

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Unlicensed Operation in the TV Broadcast Bands) ET Docket No. 04-186
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To: Marlene Dortch, Secretary
Attn: Chief, Office of Engineering and Technology

COMMENTS

The University of Utah respectfully submits these comments in further support of its April 5, 2011 request that the Commission grant a waiver of Section 15.712(b) of the Commission’s rules and permit registration of twelve television translator receive sites in the television bands database(s). Consistent with the Commission’s calculations, each of the twelve receive sites that are the subject of the University of Utah’s waiver request is located more than 80 kilometers from the protected contour of the TV station being received.¹ A waiver is thus necessary to secure protection for these sites from interference caused by the operation of unlicensed white spaces devices, including the six receive sites for which the University of Utah has constructed microwave paths, but which rely on over-the-air transmission in the event of technical failures in the microwave transmission of programming.

¹ See Public Notice, “Office of Engineering and Technology Seeks Comment on Requests for Waiver of Section 15.712(b) to Register Certain TV Receive Sites in the TV Bands Database,” DA 11-2086 (Dec. 28, 2011). With respect to certain of the distance calculations listed in Appendix A of the Public Notice, the University of Utah calculates distances at variance with those calculated by the Commission, but it agrees that each of the receive sites is located more than 80 kilometers from the receive sites being received, and it confirms the latitudes and longitudes listed by the Commission in Appendix A.

Section 1.3 of the Commission’s rules provides for waiver “for good cause shown,” and the Commission has recognized that its rules may be waived “where the particular facts make strict compliance inconsistent with the public interest.”² Permitting registration of the twelve University of Utah receive sites would be in the public interest and there is good cause to waive Section 15.712(b) and permit these sites to register in the TV Bands databases(s) for the reasons described in the University of Utah’s April 5, 2011 waiver request.

Each of the receive sites carries important and valuable programming.

- The K44JI-D, Washington County, Utah; K47HM-D, Delta/Oak City, Utah; K40AF-D, Monticello/Blanding, Utah; K50GD-D, Long Valley Junction, Utah; K20GH-D, Beaver/Milford, Utah; and K35IQ-D, Vernal, Utah receive sites carry programming that originates on KUED, which is Utah’s premiere public broadcasting station, broadcasting—24 hours a day—quality programming, including news and public affairs, children’s education, nature and science, history, music, arts, and entertainment programming, as well as award-winning, locally-produced television programs and documentaries. These receive sites carry PBS and other non-commercial educational programming, including multicast signals that carry such networks as PBS World and Spanish language PBS programming. In addition, KUED serves as a designated State Relay station under the Utah State Emergency Alert System. As such, local stations throughout Utah rely on KUED and its network of translator stations to provide local, regional, and national EAS notifications in accordance with Commission rules.
- K50KC-D, Washington County, Utah; K48KS-D, Delta/Oak City, Utah; K16BO-D, Beaver/Milford, Utah; K47JI-D, Monticello/Blanding, Utah; K46EO-D, Long Valley Junction, Utah; and K56JG-D, Vernal, Utah carry the programming of KUEN, which is licensed to the Utah State Board of Regents and operated by the Utah Education Network (“UEN”) on behalf of higher education and public education institutions in Utah. It delivers current events and public affairs programming and news and informational programming, along with valuable educational programming, including K-

² See 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); and *Request for Waiver of the Decision of the Universal Service Administrator by Douglas-Omaha Tech. Comm’n, Omaha, Nebraska*, Order, 21 FCC Rcd 9277, at para. 5 (2006). See also *id.* (“waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule”).

12 instructional television; professional development for teachers (including re-certification classes); for-credit college telecourses; and science, history and world cultures, aging and health, and visual and performing arts programming.

Without a waiver in order to register these receive sites for protection from interference caused by unlicensed white space devices, viewers in the above-identified communities would be at risk of losing the important programming that originates on KUED and KUEN, including local news and public affairs programming, high value educational programming, and Spanish language programming, as well as critical emergency information and alerts. To the extent these receive sites receive the signals of their received stations over-the-air, a waiver is necessary to ensure that this important programming is protected against interference in the affected communities. Further, given the remote location of these sites, grant of this waiver request will not unduly constrain the channels on which unlicensed white space devices may operate.³

The Commission separately invites comment about whether waivers should be granted with respect to the six receive sites for which the University of Utah has constructed microwave paths and which thus rely on direct over-the-air reception only as a back up to microwave transmission (the K45JN-D, K46JK-D, K23FT-D, K35IQ-D, K50KC-D, and K44JI-D receive sites). The University of Utah historically relied on over-the-air reception at these sites, for a period of almost 30 years. Only in the past decade, and relying on grant funding that may not always be available in the future, has the University of Utah been able to finance the

³ The Commission has opined that waivers should not affect the availability of channels for TV white space devices, given that these facilities “are generally in remote areas where many channels will be available for white space devices.” *Second Memorandum Opinion and Order*, ET Docket Nos. 04-186 and 02-380, 25 FCC Rcd 18661, at para. 42 (rel. Sept. 23, 2010).

microwave links that it now uses for these sites. Importantly, the University of Utah has experienced periodic technical failures of its microwave links. While the University of Utah has thus far been able to repair such microwave links failures promptly, it will need to rely on over-the-air reception at these sites in the event of any extended failures. Accordingly, the University of Utah seeks to maintain reception capability at these outlying translators — and thus to ensure that viewers in the translators’ service areas can continue to receive the important programming provided by non-commercial originating stations KUED and KUEN — using over-the-air reception of the KUED and KUEN signals.

The University of Utah believes that a permanent waiver would better serve the public interest because it would enable the University of Utah to count on an instant and seamless transition to over-the-air reception. In the alternative, however, the University of Utah requests that the Commission permit registration of the K45JN-D, K46JK-D, K23FT-D, K35IQ-D, K50KC-D, and K44JI-D receive sites on an interim/intermittent basis, *i.e.*, if and when there is a microwave link failure that causes the University of Utah to rely on over-the-air reception for these particular receive sites (and only for the duration of such occurrence). Such a waiver would ensure that the receive sites are protected during those times when over-the-air reception is the most critical.

For the foregoing reasons, grant of the University of Utah's waiver request is in the public interest.

Respectfully submitted,

The University of Utah

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