

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
Second Periodic Review of the) MB Docket No. 03-15
Commission’s Rules and Policies)
Affecting the Conversion)
To Digital Television)

To: The Commission

COMMENTS OF THE KM COMPANIES

KM Communications, Inc. (“KM”) and other commonly-owned companies,¹ by their counsel, and pursuant to Section 1.415 of the Commission’s rules, 47 C.F.R. § 1.415, respectfully submit their comments in response to the Commission’s Notice of Proposed Rule Making in the above-captioned second digital television (“DTV”) periodic review proceeding,² as follows:

2. **DTV Channel Election.** The Commission requested comment on setting a deadline by which television stations with both their analog and digital channel outside of the “core” channels

¹ KM is an applicant for new commercial full power analog television stations, and is the permittee of and an applicant for new Low Power Television (“LPTV”) stations. KM is 100% owned and controlled by Mrs. Myoung Hwa Bae (“Mrs. Bae”), who holds an interest in Pocatello Channel 15, L.L.C., the permittee for a new commercial full power television station, and also is the 100% owner of and controls (i) KM Television of Iowa, L.L.C.; KM Television of Flagstaff, L.L.C.; KM Television of Jackson, L.L.C.; KM Television of El-Dorado, L.L.C., and KM Television of Boise, L.L.C.; each of which is the licensee or permittee of commercial full power analog and/or digital television stations; and (ii) KM LPTV of Chicago-13, L.L.C.; KM LPTV of Milwaukee, L.L.C.; KM LPTV of Atlanta, L.L.C. and KM LPTV of Chicago-28, L.L.C., each of which is the licensee of a Class A or Class A-eligible LPTV station (KM and each of the other entities listed in this footnote collectively, the “KM Companies”).

² See Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03-15, Notice of Proposed Rule Making, FCC 03-8 (released January 27, 2003)(the “NPRM”).

(Channels 2 to 51) must elect their permanent, post-transition DTV channel allotment. See NPRM at ¶¶ 24-27. Specifically, the Commission proposed a DTV channel election deadline of May 1, 2005. Id. at ¶ 25. In proposing a deadline, the Commission expressed concern for balancing the interests of allowing DTV stations adequate time to evaluate the technical aspects of their DTV operations, versus allowing more time for stations with both their analog and digital channel allotments outside of the core to plan for their post-transition DTV operations.

3. The KM Companies continue to believe, as expressed in their comments during the first DTV periodic review proceeding, that the DTV channel election deadline should be as early as possible, as early as December 31, 2004 if not earlier. With the first DTV stations going on the air five years ago in the spring of 1998, the television broadcast industry as a whole has had more than sufficient time to evaluate the technical aspects of DTV operations on a variety of channels and in a variety of operating conditions. In addition, individual DTV stations for the most part also have had more than an ample opportunity to build out and evaluate their DTV facilities, and to the extent that they have not done so it is likely due to their own business decisions. Such stations should not be rewarded with a late DTV channel election deadline based on a perceived need for more time, when they have been in control of their time line, at the expense of stations with both channels outside of the core, due to a decision over which they have had no control, that need to plan for their post-transition DTV facilities. Class A television and LPTV stations also would benefit from the additional time for planning that an early DTV channel election deadline would bring.

4. **Effects of DTV Channel Election.** The KM Companies also request that the Commission begin to elaborate on the effects that will flow from DTV channel elections. For example, at what point will other full power DTV, Class A television and LPTV stations be permitted to file applications for construction permits that do not protect channels that will be

vacated at the end of the DTV transition? The KM Companies submit that such applications should be permitted shortly after DTV channel elections are made, so that full power television stations with both channels outside the core, as well as displaced and other Class A and/or LPTV stations, may apply for construction permits and build facilities that may be turned on in a “flash cut” at the end of the DTV transition, immediately upon the availability of the spectrum returned by stations with both channels in the core.

5. **Treatment of Stations Without a Second Paired DTV Channel.** As a relatively “new entrant” in full power television broadcasting,³ four of the six new full power television stations authorized to KM Companies did not receive a second paired channel for DTV. Although the Commission has stated generally that full power analog television stations that did not receive a second paired DTV channel “do not have to convert to DTV until the end of the DTV transition”,⁴ the KM Companies would appreciate more elaboration on the specifics of their DTV transition. For example, will such stations be required to flash-cut from analog to digital operations on some specific date set as the end of the DTV transition, or will some more flexible approach be permitted?

6. The KM Companies encourage the Commission to be very flexible in their treatment of such one-channel stations, for example by permitting such stations to apply for, construct and begin operating digital facilities during some days or day parts (such as during prime time) while continuing to broadcast in analog during other days or day parts. Any replication or maximization deadlines established by the Commission in this proceeding, see NPRM at ¶¶ 37-38, should

³ By “new entrant”, the KM Companies note that Mrs. Bae and KM first ventured into full power television broadcasting by filing applications for construction permits for new stations in late 1994; the first construction permit was granted to KM in late 1996, and a KM Companies entity completed construction and began operation of its first full power TV station in August 1999.

⁴ See, e.g., Remedial Steps for Failure to Comply With Digital Television Construction Schedule, MM Docket No. 02-113, FCC 03-77 at n.25 (released April 16, 2003).

specifically address the treatment of such one-channel stations, in addition to how such deadlines may apply to stations with a second paired DTV channel. Adding flexibility and certainty to the DTV transition process for such one-channel stations would serve the public interest by facilitating investment decisions related to such stations.

7. **End of DTV Transition Period.** Section 309(j)(14) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(14) (“Section 309(j)(14)”), establishes December 31, 2006 as the deadline for the end of analog television broadcasting, but permits the Commission to extend that date if certain specific conditions are met. See § 309(j)(14). The Commission requested comments on the interpretation and implementation of Section 309(j)(14), particularly with respect to extensions of the December 31, 2006 deadline. See NPRM at ¶¶ 69-94.

8. The Commission invited comment on whether the Commission may grant a “blanket extension” of the December 31, 2006 deadline, id. at ¶ 71, as well as series of questions about the appropriate definition of “television market” when considering extension issues. Id. at ¶¶ 71-78. The KM Companies observe that the statute itself gives the Commission exceedingly broad authority on this point, stating in Section 309(j)(14)(B) that the Commission must extend the deadline “in any television market” where the specified statutory conditions are met. See § 309(j)(14)(B) (emphasis added). Although as the Commission notes it has used Nielsen Designated Market Areas (“DMAs”) as the definition of a “television market” in some other contexts, the KM Companies note that such use has typically been in defining a television station’s local television market; in contrast, the broader and more permissive statutory language of “any television market” in Section 309(j)(14)(B) permits the Commission to define the applicable television market in a different manner in this context, or even in more than one manner as specific circumstances may dictate.

9. However, to the extent that the Commission elects to consider extension requests on a “local” television market basis, use of DMAs as the local television market definition would be more consistent and therefore preferable to other definitions, such as the Grade B contour of individual stations. See NPRM at ¶¶ 72-77. Considering extension requests on a DMA by DMA basis, as opposed to on an individual station basis, would be more administratively efficient, conserve Commission resources, and provide more consistency among competing stations in any given economic market.

10. WHEREFORE, the above premises being considered, the KM Companies respectfully request that the Commission adopt DTV rules and policies with respect to DTV channel election deadlines, the end of the DTV transition period and all other DTV transition issues which are consistent with the views expressed by the KM Companies herein.

Respectfully submitted,

KM Communications, Inc., *et al.*

By: _____
Jeffrey L. Timmons, Esq.
Their Attorney

Jeffrey L. Timmons, P.C.
3235 Satellite Boulevard
Building 400, Suite 300
Duluth, Georgia 30096-8688
(770) 291-2170 telephone
(770) 291-2171 facsimile
jeff@timmonspc.com

April 21, 2003