

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)
)
Rick D’Amico) File No. **BDFCDTL-20070227ACN**
(K26FA, Vista, CA)) Facility ID **14910**
)
For a Digital Flash Cut)
Construction Permit)

To Chief, Low Power TV Branch
Video Division, Media Bureau
(Electronically Filed with Amendment to Application)

RESPONSE TO DEFICIENCY LETTER AND REQUEST FOR WAIVER

Introduction and Request for Waiver

1. Rick D’Amico (“D’Amico”) hereby responds to the Commission’s deficiency letter of March 17, 2010, Ref. 1800E1-MFC, with respect to the above-captioned application for a construction permit to flash cut low power television station K26FA to digital operation on Channel 26 (the “D’Amico Application”).¹

2. The deficiency letter stated that the D’Amico Application is predicted to cause prohibited interference to two pending applications, each filed later in time than the D’Amico Application, and each requesting operation on first-adjacent Channel 25 (the “Channel 25 Applications”):

KDTEF-CA, Fac. ID 4035, BDISDTA-20090611ACQ (formerly KBNT-CA)
K63EN, Fac. ID 11608, BDISDTL-20090630ABO.

D’Amico submits that neither of the Channel 25 Applications need be protected by the K26FA Application, because of (a) the unique circumstances involving international coordination, in the

¹ Extensions of time were requested to file this response, most recently on July 16, 2010, requesting a filing deadline of July 23, 2010. Because CDBS would not accept an amendment under a different account number, D’Amico was unable to file on July 23, and requested a further extension until the CDBS problem was resolved. That happened on July 28, 2010.

absence of which the D'Amico Application would have been granted long before the Channel 25 Applications were filed; (b) the fact that neither of the Channel 25 Applications adequately justifies its claim for displacement relief, so neither is entitled to priority processing under Section 73.3572(a)(4) of the Commission's Rules; and (c) the fact that K26FA is confined to one watt analog power and thus is itself effectively displaced from its own current operation, even if it is "displacing" to the same channel. The D'Amico Application uses the conversion from analog to digital operation to accomplish the purposes of displacement by removing interference and allowing service to a reasonable area and population.

3. D'Amico is not objecting to a grant of either of the Channel 25 Applications at this time.² He is stating only that given all of the existing circumstances, they are not entitled to the priority processing normally afforded to displacement applications, at least to the extent that it would defeat the first-in-time position of the D'Amico Application. D'Amico further submits that the engineering mutual exclusivity between his application and the two others can be reduced to a very small amount with respect to KDTF-CA and eliminated altogether with respect to K63EN by waiving Section 74.794 of the Rules to allow K26FA to use a full service mission mask. D'Amico hereby requests such a waiver, without requiring consent of the other two stations. Furthermore, if the K26FA Application is granted, D'Amico commits not to object to a grant of either the KDTF-CA Application or the K63EN Application with the facilities currently proposed by each of those applicants.³

² Neither of the Channel 25 Applications has yet appeared on a Proposed Grant or Auction Winner List, so the time for objections has not arrived. When and if one or both of those applications are proposed for grant, D'Amico will decide whether or not to file a pleading.

³ Since the KDTF-CA and K63EN Applications are severely mutually exclusive between themselves, D'Amico does not believe it will be possible for more than one of them to be granted.

Unique Circumstances of International Coordination

4. The D'Amico Application was filed over three years ago, on February 27, 2007. In the normal course, it would have been granted long before the end of the full power digital transition on June 12, 2009. Instead, the application remained pending much longer because of the need to coordinate with the government of Mexico. As both the Commission and the broadcast industry know, the Mexican coordination process is slow, and digital low power television proposals are especially difficult to coordinate because of the absence of treaty provisions covering digital low power television facilities in the border area.

5. Mexican concurrence for the K26FA proposal was finally obtained in November of 2009.⁴ This concurrence is a great benefit for the United States, as it allows the use of a new digital channel to serve the public in this country and is in practice a rare asset. The coordination permits operation at the full 10 kW digital power limit requested in the D'Amico Application. To preserve and to maximize use in the United States of spectrum resources, the Commission must take advantage of the asset represented by the Mexican concurrence and find a way to allow K26FA to use the spectrum to the full extent to which our international neighbor has acquiesced.⁵ As shown herein, the asset resource can be exploited within its maximum parameters without denial or dismissal of any other proposal, by allowing the use of advanced, but established and off-the-shelf, filtering technology.

⁴ A copy of the Mexican concurrence letter is attached.

⁵ The Commission has “expressed as a public interest consideration the protection of United States' interests under international agreements...[particularly]... the southern California area... the Review Board enunciated as one of its ‘fundamental’ conclusions the need to provide the ‘utmost control and protection’ to the United States with respect to [a] frequency assignment by reason of its proximity to Mexico.” *Goodson-Todman Broadcasting, Inc.*, 45 FCC 2d 573, 28 RR 2d 1597 (Rev. Bd. 1973).

KDTF-CA (formerly KBNT-CA), Fac. ID 4035, BDISDTA-20090611ACQ

6. KDTF-CA is licensed to operate on analog Channel 17. It seeks displacement to digital Channel 25, based on a claim of interference to 6,911 persons (1990 U.S. Census) received from a station on first-adjacent Channel 18. No calculations are presented to support the claim of interference, nor does KDTF-CA state what percentage of the population it currently serves will receive interference. No claim is made that KDTF-CA must move aside because it causes interference to any other station.

7. The normal processing priority under Section 73.3572(f) of the Rules is first-come, first-served, with earlier-filed applications taking priority over later-filed mutually exclusive applications. No one can dispute that the D'Amico Application was filed first, more than two years prior to the Channel 25 Applications. There is narrow exception to first-in-time in Section 73.3572(a), which affords priority processing to applications for displacement relief in order to ameliorate interference and to avoid forcing stations off the air. In the case of KDTF-CA, the applicable sub-section is 73.3572(a)(iii), which authorizes a change of channel as a minor change "with technical modifications that are necessary to avoid interference or continue serving the station's protected service area." KDTF-CA does not qualify for that exception.

8. First, the proposal will not reduce interference. The attached Engineering Statement indicates that the number of persons receiving interference with KDTF-CA operating on analog Channel 17 is really only 3,512,⁶ but the number who would receive interference on Channel 25 is 7,848 (more than twice as many). Thus the proposed displacement will make the situation worse by more than doubling the number of persons receiving interference.

⁶ This figure is based on 2000 Census data, which make the most sense to use since they are the most current.

9. Second, the technical modifications proposed are not necessary to maintain service to the station's current protected service area. KDTF-CA proposes to increase its facilities from 11.9 kW analog at 131 meters above mean sea level to 15 kW at 240.3 meters AMSL. This proposal will increase the population served from 817,908 persons to 2,115,715 persons, an increase of 258%. The attached Engineering Statement further shows that KDTF-CA could flash cut to digital operation on Channel 17, preserve its entire existing service area with less interference than it would receive on Channel 25, and still double its population served to 1,610,111.

10. In sum, there is no need for KDTF-CA to move to Channel 25 to accomplish any of the objectives of Section 73.3572(a) -- reducing interference and preserving existing service. It is apparent that KDTF-CA's real purpose is to seize the "real estate" represented by an abandoned full power television station rather than to cure interference.⁷ That is not the purpose of Section 73.3572(a); so the KDTF-CA Application, filed later in time, should not be afforded processing priority over the K26FA Application, and the K26FA Application should be processed based on its acknowledged first-in-time status.

11. The KDTF-CA Application is also inconsistent with BPTTA-20080801APJ, in which KDTF-CA seeks modified analog facilities on Channel 17. That application answers "yes" to the statement that "[t]he proposed facility complies with all of the following applicable rule sections. 47 C.F.R Sections 73.6011, 73.6012, 73.6013, 73.6014, 73.6020, 73.1030 and 74.709." If that is so, then there is no need for displacement. KDTF-CA has not dismissed its analog modification proposal; it remains pending. Thus KDTF-CA's Channel 25 Application, which claims that Channel 17 is deficient, is inconsistent with its own earlier Channel 17

⁷ KGTV, Fac. ID 40876, operated on analog Channel 10, used Channel 25 as a temporary transitional digital channel, and moved its digital operation back to Channel 10 after the end of the full power transition, thus leaving Channel 25 vacant. See File No. BDTUCT-20090218AAL.

application and violates the prohibition in Section 73.3518 of the Commission's Rules against inconsistent applications.

12. D'Amico reiterates, however, that he is not asking for the KDTF-CA Application to be dismissed. His point is that whether the KDTF-CA Application is dismissed or not, it does not qualify for a displacement priority that would allow it to be processed other than under the normal first-in-time procedure with respect to the K26FA Application.

K63EN, Fac. ID 11608, BDISDTL-20090630ABO

13. K63EN Application is likewise not entitled to priority processing. K63EN was originally an out-of-core station and for that reason was entitled to apply for displacement relief under Section 73.3572(a)(ii) of the Rules. However, it did that, received a grant, and constructed in-core facilities on Channel 7.⁸ The K63EN Application now claims displacement from Channel 7; but if Channel 7 is not satisfactory, then K63EN should not have built a station on that channel.⁹

14. K63EN claims displacement by virtue of co-channel mileage separation, pursuant to Section 73.3572(a)(iv)(A)(2) of the Rules; yet the channel to which it seeks to move is even worse in that respect. K63EN claims that its Channel 7 site is 169 km. from co-channel KABC-TV, Fac. ID 282. However, its proposed Channel 25 site is only 136 km. from a new 550 kW Mexican station on Channel 25 in Mexicali.¹⁰ Thus K63EN is proposing to worsen its mileage separation problem rather than improve it.

⁸ See BPTVL 20051019ABA (granted), covered by BLDTL- 20100629AAS (pending).

⁹ In the Engineering Exhibit to its Channel 7 application, BPTVL-20051019ABA, K63EN claimed that its proposal would not cause more than 1% interference to any full power TV station.

¹⁰ The station is XHEXT-DT, Fac. ID 165463, File No. BPFS-20050721BFG.

15. Essentially, K63EN is trying to do the same thing as KDTF-CA -- to grab a channel abandoned by a full power station to expand its service area significantly. That kind of proposal should be treated as a major channel change, not a minor displacement change; so K26FA should not have to protect the later-filed K63EN Application.

Current Circumstances of K26FA

16. K26FA is currently confined to operation with one watt analog effective radiated power.¹¹ That power level obviously does not facilitate a viable operation in terms of number of people who can view the station or the economics of operating the station. The interference considerations which constrain K26FA are far more severe than those claimed by either KDTF-CA on Channel 17 or K63EN on Channel 7. K26FA should thus be considered to be “displaced” just as much as the other stations, and even more so.¹² Its application should thus be given equal priority to the Channel 25 Applications and then processed on a first-in-time basis. While Section 73.3572(a) characterizes “displacement” as a request to change “output channel,” K26FA should be deemed to be requesting a change in output channel from analog 26 to digital 26. The change in emission format is at least as significant as the change in the numerical designation of the channel in terms of curing interference, so the K26FA proposal can justifiably be treated as a displacement to a different channel.¹³

¹¹ See BLTTL-19990809JJ.

¹² Indeed, K26FA is currently licensed at a location inside the protected contour of co-channel KVCR-TV, 58795, and is displaced on that basis. The K26FA Application includes a site change that cures that problem.

¹³ The K26FA proposal is in fact more efficient than a change in the number on its channel would be, as K26FA has not tied up two channels, precluding use of either one by other stations, during the three years it has pursued a grant of its application.

The Full Service Mask Solution

17. There is a simple solution to allowing K26FA to migrate to digital operation at a reasonable power level without precluding a grant of the Channel 25 Applications -- granting a waiver of Section 74.794 to allow K26FA to use a full service emission mask. This is a common off-the-shelf component, not a rarity or an exploratory new technology. Full service stations use these filters all the time, and their performance enhances efficiency of use of the spectrum. Given the unique circumstances here, especially the fact that Mexican coordination has been received and the fact that K26FA's current operation is severely constrained, D'Amico submits that a waiver here will not open floodgates or undermine the integrity of the Commission's Rules or application processing scheme. Rather, it will resolve a unique problem in a difficult international border area and will allow all parties to serve the public, without causing interference that will damage one another's signals.

18. D'Amico submits that even if either of the Channel 25 stations has a good claim for displacement, K63EN's claim is the stronger of the two, because it is covered by the literal terms Section 73.3572(a)(4)(A)(2), even if K63EN's own conduct in constructing on Channel 7 belies the need for displacement. But by using a full service emission mask, K26FA can operate with its full proposed facilities and still fully protect the K63EN Application by causing only 0.9% interference, less than half of the permitted 2% limit.¹⁴

19. D'Amico believes firmly that because KDTF-CA will receive interference to more people on digital Channel 25 than it would receive if it flash cut on Channel 17, and it is seeking a significant expansion of its service area not contemplated by Section 73.3572(a)(iii), the KDTF-CA Application is clearly not entitled to processing priority over the earlier-filed K26FA Application. Nevertheless, even if the Commission does not agree, K26FA's proposal with a

¹⁴ See Section 74.793(h) of the Commission's Rules.

full service mask would cause only 2.4% interference to KDTF-CA. This is a very small amount. It will affect only a tiny part of the huge population gain to which KDTF-CA is not entitled in the first place. In any event, if the D'Amico Application is granted with a full service mask, D'Amico will not object to a grant of the KDTF-CA Application notwithstanding the expanded service area it represents or any predicted interference to K26FA.

Conclusion

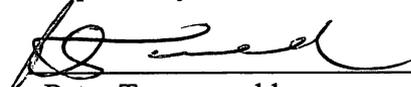
20. D'Amico submits that the combination of circumstances here -- the existence of hard-to-get Mexican concurrence, the fact that the Channel 25 Applications go beyond the intent of displacement priority by seeking service area expansion and increasing interference received, and the fact that K26FA itself should be deemed displaced, justify first-in-time processing of the K26FA Application, along with a rule waiver to permit use of a full service emission mask to mitigate the impact on the Channel 25 Applications.

21. D'Amico believes that he is entitled to a grant of his full 10 kW proposal, and he requests a grant at 10 kW ERP. While no harm will be done to the existing protected service area of KDTF-CA, if either KDTF-CA or K63EN is eventually authorized to operate on Channel 25, D'Amico will assist in resolving any complaints from viewers who may complain of interference caused by K26FA to reception of the Channel 25 station within that station's protected service area.

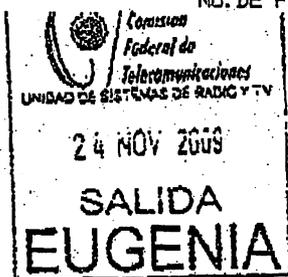
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th St., 11th Floor
Arlington, VA 22209-3801
Tel. 703-812-0404
Fax 703-812-0486

July 28, 2010

Respectfully submitted,


Peter Tannenwald

Counsel for Rick D'Amico



SECRETARÍA TÉCNICA DEL PLENO

CFT/D01/STP/2537/09

México, D.F., a 24 NOV. 2009

"2009, Año de la Reforma Liberal"

MR. JULIUS GENACHOWSKI
Chairman,
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Los referimos al comunicado de esa Comisión Federal de Comunicaciones (FCC, por sus siglas en inglés), de fecha 02 de diciembre de 2008, recibido el 08 de enero del año en curso, con número de folio de entrada 62, mediante el cual se solicita la coordinación relativa a una estación de Televisión Digital de Baja Potencia

Sobre el particular, se informa a usted que, el Memorandum de Entendimiento entre la Secretaría de Comunicaciones y Transportes de los Estados Unidos Mexicanos y la Federal Communications Commission de los Estados Unidos de América, relativo al uso de las Bandas de 54 a 72 MHz, 76 a 88 MHz, 174 a 216 MHz y 470 a 806 MHz, para el servicio de radiodifusión de Televisión Digital, a lo largo de la frontera común, no prevé la coordinación para estaciones de televisión digital de baja potencia.

Con respecto a la aceptación del canal 27 en El Rosarito, B.C., siempre que esta administración acepte la operación de la estación K26FA canal 26 en Vista, CA., no se encontró impedimento alguno para objetar dicho canal, quedando registrados de la siguiente manera:

Para Estados Unidos:

| | |
|---|------------------------------------|
| Número de canal | 26 |
| Ciudad, Estado | Vista, CA |
| Coordenadas geográficas: | L.N.: 33°00'32" LW.: 116°58'16" |
| Distintivo de llamada: | K26FA |
| Potencia radiada aparente (PRA): | 10 kW |
| Altura del centro eléctrico sobre el nivel del mar (ACESM): | 895 metros |
| Sistema de antena: | Direccional (AD) |

Para México:

| | |
|------------------|-------------------------------------|
| Número de canal: | 27 |
| Ciudad, Estado: | Domicilio Conocido, El Rosarito, BC |

DE :

Nº. DE FAX : 56828674

24 NOV. 2009 12:54PM P3



COMISIÓN FEDERAL DE
TELECOMUNICACIONES

SECRETARÍA TÉCNICA DEL PLENO

CFT/D01/STP/2537/09

| | |
|---|-------------------|
| Coordenadas geográficas: | LN.: 32°22'47.8" |
| | LW.: 117°04'15.9" |
| Distintivo de llamada: | XHJK-TV |
| Potencia radiada aparente (PRA): | 12.12 kW |
| Altura del Centro Eléctrico Sobre el Lugar de la Instalación: | 27.5 metros |
| Altura Sobre el Nivel del Mar del Lugar de la Instalación: | 12 metros |

HÉCTOR OSUNA JAIME
Presidente

RAFAEL NOEL DEL VILLAR ALRICH
Comisionado

JOSÉ ERNESTO GIL ELORDUY
Comisionado

GONZALO MARTÍNEZ POUS
Comisionado

JOSÉ LUIS PERALTA HIGUERA
Comisionado

c.c.p. LIC. FRANCISCO GARCÍA BURGOS.- Jefe de la Unidad de Sistemas de Radio y Televisión.- Presente.
c.c.p. LIC. DANIEL BERNAL DÍAZ.- Subdirector de Asuntos Jurídicos.- Presente.
c.c.p. C. FERNANDO RAÚL CASTILLO SALINAS.- Subdirector de Asuntos Internacionales y de Normalización.- Presente
c.c.p. ING. RICARDO GONZALO GUTIERREZ BELLO.- Subdirector del Área Técnica de Televisión.- Presente

La presente resolución fue aprobada por el Pleno de la Comisión Federal de Telecomunicaciones en su VI Sesión Ordinaria del 2009, mediante acuerdo P/281009/55.

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of RICK D'AMICO, licensee of Low Power Television Station K26FA, Channel 26 in Vista, California, in support of his response to a Commission deficiency letter regarding his pending Application for Construction Permit BFCDTL-20070227ACN, a digital flashcut proposal. According to the deficiency letter, dated March 17, 2010, the referenced application causes prohibited interference to two mutually exclusive displacement applications: K63EN presently operating on Channel 7 in San Diego, seeking to operate on Channel 25 (BDISDTL-20090630ABO); and, KDTF-CA on Channel 17 in San Diego, also seeking operation on Channel 25 (BDISDTL-20090611ACQ).

We have conducted coverage and interference studies for the K26FA-D proposal as well as for the present and proposed facilities of K63EN and KDTF-CA. Our studies utilized the V-Soft Probe III software, which is modeled after the Commission's Longley-Rice methodology contained in OET Bulletin 65. In all of our analyses, we utilized a cell size of 1.0 kilometer and an increment spacing of 1.0 kilometer along each azimuth studied. In addition, we employed the 2000 U.S. Census database to count population within cells.

With regard to KDTF-CA, we find that the presently licensed analog facility on Channel 17 has a Longley-Rice-based predicted service population of 817,908 within the Grade A (74 dBu) contour. The only source of incoming interference is from KUSI-DT, Channel 18 in San Diego. The population within the predicted interference area is 3,512, or 0.4 percent of the KDTF-CA service population. The digital KDTF-CA proposal has a service population of 2,115,715. According to our studies, interference from KNET-CA (Channel 25

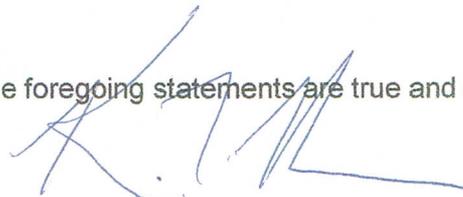
in Los Angeles, California, and KBLM-LP (Channel 25 in Riverside, California) is predicted to be caused to 7,848 people, or 0.4 percent of the proposed KDTF-CD service population.

We have also determined that KDTF-CA can specify a digital flashcut facility on Channel 17 and meet the Commission's interference standards to all full-power and low-power facilities of concern, with the presently licensed antenna (omnidirectional) and effective radiated power (ERP) of 11.9 kW and from the present site. Such a facility would have an interference-free service population of 1,640,111, more than double that which presently exists for the analog KDTF-CA facility.

Associated with the response to the Commission's deficiency letter is a request for waiver to allow the proposed K26FA-D facility to operate with a full-service mask filter. With respect to predicted interference to the KDTF-CD proposal, use of a full-service mask by K26FA-D at an ERP of 10 kW would reduce interference from 7.8% of the KDTF-CD service population (using the stringent mask filter) to 2.4%.

Using the same methodology, interference to the proposed K63EN-D service population from proposed K26FA-D (10 kW, with a stringent mask filter) would be 2.7%. Alternatively, use of the mask filter would reduce the interference to 0.9% of the K63EN-D service population.

I declare, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge and belief.



KEVIN T. FISHER

July 23, 2010