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APR 18 2008
Federal Communications Commission
Office of the Secretary

April 18, 2008

BY HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: **Eighth Report and Order on Digital Television, MB Docket No. 87-268**
Petition for Reconsideration on behalf of Corridor Television LLP
Licensee of KCWX, Fredericksburg, Texas

Dear Ms. Dortch:

Transmitted herewith on behalf of Corridor Television, LLP, licensee of television station KCWX, Fredericksburg, Texas, Facility ID 24316, are the original and four copies of a Petition for Reconsideration of the Eighth Report and Order on Digital Television in MB Docket No. 87-268.

Should additional information be necessary in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,

James A. Stenger

Encl.

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APR 1 8 2008
Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

Petition for Reconsideration of the Eighth Report and Order
on behalf of Corridor Television LLP
Licensee of KCWX, Fredericksburg, Texas

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Dated: April 18, 2008

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Summary of Argument

Corridor requested channel 8 as the DTV channel for KCWX-DT in June, 2006, almost two years ago, but was assigned channel 5, a low-VHF channel. Corridor requests that Corridor's channel assignment be changed to channel 8 and proposes to accept channel 8 with a power limitation of 15 kW non-directional ERP at 413 meters HAAT such that Corridor will cause less than 0.5 percent interference to the adjacent channel stations.

The consent of the adjacent channel stations to accept less than 0.5 percent interference has been requested but not obtained. Under those circumstances, the Commission should grant the requested waiver of the 0.1 percent interference rule to allow interference not to exceed 0.5 percent. In addition, the Commission should take a more active role in encouraging reasonable interference agreements, particularly those involving less than 0.5 percent interference. Both actions would be consistent with the Commission's stated intent of finalizing the DTV table in time for stations to build their DTV stations by the deadline and allowing stations with low-VHF channels to obtain channel reassignments in this proceeding.

The Commission should finalize the DTV table in time for existing stations to complete the transition by the February 17, 2009 transition deadline. As it will take at least six months to order and install equipment, the table should be finalized in this proceeding to the extent possible. The final DTV table should reflect the Commission's stated policy of allowing stations with low-VHF channel assignments to obtain an alternative channel in this proceeding. Corridor should not be required to commence a new proceeding in August, 2008, with only a few months left to build KCWX-DT.

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To: The Commission

Petition for Reconsideration of the Eighth Report and Order
On Behalf of Corridor Television LLP
Licensee of KCWX, Fredericksburg, Texas

Corridor Television LLP ("Corridor"), licensee of television station KCWX, analog channel 2, Facility Id. 24316, Fredericksburg, Texas, through its undersigned counsel and pursuant to Sections 1.106 and 1.429 of the Commission's Rules, hereby petitions for reconsideration of the *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, FCC 08-72, released March 6, 2008 ("the *Eighth Report and Order*")[1], and in support hereof respectfully shows as follows:

[1] The *Eighth Report and Order* was published in the Federal Register on March 21, 2008. *See* Public Notice, DA 08-631 (Mar. 21, 2008). Accordingly, petitions for reconsideration are due by April 21, 2008. 47 C.F.R. §§1.106(f), 1.429(d), 1.4(b)(1) and 1.4(j).

I. History of Proceedings.

KCWX-TV is licensed to Fredericksburg, Texas, located in what is known as the Hill Country of Texas, a rural area between Austin and San Antonio. KCWX is an independently owned station licensed to Corridor Broadcasting, LLP. The station is affiliated with the CW Television Network and is operated by Belo Broadcasting. Channel 2, Fredericksburg, Texas was one of the last analog television station licenses to be awarded by the Commission through the comparative hearing process.

In the Third Round of the DTV election process, Corridor requested channel 8 as the TCD for KCWX. The original request of KCWX for channel 8 would have caused 0.79 percent interference to channel 7, KTBC-DT, Austin, Texas, licensed to FOX, and 0.47 percent interference to channel 9, KLRN-DT, San Antonio, Texas licensed to Alamo Public Television. Corridor requested a waiver of the 0.1 percent interference standard. Corridor based its waiver request upon the expected adoption of the 0.5 percent interference standard and the fact that Corridor's request for channel 8, without a power limitation, would only exceed the 0.5 percent standard as to KTBC by a *de minimus* amount (at 0.79 percent) and would comply with the 0.5 percent standard as to KLRN (at 0.47 percent). FOX and Alamo both opposed the waiver request.

The Commission denied the waiver request in the *Seventh Report and Order* and assigned channel 5 to KCWX as its post-transition DTV channel.[2] The Commission declined to grant the requested waiver on the grounds that the 0.5 percent standard was only a proposal and had not been adopted and even if it were, the request of Corridor for channel 8 would still exceed the 0.5 percent standard as to FOX's station:

[2] *Seventh Report and Order*, 22 FCC Rcd 15581 (Aug. 6, 2007), at paras. 76-77.

> We note that the 0.5 percent standard is only a proposal and a different standard could be adopted. Moreover, the new interference caused to KTBC, 0.79 percent, not only significantly exceeds the current 0.1 percent interference standard applied to channel substitution requests, it also exceeds even the proposed 0.5 percent standard.[3]

In response to the Commission's decision and the continued position of Fox and Alamo to decline to consent to the original proposal of Corridor, a compromise proposal was offered by Corridor. Corridor proposed assignment of channel 8 with 15 kW non-directional ERP at 413 meters HAAT such that KCWX-DT would cause no more than 0.44 percent interference to FOX's station KTBC-DT and no more than 0.35 percent interference to Alamo's station KLRN-DT, *i.e.*, less than 0.5 percent interference to both stations. FOX and Alamo declined to consent to this compromise proposal and to a waiver of the 0.1 percent interference standard. As Corridor could not obtain their consent, Corridor petitioned for reconsideration of the *Seventh Report and Order.*

In its petition for reconsideration, Corridor pointed to two changes in circumstances as an appropriate basis for reconsidering the denial of its waiver request. First, the Commission adopted the 0.5 percent interference standard. This was a significant change since the *Seventh Report and Order* denied Corridor's request on the grounds that the 0.5 percent interference standard, "is only a proposal and a different standard could be adopted."[4] Second, Corridor had amended its proposal to accept a power limitation of 15 kW and thereby conform to the newly adopted 0.5 percent interference standard. This also was a significant change because the *Seventh Report and Order* denied Corridor's original proposal because it would exceed the 0.5 percent standard as to FOX's station. Corridor argued that the decision of the adjacent channel stations not to consent to the revised proposal is unreasonable and the Commission should grant the requested waiver.

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[3] *Seventh Report and Order* at para. 78.
[4] *Id.*

The *Eighth Report and Order* denied the revised proposal of Corridor and the amended waiver request of Corridor. The Commission held that the compromise proposal offered by Corridor would not be considered because Corridor's revised proposal differed from Corridor's original proposal:

> We note that Corridor does not challenge the denial of its original channel change proposal but rather it introduces a new proposal with revised technical parameters. The parameters requested by Corridor in its petition are not consistent with replication of its analog coverage contour, which is the coverage to which it certified on FCC Form 381. Accordingly, the revised channel change proposal cannot be considered in this proceeding.[5]

Instead of granting Corridor a waiver and assigning channel 8 to Corridor in time for Corridor to build channel 8 by the DTV transition deadline, the *Eighth Report and Order* directs Corridor to file a new petition when the Commission lifts the freeze on channel substitutions which is projected to occur in August, 2008, less than six months before the February 17, 2009 DTV transition deadline:

> Once the freeze is lifted with respect to channel substitutions, Corridor may submit a petition for rulemaking and request that channel 8 be substituted for channel 5 for KCWX-DT. Corridor may request specific parameters for its proposed channel 8 operations at that time, and the channel substitution will be examined under the 0.5 percent interference standard.[6]

The decision to decline to consider the compromise proposal offered by Corridor in this proceeding and to require Corridor to commence a new proceeding fails to address the critical shortage of time remaining for Corridor to construct KCWX-DTV.[7]

The efforts of Corridor to obtain channel 8 began with the selection of channel 8 in the Third Round election process in June, 2006, almost two years ago. Thus, the decision discards

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[5] *Eighth Report and Order* at para. 83.
[6] *Id.*
[7] The Communications Act directs the Commission to allow existing television stations to select new DTV channels before the FCC allows any other persons to request DTV channels: "If the Commission determines to issue additional licenses for advanced television services, the Commission...(1) should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both)...." 47 USC §336(a)(1).

two years worth of effort on the part of Corridor to attempt to obtain an interference agreement or a *de minimus* waiver. The requirement that Corridor commence a new proceeding in August, 2008, denies Corridor any meaningful relief because Corridor is faced with a statutory deadline of February 17, 2009, to construct KCWX-DT and Corridor requires at least six months lead time to order and install equipment. The *Eighth Report and Order* appears not to give proper weight to the public interest in having Corridor construct its final DTV channel in a timely manner on channel 8 rather than channel 5. Corridor therefore seeks reconsideration of its waiver request and assignment of channel 8 without having to commence another proceeding to obtain this relief.

II. The Commission Should Grant The Waiver Request of Corridor Based On The Policy Of Allowing Alternative Channel Requests From Licensees With TCDs In the Low-VHF Band.

The Commission recognizes the need to finalize the DTV table in order to enable stations to build their final DTV stations in the short time remaining:

> The DTV transition deadline - February 17, 2009 - is less than 12 months away. In view of the short period of time remaining before this statutory deadline, our goal herein has been to finalize DTV channels and facilities as expeditiously as possible to provide stations with the certainty they need to complete their digital buildout.[8]

Consistent with the goal of finalizing the DTV table, the Commission also recognizes that the Commission should grant rule waivers where doing so would allow the Commission to achieve a final DTV table sooner rather than later. The Commission granted waivers in the *Eighth Report and Order* where it found that the petitioners had met their burden of justifying a waiver:

> "[W]e find that they have met their burden of demonstrating that special circumstances justify a waiver..."[9]

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[8] *Id.* at para. 3 (footnote omitted).

[9] *Id.* at para. 38. In an accompanying note the Commission further states, "The Commission may waive its rules when good cause is demonstrated. 47 C.F.R. § 1.3. *See also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972)."

The Commission's denial of Corridor's request for a waiver of the 0.1 percent standard appears not to take into consideration and give appropriate weight to the special circumstances shown by Corridor, particularly the public interest benefits of assigning KCWX-DT a digital channel in the upper-VHF band.

The *Eighth Report and Order* affirms that moving digital television stations out of the low-VHF band is one of the priorities of the Commission that would be considered in evaluating requests for alternative channel assignments:

> In paragraph 25 of the *Seventh Further Notice*, the Commission stated that it would consider requests for alternative channel assignments only from the following: (1) licensees unable to construct full, authorized DTV facilities on the TCDs that they requested and received because, in order to avoid causing impermissible interference to other TCDs and still obtain their preferred channel, they had to agree to construct facilities on their TCD that are smaller than those to which they had certified on FCC Form 381; (2) licensees with international coordination issues which the Commission has been unable to resolve with the Canadian and Mexican governments; (3) licensees with TCDs for low-VHF channels (channels 2-6); and (4) new licensees and permittees that attained such status after the start of the channel election process and to which we assigned a TCD for post-transition DTV operations because their assigned NTSC or DTV channel was determined to cause impermissible interference to existing licensees. The Commission stated that licensees that want to change their DTV allotment, but which are not in any of these categories (*e.g.*, are technically able to construct their full, authorized DTV facilities on their existing TCD) may request a change in allotment only after the DTV Table is finalized and must do so through the existing allotment procedures.[10]

According to item (3) above, the Commission prioritized and indicated that it would consider requests for channel changes from, "licensees with TCDs for low-VHF channels (channels 2-6)." Corridor, with a TCD of channel 5 for KCWX, is just such a licensee. As a result, the public interest in allowing KCWX-DT to relocate from the low-VHF band should have been considered in evaluating the request of Corridor for a waiver of the 0.1 percent interference standard.

The *Eight Report and Order* does not indicate that the Commission considered the public interest benefits of allowing KCWX-DT to relocate from the low-VHF band. The decision states

[10] *Eighth Report and Order* at para. 73 (footnotes omitted).

that the applicable interference standard is 0.1 percent and that Corridor's proposal fails to comply with that standard.[11] Although the decision mentions that Corridor requests a waiver of the 0.1 percent standard, the decision does indicate that the Commission considered as a basis for the waiver the Commission's stated intent to assist "licensees with TCDs for low-VHF channels (channels 2-6)." Thus, the Commission states in paragraph 73 of the *Eighth Report and Order* that one of the Commission's priorities is to handle requests for channel reassignments from "licensees with TCDs for low-VHF channels (channels 2-6)," but in paragraphs 80 to 83, only a few paragraphs later, the Commission denies Corridor's waiver request without discussing the public interest benefits of assigning channel 8 in lieu of channel 5. The Commission's stated intent to assist stations with a TCD in the low-VHF band to achieve a channel reassignment in a timely manner should have been followed and applied to the waiver request of Corridor.

On reconsideration, the Commission should conclude that Corridor "met [its] burden of demonstrating that special circumstances justify a waiver," where Corridor proposes to move from low-VHF channel 5 to upper VHF channel 8 with a power limitation of 15 kW such that KCWX-DT would cause less than 0.5 percent interference to the adjacent channel stations. The grant of the *de minimus* waiver would serve the public interest in relocating KCWX-DTV from the low-VHF band and making efficient use of the upper-VHF band.

III. The Commission Should Take An Active Role In Promoting Interference Agreements, Particularly Those Involving Less Than 0.5 Percent Interference.

The Commission reiterated in the *Eight Report and Order* that interference agreements can be used to resolve interference conflicts between stations and allow changes in the DTV table that otherwise would be precluded under the interference standard:

[11] *Eighth Report and Order* at paras. 80-83.

> We also stated that, consistent with our existing rules, we would consider on a case-by-case basis stations' negotiated interference agreements provided these agreements are consistent with the public interest.[12]

Consistent with this policy, the Commission granted proposals based upon interference agreements between adjacent channel stations.[13]

An active role has been taken by the Commission in promoting agreements between licensees that will serve the public interest by removing interference conflicts and reallocating spectrum. In some cases, the Commission has provided for a period of private negotiation which if unsuccessful must be followed by a Commission supervised negotiation process.[14] Thus, the Commission has encouraged parties to enter into reasonable agreements that would benefit the public interest and has intervened where necessary consistent with the responsibility of the Commission to promote the public interest.

The waiver request of Corridor was *de minimus* in nature and it was reasonable for Corridor to request that the adjacent channel stations consent to the grant of the waiver. The Commission adopted the 0.5 percent interference standard based upon its conclusion that interference levels of 0.5 percent or less are equivalent to zero interference:

> It [the 0.5 percent interference standard] can be viewed as a "no new interference" criteria when the amount of predicted interference is rounded to the nearest whole percent (i.e., any determination of less than 0.5 percent interference would be considered to be 0 percent, while an interference determination greater than 0.5 percent would round up to 1.0 percent.) This level of rounding is more reflective of the accuracy of the interference prediction model than the 0.1 percent criterion.[15]

Clearly, an interference agreement involving less than 0.5 percent interference would be found reasonable and would be approved by the Commission.

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[12] *Eighth Report and Order* at para. 19 (footnote omitted).
[13] *See, e.g., id.* at paras. 34 (letter accepting 2.2 percent interference).
[14] *See, e.g.,* Section 90.699, *Transition of the upper 200 channels in the 800 MHz band to EA licensing*; Sec. 90.676, *Transition administrator for reconfiguration of the 806-824/851-869 MHz band in order to separate cellular systems from non-cellular systems*; Sec. 51.807, *Arbitration and mediation of agreements by the Commission.*
[15] *Third Periodic Review*, NPRM, 22 FCC Rcd 9478 (2007), at para. 106.

A decision to take an active role in encouraging a reasonable interference agreement between Corridor and the adjacent channel licensees would be consistent with the Commission's responsibility to facilitate the transition to digital television and promote the efficient use of spectrum. An interference agreement would resolve the issue now and allow Corridor to order equipment for channel 8 in time to begin operations by February 17, 2009. An interference agreement also would promote spectrum efficiency by making additional use of the upper-VHF band and removing KCWX from the low-VHF band. The Commission should take an active role in promoting a compromise between KCWX and the adjacent channel stations that will enable KCWX to move to channel 8 in time to construct a new DTV station on that channel by the transition deadline.

IV. Conclusion.

Wherefore, for the foregoing reasons, Corridor respectfully requests that the Commission reconsider the *Eighth Report and Order*, grant the requested waiver and change the TCD of KCWX, Fredericksburg, Texas to channel 8 with 15 kW non-directional ERP at 413 meters HAAT.

Respectfully submitted,

Corridor Television LLP

By: _____

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Its Counsel

Dated: April 18, 2008

CERTIFICATE OF SERVICE

I, Joan Oliver, hereby certify that on April 18, 2008, I served a copy of the foregoing Petition for Reconsideration by first class mail, postage prepaid on the following:

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