

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

_____)	
In the Matter of)	
Request for Licensing Freezing and Petition for)	Media Bureau
Rulemaking to Amend the Commission's DTV)	RM-11626
Table of Allocations to Prohibit the Future)	
Licensing of Channel 51 Broadcast Stations)	
To Promote Voluntary Agreements to Relocate)	
Broadcast Stations from Channel 51)	
_____)	

To: The Media Bureau

Comments of LeSEA Broadcasting Corporation

LeSEA Broadcasting Corporation (“LeSEA”), through undersigned counsel, hereby files comments in response to the Commission’s March 28, 2011 Public Notice seeking comment on CTIA and the Rural Cellular Association’s joint Petition for Rulemaking and Request for Licensing Freezes (the “Petition”).¹ LeSEA opposes the petition, which never should have been entertained in the first place and must be unequivocally rejected now.

Background

LeSEA has been an FCC broadcast licensee for over 30 years, providing wholesome, family oriented and religious video programming, including locally produced programs, to the American public through television broadcasting. Since 1995, LeSEA has operated low power television station KWHS-LP, Colorado Springs, Colorado.² The station was originally licensed on channel 51. In 2009, in reliance on the FCC’s earlier orders preserving channels 2-51 for broadcast television, LeSEA sought and obtained a flash-cut permit to build digital facilities for

¹ *Media Bureau Seeks Comment On A Petition And Request for Licensing Freezes*, Public Notice, DA 11-562, rel. March 28, 2011 (hereinafter “*Public Notice*”).

² Facility Id. No. 74501, KWHS-LP, Colorado Spring, Colorado.

KWHS-LP on channel 51.³ LeSEA has expended thousands of dollars to build out on KWHS-LP's digital facilities, and is a few weeks away from completing construction. In April, 2011, LeSEA filed an application with the FCC for a minor modification of its digital flash-cut permit to accommodate an antenna change.⁴ That application remains pending at this time. As soon as it is granted, LeSEA will complete construction and file a license application. LeSEA is no stranger to successful digital build-outs. It has converted two other LPTV stations to digital and has built digital facilities for seven full power stations.

I. The Petition is a blatant spectrum grab that puts private interests ahead of the public interest.

Unlike broadcasters, wireless providers are not licensed under a public interest model where serving the public's needs in a community are paramount. Regrettably, that lack of a community service model leads to spectrum abuses like this Petition, which seek to elevate private commercial interests over public service.

In short, the Petition seeks to displace and forever prevent current and future broadcast uses of channel 51 – both by foreclosing future use, and seeking to “accelerate” clearing the channel of all TV uses. The Petition does not even attempt to address the potential ramifications to communities across the United States that would lose television service on channel 51. Instead, it blindly bemoans the lost “commercial viability” of channel 52, making broadcasters out to be the villains that cause interference to their profit-driven business models, even suggesting that such interference violates the Communications Act.⁵

The Public Notice, issued a mere 13 days after the Petition was filed, does not elaborate upon or rebut the positions taken. It does not even request that commenters address the possible public interest impacts of the Petition. Can it really be the case that 28 full power digital

³ FCC File No. BDFCDTL-20090626AAE.

⁴ FCC File No. BMPDTL-20110419ABQ.

⁵ Petition, pp. 6-8.

television stations, 56 digital TV translators or LPTV stations, and 3 Class-A digital television stations,⁶ all currently serving several hundred thousand Americans on channel 51 in markets from Pittsburg, PA to Denver, CO, are somehow suddenly irrelevant?

A serious reality-check is in order here. To begin with, wireless carriers are the ones responsible for avoiding interference to TV operations on channel 51, not the other way around.⁷ Channel 51 TV stations have absolutely no obligation to protect channel 52 broadband uses. When channels 52-69 were being placed on the auction block, the FCC specifically carved out most channels between 2-51 for television operations, and rejected all calls for modifying the interference protection for broadcast operations on channel 51.⁸ Requests for reciprocal interference protection between wireless operators on channel 52 and broadcasters on channel 51 were flatly refused.⁹ Suggestions for a reduction or elimination of the required desired/undesired signal strength ratio for distantly adjacent wireless channels, for frequency coordination, and for notice to wireless carriers by broadcasters using channel 51, were proposed by the wireless industry but also relegated to the trash heap.¹⁰

Instead, the FCC accorded channel 51 television uses – both analog and digital – the same full level of protection as other TV stations, requiring wireless companies to provide robust interference protection. In the Commission’s own words:

Channel 51 is part of the core channels reserved for broadcast use, and we do not believe use of channel 51 for broadcast purposes should be restricted in order to protect operations on channel 52, even if those operations predate the commencement of operations on channel 51.¹¹

⁶ Figures obtained from April 26, 2011 searches of licensed and operating channel 51 television authorizations included in the FCC’s Consolidated Database System, http://licensing.fcc.gov/prod/cdbs/pubacc/prod/sta_sear.htm.

⁷ See, e.g., 47 CFR §27.60.

⁸ *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, Report & Order, MB Docket No. 03-15, ¶¶ 122-24 (hereinafter, “*Second Periodic Review R&O*”).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at ¶124.

In later proceedings, the FCC then assigned channel 51 for digital use to numerous full-power television stations, again based on the premise of interference protection and the future viability of channel 51 for television use. No channel 51 television license holder has since been advised by the Commission that their license is no longer valid, or that they no longer have to serve the public interest. And no channel 51 television license contains an asterisk or caveat that interference might one day have to be accepted from channel 52 wireless providers.

So other than more attractive profit margins for wireless broadband driven by the popularity of the service, nothing has changed since the FCC's 2004 statement that would dictate draconian adjacent channel interference solutions such as licensing prohibitions, freezes, or channel clearing. TV stations on channel 51, including LeSEA's KWHS-LP, still provide a valuable service to the public that deserves protection. The license holders for those stations still rely upon the regulatory framework that protected their service areas and justified spending thousands of dollars to build out digital.

The Petition presumes that by directing its requested relief to future licensing issues, it balances the desired commercial viability of channel 52 with existing TV uses on channel 51. That presumption is demonstrably false. By proposing ways to clear TV stations from channel 51, the Petition presents issues that involve a loss of TV service to the public, a serious subject on which even existing television stations are not permitted to tread. The upper and lower 700 Mhz block methods for vacating channels may have been viable models when channels 2-51 were the new "core" channels where TV would live, but today, even that is uncertain. Why would a TV station agree to relocate off of channel 51 when the very channel it moves to may yet be repurposed? The public interest cannot be possibly be preserved, much less served, by haphazard and overbroad interference "solutions" that disregard what is best for the communities served by broadcast licensees.

Without question then, the public interest served by TV broadcasters on channel 51 should far outweigh private interests seeking profits. Wireless providers bidding on channel 52 were well aware of the stringent protection requirements for channel 51, and the potential obstacles to network build-out, but elected to bid on the spectrum anyway. Buyer's remorse and profit demands from a few private companies should not be allowed to dictate spectrum policy and licensing changes.

II. Rules already exist to address voluntary interference arrangements and case-by-case waivers are currently available to wireless broadband providers.

The Petition conveniently skips over two mechanisms that already exist for channel 52 wireless providers to work toward a less expensive wireless network build-out. First, Section 27.60(b)(1)(iv) of the FCC's rules explicitly allows for wireless providers to seek out individual interference agreements with channel 51 TV licensees as a solution.¹² Indeed, the FCC favorably cited to that rule in 2004 when refusing to adopt different interference rules for distantly adjacent wireless broadband frequencies.¹³ In that same Order, the FCC also posited that wireless broadband licensees could seek waivers of interference requirements in certain circumstances.¹⁴

Not surprisingly, the Petition does not consider these options. Rather, it leaps over the case-by-case approach to apply a one-size-fits-all solution that prohibits future licensing of TV channel 51 operations, immediately freezes further grants or applications for such facilities, and accelerates moving existing TV channel 51 licensees off of the channel altogether.

The Petition's message is clear – TV channel 51 operations are a nuisance and the FCC should effectively give channel 51 to the wireless broadband providers. The relief requested is

¹² While a Cellular South voluntary interference agreement is referred to in footnote 46 of the Petition, it does so in the context of supporting the adoption of accelerated clearance mechanisms, and does not acknowledge the existing rule that permits such arrangements.

¹³ *Second Periodic Review R&O*, ¶124.

¹⁴ *Id.*

breathhtakingly broad and one-sided, without consideration of more narrow solutions. On closer examination, existing remedies, not draconian overnight relief, should be the order of the day.

III. Granting the requested relief will rewrite the adjacent channel interference for other TV Channels between 2-51.

The FCC has already proposed allowing wireless broadband companies to hold licenses on channels 2-51 that are currently reserved for television broadcasting.¹⁵ Should that proposal be formalized into a rule change, the end result will be the co-existence of adjacent channel TV and wireless broadband licenses throughout channels 2-51. If that occurs, the same issues raised in the Petition related to channel 52/51 interference will be presented over and over again, and the same faulty logic that private interests trump the public interest will be revisited in markets all over the country.

The Bureau has the opportunity now to prevent the chaos that would result from the loss of television service to the public, not to mention the unnecessary, unproductive and expensive interference fights that would almost certainly occur. By rejecting the Petition, the Bureau will make clear that interference standards are a serious matter to be addressed on a global basis, not via a piecemeal approach driven by private interests.

IV. The Petition raises numerous concerns for LeSEA's KWHS-LP digital facilities.

The Petition and the Public Notice lack clarity on the proposed licensing prohibition and freeze, and leave clearance mechanisms vague and ripe for abuse. The Petition seeks to halt “acceptance, processing and grant of applications for new stations on Channel 51.”¹⁶ But the word “new” is not defined. Is it restricted to initial proposals for use of channel 51? Does it disallow modifications to existing permits for channel 51, since the station is not yet built and would technically be “new”? Does it foreclose license applications for already issued channel 51

¹⁵ *Innovation in the Broadcast Television Bands: Allocations, Channel-Sharing, and Improvements to VHF*, Notice of Proposed Rulemaking, FCC 10-196 (rel. November 30, 2010).

¹⁶ Petition, p. 12.

permits? The Petition provides no proposed rule change language that would potentially eliminate such confusion, leaving LeSEA and others to wonder as to the scope and intent of the proposed freeze.

LeSEA currently operates KWHS-LP on analog channel 51, and intends to build out its digital flash cut permit for channel 51 shortly. The Petition presents a further quandary as to whether LeSEA's efforts, made at considerable expense, will all be negated with the flourish of a pen. Moreover, even if KWHS-LP's digital build out is completed, the Petition suggests no parameters for voluntary clearance agreements. For example, since a voluntary arrangement does not constitute a channel displacement, would the FCC consider a channel relocation to be an exception to the current freeze on new digital LPTV applications? What processes should apply to the negotiation and execution of such agreements? How is the incumbent licensee to be compensated for the relocation and re-branding of its station? What are the benchmarks to be used to ensure that such an arrangement is truly voluntary, and not dominated by the wireless carrier?

The uncertainties created by the Petition's language raise significant concerns that only heighten broadcaster suspicions. Indeed, the mere solicitation of comments on the proposal has added obstacles and unknowns that unfairly complicate LeSEA's planning, and increased its costs in getting the digital facility licensed.

Conclusion

For the above reasons, LeSEA joins its other broadcasters in emphatically declaring that channel 51 is not a doormat for private broadband interests. Consistent with the Commission's prior rulings, the Media Bureau should reject the Petition's haphazard, overbroad approach to interference protection.

Respectfully submitted:

LeSEA Broadcasting Corporation



Joseph C. Chautin, III, Esq.
Elise M. Stubbe, Esq.
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, LA 70471
(985) 629-0777 *tel*
(985) 629-0778 *fax*

Counsel for LeSEA Broadcasting Corporation

Dated April 27, 2011