

## **PUBLIC INTEREST STATEMENT**

By this application and pursuant to Section 73.1635 of the Commission's Rules, NRJ TV San Diego License Co., LLC ("NRJ SD"), license of Class A television station KSKT-CD, San Marcos, CA (Fac ID 58927) ("KSKT"), and NRJ TV LA License Co, LLC ("NRJ LA"), licensee of low power UHF television station KUAN-LD, Poway, Etc., CA (Fac ID 35609) ("KUAN") hereby request the Special Temporary Authorizations necessary to allow KSKT and KUAN to channel share, with KSKT as host or sharer and KUAN as sharee (using the common technical facilities authorized by KSKT's license and the construction permit for KUAN's digital companion channel) pending the Commission's adoption of formal rules for channel sharing between a Class A station and a LPTV station. NRJ SD and NRJ LA (collectively "NRJ") are commonly owned. As explained further below, this STA will serve the public interest by furthering the FCC's interest in channel sharing and allowing NRJ to deliver KUAN's programming to viewers over a superior digital signal until the FCC adopts final rules that will permit channel sharing between LPTV and Class A television stations.

### **I. BACKGROUND**

Over the past several years, the FCC repeatedly has recognized the benefits of channel sharing. In an April 2012 Report and Order, the Commission recognized that "participation in a channel sharing arrangement has the potential to benefit broadcasters and the viewing public" by, *inter alia*, "reduc[ing] operating costs, providing broadcasters with additional net income to strengthen their operations and to improve programming services."<sup>1</sup> Accordingly, in that Order and the subsequent Incentive Auction Report and Order, the FCC, consistent with the Spectrum Act, permitted channel sharing between full power and Class A television stations.<sup>2</sup>

In December 2015, the FCC extended the benefits of channel sharing to LPTV and TV translator stations, reasoning that "adopting channel sharing rules will serve the public interest by promoting the efficient use of spectrum and facilitating the continued operation of LPTV and TV translator stations."<sup>3</sup> Thus, the Commission has now approved channel sharing between and among: (1) full power or Class A stations; and (2) LPTV or TV translator stations. Although the FCC has not yet approved sharing between full power or Class A stations, on one hand, and LPTV or TV translator stations, on the other, it proposed to do so in the Fourth Notice of Proposed Rulemaking, which remains pending.<sup>4</sup>

For almost six years now, KUAN has been attempting to complete its digital transition and provide the benefits of digital television for its viewers.<sup>5</sup> Due to KUAN's proximity to the Mexican border, and through no fault of NRJ LA or its predecessor, the Commission was unable

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<sup>1</sup> *In the Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing & Improvements to VHF*, Report and Order, 27 FCC Rcd. 4616, 4622 ¶ 12 (2012) ("Channel Sharing Order").

<sup>2</sup> *Id.* at 4626 ¶ 19; *In the Matter of Expanding the Economic & Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567, 6851 ¶¶ 697-711 (2014)

<sup>3</sup> *In the Matter of Amendment of Parts 73 & 74 of the Commission's Rules to Establish Rules for Digital Low Power Television & Television Translator Stations*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd. 14927 ¶ 20 (2015) ("LPTV 3rd Order and 4th NPRM"); 47 C.F.R. § 74.800.

<sup>4</sup> LPTV 3rd Order and 4th NPRM ¶¶ 84-86.

<sup>5</sup> See FCC CDBS File No. BDFCDTL - 20100604AEP (filed June 4, 2010).

to grant a long-pending flashcut application because of delays in obtaining Mexican concurrence. Accordingly, on February 1, 2016, NRJ LA applied for a digital companion channel “to utilize the existing channel and identical operating facilities of co-owned station KSKT-CD, Channel 36 in San Marcos, California.”<sup>6</sup> The DCC permit was granted on March 21, 2016. As a result, KUAN and KSKT are authorized to operate on the same channel and the same facilities.

## **II. PUBLIC INTEREST SHOWING**

Grant of this Request will serve to promote substantial public interest benefits. The FCC repeatedly has touted the benefits of channel sharing, declaring that channel sharing “has the potential to benefit broadcasters and the viewing public in addition to freeing spectrum for new wireless services.”<sup>7</sup> In recognition of these benefits, the Commission has adopted rules to permit channel sharing between both primary (full power or Class A) stations and secondary (LPTV or TV translator) stations.<sup>8</sup> The only form of channel sharing that the Commission has not yet authorized is so-called primary-secondary sharing. Nevertheless, in the Fourth Notice of Proposed Rulemaking, the FCC tentatively concluded that it should permit primary-secondary sharing.<sup>9</sup>

Allowing KSKT and KUAN to channel share while the FCC considers permanent rules for primary-secondary sharing will uniquely serve the public interest by extending the benefits of digital television to KUAN’s viewers. Because KUAN’s DCC construction permit includes the same technical parameters as KSKT’s licensed facility, no technical changes are required, and grant of this request will allow KSKT and KUAN to simultaneously serve viewers with an over-the-air digital signal, which would not be possible absent a grant. Moreover, the potential concerns that the Commission raised in the NPRM, such as operating rules and rules regarding termination are not present here in light of the station’s common ownership. Further, the proposed channel sharing arrangement does not raise any MVPD carriage issues, as neither KSKT nor KUAN is entitled to mandatory carriage.

Consistent with the FCC’s approach for sharing between commonly-owned primary stations, KSKT and KUAN have not entered into a formal channel sharing agreement.<sup>10</sup>

## **III. CONCLUSION**

For the reasons demonstrated above, the Commission should permit KUAN to channel share on KSKT pending the adoption of formal rules for primary-secondary sharing.

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<sup>6</sup> FCC LMS File No. 0000007906.

<sup>7</sup> See, e.g., Channel Sharing Order at 4622 ¶ 12.

<sup>8</sup> *Supra* notes 2-3.

<sup>9</sup> LPTV 3rd Order and 4th NPRM ¶ 84.

<sup>10</sup> See *Application Instructions for Broadcast Incentive Auction Scheduled to Begin on Mar. 29, 2016 Instructions for FCC Form 177 Application to Participate in the Reverse Auction (Auction 1001)*, Public Notice, 30 FCC Rcd. 13090 ¶ 35 (2015) (“You do not need to enter into or upload an executed channel sharing agreement as a sharee if the selected station will share a channel with a commonly-owned or controlled station.”).