

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

FILED/ACCEPTED

APR 25 2008

Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of Section 73.622(i),
Final DTV Table of Allotments,
Television Broadcast Stations.
(Riverside, California)

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MB Docket No. 08-30
RM-11419

To: Office of the Secretary
Attn: Chief, Video Division, Media Bureau

REPLY COMMENTS

KRCA License LLC ("KRCA License"), licensee of Station KRCA-DT, Riverside, California, hereby submits its Reply Comments in the above captioned proceeding. *See Notice of Proposed Rule Making (NPRM)*, DA 08-504, released March 5, 2008. The *NPRM* proposes to allot Channel 35 to Riverside, California, for use by KRCA-DT as its post-transition digital channel. As stated in its April 10, 2008 Comments, KRCA License strongly supports this proposal because it is necessary to ensure that "KRCA-DT will have a channel on which to continue broadcasting after February 17, 2009."¹ Nevertheless, in spite of the significant public interest benefits associated with the Commission's proposal -- namely the continued operation of KRCA-DT after February 17, 2009 -- Univision Communications Inc. ("Univision") and the Regents of the University of California, for the University of California, San Diego (the "University"), both filed Comments opposing the proposed channel substitution. Neither Univision's nor the University's Comments, however, raise any issues that warrant the denial of the Commission's proposal. Thus, KRCA License respectfully requests that the Commission expeditiously adopt the *NPRM* so that KRCA License can order equipment for its post-transition

¹ *NPRM* at ¶1.

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digital channel and commence construction in a timely manner.² In support hereof, KRCA License states as follows:

As recognized by the Commission in the *NPRM*, “the unique circumstances of this case warrant consideration of KRCA’s proposed channel substitution.”³ KRCA-DT is an independent, full-power foreign language television station that has served the community of Riverside, California since 1989. In fact, it is the only television station licensed to Riverside, California. It is also one of only a handful of - if not the only - station that (i) broadcasts on two out-of-core channels, (ii) is located in the Mexican border zone and has been assigned a post-transition channel that has not yet been cleared by the Government of Mexico, and (iii) operates in the exceedingly congested Los Angeles market. Further, because it operates on two out-of-core channels, KRCA-DT was precluded from participating in the first round of digital channel elections.⁴ Collectively, these factors have significantly limited the options for a post-transition digital channel for KRCA-DT. The Commission recognized these unique factors when it issued the *NPRM* in this proceeding.

The University and Univision oppose the *NPRM*. Both claim that the operation of KRCA-DT on Channel 35 will displace Class A Station K35DG and such displacement is not permitted by the Community Broadcasters Protection Act (CBPA).⁵ However, this argument is factually incorrect and misinterprets the CBPA. The operation of KRCA-DT on Channel 35 will not displace K35DG. Rather, as acknowledged by the University, it will “potentially cause

² The exigencies of this case have already placed at some risk KRCA License’s ability to complete construction in the limited time remaining before the end of the transition since some manufacturers have expressed concern that they may not be able to deliver equipment soon enough to ensure that KRCA-DT is fully constructed and ready to operate by the transition date.

³ *NPRM* at ¶6.

⁴ See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, ¶44 (2004).

⁵ 47 U.S.C §336(f).

interference to over 25 percent of K35DG's contour population."⁶ This is not a displacement and will not "kill-off" K35DG as the University claims. Further, the operation of KRCA-DT on Channel 35 will not cause K35DG any additional interference and may in fact reduce the interference that the station currently experiences. This is because Station KMEX-DT is currently using Channel 35 as its pre-transition digital channel with facilities similar to the facilities proposed by the Commission in the *NPRM* for use by KRCA-DT.⁷ Thus, K35DG currently receives the same if not more interference from KMEX-DT.⁸ As detailed in the attached Technical Exhibit, the interference K35DG currently receives from KMEX-DT impacts 288,724 persons, which is 27.04 percent of its noise limited contour population (1,067,838). The operation of KRCA-DT on Channel 35 post-transition will cause interference to 205,125 persons (19.21 percent) within K35DG's noise limited contour. Thus, the interference K35DG receives from the operation of a full-power station on Channel 35 will decrease by 83,599 persons.⁹

KRCA License is sympathetic to the concerns expressed by the University. However, the service population of K35DG that would potentially be affected by KRCA-DT pales in comparison to the number of persons who absolutely will lose service if KRCA-DT does not have a post-transition channel on which it can commence operation. If KRCA-DT goes dark on

⁶ See the University's Comments at p. 5.

⁷ In fact, the University was on notice that K35DG would receive interference from digital operations on Channel 35 when it filed its application to convert from a secondary low power television station to a Class A station (BLTTA-20010212AAS). Channel 35 had already been allotted to Los Angeles for digital use and KMEX-DT had an application pending to use Channel 35 as its pre-transition channel (BPCDT-19991028AES). Thus, the University should not have any expectation that K35DG is entitled to operate free of interference from a full-power facility operating on digital Channel 35.

⁸ As noted by the Commission in the *NPRM*, KRCA-DT's operation on Channel 35 cannot exceed the existing digital operations of KMEX-DT. See *NPRM* at ¶ 7. Thus, any interference that may be caused by KRCA-DT on Channel 35 is already being caused by KMEX-DT.

⁹ It is also worth noting that K35DG's situation may be a temporary one, in any event, and could be largely or completely resolved when low power television stations are required to convert to digital operation. At that time, K35DG may be able to shift to a different channel, since some channels will become available with the termination of analog service at the end of the transition by full-power stations.

February 17, 2009, approximately 14,699,489 persons will lose this valuable local service.¹⁰

This number is fifty-five times the number of persons (270,000) who the University claims may lose service of K35DG. Both the University and Univision ignore this important fact.¹¹ Further, even if KRCA-DT's operation on Channel 35 causes interference to K35DG, such interference is not cognizable. As recognized by the Commission in the *NPRM*, pursuant to the CBPA, Class A stations are not protected from full-power stations making technical changes to replicate or maximize their facilities.¹² This includes stations with two out-of-core channels seeking to carry over their maximized service areas to their new in-core digital channel.¹³

The University and Univision claim that the Commission is precluded from using the provisions of the CBPA to resolve KRCA-DT's problem because KRCA-DT is not experiencing a technical problem. Rather, the University claims that the *NPRM* "is motivated by a legal problem – KRCA's inability to obtain Mexican clearance"¹⁴ and Univision claims "the station does not face 'technical problems' requiring an 'engineering solution.'"¹⁵ This argument is baseless. The Commission expressly addressed this situation in the *Class A Order* when it stated that

[d]espite the reference in section (f)(1)(D) to technical problems, we continue to believe it is more consistent with the statutory schemes both for Class A LPTV service and for digital full-service broadcasting to require Class A applicants to protect all stations seeking to replicate or maximize DTV power, as provided in

¹⁰ See Technical Exhibit.

¹¹ Interestingly, Univision argues that "the loss of service to [K35DG] viewers is *prima facie* contrary to the public interest" but it does not recognize the potential loss of service to KRCA-DT viewers. See Univision's Comments at p 6.

¹² *NPRM* at ¶¶ 4-5.

¹³ See *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, ¶¶ 57-60 (2000) ("*Class A Order*"). The Commission specifically recognized the plight of KRCA and 16 other full-service stations with two out-of-core channels. *Id.* fn. 107.

¹⁴ See the University's Comments at p. 6.

¹⁵ See Univision's Comments at p 9.

section (f)(7)(ii), regardless of the existence of “technical problems.” ... This interpretation seems most consistent with the intent of Congress to protect the ability of DTV stations to replicate and maximize service areas.¹⁶

Thus, even if KRCA-DT’s difficulty with Channel 45 is not a purely technical problem (which KRCA License believes it is), the CBPA is still applicable and K35DG is not entitled to any interference protection from the operation of KRCA-DT on Channel 35.

Both the University and Univision also claim that there is no guarantee that the proposed channel substitution would solve KRCA’s problem because Mexico still needs to approve KRCA’s operation on Channel 35.¹⁷ This argument, however, misconstrues the facts. As noted above, Channel 35 has already been approved by Mexico and is currently being used by KMEX-DT. While the Commission must coordinate with Mexico based on KRCA-DT’s Appendix B facilities, KRCA-DT can operate on Channel 35 prior to Mexican approval if its facilities are entirely contained within KMEX-DT’s existing digital operations on Channel 35. This is in stark contrast to Channel 45, which has not been approved by Mexico due to a Channel 45 allotment at Tijuana, Mexico. Thus, KRCA-DT cannot commence operation on Channel 45 with any facilities prior to approval from Mexico.

In addition to the arguments addressed above, Univision also argues that the change proposed in the *NPRM* violates the filing freeze and the Commission’s interference rules.¹⁸ In the *NPRM*, the Commission acknowledged that the allocation of Channel 35 for use by KRCA-

¹⁶ *Class A Order*, 15 FCC Rcd at ¶53.

¹⁷ See the University’s Comments at p. 6; Univision’s Comments at p. 6.

¹⁸ See Univision’s Comments at pp. 7-8. Univision also claims that KRCA License has engaged in “gamesmanship” in this proceeding. *Id.* at p. 7. This claim is absurd. KRCA License has been diligent and candid throughout the entire election process. On numerous occasions it has notified the Commission and the public of the issues with Channel 45. See, e.g., BDTRCT-20080215AOF; Comments of KRCA License LLC filed in MB Docket No. 87-268 (October 25, 2007); Comments of KRCA License LLC filed in MB Docket No. 07-91 (August 15, 2007); BSRCT-20060410ADO. Nevertheless, KRCA License was (and still is) willing to accept Channel 45 as KRCA-DT’s post-transition digital channel if Mexico concurs. At this point, however, it needs certainty so it can order equipment and commence construction of its post-transition facilities.

DT would cause minimal interference to two full-power stations and would contravene the current filing freeze on channel substitutions. However, the Commission believed that the continued operation of KRCA-DT after February 17, 2009 warranted flexibility in finding KRCA-DT a post-transition digital channel. As it noted, “[w]ere we to require KRCA to wait for us to complete coordination of channel 45, there is no certainty that KRCA-DT would be able to complete construction of its DTV facilities by the end of the DTV transition.”¹⁹ Further, as discussed above, 14,699,489 viewers will lose service if KRCA-DT is forced to go dark on February 17, 2009. Thus, the Commission proposed Channel 35 and waived its interference rules and the filing freeze. Other than to mention these issues, Univision does not cite any compelling public interest reasons to dispute the Commission’s conclusions.

Finally, Univision argues that the channel substitution is not warranted because the circumstances faced by KRCA-DT are analogous to those faced by two Univision stations (WFUT-DT and KFTR-DT).²⁰ In both cases, however, Univision omits a crucial fact that makes KRCA-DT’s situation distinguishable. Both WFUT-DT and KFTR-DT have been allotted post-transition digital channels on which they can operate after February 17, 2009 without coordination. KRCA-DT has not.

WFUT-DT is a station licensed to Newark, New Jersey, and like KRCA-DT it broadcasts on two out-of-core channels. However this is where the similarities end. WFUT-DT’s transition to its final digital channel did not require international coordination and there were at least two digital channels on which the station could operate after February 17, 2009.²¹ Further, even though WFUT-DT was denied a waiver of the interference rules on its second post-transition

¹⁹ *NPRM* at ¶6.

²⁰ See Univision’s Comments at pp. 8, 10.

²¹ See *Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*, 23 FCC Rcd 4220, ¶68 (2008).

digital channel, its operating authority after February 17, 2009 was never in jeopardy. In KRCA-DT's case, there are no channels available that will permit the station to operate after February 17, 2009 without a waiver of the interference rules or without Mexican coordination. Regarding KFTR-DT, Univision claims that this case is analogous because that station is also awaiting Mexican concurrence. This argument is misleading. Mexico has approved KFTR-DT's digital channel (Channel 29), but Univision has an application pending to maximize KFTR-DT's facilities, which requires Mexican coordination (BPCDT-19991029AFX).²² KRCA-DT, on the other hand, has been allotted a post-transition channel (Channel 45), but Mexico has not approved the allotment. KRCA-DT cannot operate on that channel (even with an STA) without Mexican approval.²³ Further, there is a severe short-spacing to a Channel 45 allotment at Tijuana, Mexico and it is even unclear if Mexico will ever approve the request. Thus, neither the WFUT-DT case nor the KFTR-DT case raises the same concerns as the KRCA-DT case -- namely continued operation after February 17, 2009 -- and the Commission's proposal in the *NPRM* is warranted as KRCA-DT is possibly the only full-power station in the country in its predicament.

If the *NPRM* is not adopted, it would not only put KRCA License in the untenable position of having to cease operation of KRCA-DT on February 17, 2009, it would also result in the loss of an independent station in the Los Angeles market and the loss of Riverside's only television station. It is for this reason and the other unique reasons discussed herein and in the *NPRM* that KRCA License continues to strongly support the Commission's proposed

²² While the operation of KFTR-DT on Channel 29 with maximized facilities requires Mexican coordination, KFTR-DT is operating with 94% of its Appendix B facilities and 104% of its analog facilities pursuant to special temporary authority (STA). See BLDSTA-200802089ABU; BDTRCT-20080219BHJ.

²³ Univision's suggestion that KRCA-DT operate on Channel 45 pursuant to special temporary authority is similarly misplaced and misguided. See Univision's Comments at pp. 10-11. As discussed above, Channel 45 has not been approved by Mexico and thus KRCA-DT cannot operate on this channel even with reduced facilities.

amendment to the Final DTV Table of Allotments to substitute Channel 35 for Channel 45 at Riverside, California for use by KRCA-DT. Because there is still uncertainty regarding KRCA-DT's final post-transition digital channel and it has been unable to order any equipment for its new channel and cannot do so until its post-transition channel is finalized, KRCA License encourages the Commission to grant the *NPRM* as expeditiously as possible.

Respectfully submitted,

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April 25, 2008

Its Counsel

Engineering Statement
prepared for
KRCA License LLC

This engineering statement has been prepared on behalf of *KRCA License LLC*, in support of reply comments in a *Notice of Proposed Rulemaking (NPRM)* in FCC Media Bureau Docket 08-30.¹ The subject docket proposes to allot Channel 35 as the post-transition digital channel for KRCA, Facility ID 22161, Riverside, CA. The current KRCA allotment is Channel 45 as listed in Appendix B of the Seventh Report and Order in MB Docket 87-278. This statement supplies predicted coverage and interference population data regarding the proposed KRCA-DT allotment and its impact to Class A station K35DG (Facility ID 66321, La Jolla, CA).

The proposed allotment technical parameters for KRCA-DT on Channel 35 are described in paragraph 7 of the NPRM (as corrected in the erratum of March 7, 2008). These parameters would fit the KRCA-DT coverage contour within the licensed coverage contour achieved by KMEX-DT (Facility ID 35123, Los Angeles, CA), currently operating on Channel 35. The KMEX-DT transmitter site is located very near that of KRCA, and use of the parameters described in paragraph 7 could avoid the need for international coordination for KRCA-DT on Channel 35. Alternative KRCA-DT parameters are discussed in the NPRM's paragraph 8, and would provide for full carry-over of the certified KRCA coverage area to Channel 35 should Mexican coordination be obtained before the NPRM is concluded.

¹*Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Riverside, California)*, MB Docket No. 08-30, DA 08-504, released March 5, 2008.

Population counts for the present KRCA analog and present and proposed digital facilities are summarized below. The population determinations were made using OET Bulletin 69² analysis. The NPRM would provide a greater than 100 percent population match of the licensed analog and digital KRCA facilities.

KRCA Population Summary

KRCA Facility	Interference-Free Population (2000 Census)
Licensed Analog Ch. 62 (BLCT-20020308ABC)	13,360,295
Licensed Digital Ch. 68 (BLCDT-20060726ATQ)	14,699,489
NPRM Digital Ch. 35 (Paragraph 7 parameters)	14,860,861
NPRM Digital Ch. 35 (Paragraph 8 parameters)	15,037,993

The NPRM states that KRCA-DT's use of Channel 35 would not comply with the protection requirements regarding Class A station K35DG. However, detailed analysis shows that the proposed use of Channel 35 will actually result in a reduction in the level of interference presently experienced by K35DG.

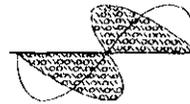
K35DG currently receives interference from the licensed operation of KMEX-DT (Ch. 35, 400 kW, BLCDT-20021118ACF). KMEX-DT will change to Channel 34 for its post-transition digital facility, thus vacating its present digital Channel 35. KMEX-DT is licensed to operate at 400 kW effective radiated power ("ERP") from a site located 1.5 km from KRCA. The same ERP, 400 kW, is proposed for KRCA's allotment, with a directional antenna pattern similar to that of KMEX-DT. The KMEX-DT Channel 35 antenna's radiation center is 1839 meters above mean sea level (AMSL), which is 131 meters higher than the proposed KRCA-DT Channel 35 allotment at 1708 meters AMSL. The NPRM specifies KRCA's proposed allotment as an equivalent facility to the licensed KMEX-DT operation, however the lower antenna height for KRCA results in less interference potential to distant stations such as K35DG.

²FCC Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, February 6, 2004 ("OET-69"). A standard cell size of 2 km was employed. Comparisons of various results of this computer program (run on a Sun Sparc processor) to the Commission's implementation of OET-69 show excellent correlation.

OET Bulletin 69 analysis shows that K35DG currently receives interference from the licensed KMEX-DT affecting 288,724 persons, which is 27.04 percent of its 1,067,838 baseline contour population. Post-transition, the proposed KRCA-DT allotment on Channel 35 would cause interference to K35DG affecting 205,125 persons, which is 19.21 percent of its baseline population. Allotment of Channel 35 to KRCA-DT would therefore result in a decrease in interference caused to K35DG by 83,599 persons. This is a net interference decrease of 7.83 percent. Thus, the proposal would not result in an increase in interference to K35DG. The OET Bulletin 69 study results³ are provided below.

<u>Existing Interference Caused to K35DG from Licensed KMEX-DT Ch-35</u>					
Results for: 35N CA LA JOLLA	BLTTA	20060621AAL	LIC		
	POPULATION	AREA (sq km)			
within Noise Limited Contour	1067838	887.7			
not affected by terrain losses	1041643	862.7			
lost to NTSC IX	0	0.0			
lost to additional IX by ATV	288724	344.9			
lost to all IX	288724	344.9			
Potential Interfering Stations Included in above Scenario				1	
35A CA LOS ANGELES	BLCDT	20021118ACF	LIC	KMEX-DT	Licensed
Percent new DTV interference:	27.0				
<u>Proposed Interference Caused to K35DG from NPRM KRCA-DT Ch-35</u>					
Results for: 35N CA LA JOLLA	BLTTA	20060621AAL	LIC		
	POPULATION	AREA (sq km)			
within Noise Limited Contour	1067838	887.7			
not affected by terrain losses	1041643	862.7			
lost to NTSC IX	0	0.0			
lost to additional IX by ATV	205125	281.9			
lost to all IX	205125	281.9			
Potential Interfering Stations Included in above Scenario				1	
35A CA RIVERSIDE	USERRECORD01	APP	KRCA-DT	NPRM	
Percent new DTV interference:	19.2				

³OET-69 analysis to K35DG employs 2000 Census data and 1 km cell size. Analysis with various combinations of 1990 and 1990 Census and 2 km and 1 km cells yields similar results and in all cases interference to K35DG is reduced.



The possible KRCA-DT parameters discussed in paragraph 8 of the NPRM would also result in decreased interference experienced by K35DG. In this case, interference from KRCA-DT would affect 247,259 persons. This represents a decrease in interference of 41,465 persons (3.88 percent) from the interference currently caused by the licensed KMEX-DT to K35DG.

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief.

Joseph M. Davis, P.E.
April 23, 2008

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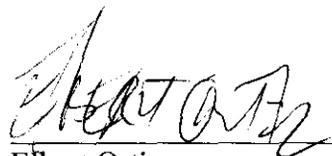
CERTIFICATE OF SERVICE

I, Elbert Ortiz, in the law firm of Wiley Rein LLP, do hereby certify that I have on this 25th day of April, 2008, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Reply Comments**" to the following:

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* VIA HAND DELIVERY