



Federal Communications Commission
Washington, D.C. 20554

September 25, 2009

1800E3-JLB

Civic Light, Inc.
c/o Joseph A. Belisle, Esq.
Leibowitz & Associates, P.A.
1 S.E. 3rd Avenue
Suite 1450
Miami, Florida 33131

ABC Holding Company, Inc.
c/o Tom W. Davidson, Esq.
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 20036

Re: File No. BPTVL-20051019ABA
Facility ID No. 11608

Gentlemen:

By letter dated August 15, 2007, the staff granted the above-referenced displacement application filed by Civic Light, Inc. ("Civic Light"), the licensee of low power television station K63EN, San Diego, California, to move to in-core channel 7 pursuant to Section 73.3572(a)(4)(ii) of the Commission's rules.¹ In doing so, the staff denied the petition to deny filed by ABC Holding Company ("ABC"), the licensee of KABC(TV), analog channel 7 and post-transition digital channel 7. ABC filed a timely petition for reconsideration, which Civic Light has opposed.

Section 74.705(b)(1) of the rules provides that a low power television station application will not be accepted for filing "if it specifies a site which is within the protected contour of a co-channel or first adjacent channel TV broadcast station."² It is undisputed that the proposed facility lies within the protected contour of co-channel KABC(TV) and KABC-DT. As the staff pointed out in its August 15 letter, however, Section 74.705(e) further provides that "[a]s an alternative to the preceding paragraphs of 74.705, an applicant . . . may make full use of terrain shielding and Longley-Rice dependant propagation prediction methodology to demonstrate that the proposed facility will not be likely to cause interference to TV broadcast stations."³ Using Longley-Rice methodology, Civic Light demonstrated that its proposed facility would not cause impermissible interference to ABC.

On reconsideration, ABC argues that the staff erred in granting the application because Section 74.705(e) does not permit the use of Longley-Rice "to avoid compliance with Section 74.705(b)." ABC

¹ 47 C.F.R. § 73.3572(a)(4)(ii).

²² 47 C.F.R. § 74.705(b)(1).

³ 47 C.F.R. § 74.705(e).

instead asserts that 74.705(e) only modifies 74.705(d). ABC's argument, however, is inconsistent with a plain reading of the rule, which states that 74.705(e) applies to "the preceding paragraphs," not "the preceding paragraph." ABC also argues that when the Commission amended Section 74.705(e) to permit stations to use Longley-Rice without first asking for a waiver, it stated that the Longley-Rice showing was to be used as an alternative to "contour overlap analysis." According to ABC, this language demonstrates that the Commission intended to limit Longley-Rice to paragraph (d), which sets forth detailed procedures for contour overlap analysis. Under this logic, however, Section 74.705(e) clearly applies to Section 74.705(b) as well; where the site for a low power television station is within the protected contour of a television broadcast station, the two stations clearly have overlapping contours.⁴

In view of the foregoing, the petition for reconsideration filed by ABC Holding Company, Inc. IS
HEREBY DENIED.

Sincerely,

Hossein Hashemzadeh
Associate Chief, Video Division
Media Bureau

⁴ We note that since the adoption of Section 74.705, the staff has routinely interpreted paragraph (e) as also applying to paragraph (b) when processing low power television and television translator applications.