

**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: Office of the Secretary  
Attention: The Commission

**PETITION OF SUNBELT MULTIMEDIA CO. FOR FURTHER  
RECONSIDERATION OF THE REVISED DTV TABLE  
AND EIGHTH REPORT & ORDER**

Sunbelt Multimedia Co. (["Sunbelt"]), by its counsel, hereby petitions for reconsideration of the *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order* (the "Order") in the captioned proceeding<sup>1</sup> to correct the revised, detailed facility allotment announced for television station KTLM, Rio Grande City, Texas, in the post-transition DTV table of allotments (the "Revised Table") attached to the Order.

**I. Introduction & Summary**

Sunbelt has been operating KTLM with NTSC facilities on Channel 40 since KTLM first signed on the air in 1999. As such, KTLM is one of the nation's newest full power television stations, having been in existence less than nine years. The station

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<sup>1</sup> *Advanced Television Systems and Their Impact upon the Existing Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Seventh Report & Order and Eighth Report & Order*, MB Docket No. 87-268, FCC 08-72 (rel. Mar. 6, 2008); 73 Fed. Reg. 15,283 (March 21, 2008).

provides programs of Telemundo and other Spanish-language programming to residents of the Harlingen-Weslaco-Brownsville-McAllen television market. KTLM is not affiliated with any of the four major television networks.

Sunbelt holds a permit (the Channel 20 Permit) for construction of a DTV facility on Channel 20 at a hypothetical site near Donna, Texas, in the population center of the market. Because economic constraints have prevented the construction of this facility, Sunbelt has for several years been operating on Channel 20 with a low power DTV facility from its existing tower in Starr County, pursuant to special temporary authority from the Commission. This is the same tower (an extremely tall structure) that is used for the current 5.0 MW NSTC facility of KTLM-TV on Channel 40.

In the *Order*, the Commission granted the petition that Sunbelt, through other counsel, filed last fall.<sup>2</sup> In response to what Sunbelt was requesting then, in the *Order*, the Commission revised the DTV Table to specify operation on Channel 20 consistent with the Channel 20 Permit.

Although Sunbelt appreciates this action by the Commission, information not fully known to Sunbelt as of last October has compelled a change in plans. Sunbelt went to the trouble to alert the FCC of these changes in its Form 387 status report, filed February 19, 2008. As explained there, the current credit crunch has regrettably put financing for a new full power digital facility on Channel 20 as a new frequency out of reach. Even though in the abstract it might help KTLM compete economically for its transmitting

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<sup>2</sup> The request for reconsideration was initially styled as reply comments in response to the Eighth Further Notice. However, by Errata filed October 31, 2007, counsel clarified that the pleading should have been styled as a petition for reconsideration of the 7<sup>th</sup> Report & Order adopting the August, 2007 version of Appendix B.

facility to be located in the population center of the market, the inescapable fact is that Sunbelt does not have the means construct such a facility. Thus, any gains from the Channel 20 Permit facility are illusory. At the same time, inadequate attention was paid to the problem of the loss area.

On a more positive note, Sunbelt has learned that its existing Channel 40 transmitter plant can be converted to digital operation at a cost that is relatively bearable. In other words, Sunbelt *does* have a path to develop a high power DTV facility by staying on Channel 40 at that location.

Accordingly, it is critical to the survival of KTLM's valuable service to the public that Sunbelt be allowed to convert KTLM to DTV operation *on Channel 40* and at the current NTSC tower site in Starr County.

## **II. Background**

KTLM-TV went on the air in 1999 as the only locally-owned and minority-owned television station in the lower Rio Grande Valley of Texas. With its 1833 foot tower and 5 MW ERP signal, KTLM brought the first high-quality television signal to Starr County, Texas, and a first television signal of any kind to parts of four Texas counties (Duval, Jim Hogg, Starr and Zapata counties). This service was accomplished at tremendous cost, with the tower alone costing multiple millions of dollars.

Specifically, the inauguration of KTLM's full power service represented the culmination of an investment of *over nine million dollars* in the station's NTSC facility. This includes the station's antenna tower (including the road to the tower site), transmitter, antenna, studio build out, studio equipment and other broadcasting hardware.

An additional sum of almost three million dollars was devoted to other expenses attendant to putting KTLM on the air, including the cost of acquiring the Channel 40 permit, and covering operating losses and debt service.

As the result of these expenses, Sunbelt is operating under an unusually onerous financial burden. Because of the extremely high cost of construction and development of KTLM, and the economic circumstances of its market, the station does not yet generate net revenue sufficient to offset payments on the debt incurred to construct the current facility. Thus, the massive investment in the NTSC facility of KTLM has not yet been discharged.

Even now, almost two million dollars of the cost of this facility has not yet even been depreciated. This separates KTLM from the vast majority of other television U.S. stations, almost all of whom (except those destroyed on September 11, 2001) constructed their NTSC facilities many years ago.

Over three years ago, Sunbelt, in its FCC Form 381 pre-election certification (FCC File No. BCERCT - 20041101AGB, elected to replicate its analog coverage in its ultimate DTV facility. Replication would have entailed the same wide-area service that KTLM's current analog facility provides and which Sunbelt is seeking through the instant petition. However, it seems that in developing the 2007 version of Appendix B, the staff may have used the power and height combination of KTLM's STA facility, for the operating parameters in Appendix B would not come remotely close to replicating KTLM's analog coverage.

While the Commission was proceeding with the transition, and developing Appendix B, Sunbelt, despite all odds, was making tremendous strides, gaining each year in audience and revenues, as the public has become more familiar with the station's offerings. This is not atypical for new television stations, but of course the vast majority of other stations went through that process decades ago.

Unfortunately, the progress has not been sufficiently rapid to create income for Sunbelt that could cover the cost of an entirely new complement of transmitter, tower, transmission line and antenna for Channel 20.<sup>3</sup> Such financial ability will take shape over time, if present trends are allowed to continue. However, all of that progress is dependent on Sunbelt's ability to reach viewers off air in a wide area, and to access the cable systems that carry KTLM's programming. If KTLM is forced off the air due to its inability to build a tower in the Donna area<sup>4</sup> and to acquire a full power channel 20 transmitter and antenna, its service will obviously disappear. Unless the FCC grants Sunbelt Multimedia special relief as detailed here, Sunbelt will lose the ability to operate as of February 20, 2009, and the entire project will collapse.

### **III. Sunbelt's Service Is Unique.**

The Technical Exhibit hereto, prepared by W. Jeffrey Reynolds, details the extensive coverage afforded by KTLM's current NTSC operation. Notably, in Figure 1

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<sup>3</sup> Detailed financial information, submitted to the FCC under conditions of confidentiality on March 7, 2008, demonstrates that while Sunbelt's losses have narrowed substantially as the station has increased revenue, KTLM is still suffering substantial red ink.

<sup>4</sup> There is an existing tower not far from the Channel 20 Permit site, but it belongs to KTLM's principal competitor. The petitioner has no expectation of being able to set up operations on that property as a tenant, even assuming that it could afford to acquire a full power transmitter plant on Channel 20.

to the Technical Exhibit, the Grade B contour of the current Channel 40 NTSC facility is contrasted with the Channel 20 DTV facility authorized by the *Order* and as specified in the Revised Table. The DTV facility described in the Revised Table covers an area almost the same size as that of the current analog KLTM-TV, but it is an area that is already well served by the existing stations in the market: KGBT, KNVO, KRGV and KVEO. All of these stations have their transmitting facilities in the Donna area or to the east of that vicinity. Therefore, none of these stations reaches western Starr County and the other portions of what would be “television white area” were it not for KTLM-TV’s current analog service.

The loss area that would be created by a forced move to Donna on Channel 20 is almost as great in size as the (U.S.) service area of the KTLM Channel 20 station described by the Revised Table. Even though the population of the loss area is much less than that of the well-served “gain area,” the population is still far from insubstantial. For example, it includes the town of Roma, Texas, whose 2000 census population was 9,617. Roma’s 2006 population estimate is 11,173, reflecting its rapid growth.<sup>5</sup>

The Commission should not suppose that this is an area where residents can easily mitigate a loss of over the air service by subscribing to satellite television services or even cable television. Median household income in Roma as of 2005 was only \$16,900, less than half of the Texas average.<sup>6</sup> Further, while cable television is available in Roma

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<sup>5</sup> <http://www.city-data.com/city/Roma-Texas.html>, last visited April 21, 2008.

<sup>6</sup> *Id.*

proper, it is not available in most of the remainder of the loss area, stretching north into Zapata County and northeast into Brooks County.

The Commission has recognized the importance of preserving essential over the air television service in the context of the DTV transition. In adopting Appendix B, the Commission very likely did not realize that, absent correction, this shift would create hundreds of square miles of television white area, and precipitate the loss of the only off-air service for many thousands of Texans.

In sum, the unique, wide-area coverage that Sunbelt presently provides is unique. It will not be replaced with the Channel 20 Permit facility, even if Sunbelt were able to construct it. It can only be maintained by a change in the Revised Table to allow KTLM to operate from the licensed transmitter site, on Channel 40, as a truly replicated facility.

#### **IV. Changed Circumstances Compel Correction of the Table.**

The service KTLM provides with its NTSC facility will disappear as of February 19, 2009 unless Sunbelt is able to (a) change its post-transition allotment to Channel 40, and (b) secure permission to build a facility that substantially replicates its analog coverage using Channel 40 as KTLM's DTV channel.

The change to Channel 40 as the post-transition frequency is mandated by the tremendous differences in the cost of construction on Channel 40 (where the existing analog antenna and most of the existing analog transmitter can still be used) as opposed to Channel 20.

The full power DTV facility described in the Revised Table would be constructed, if it could be constructed, at a completely different site from the tower used for KTLM's

NTSC operations. Principally for that reason as well as due to the cost of new Channel 20 DTV equipment, the cost to build KTLM's full power DTV facility will be extremely high, running to at least an estimated \$3.8 million dollars. Allowing for unknown cost overruns, the total expense to build the DTV facility will likely end up close to four million dollars. These funds are not available to Sunbelt.

In contrast, the current full power NTSC equipment can be converted to digital for a small fraction of that cost. Unfortunately, no one advised Sunbelt that it was possible to reuse its analog equipment in this fashion until after the deadline for seeking reconsideration of the 7<sup>th</sup> Report & Order.

It is not a viable solution merely to return Sunbelt to the facility described in the 2007 version of Appendix B. It would have produced only a minimal signal. Such a facility would have hamstrung KTLM, even if Sunbelt could have continued to use its existing tower. Still, although the 2007 Appendix B facility would have cut KTLM-DT off from being able to cover the vast majority of the population in its DMA, at least it was feasible. The revised allotment is, however, utterly impracticable at this time.

The current constriction in the availability of credit has eliminated any chance that Sunbelt would be able to finance the cost of a new tower in the Donna area, or the cost of full power transmitter and antenna on Channel 20. It is therefore essential that KTLM-DT be permitted to operate with substantial power from its *existing* tall tower, and on Channel 40.

Sunbelt has researched its ability to use both Channel 20 and Channel 40 from the existing tower. As explained in the Technical Exhibit, Sunbelt has found that there are

no impediments either in the United States or in Mexico to the post-transition use of Channel 40 at the licensed site. In contrast, there are two potential impediments to the use of Channel 20 at the site specified in the Revised Table: these are two Mexican short-spaced allotments.

Sunbelt recognizes that there is little time to secure Mexican concurrence between now and February for KTLM to return to Channel 40 as its permanent DTV allotment. However, Sunbelt's principal owner has reason to believe that the Mexican authorities will approve the subject change, as they have made no effort to create allotments that would conflict with KTLM's continued use of Channel 40.

Of course, a broader problem is that Mexico has, as a practical matter, not begun the DTV transition. Approximately half of the area served by KTLM-TV's analog signal, and the majority of the population served, are in Mexico. Once the analog signal of KTLM ceases operations, these viewers will lose the ability to watch KTLM. In addition, as shown by a recent Nielsen study, on the US side of the border, the burden of the DTV transition will fall disproportionately on Hispanic Americans, who form the vast majority of the residents in the KTLM viewing area.<sup>7</sup>

Not only can fewer of these people afford to make the transition to digital immediately, but they will continue to have the option of watching Mexican stations that will still be broadcasting in analog after February 17, 2009. Thus, there will be relatively little incentive for these viewers to obtain digital viewing capabilities. Those who do not

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<sup>7</sup> For example, over 98% of the population of Roma, Texas consists of Hispanic Americans. *Id.*

purchase digital sets, or obtain and install conversion boxes, will effectively be exiled from the United States in terms of television viewing. This is significant because, among other things, Mexico does not have an Emergency Broadcast System. As South Texas is prone to hurricanes and other severe weather, it is conceivable that lives could be lost because of a shift in viewing to Mexican stations.

Even worse, unless KTLM is granted the relief requested here, KTLM will go off the air and will not be able to reach *any* residents of the United States, much less Mexico. Accordingly, Sunbelt is a strong supporter of HR 5435, legislation known as the DTV Border Fix Act, which is currently pending in Congress. The effect of this legislation would be to extend, as to television markets along the Mexican border, the date for termination of analog broadcasts.

As positive as passage of the DTV Border Fix Act would be for Sunbelt's survival, passage of legislation is always a daunting task. Thus, Sunbelt cannot assume that the DTV Border Fix Act will become law. Assuming that such legislation is not passed, it is essential that the FCC allow Sunbelt to change its post-transition allotment to Channel 40. Otherwise, Sunbelt simply cannot complete construction of a full power Channel 20 DTV operation by February 17, 2009. As noted above, the relevant financial documents show that Sunbelt does not have the income to support such an undertaking. However, a critical savings is available in form of the cost differential between a Channel 20 DTV facility at the Permit site and one constructed at the licensed tower site on Channel 40. Indeed, even ignoring the cost of a new tower, the Channel 40 facility is would cost more than half a million dollars less than a Channel 20 facility.

While this kind of cost spread may not represent a major problem for a major group owner, for a single station owner like Sunbelt, it represents an impossibility. Recent dramatic progress in KTLM's ratings and revenues comes too late to underwrite an immediate program of the purchase of a new antenna and of a new transmitter on Channel 20, to say nothing of the cost of a new tower. It would almost be better if KTLM's coverage were to be suddenly slashed down to the minimal area represented by the 2007 Appendix B DTV facility for KTLM. At least that could be built. But the cost to the public in lost service would be enormous.

Chairman Martin, in February, committed to Congress that television stations will be able to replicate in DTV their current analog service areas. All Sunbelt is requesting is that it be given the opportunity to do so. It will submit such application as may be appropriate toward that end. If this will not be permitted, and Sunbelt is required to keep Channel 20 as its post-transition channel, then Sunbelt would likely seek authority to construct either a low power (but high HAAT) Channel 20 installation at the current tower site.

Sunbelt does not have unlimited resources. As a minority-owned entity, it was encouraged to begin broadcasting in the 1990's at the behest of an FCC that desired greater diversity in broadcast ownership and programming. Now, certain actions by Congress and the FCC have placed Sunbelt in an impossible position, absent relief of the sort described in this petition.

The licensee does not wish to represent to the FCC that it will do something that, as a practical matter, it cannot do. This is why it is seeking to preserve service through an alternative plan that is within Sunbelt's financial capacity.

As detailed in Exhibit 2 to Sunbelt's For 387 submission, which is incorporated by this reference, Sunbelt does not presently have a clear path to the survival of this television station if analog broadcasts are terminated as of February 19, 2009, and the licensee is required to operate a Channel 20 facility that it cannot afford to build.<sup>8</sup> After the station's owners have poured millions of dollars into this project and developed an audience to the point that only now is the station beginning to pay for itself, it would be a travesty for government action to effectively terminate the valuable service represented by KTLM-TV and destroy the investment of its owners. Further details as to the constraints that make construction of the Channel 20 Permit facility unrealistic were provided in Sunbelt's Form 387 submission, and are incorporated herein by this reference.

Even if Sunbelt were to receive approval for a permanent DTV facility on Channel 20 similar to the current STA facility, this would not represent a viable solution. Due to the limited coverage of such a facility, the majority of those who now watch KTLM

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<sup>8</sup> Sunbelt does recognize that, at least hypothetically, and without regard to the loss area, there is some merit to permitting KTLM to reach the Brownsville, Texas area off air, and that this would be possible with the facility described in the Revised Table. However, Sunbelt believes that the best solution in that regard is to permit Sunbelt to construct a low power, on-channel facility in the Brownsville vicinity. Almost two years ago, Sunbelt filed an application for just such a facility. See BNPTTB-20060629AAV. Further, in Sunbelt's July 5, 2006 request for waiver of the replication/maximization deadline, at footnote 8, Sunbelt adverted to the need for a distributed transmission system to cover all parts of this television market in light of its geographic extent and the potential for cost savings to result from such a system.

would be watching Mexican television, or of those that have DTV sets in the eastern part of the market, they would watch the competing stations in Brownsville - Harlingen - McAllen - Weslaco). Sunbelt would be left as, in effect, a tiny LPTV station with barely any revenue, and a multimillion dollar debt.

Instead of such a nightmare scenario, the public interest requires that Sunbelt be granted the flexibility to preserve service to its public without incurring expense that is literally prohibitive.

#### **V. Other Factors Support Reconsideration.**

Sunbelt is the only locally and minority-owned television broadcaster in the market. Yet it shares the market with television stations that are financed and operated by large television group owners. KLTM is one of only two full-service television stations in the market operating primarily in the Spanish language. If DTV station construction so cripples Sunbelt that it cannot survive in the market, Spanish-speaking television viewers in the Rio Grande Valley will lose the important choice that is currently provided by this local, minority-owned small business.

An equally compelling reason supporting the correction of the DTV Table to reflect actual replication is the unique nature of the market served by KTLN. Sunbelt should not be subject to the same demands imposed on the areas of the country where population and financial resources are much greater due to more affluent populations.<sup>9</sup>

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<sup>9</sup> Unlike broadcasters in the larger and wealthier markets, Sunbelt may not expect to generate additional revenue via the creative use of its allocated DTV spectrum for non-broadcasting purposes. At least at this point, in the Harlingen-Weslaco-McAllen-Brownsville market served by KTLN, there is minimal demand for new technologies that would use part of KTLN's DTV spectrum.

The only metropolitan area in KTLM's market is the McAllen-Edinburg-Brownsville MSA. Per capita income in this area is the lowest of any of the 318 Metropolitan Statistical Areas in the nation, according to the United States Department of Commerce. The McAllen-Edinburg-Brownsville MSA also ranks **last** in worker pay among all U.S. metropolitan areas.

KTLM's market is extremely depressed in terms of income levels and household wealth. The service area consists of four counties where the median household incomes in the year 2000 ranged from \$16,688 to \$24,313, with a median of \$22,782 for the market as a whole. Income levels are even lower in the western parts of the market served only by KTLM. These economic factors naturally affect Sunbelt's ability to defray the cost of construction of a new low power facility on Channel 20.

Levels of educational attainment in the area augur poorly for a near term change in this situation. Innumerable studies have tied average lifetime earning power to educational accomplishment. Unfortunately, Starr County, the home of KTLM's city of license, ranks lowest in the entire state of Texas. Only 32% of Starr County residents have a high school diploma – less than half the Texas average of 72%.<sup>10</sup> The other three counties in the market served by KTLM were also in the lowest ten Texas counties for educational attainment; the best being Cameron County where only 50% of the

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<sup>10</sup> 2000 Population Estimates, Texas State Data Center (Univ. Of Texas Pan American Data and Information Systems Center); 1990 census of Population and Housing, U.S. Bureau of Census.

population graduated from high school. Comparable figures for Hidalgo County and Willacy County are 47% and 43%, respectively.<sup>11</sup>

Not surprisingly, these low levels of educational achievement result in greater poverty among the DMA residents. In 1989, fully 60% of Starr County, 45% of Willacy County, 42% of Hidalgo and 40% of Cameron County lived below the poverty level. By contrast, the Texas average was only 18%.<sup>12</sup>

The above numbers represent a mere fraction of the national norms in terms of educational attainment, disposable incomes and household wealth. Nationally, in contrast, some 75% of the population has graduated from high school. These market demographics differentiate KTLM's market from the typical DMA, and support a grant of further reconsideration even though broadcasters in more affluent markets might have been expected to overcome all such challenges at an earlier phase of the transition.

## VI. CONCLUSION

The public interest will be disserved if strict enforcement of the Revised Table results in KTLM forfeiting its broadcast authorization, or losing the ability to reach significant parts of its market. That outcome would only be more odious to the extent that the affected viewers have no other U.S. television service

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

In view of the foregoing, including changed circumstances beyond Sunbelt's control, compliance with the specifications of the Revised Table is impossible at this juncture.

Sunbelt has therefore demonstrated that -- despite its best efforts -- it does not have the ability to construct a full power Channel 20 facility at the Permit site. Accordingly, the Commission should grant reconsideration and allow KTLM to replicate its analog coverage on Channel 40.

Respectfully submitted,

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