

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

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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)	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: May 21, 2008**

**Released: May 21, 2008**

By the Chief, Video Division, Media Bureau:

**A. Introduction**

1. The Video Division has before it the *Notice of Proposed Rulemaking*<sup>1</sup> issued at the request of KRCA License, LLC (KRCA), licensee of station KRCA(TV), channel 62, and KRCA-DT, channel 68, Riverside, California, seeking to substitute post-transition DTV channel 35 for channel 45 for KRCA-DT. KRCA filed comments and reply comments reiterating its continuing interest. No counterproposals were received in this proceeding.<sup>2</sup> For the reasons set forth below, we grant KRCA's request and substitute Channel 35 as the post-transition DTV channel for KRCA-DT.

**B. Background**

2. In comments filed in the DTV Table proceeding, KRCA requested this substitution in the event that channel 45, the post-transition DTV channel designation for KRCA-DT, would not receive clearance from the Government of Mexico.<sup>3</sup> The Commission has still not received approval from the Government of Mexico for KRCA-DT's post-transition operation on channel 45. In the *Notice*, we found that KRCA's proposed substitute channel 35 is more likely to obtain Mexican clearance thus ensuring that KRCA-DT will have a channel on which to continue broadcasting after February 17, 2009.<sup>4</sup>

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<sup>1</sup> See Amendment of Section 73.622(i) - Final DTV Table of Allotments (Riverside, California), DA 08-504, released March 5, 2008 (*Notice*).

<sup>2</sup> Also before us are comments and reply comments filed by the Regents of the University of California (Regents) and comments filed by Univision Communications, Inc. (Univision).

<sup>3</sup> See Comments of KRCA License, LLC, filed Oct. 25, 2007, at 2 in MB Docket No. 87-268.

<sup>4</sup> See *Notice* at 1.

3. KRCA was allotted channel 45 for post-transition operations in the *Seventh Report and Order*.<sup>5</sup> In its comments, KRCA states that it would accept the allotment of channel 45 as the post-transition DTV channel for KRCA-DT.<sup>6</sup> KRCA notes that Channel 35 has already been approved by Mexico and is currently being used by KMEX-DT, Los Angeles, California for its interim DTV operations. KRCA concludes that approval by Mexico for KRCA-DT's use of channel 35 should be able to be obtained more quickly, whereas coordination of channel 45 faces a number of obstacles that could prevent it from completing its post-transition DTV facilities by the end of the DTV transition. KRCA concludes that it needs certainty so it can order equipment and commence construction of its post-transition DTV facilities.<sup>7</sup>

4. In the *Notice*, we noted that the substitution of channel 35 will cause 1.17 percent interference to KMEX, Los Angeles, CA (analog channel 34, pre-transition digital channel 35, and post-transition digital channel 34), and 0.24 percent interference to KNBC, Los Angeles, CA (analog channel 4, digital channel 36 for both pre- and post-transition). KRCA maintains that it should be allowed additional flexibility in finding a post-transition digital channel for KRCA-DT otherwise there is no certainty that KRCA-DT will be able to complete construction of its DTV facilities by the end of the DTV transition.<sup>8</sup>

5. In addition, we noted that the substitution of channel 35 does not comply with Section 73.623(c)(5) of the Commission's rules,<sup>9</sup> which specifies protection requirements for Class A television stations, with respect to Class A television station K35DG, La Jolla, California. Section 336(f)(1)(D) of the Communications Act,<sup>10</sup> however, provides that if, after granting Class A status to a qualifying low power television station:

technical problems arise requiring an engineering solution to a full-power station's allotted parameters of channel assignment in the digital Table of Allotments, the Commission shall make such modifications as necessary –

- (i) to ensure replication of the full-power digital television applicants service area, as provided in sections 73.622 and 73.623 of the Commission's regulations . . .; and
- (ii) to permit maximization of a full-power digital television applicant's service area consistent with such sections 73.622 and 73.623.

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<sup>5</sup> *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, 22 FCC Rcd 15581, 15647 App B. (2007) (*Seventh Report and Order*).

<sup>6</sup> See KRCA Comments at 1.

<sup>7</sup> See KRCA Reply Comments at n. 18.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> 47 C.F.R. § 73.623(c)(5).

<sup>10</sup> 47 U.S.C. § 336(f)(1)(D).

6. Regents is the licensee of K35DG and maintains that the substitution of channel 35 for KRCA-DT violates section 73.6259(c)(5) of the rules and is not consistent with the exception set forth in Section 336(f)(1)(D) since the proposal is motivated by a legal problem (the inability to obtain Mexican clearance) and not a technical problem.<sup>11</sup> In addition, Regents argues that there is no guarantee the channel substitution will resolve KRCA's problem because Mexican clearance would still be required for KRCA-DT to operate on channel 35.<sup>12</sup>

7. KRCA maintains that the substitution of Channel 35 for KRCA-DT is the result of a technical problem requiring an engineering solution as required by Section 336(f)(1)(D). Even if not purely a technical problem, KRCA argues that Section 336(f)(1)(D) applies and K35DG is not entitled to any interference protection from the operation of KRCA-DT on channel 35.<sup>13</sup>

8. Furthermore KRCA argues that the channel substitution will not displace K35DG. Rather, KRCA argues that it will potentially cause interference to over 25 percent of K35DG's contour population. KRCA argues that this is not a displacement as Regents claims. KRCA notes that KMEX-DT is currently using channel 35 for its pre-transition DTV operations with facilities similar to those proposed by the Commission in the *Notice* for use by KRCA-DT. Thus, KRCA concludes, K35DG receives the same, if not more, interference from KMEX-DT. KRCA estimates that the interference that K35DG currently receives from KMEX-DT is 27.04 percent of its protected population (or 288,724 persons) while the interference that K35DG would receive from KRCA-DT would be 19.21 percent (or 205,125). Therefore, KRCA concludes, the interference that K35DG would receive from the operation of KRCA-DT on channel 35 would actually decrease.<sup>14</sup>

9. Univision is the licensee of KMEX-DT. Univision opposes the substitution of Channel 35 for KRCA-DT because it claims that it will result in an unacceptable loss of television service.<sup>15</sup> First, Univision maintains that KRCA-DT's use of Channel 35 will provide interference free service to 209,000 fewer persons than operation on Channel 45.<sup>16</sup> In addition, Univision points out that KRCA-DT's operation on Channel 35 will result in 1.17 percent new interference to KMEX-DT resulting in a loss of service to an additional 170,520 persons.<sup>17</sup> Univision continues that there will be 0.24 percent new interference to KNBC-DT for a loss of an additional 46,253 persons.<sup>18</sup> Finally, Univision maintains that there will be 19.5

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<sup>11</sup> See Regents Comments at 5.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> See KRCA Reply Comments at 5.

<sup>14</sup> See KRCA Reply Comments at 3.

<sup>15</sup> See Univision Comments at 4-7 and Exhibit 1.

<sup>16</sup> *Id.* at 4-5.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.*

percent interference to K35DG for a loss of 208,516 persons.<sup>19</sup> In sum, Univision calculates that there will be a total loss of television service to 634,289 persons if the Commission grants KRCA's channel substitution. Univision argues that this loss of service is greater than that which the Commission had found acceptable in the past.<sup>20</sup> Univision concludes that there is no compelling reason to permit such an extensive loss. Univision argues that it is not even certain that Mexico will permit KRCA-DT's operation on Channel 35.

10. KRCA responds that continued operation of KRCA-DT after February 17, 2009 warrants flexibility in finding the station a post-transition digital channel.<sup>21</sup> Furthermore, KRCA argues that the minimal interference caused by the channel substitution is a lesser harm than the loss of service to 14,699,489 persons that will occur if KRCA-DT is forced to go dark on February 17, 2009.

### C. Discussion

11. We believe that the unique circumstances of this case warrant substitution of channel 35 as KRCA's post-transition DTV channel. KRCA is one of only a small number of television stations with both out-of-core analog and pre-transition DTV channels.<sup>22</sup> We have previously acknowledged the challenges that these stations face in seeking to complete their transition to digital.<sup>23</sup> Although consideration of channel changes and substitutions is currently subject to the filing freeze,<sup>24</sup> we believe it is appropriate to

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 6-7.

<sup>21</sup> *See* KRCA Reply Comments at 6.

<sup>22</sup> Television stations are required to cease operating on channels 52-69 (out of core channels) and operate on only the "core" television channels 2-51 by February 17, 2009. *See* Digital Television and Public Safety Act of 2005 ("*DTV Act*"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("*DRA*") (*codified at* 47 U.S.C. §§ 309(j)(14) and 337(e)). Full-power television stations were provided a paired DTV channel for pre-transition DTV operations. *See* Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588 (1997). The Commission attempted to provide all eligible broadcasters with a paired DTV channel within the core channels 2-51 but where necessary, out-of-core channels were also used. *Id.* A small number of stations with out-of-core analog channels also received an out-of-core paired DTV channel.

<sup>23</sup> *See, e.g., Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18322 (2004).

<sup>24</sup> *See* Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810, 14810-11 (MB 2004). The freeze, which was imposed on August 3, 2004 – prior to the commencement of the channel election process, precludes parties from filing the following items: (i) petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. In the *Third DTV Periodic Review Report and Order*, the Commission announced its intention to lift the freeze on the filing of maximization applications on August 17, 2008, but has not announced whether it intends to lift the freeze for the other types of

permit the channel substitution in this case where a licensed station has no in-core channel on which it may operate after February 17, 2009. We believe KRCA's situation is unique because it cannot remain on either its current analog or digital channel because they are both out-of-core and because the channel we allotted in the Table of Allotments proceedings has not yet been cleared by the Government of Mexico and the transition deadline is fast approaching. We find that coordination of this channel with full certified coverage is more likely to receive approval because Mexico has previously approved the use of this channel with the interim DTV operations of another station (KMEX-DT). Were 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. Unlike most situations in which international coordination is required and the station can build a facility, albeit not the exact facility requested by the licensee, in this case, if KRCA's use of channel 45 is rejected by Mexico, the station will not be able to build any facility. As a result, the current analog viewers of KRCA would lose access to this station, which is an independent foreign language broadcaster, serving Riverside, CA since 1989. Moreover, because KRCA-DT's pre-transition channel is out-of-core, we cannot permit KRCA to remain on its pre-transition channel after February 17, 2009.<sup>25</sup> Therefore, in order for KRCA-DT to be operational after February 17, 2009, we must permit its channel substitution.

12. With respect to the interference that will be created by the substitution of channel 35, we believe that licensees such as KRCA, with two out-of-core channels and facing international coordination issues, should be allowed greater flexibility with respect to interference. A small increase in interference is greatly outweighed by the fact that KRCA is more likely to be able to complete its transition to digital by the February 17, 2009 deadline on substitute channel 35 since that channel has already received Mexican clearance for DTV operations by KMEX-DT. This will enable KRCA-DT to expedite its order for equipment for post-transition operation and commence construction in a timely manner.

13. As for the displacement of Class A station K35DG, 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 conclude that the substitution of channel 35 constitutes an engineering solution to a technical problem, consistent with Section 336(f)(1)(D). Furthermore, it is not certain whether KRCA-DT's operation on Channel 35 will even result in displacement of K35DG. KMEX-DT currently operates its pre-transition DTV facilities on Channel 35 and KRCA-DT's post transition DTV operation will be similar to those of KMEX-DT. As noted previously, KRCA estimates that the amount of interference to K35DG actually may be reduced when KRCA-DT begins operating on Channel 35.<sup>26</sup> Should displacement of K35DG occur, we note that it is eligible to file a displacement application pursuant to Section 73.3572(a)(4)(iii) of the rules.<sup>27</sup>

14. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and

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filings listed above including petitions for rulemaking. *See* Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television, *Report and Order*, FCC 07-228, released December 31, 2007 (*Third DTV Periodic Review Report and Order*).

<sup>25</sup> *See, supra* n.22.

<sup>26</sup> *See supra* ¶8; *see also* KRCA Reply Comments at 3.

<sup>27</sup> *See* 47 C.F.R. § 73.3572(a)(4)(iii).

(r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective July 5, 2008, the post-transition DTV Table of Allotments, Section 73.622(i) of the Commission's Rules, IS AMENDED to read as follows:

CALIFORNIA

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Community	Channel No.
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Riverside, California	35
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15. Although we grant KRCA's substitution of Channel 35 as the post-transition channel for KRCA-DT, we note that such substitution is granted to the extent that KRCA-DT's service contour will be entirely contained within the existing digital operations on Channel 35 which were previously approved for Channel 35 for KMEX-DT, Los Angeles, CA, through international coordination with Mexico. Accordingly, when it files its application for construction permit, KRCA will need to utilize parameters consistent with those approved for KMEX-DT on Channel 35. If KRCA decides to seek larger facilities, then those facilities once again would be contingent on approval from Mexico.

16. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, KRCA shall submit to the Commission a minor change application for a digital construction permit (FCC Form 301-DT) specifying post-transition DTV Channel 35 in lieu of DTV Channel 45 for station KRCA-DT, Riverside, California.

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

18. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the DTV Table of Allotments, Section 73.622(i). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, § 3506(c)(4).

FEDERAL COMMUNICATIONS COMMISSION

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