



Federal Communications Commission
Washington, D.C. 20554

August 28, 2019

In Reply Refer to:
1800B3-CEG

1TV.COM, Inc.
c/o John F. Garziglia, Esq.
Womble Bond Dickinson LLP
1200 19th Street NW Suite 500
Washington DC 20036

Kona Coast Radio LLC
Attn: Victor A. Michael, Jr.
87 Jasper Lake Road
Loveland CO 80537

In re: **KIKO-FM, Claypool, AZ**
Facility ID No. 11894
File Nos. BPH-20170620ABH
BLH-20170620ABG
BLH-20181121AAM

NEW(FM), Star Valley, AZ
File No. BNPH-20170621ABC

**Petition for Reconsideration
Informal Objection**

Dear Counsel and Petitioner:

We have before us a petition for reconsideration (Petition) filed on May 9, 2018, by Kona Coast Radio, LLC (Kona Coast), seeking reconsideration of an April 25, 2018, letter decision (*Letter Decision*) issued by the Audio Division, Media Bureau (Bureau).¹ In the *Letter Decision*, the Bureau: (1) granted the above-referenced application for a license to cover a construction permit for station KIKO-FM, Claypool, Arizona (KIKO or Station) filed by 1TV.COM, Inc. (1TV) on June 20, 2017 (Channel Change License Application); (2) granted the above-referenced modification application to upgrade the KIKO facilities, also filed by 1TV on June 20, 2017 (Upgrade Modification Application) (collectively, Applications); and (3) dismissed the above-referenced competing application for a new FM station at Star Valley, Arizona, and returned the associated petition for rulemaking for a new FM allotment on Channel 242A, Star Valley, Arizona (collectively, Star Valley Petition), for failure to comply with the minimum distance separation requirements of Section 73.208(a)(3).² We also have before us the above-referenced application (Upgrade License Application) for a license to cover the Upgrade Modification Application construction permit (Upgrade Construction Permit) filed by 1TV on November 21, 2018, and an informal objection to the Upgrade License Application filed by Kona Coast on November 28, 2018 (Informal

¹ *John F. Garziglia, Esq.*, Letter, Ref. No. 1800B2-RB (Apr. 25, 2018) (*Letter Decision*). On May 21, 2018, 1TV requested an extension of time to file an opposition to the Petition. On June 13, 2018, 1TV filed an opposition to the Petition (Petition Opposition). On June 22, 2018, Kona Coast filed a reply to the Petition Opposition (Petition Reply).

² 47 CFR § 73.208(a)(3).

Objection).³ For the reasons stated below, we dismiss the Petition, deny the Informal Objection, and grant the Upgrade License Application.

Background

As described in detail in the *Letter Decision*, this proceeding concerns a non-adjacent channel upgrade for station KIKO that was accomplished in two stages: first, a modification application to change channels (Channel Change Modification Application)⁴ and associated license to cover application (Channel Change License Application), and second, a modification application to upgrade the KIKO facility (Upgrade Modification Application) and associated license to cover (Upgrade License Application). On June 20, 2017, the same day that the Channel Change Modification Application was granted, 1TV filed the Channel Change License Application and Upgrade Modification Application. The next day, Kona Coast filed the Star Valley Petition, which conflicted with the KIKO facilities specified in the Upgrade Modification Application.

Kona Coast filed informal objections to the Channel Change License and Upgrade Modification Applications, arguing in relevant part that: (1) the Upgrade Modification Application should not have been accepted for filing until it was grantable (i.e., until the requested channel was vacated by KRFB(FM), Show Low, Arizona (KRFB), and the Channel Change License Application was granted); and (2) to “be fair and afford potential applicants due process,” the Commission should accept mutually-exclusive applications filed the next business day after the relevant channel becomes available.⁵

In the *Letter Decision*, the Bureau denied Kona Coast’s informal objections and granted the Channel Change License and Upgrade Modification Applications, stating that “there is nothing in the Rules to prevent an applicant from filing an application for a license to cover an existing permit and then, prior to grant, seeking permission to modify those existing, if not yet operating, facilities in the future.”⁶ The Bureau also explained that the conditions in the underlying construction permit (Channel Change Construction Permit), did not foreclose the filing of the Channel Change License Application because they concern license grantability, not acceptability for filing.⁷ Finally, the Bureau declined to impose a one-day filing window for mutually exclusive applications between the grant of a channel change license application and the filing of a subsequent upgrade application, explaining that the “immediate” two-step non-adjacent channel upgrade procedure was expressly permitted by the Commission in the 2007 *Examples PN*.⁸

Petition for Reconsideration. In the Petition and Petition Reply, Kona Coast argues that: (1) the Channel Change License Application and Upgrade Modification Application should not have been accepted for filing until they were grantable (i.e., until KRFB vacated Channel 243 as required by special

³ On December 21, 2018, 1TV filed an opposition to the Informal Objection (Informal Objection Opposition). On January 2, 2019, Kona Coast filed a reply to the Informal Objection Opposition (Informal Objection Reply).

⁴ File No. BPH-20160927ADT (Channel Change Modification Application) (granted on June 20, 2017. *Broadcast Actions*, Public Notice, Report No. 49013 (MB June 23, 2017)).

⁵ *Letter Decision* at 2-3.

⁶ *Letter Decision* at 4.

⁷ *Letter Decision* at 4.

⁸ *Letter Decision* at 4-5 (citing *Media Bureau Offers Examples to Clarify the Treatment of Applications and Rulemaking Petitions Proposing Community of License Changes, Channel Substitutions, and New FM Allotments*, Public Notice, 22 FCC Rcd 6852, 6853, Example 5 (2007) (*Examples PN*)).

operating condition #4 of the Channel Change Construction Permit);⁹ (2) the Upgrade Modification Application should not have been accepted for filing until KIKO commenced program testing on Channel 243, based on language in the 2007 *Examples PN*;¹⁰ (3) the Applications collectively constituted a *de facto* major change and thus should be open to competing expressions of interest;¹¹ (4) the KIKO two-step non-adjacent channel upgrade, combined with the vacating of Channel 243 by KRFM, constituted an abuse of the minor change rules;¹² (5) the principal of 1TV has a “mounting history” of improper installations and/or lack of candor possibly warranting further investigation;¹³ and (6) the Applications should not have been granted due to various “technical discrepancies.”¹⁴

Specifically, the technical discrepancies in the Applications alleged by Kona Coast are: (1) the Channel Change License Application specifies an effective radiated power (ERP) of 0.67 kW, whereas the underlying Channel Change Modification Application specified an ERP of 0.68 kW;¹⁵ (2) there is a one second difference in latitude between the coordinates specified in the Upgrade Modification Application and those specified in a 1990 application for KQMR(FM), Globe, Arizona, located on the same tower;¹⁶ and (3) the pre-upgrade KIKO antenna bays (constructed pursuant to the Channel Change Construction Permit) may have been incorrectly spaced for operation on Channel 243.¹⁷

In the Petition Opposition, 1TV argues that the Petition should be dismissed because: (1) Kona Coast relies upon facts and arguments that were or could have been presented prior to the *Letter Decision*; and (2) the Petition is not properly verified pursuant to section 1.52 of the rules.¹⁸ 1TV also contends that, even if the Applications were dismissed as requested by Kona Coast, the Star Valley Petition could not be considered because it did not satisfy the minimum distance separation requirement at the time of filing.¹⁹ 1TV reiterates the Bureau’s conclusion that the Applications did not have to be grantable to be acceptable for filing, citing to the 2003 *Semora, NC*, decision, in which the Bureau explained that “[o]ur broadcast licensing procedures do not require the return of applications that were unacceptable at the time of filing but which came into compliance with our technical rules prior to the deadline for corrective amendments.”²⁰ 1TV asserts that Kona Coast’s *de facto* major change argument is unsupported by any

⁹ Petition at 2.

¹⁰ Petition at 3-4 (citing the *Examples PN*, 22 FCC Rcd at 6853, which states that a station utilizing the two-step minor modification procedure for changing channels and then upgrading may, “upon commencement of program tests” and filing of a license application, “immediately file” an upgrade modification application).

¹¹ Petition at 4-5.

¹² Petition at 5.

¹³ Petition at 8.

¹⁴ Petition at 5-7.

¹⁵ Petition at 5-6.

¹⁶ Petition at 6, Exh. 6 (citing File No. BMLH-19900328KA (KQMR Modification Application)).

¹⁷ Petition at 6-7.

¹⁸ Petition Opposition at 5, 9 (citing 47 CFR § 1.52 (“A party who is not represented by an attorney shall sign and verify the document and state his address.”)); *see also* 47 CFR § 1.106(i) (stating in relevant part that “[p]etitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52”).

¹⁹ Petition Opposition at 7-8.

²⁰ Petition Opposition at 8-9 (citing *WKVE, Semora, North Carolina*, Memorandum Opinion and Order, 18 FCC Rcd 23411, 23423, para. 26 (2003)).

“FCC rule, case law, or policy” and is essentially an attempt to return to the processing rules prior to the current first-come, first-serve procedure for minor modification applications.²¹

Regarding the alleged technical discrepancies, 1TV states that: (1) the *de minimis* ERP change specified in the Channel Change License Application met the criteria for a single-step license modification set out in section 73.1690(c)(8);²² (2) the geographic coordinates specified in the Upgrade Modification Application were correct; and (3) any small transmitter power output change resulting from variations in bay spacing met the criteria for a single-step license modification set out in section 73.1560(b).²³ 1TV also suggests that Kona Coast’s decision not to amend the Star Valley Petition to specify another available channel indicates that the actual purpose of the Star Valley Petition was not to serve Star Valley but to block the KIKO upgrade.²⁴

Informal Objection. In its Informal Objection and Informal Objection Reply, Kona Coast argues that the Upgrade License Application should be denied because: (1) the specified coordinates differ from other tenants of the same tower by one second latitude;²⁵ (2) 1TV operated the Station prior to receiving program test authority under the Upgrade License Application;²⁶ (3) 1TV may not have adequately accounted for appurtenances mounted on the tower near the KIKO antenna—specifically, the antenna of UHF digital TV translator station, K16FB-D, Globe, Arizona (K16FB-D), and an ice shield mounted below the KIKO antenna—thus potentially affecting the accuracy of its predicted directional pattern;²⁷ (5) 1TV failed to include RF field strength measurements, in violation of Condition #2 of the Upgrade Construction Permit;²⁸ and (6) 1TV’s operation of “very minimum Class C facilities,” while technically permissible, is an “abuse of the directional antenna rules under 73.316” and “a waste of a class C allotment.”²⁹

²¹ Petition Opposition at 10.

²² 47 CFR § 73.1690(c)(8).

²³ Petition Opposition at 12-13; 47 CFR § 73.1560(b).

²⁴ Petition Opposition at 15.

²⁵ Informal Objection at 2.

²⁶ Informal Objection at 3.

²⁷ Informal Objection at 2-4 (citing subsections 73.316(c)(2)(vi) and (d), which require a statement that no other antennas are mounted at the same tower level or within any distance specified by the manufacturer and a showing of the expected effect of the operation of other broadcast antennas within 60 meters of the constructed antenna. *See* 47 CFR §§ 73.316(c)(2)(vi), (d)).

²⁸ Informal Objection at 4.

²⁹ Informal Objection Reply at 6-7. Kona Coast also suggests that KIKO may have begun upgraded operations prior to filing the Upgrade Modification Application, submitting as evidence a copy of an online blog discussing the station. Informal Objection at 4. This unsworn and uncorroborated third-party allegation is the equivalent of hearsay and does not meet our evidentiary standards for specificity and personal knowledge. Thus, it will not be considered further herein. *See, e.g., DFW Radio License, LLC, Assignor, and Bernard Dallas, LLC, Assignee, Memorandum Opinion and Order*, 29 FCC Rcd 804, 810-11, para. 16 (2014). In addition, for the same reasons discussed in connection with the Petition, we will not consider any allegations set forth in the Informal Objection or Informal Objection Reply concerning other stations. Finally, we find irrelevant to our consideration of the Upgrade License Application Kona Coast’s suggestion that 1TV may have failed to file an FCC Form 335 when it commenced digital transmissions. *See* Informal Objection Reply at 4.

In the Informal Objection Opposition, 1TV argues that: (1) the geographic coordinates provided in the Upgrade Modification Application are correct and confirmed by its engineer and a licensed surveyor;³⁰ (2) the Station commenced PTA operations at 50% power, as permitted by section 73.1620(a) of the rules;³¹ (3) the Station antenna was correctly installed in accordance with Commission rules and underwent antenna pattern testing that accounted for antennas and other appurtenances, as evidenced by a statement from the antenna manufacturer;³² and (4) the “RF Compliance” exhibit included with the Upgrade License Application provided calculations showing that the combined RF level at the tower site will not exceed 37.13% of the maximum general population exposure level.³³ For these reasons, 1TV concludes, Kona Coast fails to demonstrate that the terms and conditions of the construction permit were not met or that operation of the Station would be against the public interest.³⁴

Discussion

Petition for reconsideration. Reconsideration is warranted only if the petitioner shows an error of fact or law in the Commission’s original order or raises additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.³⁵ A petition for reconsideration relying on facts or arguments not previously presented to the Bureau may only be entertained if: (1) they involve changed circumstances; (2) they could not have been earlier discovered by the petitioner by the exercise of ordinary diligence; or (3) consideration is required in the public interest.³⁶ A petition for reconsideration that simply reiterates arguments previously considered and rejected will be dismissed.³⁷ Likewise, a party may not “sit back and hope that a decision will be in its favor and, when it isn’t, to parry with an offer of more evidence.”³⁸ All of the arguments and facts advanced by Kona Coast in the Petition either were or could have been raised earlier in the proceeding by the exercise of ordinary diligence, as discussed individually below. Therefore, the Petition will be dismissed for failure to meet the procedural requirements for a petition for reconsideration.

Grantability versus acceptability. In the *Letter Decision*, the Bureau expressly considered and rejected Kona Coast’s argument that the Channel Change License and Upgrade Modification Applications should not have been accepted for filing because they were not grantable at the time of filing. As the Bureau explained, the special operating conditions in the Channel Change Construction Permit relate to acceptability for filing, not to grantability.³⁹ Moreover, with certain exceptions not applicable here, an application that is not grantable at the time of filing may still be granted if the deficiencies are corrected

³⁰ Informal Objection Opposition at 3, Attachment A.

³¹ Informal Objection Opposition at 4; 47 CFR § 73.1620(a).

³² Informal Objection Opposition at 4.

³³ Informal Objection Opposition at 4.

³⁴ Informal Objection Opposition at 3.

³⁵ See 47 CFR § 1.106(c) and (d); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, paras. 2-3 (1964) (*WWIZ, Inc.*).

³⁶ 47 CFR § 1.106(c).

³⁷ *WWIZ, Inc.*, 37 FCC at 686, para. 2.

³⁸ *Canyon Area Residents for the Environment*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154, para. 7 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)).

³⁹ *Letter Decision* at 4.

before the application is acted upon.⁴⁰ Therefore, this argument is impermissibly raised on reconsideration.

Mandatory program testing. Kona Coast could have argued at the informal objection stage that the 2007 *Examples PN* required 1TV to begin program testing before filing the Upgrade Modification Application.⁴¹ This argument is not based on new facts or changed circumstances. Rather, in the Petition, Kona Coast disagrees with the Bureau's application of the non-adjacent channel upgrade example (Example 5) set out in the *Examples PN*.⁴² Example 5 states: "Station A may file a minor change application to substitute 277A for 221A. Upon commencement of program tests on 277A and filing of FCC Form 302-FM, Station A may immediately file FCC Form 301 "one-step" modification application to upgrade to 277C3." In the *Letter Decision*, the Bureau declined to interpret Example 5 as imposing a new requirement that an applicant must commence program testing before filing a follow-up upgrade modification. Rather, it considered the program test aspect of the fact pattern to be superfluous for the purpose of determining whether the Upgrade Modification Application was acceptable for filing.⁴³ We confirm this approach and note that it is in keeping with the general Commission policy that operation pursuant to program test authority is not mandatory.⁴⁴

De facto major change. In the *Letter Decision*, the Bureau considered and rejected Kona Coast's argument that the Channel Change and Upgrade Modification Applications, taken together, constituted a *de facto* major change subject to competing expressions of interest. Therefore, this argument is also impermissibly raised on reconsideration. As the Bureau explained, pursuant to the *Examples PN*, a non-adjacent channel upgrade—although defined as a major change in section 73.3573(a) of the rules—can be accomplished by filing two consecutive minor modification applications.⁴⁵ Therefore, the Bureau properly declined to consider untimely competing expressions of interest in Channel 243.

Abuse of process. Kona Coast's abuse of process argument could have been raised at an earlier stage of the proceeding and, in any case, is without merit. Abuse of process has been generally defined as "the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule."⁴⁶ In this case, Kona Coast has not demonstrated that the purpose of the *Examples PN* was subverted by 1TV's use

⁴⁰ See, e.g., *BVM Helping Hands*, Memorandum Opinion and Order, 29 FCC Rcd 6464, 6465, para. 4 (2014) (holding that the Bureau "properly declined to take adverse action based solely on an application's earlier acceptability, when subsequent events [i.e., a change in applicable law] resulted in an acceptable application at the time of processing"); *Hampton Roads Educational Telecommunications Association, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 14906 (2015) (accepting a curative amendment based on changed law and circumstances).

⁴¹ *Letter Decision* at 4 (citing *Examples PN*, 22 FCC Rcd at 6853, Example 5).

⁴² *Id.*

⁴³ *Letter Decision* at 4.

⁴⁴ See 47 CFR § 73.1620(a) ("Upon completion of construction of an [FM] station . . . program tests *may be* conducted in accordance with the following . . .") (emphasis added).

⁴⁵ *Letter Decision* at 4.

⁴⁶ See *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and other Participants in the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, First Report and Order, 4 FCC Rcd 4780, 4780, para. 2, n.3 (1989).

of the two-step non-adjacent channel upgrade process, which, as a matter of policy, limits mutually-exclusive applications to a one-day window.

Other stations. As Kona Coast acknowledges, its allegations regarding incorrect statements made by the principal of 1TV in connection with other stations do not relate to this proceeding.⁴⁷ In general, when evaluating applications, we do not consider a licensee's conduct at one station to be relevant its qualifications to hold another authorization.⁴⁸ Therefore, we do not consider these allegations here.

Technical deficiencies. The technical discrepancies newly raised by Kona Coast in the Petition and Petition Reply are all procedurally unacceptable, as they are based either on information contained within the Applications or were known or easily discoverable while the Applications were pending (as, for example, Kona Coast's photographs and allegations regarding antenna installation and bay spacing). Even if timely raised, none of the alleged technical discrepancies would have precluded grant of the Applications. First, the 0.01-kW ERP change was not only negligible but allowable as a single-step license modification under section 73.1690(c)(8). We routinely permit applicants to report any changes authorized under section 73.1690(c) using the same Form 302-FM used to cover an existing construction permit. Second, 1TV submits certifications from its engineer and a licensed surveyor to corroborate that the geographic coordinates submitted with the Upgrade Modification Application are correct. Kona Coast does not show that this data is incorrect or address the possibility that any discrepancy may be due to error in the KQMR application or simply variations in the technology and/or methodology used to obtain the coordinates. Therefore, we properly rely on the coordinates provided by 1TV. Third, a variance in transmitter power output, if not less than 90% nor more than 105% of the authorized power, is permitted under section 73.1560(b) and thus reportable in a license application. Without evidence to the contrary, we rely on 1TV's statement that any transmitter power variance resulting from the KIKO bay spacing is within these limitations.

Verification. Because we dismiss the Petition as procedurally unacceptable under section 1.106, we need not reach the issue of whether Kona Coast's failure to verify the Petition could potentially constitute an additional ground for dismissal under sections 1.52 and 1.106(i). However, we note that in the Petition Reply, Kona Coast mistakenly asserts that the verification requirement applies only to the photographs submitted with the Petition.⁴⁹ Therefore, we remind Kona Coast of the requirement that a petition for reconsideration filed by a party not represented by counsel must be signed and verified by the party.⁵⁰ Unsworn verifications or declarations (i.e., non-notarized verifications) can be accepted in lieu of sworn affidavits or declarations if they are substantially in the following form: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)."⁵¹ We caution Kona Coast that, depending on the totality of the circumstances, an unverified pleading may be dismissed.⁵²

⁴⁷ Petition at 8.

⁴⁸ See, e.g., *Policy Regarding Character Qualifications in Broadcast Licensing*, Memorandum Opinion and Order, 102 FCC 2d 1179 (1986).

⁴⁹ Petition Reply at 4.

⁵⁰ 47 CFR § 1.52.

⁵¹ 47 CFR § 1.16.

⁵² See *Lincoln, Osage Beach, Steelville & Warsaw, Missouri*, Memorandum Opinion and Order, 17 FCC Rcd 6119, 6122-25 paras. 11-17 (2002) (dismissing a petition for rulemaking for failure to meet the subscription and verification requirement of section 1.52).

Informal objection. Section 319(c) of the Communications Act of 1934, as amended,⁵³ imposes a stringent standard on challenges to license applications. So long as all the terms, conditions, and obligations set forth in the application and permit have been fully met, 1TV is entitled, as an applicant for a license to cover a construction permit, to a high degree of protection and a presumption that the public interest determination made during the underlying construction permit proceedings continues in effect unless circumstances have arisen that would make operation of the Station against the public interest.⁵⁴ When reviewing a license application, Bureau staff performs a brief review of the license application to confirm that the constructed facilities match the construction permit. Usually, no further determination of compliance with Commission rules and policies is required at the license application stage, since those determinations were made prior to grant of the construction permit.⁵⁵ As mentioned, we routinely permit applicants to report any changes authorized under section 73.1690(c) using the same Form 302-FM used to cover an existing construction permit.

In this case, we find that Kona Coast fails to demonstrate that 1TV did not meet the terms of the Upgrade Modification Application construction permit or that grant of the Upgrade License Application would be inconsistent with the public interest. Taking each argument in turn, we find as follows:

1. *Geographic coordinates.* To the extent that Kona Coast challenges the accuracy of the coordinates provided in the Upgrade Modification Application, this argument is untimely. At the licensing stage, we consider only whether the one-second variance between the Upgrade Construction Permit and any other application filed by a co-tenant of the tower provides evidence that 1TV constructed at a location other than that authorized in the construction permit. We conclude that it does not. Kona Coast does not demonstrate either that the coordinates provided by 1TV do not accurately identify the KIKO tower site or that 1TV did not construct at this site. In these circumstances, we rely on the certifications of both 1TV's engineer and licensed surveyor that the coordinates provided correctly reflect both the permitted and constructed location of the KIKO facilities.

2. *Program test authority.* Kona Coast accuses 1TV of operating prior to receiving program test authority in conjunction with the Upgrade License Application. However, it does not refute 1TV's statement that such operation complied with section 73.1620(a) because it operated KIKO under PTA at 50% authorized ERP. Therefore, we will not consider this argument further.

3. *Appurtenances.* Kona Coast claims that the Upgrade License Application fails to account for tower appurtenances located near the KIKO antenna—namely, an ice shield and the antenna of UHF digital TV translator station, K16FB-D, Globe, Arizona. In response, 1TV provides a declaration by the antenna manufacturer, Propagation Systems, Inc. (PSI), that it performed antenna pattern testing for the KIKO antenna in accordance with the Commission requirement that it account for all appurtenances, specifically, two transmission lines and “an 8-bay UHF slot-type antenna

⁵³ 47 U.S.C. § 319(c) (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest...”).

⁵⁴ See, e.g., *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

⁵⁵ *Amendments of Parts 73 And 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities without a Construction Permit*, Report and Order, 12 FCC Rcd 12371, 12375, para. 3 (1997).

mounted to the southeast tower face” (the K16FB-D antenna). The PSI statement addresses the concerns raised by Kona Coast and satisfies the requirements of section 73.316(c)(2) and (d).⁵⁶

4. *RF exposure measurements.* RF field strength measurements are typically required in a construction permit when it is not possible to determine compliance with the RF exposure guidelines of section 1.1310 based solely on the technical data provided in the construction permit application.⁵⁷ For this reason, the Upgrade Construction Permit included an RF exposure measurement condition. However, in the Upgrade License Application, 1TV provided detailed information regarding the combined RF level of the KIKO, KQMR, K16FB-D, and KDOS-LD antennas, using the Commission’s FM Model calculator. This information demonstrates compliance with the RF exposure guidelines. Therefore, no field strength tests are necessary.

5. *Abuse of process.* We find no merit to Kona Coast’s argument that operation of “very minimum Class C facilities,” while technically permissible, is an “abuse of the directional antenna rules under 73.316” and “a waste of a class C allotment.” It is well-established that the distance separation requirements of section 73.207 protect fully-spaced facilities to the same extent as a station operating at the hypothetical maximum ERP and HAAT for its class.⁵⁸ There is no requirement for a station to operate at its maximum class parameters. The Upgrade License Application is therefore in compliance with Commission allotment rules and policies and there is no evidence that grant of the application would undermine the purpose of those rules and policies.

For the reasons stated above, we conclude that 1TV has met the terms of the Upgrade Construction Permit and satisfied the technical criteria for a license application. Moreover, we find that grant of the Upgrade License Application would be consistent with the public interest. Therefore, we deny the Informal Objection and grant the Upgrade License Application.

Conclusion/Actions. IT IS ORDERED that the petition for reconsideration filed on May 9, 2018, by Kona Coast Radio, LLC, IS DISMISSED.

IT IS FURTHER ORDERED that the informal objection filed by Kona Coast Radio, LLC, on November 28, 2018, IS DENIED and the license application filed by 1TV.COM, Inc. on November 21, 2018, File No. BLH-20181121AAM, IS GRANTED.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

⁵⁶ We find that Kona Coast’s allegation that the KIKO antenna may have not been installed according to the manufacturer’s instructions to be inadequately substantiated. Therefore, for licensing purposes, we rely on PSI’s statement regarding antenna pattern testing.

⁵⁷ 47 CFR § 1.1310.

⁵⁸ 47 CFR § 73.207.