

## Statement re Use-or-Lose Deadline

Footnote 204 to the Report and Order in the Third Periodic Review, released December 31, 2007 (FCC 07-228), observes that KUAM-TV lost interference protection to that part of its service area that it failed to serve by the use-or-lose deadline, and says KUAM-TV's construction permit application "should reflect this modification." This statement is intended to constitute compliance with Footnote 204.

The Commission explained in its Report and Order in the Second Periodic Review, FCC 04-192 released September 7, 2004, 29 FCC Rcd 18279 at 18311, that as an incentive to earlier initiation of DTV service by the "use-or-lose" deadline, stations must be on the air operating with digital facilities that replicate their 1997 NTSC Grade B service area or else lose interference protection to the unreplicated portion of this service area outside the noise-limited signal contour. Loss of such protection would enable other full or low-power stations "the opportunity to expand their service areas to serve the viewers made available as a result of a DTV station's failure to fully replicate." Id.

The entire Territory of Guam is wholly within the Grade A service area of KUAM-TV. The land mass of the island is comparable in size to the City of Chicago. Likewise, the area outside the noise-limited signal contour of KUAM-TV is all ocean. For this reason, the use-or-lose incentive is of no value to KUAM-TV, and its failure to initiate DTV service by the use-or-lose deadline has no practical significance.

This is not to say that KUAM-TV has not been cognizant of its responsibilities in the DTV conversion, or that it has not acted responsibly under the unique circumstances that it has faced in providing service to a part of the world that is closer to the Philippines than it is to Hawaii, in a different ITU Region than the United States.

In its Order on the DTV Build-Out, Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines," FCC 07-90, released May 18, 2007, 22 FCC Rcd 9750, at 9769, the Commission said of KUAM-TV:

KUAM-DT, Agana, Guam, elected to return to its analog channel 8. The station was originally assigned DTV channel 2 and was previously denied a DTV extension for that channel in 2004 and was placed in the Commission's remedial program. In response, the station filed a petition for rulemaking to change its DTV channel from 2 to 10. During the channel election process, the station apparently abandoned its plans and elected to return to its analog channel 8. That proposal was accepted by the Commission. In the interim, the station has failed to make any progress on completion of its DTV facilities on channel 2. The station's only justification is that it will seek Commission approval to flash cut to channel 8 at the end of the transition, a proposal that was never filed.

This is not an entirely accurate record of KUAM-TV's efforts. It fails to note the Commission's inaction on KUAM-TV's petition for reconsideration and petition for rulemaking (and associated freeze waiver request). Nor does it take into account KUAM-TV's actions taken in reliance upon informal discussions with the Commission staff.

On March 25, 2005, KUAM-TV timely filed a petition for reconsideration of the denial of its request for extension of its construction permit for DTV Channel 2. The Commission did not act on that petition.

On March 25, 2005, KUAM-TV filed a petition for rule making and request for waiver of the freeze on DTV rulemakings, to substitute Channel 10 for Channel 2 in the DTV Table of Allotments at Agana, Guam. The Commission did not act on the petition or waiver request.

On April 14, 2005, KUAM-TV filed a DTV Construction Progress Report consistent with the remedial measures the Commission imposed.

On May 26, 2006, KUAM-TV filed a Third Round Election Form reflecting its intention to operate DTV facilities on its NTSC allotted Channel 8.

On July 3, 2006, KUAM-TV advised the Commission, with respect to compliance with the use-or-lose deadline;

Because of the unique circumstances of television broadcast service in the Territory of Guam, as described in detail in Pacific's prior DTV filings, and in light of Pacific's plan for implementation of DTV service in Guam, Pacific determined not to participate in the Pre-Election Certification, First Round, or Second Round channel election procedures. This determination was made after informal discussions with the Commission staff, reviewing the peculiar situation in Guam.

Consistent with discussions with the Commission staff, Pacific filed a Third Round Election Form. In File No. BTRECT-20060526AAF, Pacific elected to operate KUAM-DT on its allotted NTSC Channel 8. Its revised plans are now to flash cut to DTV Channel 8, and to make the KUAM-TV analog service available to the public on UHF Translator Station K28HS ( File No. BLTT-20051014AEL), which is currently licensed to an affiliated company.

By this application, KUAM-TV intends to move forward with its obligations under the DTV Build-Out Order and the Report & Order in the Third Periodic Review. The facilities sought herein comply with the impact of the loss of protection under the Commission's use-or-lose deadline.