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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)	
)	
Amendment of Section 73.622(i),)	MM Docket No. 08-30
Final DTV Table of Allotments,)	RM-11419
Television Broadcast Stations)	
(Riverside, California).)	

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

REPLY COMMENTS OF
UNIVISION COMMUNICATIONS INC.

UNIVISION COMMUNICATIONS INC.

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Dated: April 25, 2008

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**REPLY COMMENTS OF
UNIVISION COMMUNICATIONS INC.**

Univision Communications Inc. ("Univision"), the ultimate parent of the licensee of KMEX-TV, Los Angeles, California, by its attorneys, hereby submits these reply comments opposing KRCA-DT's proposed change in allotment from channel 45 to channel 35. In its comments -- the only comments filed supporting the proposed change -- the licensee of KRCA-DT, KRCA License LLC ("KRCA") -- does not dispute that the proposal would cause impermissible interference to KMEX-DT and would illegally displace K35DG, a Class A station operated by the University of California - San Diego airing non-commercial educational programming. Similarly, KRCA fails to demonstrate that Mexican coordination of channel 45 will not occur, or even that it will take significantly longer than coordination of channel 35, which has been in the coordination processing pipeline a far shorter time. KRCA, as the only proponent of the channel change, has therefore failed to demonstrate that the proposal serves the public interest, or that it even complies with law, and the proposed modification of KRCA's allotment should be rejected.

I. No Commenter Has Disputed the Harm That Adoption of the Proposal Will Cause, Nor Presented a Countervailing Benefit Beyond the Speculative Claim That Channel 35 Can Be Coordinated Sooner Than the Already-Pending Channel 45 Allotment

At the outset, Univision notes that KRCA's comments largely repeat the statements in the NPRM,¹ but do not provide any substantive support for them. KRCA does not mention, much less dispute, the fact that adoption of the channel 35 proposal would guarantee a post-transition loss of television service for approximately 635,000 viewers, while creating impermissible interference to KMEX-DT, KNBC-DT, and Class A station K35DG.² The harm of the proposal is therefore uncontested. In contrast, as Univision discussed in its comments,³ the sole reason presented in the NPRM (as well as in KRCA's comments) for adopting the channel 35 proposal is the purely speculative assertion that Mexico will provide concurrence "more quickly" for channel 35 than for KRCA-DT's allotted channel 45.⁴

However, because the NPRM proposes to allocate channel 35 at a different community and transmitter site than was previously coordinated with Mexico, either channel will require Mexican coordination.⁵ While the NPRM does not disclose the precise date on which the Commission requested Mexican coordination of channel 45, nor does it indicate if it has submitted a request for coordination of channel 35, it is safe to say that Mexico has had far more time to study and process the channel 45 proposal than it will have to coordinate channel 35. Given this fact, the notion that channel 35 could be coordinated "more quickly" is completely without any basis in fact, and is at best unfounded optimism.

¹ *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Riverside, California)*, Notice of Proposed Rulemaking, MM Docket No. 08-30 (March 5, 2008) (the "NPRM").

² *See* Comments of Univision Communications Inc., MM Docket No. 08-30, 4-5 (filed April 10, 2008) ("Univision Comments").

³ *See id.* at 2-4.

⁴ *See* Comments of KRCA License LLC, MM Docket No. 08-30, 2-3 (filed April 10, 2008) ("KRCA Comments").

⁵ NPRM at ¶ 2.

Even if channel 35 actually could be coordinated more quickly than channel 45, that is an inadequate basis for creating the harm to broadcast service proposed here, particularly since KRCA is unable to demonstrate that changing horses in mid-stream will ensure Mexican coordination in time to complete construction by February 18, 2009. Indeed, KRCA is unable to demonstrate that this last-minute change of channels won't be *the cause* of its failure to be operational on February 18, 2009. Univision appreciates that KRCA is not happy with the pace of coordination, but abandoning a year of coordination progress on channel 45 out of blind hope that channel 35 might prove faster is a foolish bet, and one which KRCA is asking KMEX-TV, KNBC, K35DG, and the public to bankroll.

II. KRCA's Suggestion That the Commission Not Only Allot It Channel 35, But Allot Channel 35 With Parameters That Would Cause Even Greater Interference Than Specified in the NPRM, Is Plainly Contrary to the Public Interest

The Commission allotted channel 45 to KRCA as the most appropriate channel for it to replicate its existing analog coverage without causing impermissible interference, twice rejecting channel 35 because it would generate excessive interference.⁶ As noted in Univision's initial comments, the Commission should not now delegate to Mexico the authority to alter that determination, but should instead put its full efforts into coordinating the channel 45 allotment that it assigned to KRCA.⁷

Increasing Univision's concern is that, despite the proposed channel 35 allotment causing excessive interference to KMEX-TV and KNBC(TV), and as discussed below, plainly illegal interference to K35DG, KRCA's comments suggest that:

KRCA-DT's operation on Channel 35 will be limited to the existing digital operations on Channel 35 which were previously approved by Mexico. The parameters of these operations, which will replace KRCA-DT's current

⁶ Univision Comments at n.4.

⁷ See *id.* at 10.

Appendix B parameters, are contained in an Erratum to the *NPRM* released on March 7, 2008. If, however, before this rule making proceeding is completed, *Mexico approves Channel 35 with the KRCA-DT certified Appendix B facilities, KRCA License supports the assignment of those parameters.*⁸

In making this statement, KRCA cites to Paragraph 8 of the *NPRM*, which “alternatively” seeks comments on such a possibility. However, given that the existing proposal causes interference to KMEX-DT which already vastly exceeds that permitted, delegating to Mexico the task of setting *through the coordination process* the parameters at which KRCA will operate (without consideration of the additional interference caused to KMEX-DT and others) represents an outrageous abdication of the Commission’s responsibilities under the Communications Act of 1934, as amended.

First, the claimed point of this proceeding is to assess whether assigning channel 35 to KRCA with parameters that have previously been coordinated with Mexico might speed coordination of the station’s post-transition facility. To have the Commission submit to Mexico any proposal that exceeds the previously coordinated parameters *would eviscerate the only claimed benefit of this proceeding* and would be nothing more than KRCA seeking to belatedly substitute one channel for another at its pleasure. The Commission has already twice rejected KRCA’s efforts to do just that because of the unwarranted interference it would cause.

Second, in pursuing this option, KRCA abandons the subterfuge of needing a new channel whose operating parameters have previously been coordinated with Mexico. If that is its true goal, then it should have sought reconsideration or appealed the Commission’s prior rejections of its efforts to claim channel 35. Instead, it sat on its hands and now seeks to circumvent the Commission’s interference rules by declaring that there is not enough time left

⁸ KRCA Comments at n.8 (citations omitted; second emphasis added).

to complete coordination of channel 45, but that there is plenty of time to have channel 35 coordinated at a different community, different transmitter site, and greater power level than was previously coordinated. With that admission, the sole, already speculative, benefit of the KRCA proposal evaporates, and the public is left with nothing but the excessive interference KRCA seeks to cause.

Third, because the Commission's Rules permit stations "a limit of 0.5 percent *new* interference *in addition to* that in the DTV Table Appendix B,"⁹ under either proposal, KRCA would ultimately be permitted to cause 0.5% more interference than is currently being contemplated in modifying the DTV Table of Allotments. As a result, the 1.17% allotment interference to KMEX-DT specified in the NPRM means that KRCA would be permitted to apply for facilities causing up to 1.67% interference to KMEX-DT, up to 0.74% interference to KNBC-DT, and up to 20% interference to K35DG.¹⁰

Such service loss is unacceptable under any circumstances, and is particularly unacceptable where the only basis for causing such harm is KRCA's baseless speculation that coordination of channel 35 can be accomplished "more quickly" than coordination of channel 45, *despite* the later start and *even if* the FCC seeks to coordinate a channel 35 allotment that significantly exceeds the parameters previously coordinated for KMEX-DT. As the harm to the public would be immense, and KRCA has now abandoned the pretext of wanting to limit its operations to the earlier coordination parameters, there is no public interest balancing to be done here. The proposal, in either of its forms, is unequivocally not in the public interest.

⁹ See *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 2008 FCC LEXIS 2178, ¶¶ 13, 16 (rel. March 6, 2008) (emphases added).

¹⁰ See Exhibit 1 hereto, an Engineering Statement prepared by du Treil, Lundin & Rackley, Inc. in support of the instant Reply Comments.

III. The Immense Interference the KRCA Proposal Would Cause to K35DG Is Statutorily Prohibited

The Regents of the University of California (the "University"), licensee of Class A station K35DG, La Jolla, California, also filed comments opposing KRCA's proposal. In those comments, the University discussed the extensive illegal interference that KRCA-DT would cause to co-channel educational station K35DG, along with the fact that there are no other in-core displacement channels available for the station.¹¹ Indeed, as the University notes, the substantial population permanently lost to interference from KRCA could potentially force the station to cease operating entirely.¹²

As discussed in Univision's comments, the bare minimum amount of interference that the KRCA proposal would cause to K35DG is 19.5%, representing 208,516 people.¹³ However, as discussed above, because of the 0.5% interference KRCA would be permitted to cause beyond that inherent in the DTV Table of Allotments parameters, the actual interference to K35DG from a KRCA channel 35 application could be as high as 20%.¹⁴

Such a massive loss of service cannot be justified as being in the public interest, particularly given the unique nature of the station and its programming outlined in the University's comments, including many locally-produced programs.¹⁵ However, the Commission need not perform such a public interest analysis since the interference proposed by the NPRM to Class A station K35DG is *statutorily* prohibited.

¹¹ See Comments of University of California, San Diego, MM Docket No. 08-30, 1, 6-7 (April 10, 2008) ("University Comments").

¹² See *id.* at 6.

¹³ Univision Comments at Exhibit 1.

¹⁴ See Exhibit 1 hereto.

¹⁵ See University Comments at 3-5.

As the comments filed by both Univision and the University note, the interference that would be caused to K35DG by the KRCA proposal would violate not only Section 73.623 of the Commission's Rules, but also the provisions of the Community Broadcasters Protection Act ("CBPA").¹⁶ Under the CBPA, Class A stations must be protected from interference, which the KRCA proposal fails to do. The NPRM suggests, however, that the KRCA proposal is permissible pursuant to Section 336(f)(1)(D) of the Communications Act, as amended by the CBPA. That provision sets forth a narrow exception to the requirement that Class A stations be protected from interference:

RESOLUTION OF TECHNICAL PROBLEMS. - The Commission shall act to preserve the service areas of low-power television licensees pending the final resolution of a class A application. If, after granting certification of eligibility for a class A license, *technical* problems arise *requiring an engineering solution* to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications *as necessary*--

(i) to ensure replication of the full-power digital television applicant's service area, as provided for in §§ 73.622 and 73.623 of the Commission's regulations (47 CFR 73.622, 73.623); and

(ii) to permit maximization of a full-power digital television applicant's service area consistent with such §§ 73.622 and 73.623, if such applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000. Any such applicant shall comply with all applicable Commission rules regarding the construction of digital television facilities.¹⁷

This exception to Class A interference protection is, however, inapplicable here for a multitude of reasons.

First, the KRCA proposal is not an "engineering solution," as any delay in obtaining coordination is at most a timing problem, not an engineering problem. Indeed, as Mexico has

¹⁶ See Univision Comments at 8-9; University Comments at 5-6.

¹⁷ 47 U.S.C. § 336(f)(1)(D).

not even rejected coordination of channel 45, there is *no* problem requiring *any* type of solution at this point.

Second, as Univision noted in its comments, there is similarly not a “technical problem” here.¹⁸ KRCA faces an international coordination, as do many other television stations, none of which have been permitted to displace Class A stations in order to make the international coordination process “easier” or “faster.” The relevant point in this proceeding is that KRCA-DT moving to channel 35 would *create* rather than resolve technical problems.¹⁹

Third, as Univision also noted in its comments, international coordination is categorized by the Commission as a “foreign affairs function.”²⁰ Section 336(f)(1)(D) does not create an exception for alleged “engineering solutions” to foreign affairs functions of the FCC, only for “technical problems.”

Fourth, even if there actually were a “technical problem” and an “engineering solution” being presented here, the Section 336(f)(1)(D) exception applies only where the technical problem “requires” an engineering solution. It is clear that there are not only other, but better, solutions available here; for example, seeking to coordinate the channel 45 allotment which is universally acknowledged as being superior to the channel 35 allotment proposed. As a result, the NPRM’s proposed solution is not “required” to accomplish the task at hand.

¹⁸ Univision Comments at 8-9.

¹⁹ It is important to reiterate that KRCA itself has admitted to the Commission that, “from a technical perspective, its assignment to Channel 45 may be preferable in several respects to its election of Channel 35: less new interference is caused to KMEX-TV and KNBC, less interference is received by KRCA, and the station can broadcast at higher power.” See Comments of KRCA Licensee LLC, MB Docket 07-91, at 2 (filed Aug. 15, 2007) (“2007 KRCA Comments”).

²⁰ See Univision Comments at n. 30 (citing *Amendment of Parts 2, 22 and 25 of the Commission’s Rules*, 7 FCC Rcd 266 at ¶ 51 (1992)).

Fifth, even if there were a technical problem requiring an engineering solution, *Section 336(f)(1)(D) permits interference to a Class A station only where it is “necessary” to ensure replication or permit maximization of a full power DTV station.* Because the current allotment of channel 45 will permit replication/maximization, and do so better than a channel 35 allotment, causing interference to K35DG clearly is not “necessary” for replication/maximization.

Sixth, the NPRM proposal does not qualify for the exception, given that it does not “ensure replication” of KCRA’s analog service area. KRCA has already acknowledged the inferiority of a channel 35 allotment, noting that on its current channel 45 allotment, “less new interference is received by KRCA, and the station can broadcast at a higher power”²¹ than on channel 35.

Seventh, the NPRM proposal does not qualify for the exception as being necessary for the station’s “maximization.” As KRCA’s statement quoted above makes clear, the current allotment of channel 45 will allow the station “to broadcast at a higher power” than channel 35. Even if that were not the case, however, Section 336(f)(1)(D)(ii) allows interference to a Class A station for maximization only where the maximization application for channel 35 was filed prior to May 1, 2000, and even then, only if the “applicant compl[ies] with all applicable Commission rules regarding the construction of digital television facilities.”²² As the NPRM acknowledges that the KRCA proposal causes impermissible interference to KMEX-DT,

²¹ See 2007 KRCA Comments at 2.

²² 47 U.S.C. § 336(f)(1)(D)(ii).

KRCA-DT would not be complying with “*all* applicable Commission rules” and therefore could not qualify for the statutory exception to cause interference to Class A station K35DG.²³

The NPRM considers none of these fatal obstacles to the KRCA proposal, but instead seeks comment on its tentative conclusion that:

Given that substituting channel 35 for KRCA-DT’s post transition DTV operation would *likely* resolve the issue of lack of Mexican clearance and would ensure that KRCA-DT is able to complete its DTV transition *in a timely fashion*, we tentatively conclude that KRCA’s proposed channel substitution constitutes an engineering solution to a technical problem, consistent with Section 336(f)(1)(D).²⁴

However, Section 336(f)(1)(D) does not create an exception to Class A protection merely for those seeking to complete the DTV transition “in a timely fashion.” Even if it did, the statute demands that there be a technical problem “requiring” the engineering solution, and that the engineering solution then be limited to modifications “necessary” for replication or maximization. The problem here is that attempting to “*likely* resolve the issue of lack of Mexican clearance” is categorically outside the Section 336(f)(1)(D) exception. In addition, the KRCA proposal is not “necessary” to that outcome, as it is only “likely” to achieve the goal rather than “necessary” to achieve that goal.

In sum, the KRCA proposal clearly violates the CBPA’s statutory requirement that Class A stations be protected from interference, and the exception provided under Section 336(f)(1)(D) is clearly not applicable to the KRCA proposal for the many reasons stated above. Allotment of channel 35 to KRCA must therefore be rejected as a violation of the CBPA as well.

²³ As the statute explicitly requires that the station comply with all Commission rules, grant of a waiver by the Commission of those rules would still not permit KRCA to cause interference to K35DG, as a waiver would merely confirm that KRCA had failed to comply with the rules as required by Section 336(f)(1)(D)(ii).

²⁴ NPRM at ¶ 5 (emphases added).

CONCLUSION

The comments filed in this proceeding overwhelmingly demonstrate the many harms that would be associated with grant of the KRCA proposal, but provide no support for its sole speculative benefit of faster Mexican coordination. Specifically, the proposal would (i) provide interference-free service to 209,000 fewer persons than on KRCA-DT's currently allotted channel 45; (ii) create as much as 1.67% interference to KMEX-DT; (iii) create as much as 0.8% interference to KNBC-DT; (iv) displace K35DG by causing as much as 20% interference to that station; (v) violate the DTV freeze; (vi) violate Sections 73.1616 and 73.623(c)(5) of the FCC's Rules; and (vii) violate the Community Broadcasters Protection Act.

As the comments of both Univision and the University demonstrate, even if the KRCA proposal were adopted, KRCA would still need to obtain Mexican concurrence for its proposed channel 35 allotment, and there is *nothing* in the record to demonstrate that the earlier-submitted coordination for channel 45 cannot be completed before a new channel 35 allotment could be coordinated.²⁵ Unsupported speculation to the contrary cannot possibly justify the very real harms to the public that KRCA's comments do not contest. The KRCA proposal should therefore be rejected outright as a violation of the Community Broadcasters Protection Act and, whether judged from the lack of benefits it will create for the public, or

²⁵ See Univision Comments at 3-4, 9-10; University Comments at 6.

from the immense harm it will cause the public, the KRCA proposal should also be rejected as *contrary to the public interest.*

Respectfully submitted,

UNIVISION COMMUNICATIONS INC.

By: 

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Dated: April 25, 2008

EXHIBIT 1

TECHNICAL EXHIBIT
IN SUPPORT OF REPLY COMMENTS OF
UNIVISION COMMUNICATIONS INC.
IN THE NOTICE OF PROPOSED RULE MAKING
MM DOCKET NO. 08-30
RIVERSIDE, CALIFORNIA

This Technical Exhibit was prepared on behalf of Univision Communications Inc., the ultimate parent of station KMEX-TV (analog channel 34, pre-transition digital channel 35, and post-transition digital channel 34), Los Angeles, California ("KMEX") in support of its reply comments in the Notice of Proposed Rule Making in MM Docket No. 08-30 ("NPRM") which was issued in response to comments filed by KRCA License, LLC ("KRCA"), licensee of TV station KRCA (analog channel 62, pre-transition digital channel 68, and post-transition digital channel 45), Riverside, California. The NPRM proposes that the FCC substitute channel 35 for KRCA-DT's post-transition channel 45 allotment. The purpose of this Technical Exhibit is to provide information concerning the potential for the proposed channel 35 substitution to cause new interference in addition to that resulting from its Appendix B facility.

The Commission's Rules permit stations to cause up to 0.5% *new* interference for post-transition DTV expansion applications.¹ Thus, KRCA would ultimately be permitted to cause up to 0.5% additional interference than is currently being considered in modifying the DTV Table of Allotments. As a result, based on the 1.17% interference to KMEX-DT specified in the NPRM, KRCA would be permitted to apply for expansion facilities causing up to 1.67% interference to KMEX-DT, up to 0.74% interference to KNBC-DT (post-transition digital channel 36, Los Angeles, CA) and up to 20% interference to Class A station K35DG (channel 35, La Jolla, California). The 0.5% new interference allowance would permit KRCA to cause additional interference beyond that contemplated in the NPRM as follows: KMEX 75,006 additional persons; KNBC 77,275 additional persons; and K35DG 5,360 additional persons. Combined, there would be potential new interference to 157,641 persons.

¹ See paragraph 155 of the Report and Order in the Third DTV Periodic Review (MB Docket No. 07-91).

The attached technical statement has been prepared by or under the direct supervision of W. Jeffrey Reynolds, technical consultant with the firm of du Treil, Lundin and Rackley, Inc., a telecommunications consulting firm located in Sarasota, Florida, who states that his qualifications are a matter of record with the Federal Communications Commission, having been presented on previous occasions. All data and statements contained herein are true and correct to the best of his knowledge and belief.



W. Jeffrey Reynolds

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April 25, 2008

CERTIFICATE OF SERVICE

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing **"REPLY COMMENTS OF UNIVISION COMMUNICATIONS INC."** were served via U.S. Mail on this 25th day of April 2008 to the following:

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