



Federal Communications Commission
Washington, D.C. 20554

October 24, 2016

KUPN Licensee, LLC
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1200 Seventh Street, NW
Washington, DC 20036

Channel 33, Inc.
c/o Colby M. May, Esq.
P. O. Box 15473
Washington, DC 20003

Re: KSNV, Las Vegas, Nevada
Facility ID No. 10179
KHSV, Las Vegas, Nevada
Facility ID No. 69677
Request for Waiver of 47 C.F.R § 73.682(d)

Dear Counsel:

This is with respect to the above-referenced facilities' request for waiver of ATSC A/65C ("ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006") (PSIP Standard).¹ KUPN Licensee, LLC is the licensee of KSNV, Las Vegas, NV, which is authorized to operate on RF channel 22 and virtual channel 21. Channel 33, Inc., the licensee of KHSV, Las Vegas, NV, is authorized to operate on RF channel 2 and virtual channel 3. KUPN Licensee, LLC ("KUPN") and Channel 33, Inc. ("Channel 33" and together with KUPN, the "Parties") request the Commission for a waiver of the PSIP Standard and request stations KSNV and KHSV exchange virtual channel numbers. For the reasons set forth below, the request is granted.

Background. The PSIP Standard states, "For broadcasters with existing NTSC licenses, the major channel number for the existing NTSC channels, as well as the digital virtual channels, controlled by the broadcaster, shall be set to the NTSC RF channel number."² Here, pursuant to the PSIP Standard, KSNV

¹ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order*, 19 FCC Rcd 18279, 18344-6 (2004) ("Second Periodic Review").

² PSIP Standard, Annex B, at Section B.1.1.

would operate on virtual channel 21, as its NTSC licensed operations were on RF channel 21.³ Similarly, KHSV would operate on virtual channel 3, as its NTSC licensed operations were on RF Channel 3.⁴

KUPN states that it acquired certain non-license assets of station KHSV including the programming rights of the NBC affiliation for the Las Vegas DMA. KUPN explains that NBC programming in the Las Vegas DMA had been broadcasting on channel 3 since 1967 and the local Las Vegas NBC brand news had been identified as “Channel 3 News” for more than 30 years. The NBC programming was simultaneously broadcast on the primary streams of both station KSNV and station KHSV from November 1, 2014 through December 31, 2014, and from January 1, 2015, the NBC programming had been broadcast solely on station KSNV in the Las Vegas DMA.⁵ KUPN further states that the acquisition of the NBC network affiliation created an opportunity to improve the coverage and reception of the existing NBC programming, which also provided local news and emergency information in the Las Vegas DMA.⁶

Discussion. In the *Second Periodic Review*, the Commission states “To the extent broadcasters have a unique situation that is not provided for in PSIP, the Commission may grant exceptions on a case-by-case basis.”⁷ Collectively, the Parties maintain they have a “unique situation” which warrants waiver of section 73.682(d) as contemplated in the *Second Periodic Review*. KUPN asserts the a grant of the waiver request would allow station KSNV to continue providing uninterrupted service to the Las Vegas DMA and would serve the public interest since it would allow viewers to continue to tune to the virtual channel number already associated with NBC programming.

Considering the unique circumstances and recognizing the PSIP standard was instituted to avoid viewer confusion and to promote programming channel number identification,⁸ the Commission finds that the Parties present a “unique situation” that is not provided for in the PSIP Standard. The *Second Periodic Review* provides that the waiver of the PSIP Standard is to be evaluated on a case-by-case basis for those unique situations that are not accounted for by the PSIP Standard. The instant request is distinctive as it would help facilitate improved coverage and reception of NBC network programming to the Las Vegas DMA. A grant of the waiver request would also be effective in aiding to avoid the unnecessary viewer confusion that would result from a disruption of established programming being shifted to virtual channel 21. Furthermore, KUPN and Channel 33 are both in mutual agreement to seek a waiver of the PSIP Standard associated with their virtual channel swap and as a result there will be no technical/interference objections.⁹ Moreover, based upon the Parties’ showings and the Commission’s own studies, the virtual channel exchange if implemented would not conflict or duplicate any other station’s channel assignment in the Las Vegas DMA and as such would not harm any incumbent licensees.

³ See FCC File No. BLCT-19991104AAN.

⁴ See FCC File No. BLCT-20030506ABA.

⁵ KUPN Petition for Waiver of 47 C.F.R § 73.682(d) at 2.

⁶ *Id.* at 4.

⁷ *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, Report and Order*, Report and Order, 19 FCC Rcd 18346, para. 153 (2004)(“*Second Periodic Review*”).

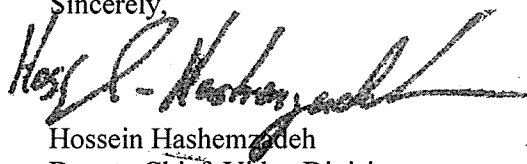
⁸ *Id.* at 18343.

⁹ KUPN Petition for Waiver of 47 C.F.R § 73.682(d) at 4.

The Commission agrees that a waiver request of ATSC A/65C is warranted and good cause exists for the assignment of virtual channel 3 to station KSNV and virtual channel 21 to station KHSV as the Parties presented a unique situation not accounted for by the PSIP Standard.

Accordingly, IT IS ORDERED that the waiver request of ATSC A/65C, the PSIP Standard, made by KUPN Licensee, LLC and Channel 33, Inc., to operate station KSNV on virtual channel 3 in lieu of virtual channel 21 and to operate station KHSV on virtual channel 21 in lieu of virtual channel 3 IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Hossein Hashemzadeh", written over a horizontal line.

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau