



Federal Communications Commission
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DA 03-3197

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Re: Application for Modification of
TV Translator Station K46DH
El Paso, Texas
File No. BPTT-20030703AAD
Facility ID No. 36919

Request for Special Temporary
Authority for KTYO(TV)
Las Cruces, New Mexico
File No. BSTA-20030703ACP
Facility ID No. 36916

Dear Licensees:

This is with respect to the petition to deny filed by Arnoldo Cabada De La O (Cabada), the licensee of Mexican television station WHIJ, channel 44, Ciudad Juarez, Mexico, against the above-referenced displacement application for television translator station K46DH, El Paso, Texas, licensed to Council Tree Communications VI, L.P. (Council Tree). Council Tree filed an opposition on September 2, 2003, to which Cabada replied on September 15th. We also have before us a request for Special Temporary Authority (STA) to operate KTYO(TV) with parameters at variance from its licensed facilities, filed on July 3, 2003, which is unopposed.

Background. According to Council Tree, K46DH rebroadcast the programming of co-owned, Spanish-language television station KTYO(TV), channel 48, Las Cruces, New Mexico, but was displaced by the first-adjacent DTV channel 47 assignment for KTYO-DT. In 2001, Council Tree filed a displacement application to move to channel 53 at a site near the K46DH

licensed site.¹ Because the proposal specified a transmitting location in close proximity to the Mexican Border, coordination with the Government of Mexico was mandatory. As a result of this coordination, the Secretaria de Comunicaciones Y Transporte ("SCT") informed the Commission that it objected to the grant of the proposed facility on channel 53 because it did not offer protection to channel 56 of Ciudad Juarez, Mexico, and thus, did not fulfill the disposition of paragraph 1.3 in the 1988 Agreement Amending the Agreement Relating to Assignments and Usage of Television Broadcasting Channels in the Frequency Range 470-806 MHz (channels 14-69) ("the 1988 Agreement") throughout the Mexico-United States border. Subsequently, the staff dismissed the application.² While that application was pending, however, Council Tree filed an application for a television booster station on channel 48, which was granted on November 6, 2001, and subsequently modified by application granted May 15, 2003. Rather than construct the modified booster facility, however, Council Tree filed the instant application for a television translator on channel 48,³ and concurrently filed for an STA to locate KTYO-TV at the former K46DH site, in order to minimize the potential for mutual interference between the co-channel facilities.

In its petition to deny, Cabada asserts that the displacement application must be coordinated with Mexico because the proposed facility is within 4 km of the Mexican border, and the fact that the proposed translator facility is entirely within the predicted Grade B contour of KTYO-TV is irrelevant. Cabada further asserts that there is no need to move the displaced station the distance which Council Tree proposes, because the Commission recognizes that co-locating an adjacent channel analog station with a DTV station eliminates the potential for interference.

In response, Counsel Tree asserts that because the television translator on channel 48 will operate entirely within the service contour of KTYO-TV, which has already been approved under the terms of the 1988 Agreement between the United States and Mexico, the application need not be referred to Mexico. With respect to the assertion that Council Tree should be required to co-locate its displacement and DTV facilities to avoid interference, Council Tree explains that because of severe terrain shielding, which effectively separates the Las Cruces and El Paso population centers, KTYO-TV is unable to deliver an acceptable over-the-air signal simultaneously into both communities. Thus, Council Tree proposes to operate the channel 48 translator station from a location closer to El Paso. According to Council Tree, "[s]ince KTYO's analog facilities are also located at the same site as the station's digital operations, it would be of no use to redundantly co-locate K46DH at the same site as its analog parent."

¹ File No. BPTT-20011019AAU.

² Council Tree filed a timely petition for reconsideration on December 12, 2002. Because we are granting the above-referenced, superceding displacement application, the petition for reconsideration will be dismissed as moot.

³ File Nos. BNPTTB-20010725AAE and BMPTTB-20030331AFO. Cabada filed a petition for reconsideration of the grant of the application for modification of the booster facility, which is pending. Because the authorized booster facility is less than a mile from the proposed television translator facility, and Council Tree is requesting the channel 48 translator facility in lieu of the modified booster facility, we will cancel Council Tree's channel 48 booster authorization and dismiss Cabada's petition for reconsideration as moot.

Discussion. We conclude that, based on agreements currently in force, as well as our mutually accepted procedures, the U.S. operation in question provides full protection to all Mexican registries and is in compliance with our bilateral protection and coordination requirements. To reiterate the details, there is currently a full service NTSC operation on channel 48 in Las Cruces, which was formally coordinated under the terms of the UHF-TV bilateral agreement to operate with 5000 kW ERP and 610 meters HAAT. That operation is located only 27 km from the proposed translator operation, which is intended to fortify localized coverage in an area where the signal from the primary operation is experiencing some level of degradation. Based on calculations performed using accepted signal propagation criteria, the service area of the proposed translator is entirely contained within the Grade B service area or allotment zone of the Las Cruces operation. As the secondary operation of the translator will not exceed in any way the allotted service area of the Las Cruces operation, or increase the interference potential of the Las Cruces allotment zone, it is in full compliance with our current bilateral agreements. Thus, the proposed translator operation is strictly an operation of secondary status, transmitting a co-channel signal which is entirely contained within the allotted service area of the full service station in Las Cruces. Additionally, since its purpose is to eliminate a deficiency in the normally expected service of the primary operation, while also having no significant deleterious effect beyond the Las Cruces allotment zone, it does not require prior coordination with Mexico.

Cabada argues that it is not necessary to move the facility the distance proposed, because co-location with the DTV facility will eliminate interference. Section 73.3572(a)(4)(ii) of the Commission's rules, however, does not place a geographic restriction on the filing of displacement applications for translator stations displaced by an authorized DTV station. That rule only requires that the applicant demonstrate that the modifications are necessary to avoid interference or continue serving the station's protected service contour. Council Tree, thus, is not required to move the absolute minimum distance necessary to avoid interference, and we believe it has justified the magnitude of its move, which is necessary to serve viewers in El Paso who do not receive a viewable signal from KTYO-TV.⁴ Accordingly, Cabada's petition to deny will be denied.

Council Tree states that the public interest would be served because: (1) the STA facility would increase the area and population in Las Cruces, its community of license, which would receive a city grade signal;⁵ and (2) the proposed displacement facility will provide much better "fill in" service than the present booster facility. In addition, while approximately 42,500 viewers will no longer reside within the predicted Grade B contour of KTYO-TV or the 64 dBu protected contour of the translator station, Council Tree states that 99.5% of these viewers are within the Grade B contour of at least five other television stations. Moreover, 99.4% of these

⁴ Council Tree acknowledges that there will be no contour overlap between the licensed and proposed 74 dBu service contours, but submits the results of a study indicating that due to prohibited contour overlap with authorized and proposed analog television, digital television, television translator, low power television, Class A television, and Mexican stations, all alternative core channels are precluded from use at the present K46DH site.

⁵ Using Longley-Rice alternative propagation prediction model accepted by the Commission, the STA facility will cover 98.6 percent of the area and 100% of the population of Las Cruces, while the licensed KTYO facility provides 80 dBu coverage to only 26.9% of the area and 53.8% of the population of Las Cruces.

viewers would continue to be within the Grade B contour of Spanish-language television stations KINT-TV and/or KTFN(TV), El Paso, Texas. We agree with Council Tree that, under the circumstances of this case, the public interest will be served by granting the requested STA and displacement translator application, in order that KTYO-TV may provide a city grade signal to its entire community of license, and the translator station provide service to viewers in the El Paso area which do not receive a viewable signal from KTYO-TV due to terrain.

Accordingly, IT IS ORDERED, That the petition to deny filed by Arnoldo Cabada De La O IS DENIED, and That the application for a construction permit for a television translator station on channel 48 (File No. BPTT-20030703AAD), filed by Council Tree Communications VI, L.P. IS HEREBY GRANTED.⁶ IT IS FURTHER ORDERED, That the authorization for television booster station KTYO1 IS CANCELLED, and That the Petition for Reconsideration filed by Arnoldo Cabada De La O in connection with an application for modification of KTYO1 (File No. BMPTTB-20030331AFO) IS DISMISSED as moot; and That the Petition for Reconsideration filed by Council Tree Communications VI, L.P. in connection with the dismissal of its displacement application to move to channel 53 (File No. BPTT-20011019AAU) IS DISMISSED as moot.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁶ Council Tree's request for an STA for KTYO-TV (File No. BSTA-20030703ACP) is being granted by separate letter.