

KEVN, Inc. (“Licensee”), the licensee of KEVN-TV, NTSC Channel 7 and DTV Channel 18, Rapid City, South Dakota (the “Station”), hereby requests reauthorization and extension of previously granted Special Temporary Authority (“STA”) to operate the Station’s digital facilities at variance from authorized parameters until February 17, 2009. Previously recognized financial hardships, including bankruptcy, combined with the Commission’s recent grant of Licensee’s request for a post-transition digital channel re-assignment,<sup>1</sup> make such relief particularly appropriate in this unique case.

As the Commission is aware, Licensee’s expenditures in connection with the Commission’s deadline for commercial television stations to construct digital facilities were the principal factor in Licensee’s November 2003 decision to seek protection under Chapter 11 of the U.S. Bankruptcy Code, as they rendered it incapable of making interest payments to its senior lender. Since emerging from bankruptcy protection in 2005, Licensee has been operating pursuant to an Order of Final Decree<sup>2</sup> which obligates it to remit the vast majority of its excess cash flow to its senior lender and earmarks additional funds for repayment of general creditors.

Meanwhile, on May 13, 2005, Licensee filed a timely request seeking extension of the Commission’s “use-it-or-lose” it deadline for buildout of its DTV facilities.<sup>3</sup> In that request and its supplements, Licensee demonstrated that the Station would be unable to satisfy the July 1, 2006 interim build-out requirement due to severe financial constraints imposed on Licensee in connection with the ongoing bankruptcy proceeding. In response, on May 18, 2007, the Commission granted Licensee a six-month waiver of its “use it or lose it” deadline on financial hardship grounds until November 2007.<sup>4</sup>

On January 25, 2006, Licensee also filed comments in the Commission’s proposed DTV Table of Allotments proceeding, demonstrating that the same financial constraints associated

---

<sup>1</sup> See Seventh Report and Order, *In the Matter of Advanced Television Systems And Their Impact Upon The Existing Television Broadcast Service*, FCC 07-138 (released August 6, 2007), at Appendix D5: Granted Requests for Alternative Channel Assignments (“Seventh Report and Order”).

<sup>2</sup> See *In re KEVN, Inc.* (File No. 03-50592) (Bankr. D.S.D. entered July 13, 2005).

<sup>3</sup> See Petition for Relief Seeking Extension of the July 1, 2006 Interim Digital Construction Deadline (filed May 13, 2005) (“Petition for Relief”); Supplement to Petition for Relief (filed August 19, 2005) (“Supplement”); Further Supplement to Petition for Relief (filed July 7, 2006) (“Further Supplement”).

<sup>4</sup> See Order, *In the Matter of DTV Build-Out: Requests for Waiver of July 1, 2005 and July 1, 2006 “Use or Lose” Deadlines*, 22 FCC Rec 9750 (2007) at ¶¶ 43, 60, 67 (KEVN-DT “has met the requirements for waiver of the ‘use-or-lose’ deadline as [a] station[] experiencing financial hardship.”).

with the bankruptcy proceeding rendered it unable to construct full, authorized DTV facilities on the Station's previously assigned DTV Channel 18, and that build out of permanent digital facilities on its current analog Channel 7 would be both technically and financially advantageous and enable it to better serve viewers in the Rapid City market.<sup>5</sup> In an order issued on August 6, 2007, the Commission granted Licensee's request, and digital Channel 7 was allotted to Rapid City and assigned to the Station as its post-transition digital channel.<sup>6</sup> In the Seventh Report and Order accompanying the new Table, the Commission "remind[ed] stations that they must file construction permit or modification applications (i.e., FCC Form 301 or 340) if they need to request authority to construct or modify their post-transition facilities" on the newly assigned channel.<sup>7</sup> Licensee is proceeding diligently to prepare and submit the necessary application to modify its existing digital construction permit.

Most importantly, as previously explained to the Commission, it is necessary for KEVN to use its existing top-mounted VHF analog antenna for post-transition service.<sup>8</sup> To require construction of full-power DTV facilities on Channel 18 -- which is no longer allotted to the market -- and installation of an antenna that cannot be used post-transition (1) would waste Commission and Licensee resources, (2) would be inconsistent with the Commission's recognition of KEVN's difficulties; (3) would be inconsistent with the Commission's grant of numerous "top-mount" waivers,<sup>9</sup> and (4) would preclude KEVN from having the financial resources to build out its permanent facility on Channel 7.

Under the circumstances, Licensee respectfully requests that the Commission harmonize its grant of STA and its re-assignment of Licensee's digital channel allotment by authorizing the

---

<sup>5</sup> See Comments of KEVN, Inc., *In the Matter of Advanced Television Systems And Their Impact Upon The Existing Television Broadcast Service*, MB Docket No. 87-268 (filed Jan. 25, 2006), at 4 ("[C]apital costs associated with the build-out of KEVN to full facilities on DTV Channel 18 will be forty percent higher than a build-out on its current NTSC Channel 7 . . . . Altogether, Licensee estimates that it could avoid nearly \$500,000 in capital expense if it were able to use its current NTSC Channel 7 for KEVN's post-transition operations rather than its assigned DTV Channel 18."). Licensee requested this relief because its previous financial condition caused it to rely on an initial engineering consultation that recommended Licensee select Station's assigned DTV Channel 18 for post-transition operation because UHF frequencies would be operationally advantageous following the digital transition. It was only later that Licensee learned of the costly ramifications of its initial channel election. See *id.*; see also Further Supplement at 4.

<sup>6</sup> See Seventh Report and Order.

<sup>7</sup> *Id.* ¶ 85.

<sup>8</sup> See, e.g., Petition for Reconsideration of KEVN, Inc., filed June 18, 2007, at 4.

<sup>9</sup> See Order, FCC 07-90 (released May 18, 2007) at ¶¶ 79-104.

Station to continue to operate low-power digital facilities on Channel 18 pending the construction and activation of full digital facilities on newly-allotted Channel 7 at the conclusion of the DTV transition on February 17, 2009.