

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of	)	
	)	
FCC Seeks Comment Regarding Possible Revision	)	CB Docket No. BO 16-251
or Elimination of Rules Under The Regulatory	)	
Flexibility Act, 5 U.S.C. Section 610	)	
	)	

To: The Commission

**Comments of**  
**Lotus Communications Corp.**

Lotus Communications Corp. , a California corporation ("**Lotus**") and the sole shareholder of the licensees of digital LPTV stations KHLN-LD, Channel 43, Houston, Texas, Facility ID No. 57189 ("**KHLN**"), and KPHE-LD, Channel 16, Phoenix, Arizona, Facility ID No. 186602 (formerly Facility ID No. 30885)("KPHE"), respectfully submits these comments in the above-captioned proceeding, with respect to the Commission's review of the rule in 47 C.F.R. Section 74.785 to determine whether this rule should be continued without change, or should be amended or rescinded.<sup>1</sup> The aforementioned rule provides the general requirements for the pilot program mandated by Congress in the LPTV Pilot Project Digital Data Services Act (the "**DDSA**").<sup>2</sup> The Commission is proposing to review this rule based on the following factors: (a) the continued need for the rule; (b) the nature of complaints or comments received concerning the rule from the public; (c) the complexity of the rule; (d) the extent to which the rule overlaps, duplicates or conflicts with other federal rules and, to the extent feasible, with state and local governmental

---

<sup>1</sup> See *FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act*, 5 U.S.C. 610, public notice, DA 16-172 ("**PN**") (2016).

<sup>2</sup> 47 U.S.C. § 336(h)

rules; and, (e) the length of time since the rule has been evaluated to the degree to which technology, economic conditions or other factors have changed in the area affected by the rule. Lotus' LPTV stations, KHLN and KPHE, are both named in the DDSA as being eligible to participate in the pilot project and Lotus intends to exercise the eligibility rights associated with these station in the post Incentive Auction and TV-Repack era. Given the increasing demand for digital data services, there is every reason for the Commission to continue the rule without change.

### **Background**

The DDSA specifies twelve LPTV stations that are eligible to participate in the pilot project, which was created to demonstrate the feasibility of using low-power television stations to provide digital data services to unserved areas.<sup>3</sup> The DDSA defines permissible digital data services to include digitally based interactive broadcast service and wireless internet access. The DDSA allows for such portable and fixed services to be provided on a one-way or two-way basis on the LPTV channel. The DDSA also allows for LPTV digital data services to be delivered via multiple transmitters at multiple locations.

The Commission released an Order implementing the provisions of the LPTV Pilot project in April 2001.<sup>4</sup> Those provisions were revised in some respects on reconsideration in February 2002.<sup>5</sup> Lotus acquired KHLN and KPHE in 2004. During this time period the Commission was transitioning full-service television stations from analog to digital and as a result, many LPTV and TV translator stations were displaced. Although Lotus was learning

---

<sup>3</sup> The DDSA also directs the Commission to select a station and repeaters to provide service to communities in the Kenai Peninsula Borough and Matanuska Susitna Borough in Alaska.

<sup>4</sup> *Implementation of LPTV Digital Data Services Pilot Project*, FCC 01-137, Order, 16 FCC Rcd 9734 (2001).

<sup>5</sup> *Implementation of LPTV Digital Data Services Pilot Project*, FCC 02-40, Order on Reconsideration, 17 FCC Rcd 2988 (2002).

about the emerging technologies that its stations might employ to provide digital data services, it was not possible to implement such services during the digital television transition due to the high risk of displacement. Towards the end of the digital television transition, the threat of displacement was reduced to the point that in 2009 both KHLN and KPHE were transitioned early to digital-only operation. KPHE elected to make its digital companion channel the primary channel, hence its facility ID number was changed for 30885 to 186602, and KHLN was flash-cut on its analog channel. The threat of displacement was quickly renewed in 2010 with the announcement of the Incentive Auction and TV-Repack.<sup>6</sup> Lotus is presently looking at various options for implementing a digital data service in the post Incentive Auction and TV Repack era, including the option of sharing a channel with a primary status station in such a way that a standard definition stream for the primary station would be maintained and thus the concern over future displacement eliminated.<sup>7</sup>

### **Analysis**

The Commission is proposing to review the rule in 47 C.F.R. Section 74.785 to determine whether this rule should be continued without change, or should be amended or rescinded. It outlined the following five factors that it will use to make a determination.

1. The continued need for the rule. The rule needs to be continued for those eligible stations that wish to implement the DDSA. Further, the original purpose of the pilot

---

<sup>6</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket 12-268, Report and Order, 29 FCC Rcd. 6567 (2014).

<sup>7</sup> *Channel Sharing by Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, MB Docket No. 15-137, Report and Order, 32 FCC Rcd 2637(2017). "An LPTV or TV translator that shares a full power or Class A station's channel will obtain "quasi" primary interference protection for duration of the channel sharing arrangement by virtue of the fact that the full power or Class A station is a primary licensee."

project, demonstrating the feasibility of using low-power television stations to provide digital data services to unserved areas, is still relevant.

2. The nature of complaints or comments received concerning the rule from the public.  
Lotus is unaware of any such complaints or comments.
3. The complexity of the rule. The requirements for implementing the provisions in the DDSA adopted on reconsideration are not overly complex.
4. The extent to which the rule overlaps, duplicates or conflicts with other federal rules, including rules associated with state and local governments. The rule in question provides the general requirements for the pilot program mandated by Congress in the DDSA and does not overlap, duplicate or conflict with other federal or local governmental rules.
5. The length of time since the rule has been evaluated to the degree to which technology, economic conditions or other factors have changed in the area affected by the rule. All areas affected by the rule have improved such that the rule is more relevant today than when it was originally adopted. For example, there have been significant technological advancements in both fixed and portable devices since the rule was created over a decade ago. Moreover, the recently adopted rules for channel sharing now allow LPTV stations to share a full power or Class A station's channel, which effectively eliminates the risk of displacement for the duration of the channel sharing arrangement as a result of the primary status associated with the full-service or Class A station licensee.

## **Recommendation and Conclusion**

As a practical matter, the pilot project is still needed to demonstrate the feasibility of using low-power television stations to provide digital data services to unserved areas. For all the reasons stated above, Lotus respectfully request that the rule be continued without change.

Respectfully submitted,

**Lotus Communications Corp.**

Howard A. Kalmenson  
President  
May 3, 2017