

REQUEST FOR WAIVER

KJLA, LLC ("KJLA"), the licensee of Digital Full-Power Television Station KJLA(TV), Ventura, California (the "Station"), hereby requests that the Commission waive the recently adopted limitation on further processing of full power station modification applications,¹ as it applies to the above-referenced application filed by KJLA for authority to modify the Station's facilities. In support thereof, KJLA states as follows.

In the Limitations Notice, the Commission announced a limitation on the filing and processing not only of new, but previously submitted and pending, applications for modification of full power and Class A television facilities. The announced purpose was to enable the Commission to freeze the television band as it prepares to conduct an incentive auction and reorganize the broadcast television band, in order to make more spectrum available to mobile broadband users, in accord with legislation providing for the process.² In establishing the application processing limitation, the Media Bureau advised that it would consider, on a case-by-case basis, requests for waiver of the limitation "when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public...." Limitations Notice a p. 2. This is one such instance.

A waiver of the rules, to allow the processing of the instant application will enable KJLA to a secure action on its long-pending in File No. BPCDT-20080905AAC ("Application") to provide improved service to the public by the Station. Accordingly, the public interest would be well served by allowing the waiver owing to the unique circumstances that KJLA will present

¹ *Public Notice, Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate, DA 13-618, released April 5, 2013 ("Limitations Notice").*

² *Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156 (2012).*

herein. On the basis of the unique circumstances being presented herein and that the public interest is well-served by a waiver of the processing limitation policy, KJLA submits that it has overcome the high hurdle for waiver requests and is entitled to the waiver it is seeking. See *WAIT Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969), cert denied, 409 U.S. 1027 (1972).

The unique circumstances that KJLA relies on are as follows:

KJLA's Application Has Been Pending for Nearly Five Years. On September 5, 2008, now nearly five years ago, KJLA filed its Application. At that time, the concept of an incentive auction and band reorganization, let alone how they would impact on applications then being filed, were nothing more than rough outlines of future policies requiring legislative approval. Having waited this long period of time, in order to be able to provide better service for its viewers, KJLA should not be disadvantaged and its opponents benefited.

KJLA Should Not Be Denied An Opportunity By A Constantly Evolving Set of Rules. No one would disagree that the standards under full power applications are now being administered is far different from what was intended in 2008 when KJLA filed its application. KJLA has played by the rules and has taken not a single action at variance with them. It has followed the Commission rules and responded wherever called upon. After nearly five years of waiting, if there is a basis for receiving what it applied for, it should be given that opportunity. Unless the Commission grants the instant waiver, there may be an unintended and improper consequence of the application of these rules by the Commission by preventing a licensee from better serving the public, which has long been the policy of the Commission. A waiver of the processing limitations policy would allow the use of the limited, available broadcast spectrum to the maximum extent possible. It is clearly in the public interest.

KJLA also wishes to make note that there is precedent for the granting of the instant waiver. In an action the Media Bureau took, at nearly the same time as it issued the Limitations

Notice, the Bureau authorized a blanket waiver of its major change rules to permit certain applicants in Auction 83 to de-select a filing status they had selected a decade earlier and allow them to proceed in an auction process they would otherwise have been dismissed from.³ Just as the applicants in Auction 83 were given an opportunity to deselect and proceed, long-pending pending full power television applicants should be given an opportunity to proceed to secure the facilities they had long sought to receive and now face a new and unexpected impediment in receiving.

In the Translator Notice, the Media Bureau provided the following argument which is equally applicable to the instant matter:

Equitable considerations also strongly favor providing this relief. Most importantly, strict enforcement of the major change prohibition would be inconsistent with basic due process requirements....This waiver relief—to “give applicants for NCE stations one opportunity to reevaluate their long pending plans in the context of *full and complete information about how the licensing process will work*”---is identical to the relief which the Commission has provided repeatedly to essentially identically situated applicants. Thus, competing applicants could have reasonably anticipated that the Commission would afford these applicants an opportunity to participate in the upcoming auction. In particular, we note that the Commission has provided this relief to applicants with proposals that have been pending in mixed MX groups for up to fifteen years (footnotes omitted).

KJLA submits that the Translator Notice informs the Commission that long pending applicants should not be disadvantaged as the rules evolve over the pendency of their applications. Just as the Media Bureau acted to preserve the eligibility for certain, deserving Auction 83 applicants, the Media Bureau should enable full power and Class A applicants, who have faced impediments to the processing of their applications, the ability to proceed in the application process.

³ *Public Notice*, Media Bureau Announces April 8-April 17 Filing Window to Permit Amendment of Auction 83 Noncommercial Educational FM Translator Applications, DA 13-587, released April 2, 2013 (“Translator Notice”).

On the basis of the unique circumstances presented, involving a party that has long sought to improve its broadcast service and been stymied by factors beyond its control, and that the public interest is well-served by a waiver of the policy created in the Limitations Notice in order to permit KJLA to better serve its viewers through the modification of its license to provide a DTV service that it has long sought to implement. KJLA clearly has overcome the high hurdle for waiver requests and is entitled to the waiver it is seeking.

WHEREFORE, KJLA, LLC, the licensee of Station KJLA(TV), Ventura, California, respectfully requests that the Media Bureau waive the processing limitation as it applies to KJLA's Application for authority to modify the facilities of the Station.