



Federal Communications Commission  
Washington, D.C. 20554

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Re: KNXT, Visalia, CA  
Facility ID No. 16950  
Request for Amendment of the  
DTV Table of Allotments

Dear Petitioners:

This letter is in reference to an August 9, 2019, Joint Petition for Rulemaking and Request for Waiver (the Petition)<sup>1</sup> filed by the Diocese of Fresno Education Corp. (the Diocese), licensee of full-power noncommercial educational (NCE) television station KNXT, Visalia, California, and Ventura TV Video and Appliance Center, Inc. (Ventura) (collectively, Petitioners), seeking to dereserve channel \*50, Visalia, California, and/or channel \*22, Visalia, California, waive the Commission's uncodified rule requiring newly allotted television channels be made available for competing applications, and allocate and reserve channel 2 at Visalia.<sup>2</sup> The Petition is reviewed under our section 316 authority to modify licenses and our general waiver authority under section 1.3 of the Commission's rules.<sup>3</sup> For the reasons detailed below, we deny the Petition and request for waiver.

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<sup>1</sup> Joint Petition for Rulemaking and Request for Waiver for Diocese of Fresno Education Corp. and Ventura TV Video and Appliance Center, Inc. (filed Aug. 9, 2019) at <https://enterpriseefiling.fcc.gov/dataentry/api/download/attachment/25076ff36c8d17e2016c9b866e100334>. (Petition).

<sup>2</sup> Petition at 1-2. Since 2004, the Commission has imposed a freeze on allotment of new television channels. *See Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (2004).

<sup>3</sup> 47 U.S.C. § 316 (the statute provides that “[a]ny station license or construction permit may be modified by the Commission . . . if in the judgment of the Commission such action will promote the public interest, convenience, and necessity . . . .”); 47 CFR § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therein is shown.”).

*Background.* KNXT is licensed to operate on channel \*50, and has a construction permit for post-auction facilities on channel \*22.<sup>4</sup> Petitioners seek the dereservation and waiver so that Ventura may purchase KNXT and operate the station on a commercial license.<sup>5</sup>

Petitioners argue their Petition should be granted because continued operation of the station is financially untenable.<sup>6</sup> According to Petitioners' declarations, the station has operated at a loss over the last 10 years, and cost saving measures were never realized.<sup>7</sup> The Diocese had initially hoped "there would be an auction payoff for the station [in connection with the incentive auction]" but "there was not spectrum needed for the Fresno-Visalia market."<sup>8</sup> In 2017, the station entered into a 12-month brokerage agreement with Patrick Communications to sell KNXT as an NCE station.<sup>9</sup> According to Patrick Communications, it ceased efforts to sell the station after only five months when the Diocese informed it that the Diocese planned to enter into a programming agreement with CatholicTV Network (CatholicTV) which would result in a significant reduction in KNXT operating costs.<sup>10</sup> Petitioners state that after the Diocese entered into an agreement with CatholicTV, it appeared that the expected savings would not manifest and, therefore, the Diocese did not resume efforts to sell the station to an NCE qualified buyer. Instead, the Diocese was approached by Ventura President and former member of the KNXT advisory board, Mark Shirin, offering to purchase KNXT.<sup>11</sup> However, Mr. Shirin was made aware that because Ventura is a commercial entity, it would be unable to purchase KNXT unless the channel on which KNXT operated was dereserved.<sup>12</sup>

Petitioners also argue that the Petition is in the public interest because Ventura has made commitments to carry KNXT's NCE programming on a sub-channel.<sup>13</sup> Petitioners also note that the Fresno-Visalia Designated Market Area (DMA) is currently served by two NCE stations: KNXT and KVPT, Fresno, California, a PBS affiliate, and therefore would not be deprived of NCE programming were the Petition granted.<sup>14</sup> Additionally, Petitioners state that they recognize the value of a second NCE

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<sup>4</sup> Petitioners state that KNXT was displaced. Petition at 2. However, this is not accurate. KNXT was reassigned to a new channel as a result of the incentive auction repacking. Because KNXT is a full-power television station, the Commission took all reasonable efforts to preserve the existing coverage area of KNXT in assigning a new channel in the incentive auction repacking, and "costs reasonably incurred" by the Diocese in constructing its repacked facilities are eligible for reimbursement by the Commission from the Reimbursement Fund established by Congress. *See, generally, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, § V.C.5 (2014).

<sup>5</sup> Petition at 2. Channels designated in the Table of Allotments with an asterisk are reserved for noncommercial educational use and are licensed only to nonprofit educational organizations or municipalities upon a showing that the proposed station will be used primarily to serve the educational needs of the community. *See* 47 CFR § 73.621.

<sup>6</sup> Petition at 3.

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 5, Attachment C: Guy Declaration, para. 3.

<sup>10</sup> Petition at 5, Guy Declaration at para. 5.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.* at Attachment B: Shirin Declaration, para. 8.

<sup>13</sup> *Id.* at 7-8.

<sup>14</sup> *Id.* at 8-9.

station, and, therefore, they request channel 2 be allotted and reserved for noncommercial use.<sup>15</sup> For these same public interest reasons, Petitioners argue that the Commission should waive its uncodified rule to permit the sale of KNXT to Ventura as a commercial station, as the Petitioners would withdraw the Petition if the channel was opened for competing applications.<sup>16</sup>

*Discussion.* We do not find circumstances sufficiently justify dereservation, and therefore we deny the Joint Petition for Rulemaking and Request for Waiver. As Petitioners recognize, the Commission is reluctant to dereserve NCE TV channels, and “an applicant for waiver faces a high hurdle even at the starting gate.”<sup>17</sup> The Commission has only granted one dereservation request in the past.<sup>18</sup> In the 2002 Report and Order, the Commission found that QED Pittsburgh (QED), the licensee of NCE stations WQED(TV) and WQEX(TV), Pittsburgh, Pennsylvania, clearly demonstrated financial distress and that the public interest would be served by granting its request to dereserve its second station, WQEX(TV), so that it could be sold to a commercial buyer for \$20,000,000. The Commission granted the request six years after QED’s 1996 request was denied. And for the same public interest reasons, the Commission granted a waiver of the uncodified rule to permit the sale of WQEX(TV) to a commercial buyer without soliciting competing applications.<sup>19</sup>

In 1996, Congress passed legislation that authorized the Commission to address QED’s petition for dereservation and waiver of the uncodified rule.<sup>20</sup> In its 1996 petition, QED submitted an analysis of operations and financial condition prepared by the chief operating officer, audited financial statements for the previous three years, an independent auditor’s report, and a financial study prepared by Duquesne University.<sup>21</sup> These documents showed an unrestricted net asset deficit of \$6.1 million on June 30, 1995, and that liabilities exceeded assets by \$9.5 million as of that same date.<sup>22</sup> At the time, QED also owed \$6.4 million on revolving credit and had to borrow \$4.5 million from its restricted endowment fund and had \$2.9 million in overdue accounts payable.<sup>23</sup> Despite this demonstration of financial distress, however, the Commission denied QED’s request because it was not apparent that dereservation was the only option to protect local public television in Pittsburgh.<sup>24</sup>

In 2001, QED filed its second petition seeking dereservation and waiver of the uncodified rule.<sup>25</sup> In the second proceeding, the Commission found that QED was still in financial distress, and any

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<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.* at 11-12.

<sup>17</sup> *Wait Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1990).

<sup>18</sup> See generally, *Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel \*16, 482-488 MHz, Pittsburgh, Pennsylvania*, MB Docket No. 01-276, Report and Order, 17 FCC Rcd. 14038 (2002) (2002 Report and Order).

<sup>19</sup> *Id.* at 14055, para 47.

<sup>20</sup> *Id.* at 14039, para. 3.

<sup>21</sup> *Deletion of Noncommercial Reservation of Channel \*16, 482-488 MHz (Pittsburgh, Pennsylvania)*, Memorandum Opinion and Order, 11 FCC Rcd 11700, 11703, para. 6 (1996) (1996 Memorandum Opinion and Order).

<sup>22</sup> *Id.* at 11703-04, para. 7.

<sup>23</sup> *Id.* at 11704, para. 8.

<sup>24</sup> *Id.* at 11710, para. 22.

<sup>25</sup> 2002 Report and Order, 17 FCC Rcd at 14040, para. 7.

improvements to its situation were a result of one-time actions, such as selling off real estate assets and programming rights.<sup>26</sup> The Commission concluded that while QED was still barely meeting expenses, there was no expectation of improvement.<sup>27</sup> The Commission also believed it was apparent from the record that QED's ongoing financial difficulties hampered its efforts to not only convert to digital operations, but also produce educational programming to air on its stations and fully take advantage of digital services.<sup>28</sup>

The Commission's decision to grant QED's petition was influenced by the unique factors of the Pittsburgh market. Pittsburgh had suffered a severe economic downturn, with its population halving between 1950 and 1999, despite population growth in Pennsylvania and the United States.<sup>29</sup> In addition to a shrinking population, Pittsburgh's median household income and median home value lagged some 9% behind the national household median, and western Pennsylvania experienced a record number of bankruptcies in 2001 (up almost 18% from the year before).<sup>30</sup> This downturn also saw a significant number of QED's corporate donors downsize or close.<sup>31</sup> These facts suggested that Pittsburgh was unable to continue to support two member-funded NCE stations, a conclusion supported by QED's audited financial records which showed member contributions had fallen 20%, and corporate underwriting by 30% in the years preceding QED's second dereservation request.<sup>32</sup>

It was also clear from the record that Pittsburgh no longer needed two NCE reserved channels licensed to the same entity to meet its educational and instructional needs.<sup>33</sup> At this point, QED had been simulcasting both stations for five years.<sup>34</sup> The Commission found that granting QED's request would allow QED to focus resources, creating one economically sound NCE station better equipped to meet the market's needs.<sup>35</sup> In its decision, the Commission noted that two NCE channels in the same market under the same licensee is particularly rare - Pittsburgh being one of five markets with two commonly owned reserved-channel NCE stations at the time the *2002 Report and Order* was released.<sup>36</sup> The Commission also noted that with only seven full-power commercial stations, the Pittsburgh market had fewer

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<sup>26</sup> *Id.* at 14049-50, para. 32.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 14051, para. 36.

<sup>29</sup> *Id.* at 14044-45, para. 19.

<sup>30</sup> *Id.* at 14045, para. 21.

<sup>31</sup> *Id.* at 14045, para. 19.

<sup>32</sup> *Id.* at 14051-52, para. 38.

<sup>33</sup> *Id.* at 14052, para. 40.

<sup>34</sup> *Id.* at 14040, para. 6.

<sup>35</sup> *Id.* at 14053, para. 41.

<sup>36</sup> *Id.* at 14055, para. 45. The Commission also reiterated that "[w]ith respect to any dereservation requests the Commission may receive in the future . . . only under compelling circumstances will we consider deviation from our policy disfavoring dereservation of noncommercial educational channels." *Id.*

commercial stations than similarly situated DMAs.<sup>37</sup> Granting QED's request would allow entry of another commercial broadcaster, strengthening the diversity of voices in the market.<sup>38</sup>

The facts discussed above make the circumstances that led to the *2002 Report and Order* distinguishable from the current Petition. The Commission's decision to grant QED's petition was the culmination of a saga that spanned over a half decade, which began with a Congressional directive, and involved multiple orders and rulemaking proceedings. More specifically, while the declarations provided by Petitioners attest to the financial difficulties facing KNXT,<sup>39</sup> these declarations do not contain the same level of specificity as the myriad of audited statements and studies QED provided to the Commission. These declarations do not provide context, such as where the operating losses are coming from, or how those losses fit into the overall financial picture of the Diocese. Additionally, QED's financial documentation demonstrated how QED's financial hardship materially hampered QED's transition to digital service. It is unclear how KNXT's financial hardship hampers its repacking efforts, or how those repacking efforts would be bolstered by approving the Petition, when repacking expenses reasonably incurred by the Diocese are reimbursed by the Commission.<sup>40</sup>

The documentation provided by QED demonstrated the extent of its efforts to alleviate their financial distress prior to filing their request. KNXT's efforts to find an NCE buyer only lasted five months. And while Petitioners argue that there is no market to sell KNXT as an NCE station, they acknowledge that the market price for KNXT as a commercial station would be more than Ventura's purchase price (which has not been disclosed to the Commission).<sup>41</sup> It remains unclear why allowing Ventura to purchase KNXT at a discount is in the public interest.

Second, nothing provided by Petitioners suggests the market conditions of Pittsburgh at the time we granted QED's petition are present in the Fresno-Visalia market. In fact, Census data indicates that both Visalia and Fresno have experienced population growth in the near-term year after year, as well as consistent historical growth over the last several decades.<sup>42</sup> And unlike Pittsburgh, the Fresno-Visalia DMA is not served by two simulcasted NCE stations licensed to the same entity. The staff estimates that over 600,000 viewers are exclusively covered by KNXT without coverage by KVPT. Moreover, it is unclear how granting Petitioners' request would bolster the remaining NCE station in the area, as it did in Pittsburgh. While KNXT and KVPT are both licensed to communities in counties that are assigned to the Fresno-Visalia DMA, they serve different municipalities, with KNXT in Visalia and KVPT in Fresno. Additionally, Ventura's promises to continue to air KNXT's programming on a sub-channel are unenforceable, and sub-channels do not have the same carriage rights on MVPDs as main stations. These

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<sup>37</sup> *Id.* at 14053-55, para. 43.

<sup>38</sup> *Id.*

<sup>39</sup> *See, e.g.*, Petition at Attachment A: Brennan Declaration, para. 3.

<sup>40</sup> According to KNXT's Form 399, KNXT estimated a total repack cost of \$3,100,771.61. Application for Reimbursement for Diocese of Fresno Education Corp., File No. 0000026332 (filed July 5, 2019) <https://enterpriseefiling.fcc.gov/form399/public/draftCopy.html?displayType=html&appKey=25076f916b48b8b7016b6b9417ce002c&id=25076f916b48b8b7016b6b9417ce002c&goBack=N>. Of this, a total of \$1,238,288.92 has been reimbursed as of December 16, 2019.

<sup>41</sup> Petition at Attachment B: Shirin Declaration, para. 12.

<sup>42</sup> United States Census Bureau, *Census of Population and Housing*, <https://www.census.gov/prod/www/decennial.html> (last visited Oct. 17, 2019); United States Census Bureau, *Population and Housing Unites Estimates Tables*, <https://www.census.gov/programs-surveys/popest/data/tables.2018.html> (last visited Oct. 17, 2019).

facts make it less likely that KVPT, as the remaining NCE station in the area, could adequately compensate for the loss of KNXT programming in Visalia.

Finally, our decision to grant QED's request was driven in part by the lack of full-power commercial stations in the Pittsburgh market. The Fresno-Visalia DMA is not underserved. Currently, 10 commercial stations serve the Fresno-Visalia DMA, a DMA smaller than the Pittsburgh DMA. As such, increasing the diversity of commercial voices in the DMA is not as pressing a public interest issue as it was when the Commission approved QED's request in Pittsburgh.

*Conclusion.* We find that the Petitioners have neither provided sufficiently compelling circumstances to grant Joint Petition for Rulemaking and Request for Waiver. Accordingly, the Joint Petition for Rulemaking filed by the Diocese of Fresno Education Corp. and Ventura TV Video and Appliance Center, Inc. is hereby denied, and we do not address here the Request for Waiver. Our decision here is without prejudice to any future request for dereservation.

Sincerely,



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cc:

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