was disapproved by the Commission in June, 2005 due to small amounts of interference to Station WSIU-DT in Carbondale, Illinois. To resolve that concern, during June and July of 2005, KETC undertook extensive efforts to reach an agreement with Station WSIU-DT to allow for KETC-DT's use of Channel 9. After those efforts failed, KETC had no choice in its First Round Conflict Decision in August, 2005 but to modify its channel election to select its existing DTV Channel 39. *See* FCC File No. BFRECT-20050811AAL. The FCC released its tentative designation of post-transition DTV Channel 39 for KETC on October 5, 2005.

When KETC had certified its intent to replicate, it had been more than two years since it had built-out and licensed its KETC-DT facility on Channel 39 at 124.6 kW ERP. *See* FCC File BLEDT-20020816AAQ, granted February 12, 2003. With that constructed DTV facility, KETC already met the 80% replication standard required of stations that receive a DTV channel designation on a channel that is not their current DTV channel – which is precisely what KETC expected to receive upon its then planned, and later filed, election of its NTSC Channel 9. In fact, as KETC has previously shown, KETC-DT's currently licensed and operating digital facilities on Channel 39 replicate 97.2% of the station's analog population service.

It was only after the FCC identified a conflict with the Channel 9 election, and KETC was unable despite significant efforts to resolve it, that KETC in August of 2005 conceded that it would be required to stay on Channel 39 as its permanent DTV channel (which decision was later acknowledged by the Commission with the issuance of the tentative table in October, 2005). Due to the required change from the election of its NTSC channel to that of its existing DTV

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Id.

channel, KETC must now “construct full, authorized DTV facilities,”⁴ which FCC staff has confirmed requires 100% analog replication.

Request for Waiver

KETC has explored the feasibility and practicality of achieving 100% replication and has determined that the cost of doing so would be prohibitive. The cost is unaffordable for a noncommercial educational broadcaster such as KETC. Perhaps more importantly, expenditure of the vast sums required to achieve 100% replication would not serve the public interest, because under any calculus, the expenditure is not worth the marginal gain to be achieved in terms of potential viewers.

As explained in KETC’s June 28, 2006 waiver request, and fully documented therein, KETC-DT currently reaches an OET-69 interference-free population of 2,671,405 persons (97.2% replication of KETC’s “Table II” replication baseline population). In order to reach the 100% replication level of 2,748,995 persons, KETC would need to *quadruple* the power for KETC-DT (to 498.4 kW ERP). KETC’s estimated costs to accomplish the quadrupling of power would amount to \$1,652,000.00 (including antenna, installation, tower, filter, combiner, power, DHD, and HVAC costs, as detailed in Exhibit 2).⁵ These costs would be in addition to the \$1,082,096 that KETC has spent to date on its DTV conversion.

Thus, the expenses involved with reaching the 100% replication number would be nearly *double* the entire cost of KETC’s DTV investment to date, an investment that achieves 97.2% replication. Under these circumstances, it is simply unreasonable for a public TV station with limited funding to spend more than \$1.6 million dollars to achieve a gain of only 2.8% (77,590) more potential over-the-air viewers.

The need for a waiver is further supported by fact that only a minimal percentage of the population of KETC’s community of license relies on off-air reception. According to Nielsen Media Research, the 2006 Cable and/or Alternate Delivery System (ADS) penetration for the St. Louis DMA is at 78%.⁶ Thus not only would an extraordinary outlay of funds be necessary to achieve a minimal gain (of fewer than 80,000) in DTV population, but it is likely that less than a quarter of those viewers actually rely upon over-the-air television reception.⁷

⁴ Id.

⁵ It would cost \$423,168.00 in equipment and installation expenses to merely double KETC-DT’s power (to 249.2 kW), which would increase the digital facility’s predicted interference-free coverage to 2,710,725 persons (a net increase of fewer than 40,000), and which would still amount to only 98.6% of its replication requirements.

⁶ http://www.tvb.org/rcentral/markettrack/Cable_and_ADS_Penetration_by_DMA.asp

⁷ At the end of transition, KETC will explore the option of moving its DTV antenna some 100 feet higher on its tower, following the removal of the analog antenna, as may further increase its replication coverage.

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Based on the forgoing, KETC respectfully submits that good cause exists for the Commission waive the replication requirements for KETC-DT. Circumstances beyond KETC's control forced a late revision of its DTV channel election, and brought about a recent change to the station's replication requirements (now at 100% as opposed to the earlier 80%). As a result, KETC finds itself with a licensed DTV operation that falls 2.8% short of replicating its full analog population, and KETC faces extraordinary expenses beyond its public TV budgetary means in order to make up the meager difference in coverage.

In response to the prior waiver request, the Commission granted a six month waiver. However, plainly, the circumstances here are such that the waiver should be made permanent. Granting an additional six months misses the point, which is that the investment required to achieve 100% replication is simply not worth the cost. Another temporary waiver also would require KETC and the Commission to deal with the issue again, when it can be resolved now.

KETC is a noncommercial educational broadcaster and operates station KETC(TV/DT) on a noncommercial educational basis. Moreover, KETC qualifies as governmental entity. KETC is therefore exempt from filing fees pursuant to Section 1.1114 of the FCC's Rules, and exempt from regulatory fees pursuant to Section 1.1162 of the FCC's Rules. The applicant certifies that no party to this filing is subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

Should any questions arise concerning this waiver request, kindly contact this office.

Very truly yours,



Todd D. Gray

Barry S. Persh

Counsel for St. Louis Regional Educational and
Public Television Commission

cc: Shaun Maher (at Shaun.Maher@fcc.gov)