

# DICKSTEINSHAPIRO<sub>LLP</sub>

1825 Eye Street NW | Washington, DC 20006-5403  
TEL (202) 420-2200 | FAX (202) 420-2201 | dicksteinshapiro.com  
Writer's Direct Dial: (202)420-1304  
E-Mail Address: sadowskys@dsmo.com

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Federal Communications Commission  
Bureau / Office

Via E-Mail and Hand Delivery

Hossein Hashemzadeh, Associate Chief  
Video Division, Media Bureau  
Federal Communications Commission  
c/o Natek, Inc.  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, DC 20002

Re: Alma Vision Hispanic Network, Inc.  
Station KTAV-LP, Altadena CA (Facility ID No. 6791)  
Virtual Channel Designation

Dear Mr. Hashemzadeh:

On behalf of Alma Vision Hispanic Network, Inc. ("AlmaVision"), licensee of low power television station KTAV-LP (analog Channel 69), Altadena, California (Facility ID No. 6791) and the grantee of special temporary authority ("STA") to operate KTAV-LD (digital Channel 46), this is to respectfully request that KTAV-LD be permitted to use a "virtual channel"<sup>1</sup> other than Channel 69 when it commences digital operations.

By way of background, on August 20, 2009, AlmaVision was granted STA to operate KTAV-LD on Channel 46. See File No. BSTA-20090722ABT.<sup>2</sup> AlmaVision anticipates being ready to commence digital operations of KTAV-LD in approximately 30 days.

Channel 46 is utilized as the virtual channel of full-service Station KFTR-DT, Ontario, California, making it unavailable for use as KTAV-LD's virtual channel. Under these circumstances, AlmaVision understands that KTAV-LD would be expected to use the KTAV-LP

<sup>1</sup> In this context, the term "virtual channel" has the meaning specified by Advanced Television Systems Committee ("ATSC") in Program and System Information Protocol for Terrestrial Broadcast and Cable ("PSIP") (Document A/65: 2009) (April 14, 2009).

<sup>2</sup> AlmaVision has a pending application to displace KTAV-LP to digital Channel 46 (BDISDTL-20090609ACK).

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analog channel (69) for its virtual channel in accordance with Annex B to ATSC Document A/65 (“ATSC A/65B”). However, for a number of reasons, AlmaVision does not wish to maintain any association with Channel 69, and therefore respectfully requests that it be permitted to use an available lower “in-core” channel, such as Channel 35, for KTAV-LD’s virtual channel.<sup>3</sup>

AlmaVision has surveyed all currently unused and un-applied for digital channels in the Los Angeles market, and has determined that Channel 35, among others, is neither in use nor applied for. Accordingly, AlmaVision requests that KTAV-LD be permitted to use Channel 35 as its virtual channel instead of Channel 69.<sup>4</sup>

It does not appear that a waiver of a Commission rule, policy or standard is required to grant the relief requested by AlmaVision. Although the Commission adopted ATSC A/65B for full service television stations<sup>5</sup>, it has not yet done so for LPTV Stations. Indeed, in 2004, when the Commission adopted rules for the digital LPTV service, it expressly declined to adopt the ATSC A/65B standard for LPTV stations, preferring to revisit the matter in a future DTV proceeding.<sup>6</sup> However, undersigned counsel has found no public record of the Commission’s revisiting the matter since that time. Nonetheless, out of an abundance of caution, if any waiver of an applicable Commission rule, policy or standard is required in this instance, such a waiver is hereby requested and, as will be shown, is warranted.

AlmaVision recognizes that a party seeking a waiver faces a high hurdle and must demonstrate that deviation from the general rule is warranted by special circumstances and will serve the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In determining whether that requirement has been satisfied, the Commission must conclude that a grant of the waiver “will not undermine the policy, served by the rule, that has been adjudged in the public interest.”

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<sup>3</sup> AlmaVision is a religious ministry dedicated to furthering the teachings of the Gospel of Jesus Christ to the Spanish-speaking community through Spanish-language television and radio programming. In addition to the practical benefits of having KTAV-LD viewed over-the-air (as far as the public is aware) on a channel that is lower “on the dial” than Channel 69, AlmaVision wishes to disassociate itself, its station and its programming from the unavoidable and undesirable branding that Channel 69 and its sophomoric symbolism carries.

<sup>4</sup> If, for any reason Channel 35 is deemed unavailable as a virtual channel for KTAV-LD, there are several other television channels currently unused and unapplied for in the Los Angeles market, including 15, 21, 32, 39, 41, any of which AlmaVision would be willing to utilize.

<sup>5</sup> See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279 (2004) (“*Second Periodic Review*”).

<sup>6</sup> See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 19 FCC Rcd 19331, 19413 (2004).

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*WAIT Radio v. FCC*, 418 F.2d at 1157. AlmaVision's waiver request comports with this standard.

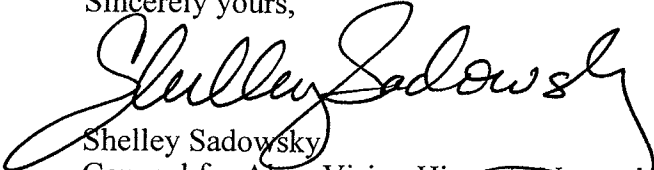
Permitting AlmaVision to utilize Channel 35 (or another available channel) as the virtual channel for KTAV-LD, when the channel is neither in use nor applied for by any other television licensee will have no adverse effect whatsoever on the public interest. Indeed, allowing KTAV-LD to utilize an "in-core" virtual channel would be decidedly in the public interest. That is so because AlmaVision is aware that analog KTAV-LP's placement on the highest UHF channel has been perceived as inconvenient for its viewers. Moreover, requiring KTAV-LD to operate (as far as the public is aware) on virtual Channel 69 could result in confusion to members of the public who have been informed that Channel 69 is no longer available for over-the-air television use. In short, there is no public interest benefit for KTAV-LD to be saddled with virtual channel 69.

Moreover, permitting AlmaVision in this instance to utilize a virtual channel other than its analog station's operating channel should not undermine the ATSC A/65B scheme. That is because exceedingly few, if any other LPTV stations face the circumstances that KTAV-LD faces here – the prospect of having to utilize virtual Channel 69 which has undesirable branding connotations for religious programming. In other words, a waiver granted in this case should not open up a floodgate of similar requests.

Finally, when the Commission adopted ATSC A/65B for full-service stations, it expressly recognized that unique situations might arise, and that exceptions could be granted on a case-by-case basis. See *Second Periodic Review*, 19 FCC Rcd at 18346. Such a unique situation is presented in this instance by AlmaVision. Accordingly, for the reasons stated above, it is respectfully requested that an exception to ATSC A/65B be made, if necessary, to permit KTAV-LD to utilize virtual Channel 35 (or another in-core channel) in lieu of virtual Channel 69.

Thank you for your consideration of this request. Should there be any questions concerning this matter, please contact undersigned counsel.

Sincerely yours,



Shelley Sadowsky  
Counsel for Alma Vision Hispanic Network, Inc.