

LMS File No. 0000030068
K42HL-D/K31ND, Facility ID 33744, Oroville, CA
Maxair Media, LLC

AMENDMENT AND JOINT REQUEST FOR APPROVAL

The purpose of the instant amendment is to resolve the mutual exclusivity identified in the MX Group 52 listed in the FCC's Public Notice DA 18-1108, released October 30, 2018, involving the above-referenced station and KFMS-LD, Keyes, CA. This application is being amended to reduce the proposed operating power of K31ND.

The two applicants in MX Group 52 have agreed to settle this mutual exclusivity with a reduction in power by K31ND and waiver of incoming interference by KFMS-LD. Their agreement has been reduced to writing. A copy of the Settlement and Interference Acceptance Agreement (the "Agreement") is attached to this exhibit.

Consistent with Section 73.3525 of the FCC rules, the parties to the Agreement certify that (i) neither applicant has paid or promised, or has been paid or been promised, any consideration to the other applicant or its principals, (ii) their respective applications were not filed for the purpose of entering into this Agreement or any settlement. The applicants also believe this settlement is in the public interest because it will save the parties and the Commission processing time and resources by resolving the MX situation, and it will permit both stations to remain on the air to continue to provide broadcast services to viewers in their local communities.

SETTLEMENT AND INTERFERENCE ACCEPTANCE AGREEMENT

This SETTLEMENT AND INTERFERENCE ACCEPTANCE AGREEMENT (“Agreement”) is made this 9th of January, 2019, between MAXAIR MEDIA, LLC (“Maxair”), and DTV AMERICA CORPORATION (“DTV America”) (each a “Party”).

WHEREAS, Maxair is the licensee of Low Power Television (“LPTV”) Station K42HL-LD, FCC Facility ID 33744, Oroville, CA, and has filed an application with the Federal Communications Commission (“FCC”), LMS File No. 0000030068, for displacement relief to modify the facilities of K42HL-D to transmit on Channel 31 at Oroville (“K31ND Application”); and

WHEREAS, DTV America is the licensee of LPTV Station KFMS-LD, FCC Facility ID 182091, Keyes, CA, and has filed an application with the FCC, LMS File No. 0000051634, for displacement relief to modify the facilities of KFMS-LD to transmit on Channel 31 at Keyes (as amended, “KFMS Application”); and

WHEREAS, the K31ND Application and the KFMS Application have been identified as mutually exclusive by the FCC in a Public Notice released October 30, 2018 (DA 18-1108); and

WHEREAS, Maxair and DTV America wish to resolve the mutual exclusivity between their Applications, in order to permit the two Applications to be independently processed and acted upon by the FCC; and

WHEREAS, Public Notice DA-18-1108 opened an opportunity for mutually exclusive applications to file amendments removing mutual exclusivity and set January 10, 2019, as the deadline for such amendments (the filing deadline as initially established or as it may be extended in the future (“the Amendment Deadline”));

NOW, THEREFORE, in consideration of the foregoing and the representations, promises and covenants made herein, Maxair and DTV America hereby agree as follows:

1. K31ND Amendment. At the earliest practicable date, but in no event later than the Amendment Deadline, Maxair will file an amendment to the K31ND Application requesting a reduction in effective radiated power to 0.68kW. The amendment will be accompanied by a Joint Request for Approval including a copy of this Agreement, as provided in Section 73.3525 of the FCC’s Rules and Regulations.
2. Acceptance of Interference. DTV America recognizes that the facilities proposed in the amendment to the K31ND Application are predicted to cause interference to 3.71% of the population within KFMS-LD’s predicted service contour (50.42 dBu), and hereby agrees to accept such interference.
3. No Further Mutual Exclusivity. Neither party will amend their pending Applications in a manner that would create any new mutual exclusivity between such Applications.
4. No Payment or Other Consideration. Neither Party has or will pay or promise any consideration to the other Party or any officer, director, owner, employee, or agent of the other Party in return for incurring and/or fulfilling obligations under this Settlement Agreement apart from the mutual promises made to eliminate mutual exclusivity between the their respective applications. The Parties

agree that their mutual promises are adequate consideration for the obligations they have agreed to incur hereunder.

5. No Mutual Contingency. Absent a breach by the other Party, Each of Maxair and DTV America agrees to fulfill its obligations under this Settlement Agreement regardless of whether or when its own Application is granted by the FCC.

6. Representations and Warranties. Each of Maxair and DTV America represents and warrants to the other as follows:

a. It is in good standing in the state where it is incorporated and has full legal authority to enter into this Agreement and to comply with its obligations hereunder, including, but not limited to, all necessary internal company approval.

b. Its execution and fulfillment of this Agreement does not and will not violate or contravene any internal or external obligation to which it is subject.

c. It believes that the undertakings in this Agreement will serve the public interest by accelerating and facilitating the grant of both the K31ND Application and the KFMS Application.

d. Its Application was not filed with the FCC for the purpose of reaching or carrying out a settlement.

7. Termination. This Agreement may be terminated by either Party, upon written notice to the other, if:

a. The other Party is in breach of any of its material obligations under this Agreement and fails to cure the breach within thirty (30) days of written notice or by the Amendment Deadline, whichever comes first, and the terminating Party is not itself at that time in breach of any of its material obligations under this Agreement; or

b. The amendment to the K31ND Application to remove mutual exclusivity is returned, dismissed, or denied by the FCC, and the result is that mutual exclusivity between the K31ND Application and the KFMS Application is restored, and the mutual exclusivity cannot be removed by reasonable further steps by the Parties.

c. The FCC denies or otherwise rejects this Agreement.

f. *Provided, however,* that neither party may terminate this Agreement, no matter what the reason (i) after its Application has been granted, its construction permit remains in force and effect, and the grant is no longer subject to reconsideration or review by the FCC or a court of law; or (ii) its Application has been granted, and it has filed an application for a license to cover its resulting construction permit.

8. Remedies. In addition to any other remedies to which they may be entitled hereunder, in the event of litigation over the provisions of this Agreement, the prevailing Party will be

entitled to receive its reasonable costs of enforcing its rights, include reasonable attorney's fees and costs. Each Party will have the right to enforce the other Party's obligations by a judicial or administrative action to compel specific performance, in lieu of monetary damages, without the obligation to post bond. If monetary damages are claimed, the claim will be limited to actual damages and may not include any consequential, punitive, or exemplary damages or damages for lost profits or business opportunities.

9. Notices. All notices, demands and requests required or permitted to be given under the provisions of this agreement must be (a) in writing; (b) delivered by personal delivery or by commercial delivery service or Certified or Priority U.S. Mail with documented proof of delivery, and (c) will be deemed to be given on the date of personal delivery or the first business day of documented attempted delivery set forth in the records of the Postal or other delivery service. Notices must be addressed as follows:

If to Maxair:

Maxair Media, LLC
101 Lauren Lane
Clinton, MS 39056
Attn: Dan Modisett
Email: danmodisett@comcast.net

with a copy (which will not constitute notice) to:

Fletcher, Heald & Hildreth, PLC
1300 N. 17 St., 11th Floor
Arlington, VA 22209-3801
Attn: Daniel A. Kirkpatrick
Email: kirkpatrick@fhhlaw.com

If to DTV America:

DTV America Corporation
450 Park Avenue, 30th Floor
New York, NY 10022
Attn: Renee Ilhardt
E-mail: rilhardt@hc2broadcasting.com

with a copy (which will not constitute notice) to:

DTV America Corporation
450 Park Avenue, 30th Floor
New York, NY 10022
Attn: Rebecca Hanson
E-mail: rhanson@hc2broadcasting.com

10. Governing Law; Venue. This Agreement will be construed and enforced in accordance with the laws of the State of California without giving effect to the choice of law principles thereof.

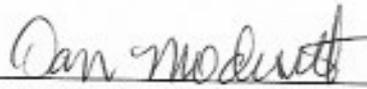
11. Counterparts; Execution. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Facsimile and electronically transmitted signatures will be deemed acceptable for the purpose of executing this Agreement.

12. Assignment. This Settlement Agreement will be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns, including, but not limited to any successor holder of the FCC licenses for KFMS-LD or K31ND. No Party may assign its interest or delegate its duties under this Settlement Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, delayed, or conditioned as long as the assignee contemporaneously becomes the licensee of the assignor's station. In the event of an assignment of the FCC license of either KFMS-LD or K31ND, the assignor must procure the written consent of the assignee to assume all of the assignor's obligations under this Agreement.

13. Entire Agreement. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter and may not be changed or terminated, nor any waiver made binding, except in writing and signed by the Party against which enforcement is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

MAXAIR MEDIA, LLC



PRESIDENT

DTV AMERICA CORPORATION

10. Governing Law; Venue. This Agreement will be construed and enforced in accordance with the laws of the State of California without giving effect to the choice of law principles thereof.

11. Counterparts; Execution. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Facsimile and electronically transmitted signatures will be deemed acceptable for the purpose of executing this Agreement.

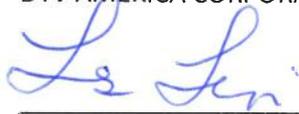
12. Assignment. This Settlement Agreement will be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns, including, but not limited to any successor holder of the FCC licenses for KFMS-LD or K31ND. No Party may assign its interest or delegate its duties under this Settlement Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, delayed, or conditioned as long as the assignee contemporaneously becomes the licensee of the assignor's station. In the event of an assignment of the FCC license of either KFMS-LD or K31ND, the assignor must procure the written consent of the assignee to assume all of the assignor's obligations under this Agreement.

13. Entire Agreement. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter and may not be changed or terminated, nor any waiver made binding, except in writing and signed by the Party against which enforcement is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

MAXAIR MEDIA, LLC

DTV AMERICA CORPORATION



DECLARATION OF LES LEVI

I, Les Levi, hereby declare as follows:

1. I am the COO of DTV American Corporation (“DTV America”), an applicant for a construction permit to change the channel of LPTV Station KFMS-LD, FCC Facility ID 182091, Keyes, CA, to transmit on Channel 31.

2. The application filed for KFMS-LD is mutually exclusive with an application filed by Maxair Media, LLC (“Maxair”) for displacement relief for LPTV Station K42HL-LD, FCC Facility ID 33744, Oroville, CA, to transmit on Channel 31.

3. DTV America has entered into a Settlement Agreement (“Settlement Agreement”) with Maxair pursuant to which Maxair will amend its application to specify operation with facilities that are not mutually exclusive with the Channel 31 facilities requested for KFMS-LD, and KFMS-LD will accept 3.71% interference from K42HL-LD.

4. Approval of the Settlement Agreement will serve the public interest by facilitating and accelerating opportunities for improved dissemination to the public of the programming of both KFMS-LD and K42HL-D and allowing both stations to operate on channels remaining available for television broadcasting after the FCC’s repacking of televisions into Channels 2-36.

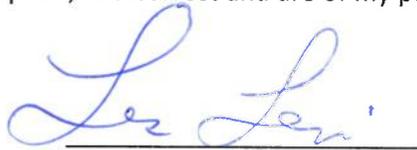
5. DTV America hereby certifies that its application was not filed for the purpose of reaching or carrying out a settlement.

6. Apart from commitments explicitly recited in the Settlement Agreement, neither DTV America nor any officer, director, owner, employee, or agent of DTV America has been paid or promised any money or other consideration by Maxair or any other person or entity in return for DTV America’s entering into or fulfilling its obligations under the Settlement Agreement.

7. Apart from commitments explicitly recited in the Settlement Agreement, Neither DTV America nor any officer, director, owner, employees, or agent of DTV America has paid or promised to pay any consideration to Maxair, to any officer, director, owner, employee, or agent of Maxair, or to any other person or entity in return for Maxair’s entering into or fulfilling its obligations under the Settlement Agreement.

The statements made herein are true, complete, and correct and are of my personal knowledge and belief.

Executed on January 8, 2019.



DECLARATION OF DAN MODISETT

I, Dan Modisett, hereby declare as follows:

1. I am the sole member of Maxair Media, LLC ("Maxair"), an applicant for a construction permit to change the channel of LPTV Station K42HL-LD, FCC Facility ID 33744, Oroville, CA, to transmit on Channel 31.

2. The application filed for KFMS-LD is mutually exclusive with an application filed by DTV America Corporation ("DTV America") for displacement relief for LPTV Station KFMS-LD, FCC Facility ID 182091, Keyes, CA, to transmit on Channel 31.

3. Maxair has entered into a Settlement Agreement ("Settlement Agreement") with DTV America pursuant to which Maxair will amend its application to specify operation with facilities that are not mutually exclusive with the Channel 31 facilities requested for KFMS-LD, and KFMS-LD will accept 3.71% interference from K42HL-LD.

4. Approval of the Settlement Agreement will serve the public interest by facilitating and accelerating opportunities for improved dissemination to the public of the programming of both KFMS-LD and K42HL-D and allowing both stations to operate on channels remaining available for television broadcasting after the FCC's repacking of televisions into Channels 2-36.

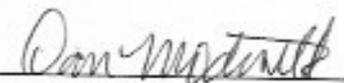
5. Maxair hereby certifies that its application was not filed for the purpose of reaching or carrying out a settlement.

6. Apart from commitments explicitly recited in the Settlement Agreement, neither Maxair nor any officer, director, owner, employee, or agent of Maxair has been paid or promised any money or other consideration by DTV America or any other person or entity in return for Maxair's entering into or fulfilling its obligations under the Settlement Agreement.

7. Apart from commitments explicitly recited in the Settlement Agreement, Neither Maxair nor any officer, director, owner, employees, or agent of Maxair has paid or promised to pay any consideration to DTV America, to any officer, director, owner, employee, or agent of DTV America, or to any other person or entity in return for DTV America's entering into or fulfilling its obligations under the Settlement Agreement.

The statements made herein are true, complete, and correct and are of my personal knowledge and belief.

Executed on January 8, 2019.


Dan Modisett