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Before the
Federal Communications Commission
Washington, DC 20554

FILED/ACCEPTED
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Federal Communications Commission
Office of the Secretary

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

Attn: Eloise Gore, Esq.
Policy Division, Media Bureau

JOINT PETITION FOR RECONSIDERATION

Gulf-California Broadcast Company ("Gulf") and NPG of Texas, L.P. ("NPG-Texas") (collectively "NPG") jointly petition the Federal Communications Commission ("FCC") to reconsider, set aside and reverse in part its decision in the captioned proceeding, FCC 07-228, released December 31, 2007 ("Third DTV Periodic Decision").¹

1. NPG's Joint Petition is directed solely to the FCC's surprise and unorthodox holding (at paragraph 78 of the Third DTV Periodic Decision), where the FCC stated:

"78. Circumstances beyond the station's control... *A station seeking to maximize that cannot obtain international coordination for such facilities may be required to construct facilities with a smaller coverage area*" (emphasis added).

2. Each of the full power TV stations that is the subject of this Petition (KESQ-DT, Palm Springs, CA, KECY-DT, El Centro, CA/Yuma, AZ and KVIA-DT, El Paso, TX) has filed a

¹ Gulf is the Licensee of KESQ-TV, Palm Springs, CA [ABC-TV Network] and the proposed Assignee of KECY-TV, El Centro, CA/Yuma, AZ [Fox-TV Network]. NPG-Texas is the licensee of KVIA-TV, El Paso, TX [ABC-TV Network]. News-Press & Gazette Company ("NPG") is the ultimate parent of both Gulf and NPG-Texas.

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Form 301 digital TV application that will require Mexican concurrence.² It has been reported recently that the FCC's International Bureau has thus far been unable to obtain Mexican concurrence for many US/Mexican border TV stations that are reverting to their NTSC (analog) channels for their post-transition digital operations.³

3. At this late date in the FCC's 10-year-long digital TV transition process, it is surprising at best for the FCC to suggest for the first time that, if Mexico does not timely grant the needed concurrences, then some stations -- possibly including the three stations that are the subject of this Petition -- may NOT be permitted by the US government to construct their proposed digital facilities -- to serve all of the audiences and areas that will depend, post-transition, on these stations for their respective network DTV service.⁴ After working closely and effectively with all American TV licensees since 1997 to develop detailed post-transition digital proposals, the FCC now purports to adopt a new policy that, absent the FCC's ability to obtain Mexican concurrences for digital operations (on NTSC channels that Mexico previously has approved for analog operations), then some stations simply will have to accept "a smaller coverage area" that does not fully meet the needs of these stations' current analog viewers.

4. This "paragraph 78 policy announcement" is not only an unexplained departure from FCC precedent,⁵ but if allowed to stand as FCC policy, it would constitute both an unlawful "taking" by the federal government and also a violation of the landmark Congressional mandate that the FCC fairly distribute broadcast service throughout the Nation. See 47 USC 307(b). To simply

² Each of these stations has timely filed a Form 387 DTV Transition Status Report with the FCC, noting the need for Mexican coordination and further stating that any delay this spring in obtaining such concurrence by Mexico could jeopardize its ability to meet the February 17, 2009 statutory deadline.

³ Each of these stations filed "elections" several years ago, informing the FCC that each would revert to its NTSC "analog" channel for post-transition digital operations.

⁴ Accordingly, for purposes of meeting the standing requirements of 47 CFR 1.106, NPG meets the "adversely affected" test. NPG has not participated previously in this proceeding because this "new policy" has not previously been announced by the FCC.

⁵ See, e.g., Sixth Report and Order, 12 FCC Rcd 14588 (1997); First DTV Periodic Report and Order, 16 FCC Rcd 5946 (2001), subseq. history omitted; Second DTV Periodic Report and Order, 19 FCC Rcd 18279 (2004).

state, after more than 10 years of designing a transition that is being imposed upon the broadcast industry and imposed on more than 1800 full power TV stations, that some stations -- and some of their current viewers -- may have to be content with digital facilities serving "a smaller coverage area" is arbitrary, unlawful and an abuse of the administrative process.

CONCLUSION

The Third DTV Periodic Decision's new statement of policy -- that should Mexican concurrence for some U.S. stations' proposed post-transition operations not be timely obtained, then some United States television stations may simply have to be content with constructing final post-transition digital facilities "with a smaller coverage area" (id., at para. 78) -- should be reconsidered and set aside. The FCC should adhere to its long-held policy and its consistent plan to obtain the necessary Mexican concurrences for all US/Mexican-Border stations to construct the digital TV facilities that they have proposed, in order to serve their current viewers.⁶

Respectfully submitted,

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⁶ Stations along the U.S. border with Mexico, who need Mexican concurrences to construct their long-planned digital facilities, are powerless in the "concurrence" process, as the FCC long has taken the position that only its International Bureau is empowered to seek such Mexican approvals.