

Before the
Federal Communications Commission
Washington, D.C. 20554

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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, Federal Communications Commission
Attn: Media Bureau, Video Division

PETITION FOR RECONSIDERATION

The Regents of the University of California, for the University of California, San Diego ("the University"), by its attorneys, and pursuant to Section 1.429 of the FCC's Rules, petitions for reconsideration of the Commission's decision in the referenced proceeding (the "DTV Table Proceeding") to substitute Channel 35 as the post-transition DTV channel for Station KRCA-DT in Riverside, California. The University respectfully submits that KRCA-DT is not entitled to the channel substitution under the Commission's Rules and that displacement of Class A station K35DG is not a viable option due to the lack of available channels.

Background

K35DG is located in La Jolla, California and serves the greater San Diego metropolitan area. K35DG has always been operated by the University as a noncommercial station associated with the University's campus in San Diego. In keeping with the University's general mission to educate, inform and enrich the lives of California residents, K35DG provides educational and informative programming via regionally focused, locally produced television programs designed to appeal to a wide cross-section of local citizens.

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On March 5, 2008, the Commission initiated the DTV Table Proceeding to substitute Channel 35 as the post-transition DTV channel for KRCA-DT.¹ The University filed comments opposing the proposed substitution, on the basis that it would result in an unacceptable level of interference to K35DG – potentially greater than 25 percent of its contour population.² On May 21, 2008, the Commission granted the proposed channel substitution.³ KRCA-DT has since filed an application to maximize its DTV service contour on Channel 35, which would potentially result in an even greater level of interference to K35DG.⁴

Argument

I. KRCA-DT Provided No Sufficient Basis for the Failure to Protect K35DG

The substitution of Channel 35 as the post-transition DTV channel for KRCA-DT is inconsistent with the Commission's Rules. The Commission itself noted in the Notice that substitution of Channel 35 does not comply with Section 73.623(c)(5) of the Commission's Rules, which requires protection of Class A stations such as K35DG.⁵ KRCA-DT argued in response that the substitution constitutes an "engineering solution" under Section 336(f)(1)(D) of the Communications Act, which provides for "such modifications as necessary" to Class A stations when "technical problems arise requiring an engineering solution to a full-power

¹ See *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Riverside, California)*, Notice of Proposed Rulemaking, MB Docket No. 08-30, DA 08-504 (rel. Mar. 5, 2008) ("Notice").

² See University Comments in MB Docket No. 08-30.

³ See *Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations (Riverside, California)*, Report and Order, MB Docket No. 08-30, DA 08-1185 (rel. May 21, 2008) ("Report and Order").

⁴ See FCC File No. BPCDT-20080620AIN.

⁵ See Notice at ¶ 4.

station's [DTV allotment]."⁶ KRCA-DT, however, failed to provide any explanation for why its inability to obtain Mexican clearance for its post-transition facility qualifies as a "technical problem." Instead, KRCA-DT argued that Section 336(f)(1)(D) applies even in the absence of a technical problem.⁷

KRCA-DT's argument is without merit in the context of its request to substitute Channel 35 as KRCA-DT's post-transition DTV channel. As noted by KRCA-DT, the Commission in the *Class A Report and Order* concluded that DTV stations seeking to replicate or maximize power are entitled to protection from Class A stations regardless of whether a technical problem exists.⁸ However, the Commission also interpreted Section 336(f)(1)(D) to continue to require that a technical problem exist in order to justify adjustments to DTV facilities – including channel changes – proposed in applications for maximization of DTV facilities.⁹

In this proceeding, KRCA-DT requested a channel change in order to replicate its facilities on a different channel than it was allotted for post-transition DTV operations. KRCA-DT also subsequently filed an application for maximization on Channel 35. The substitution of Channel 35 as the post-transition DTV channel for KRCA-DT thus falls squarely within the scope of Section 336(f)(1)(D)'s requirement that a technical problem exist to excuse the lack of protection to a Class A station for adjustments to DTV facilities. Consequently, KRCA-DT's lack of requisite protection is not excused and KRCA-DT provided no justification for the substitution of Channel 35 in violation of the Commission's Rules.

⁶ See KRCA Reply Comments at 4.

⁷ See KRCA Reply Comments at 4-5.

⁸ See *Establishment of Class A Television Service*, Report and Order, 15 FCC RCD 6355, ¶ 53 (2000) ("*Class A Report and Order*").

⁹ See *Class A Report and Order* at ¶ 63; *Establishment of Class A Television Service*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, ¶ 63 (2001).

II. The Displacement of K35DG is Not a Viable Solution

The substitution of Channel 35 as KRCA-DT's post-transition DTV channel will effectively result in the displacement of K35DG.¹⁰ Indeed, the operation of KRCA-DT's proposed facilities on Channel 35 will result in interference to over 25 percent of K35DG's analog service contour population and combined interference to over 40 percent of the service contour population of a digital facility replicating K35DG's analog service contour on Channel 35.¹¹

Displacement to another channel is not a viable solution for K35DG, however, because there are no available displacement channels in the Southern California area.¹² Consequently, the substitution of Channel 35 as the post-transition DTV channel for KRCA-DT will force K35DG to continue its operations on Channel 35 while receiving a substantial amount of interference from KRCA-DT. At a minimum then, K35DG submits that it is entitled to the protection of its current analog service contour (and the digital replication of its analog service contour) from any increased interference proposed by KRCA-DT's maximization application relative to the facilities authorized for KRCA-DT in the Report and Order.

III. KRCA-DT's Circumstances Should Not a Substitute for Compliance with the Commission's Rules

The Commission in its Report and Order concluded that KRCA-DT's "unique circumstances" warrant the substitution of Channel 35 as KRCA-DT's post-transition DTV

¹⁰ The Commission in its Report and Order noted that K35DG is eligible to file a displacement application. *See* Report and Order at ¶ 13. However, it is not clear that Section 336(f)(1)(D) contemplates displacement as a permitted "modification as necessary" to K35DG, as opposed to changes to K35DG's facilities that would allow both K35DG and KRCA to co-exist.

¹¹ *See* Engineering Statement in University Comments.

¹² *See* Engineering Statement in University Comments.

Channel.¹³ KRCA-DT's particular circumstances, however, should not excuse the fact that KRCA-DT did not provide a justification for its failure to protect K35DG as required by the Commission's Rules. Nor should the Commission's analysis of this question in the Report and Order – a one sentence conclusion that the lack of Mexican clearance constitutes a technical problem consistent with Section 336(f)(1)(D) – substitute for such a justification.

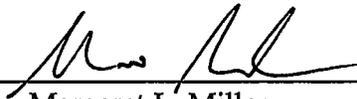
¹³ See Report and Order at ¶ 11.

Conclusion

For all the above reasons, the University respectfully requests reconsideration of the Commission's grant of KRCA-DT's request to substitute Channel 35 as the post-transition DTV channel for KRCA-DT.

Respectfully submitted,

**REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

By: 
Margaret L. Miller
Mario J. Weber

Its Attorneys

DOW LOHNES PLLC
1200 New Hampshire Avenue, N.W., Ste 800
Washington, DC 20036
202-776-2000

July 7, 2008

CERTIFICATE OF SERVICE

I, Michelle Holly, certify that a copy of the foregoing "Petition for Reconsideration" was served on July 7, 2008, by hand delivery or First Class United States mail, postage prepaid, upon the following:

Marnie K. Sarver, Esq.
Wiley Rein, LLP
1776 K Street, N.W.
Washington, DC 20006
Counsel for Petitioner

Hossein Hashemzadeh
Federal Communications Commission
Media Bureau, Video Division
445 12th Street, S.W.
Washington, DC 20554

Shaun Maher
Federal Communications Commission
Media Bureau, Video Division
445 12th Street, S.W.
Washington, DC 20554

Scott R. Flick
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037
Counsel for Univision Communications Inc.

Michelle Holly