

EXHIBIT 41 – APPLICATION FREEZE WAIVER REQUEST

Media General Broadcasting of South Carolina Holdings, Inc. (“Media General”), permittee of television station KIMT-DT, Mason City, Iowa (the “Station”), hereby requests waiver of the freeze on applications that propose a service area increase.¹ Tower consultants have informed Media General that the existing KIMT-TV tower cannot support the DTV facilities proposed in the Station’s existing construction permit.² Media General accordingly proposes in this instant application to construct the Station at a nearby tower site. This shift in location has a resulting shift of service area, which would increase the Station’s service area in the direction of the move. Accordingly, for these reasons beyond the Station’s control, Media General seeks waiver of the freeze on applications that propose increases in service area. The Commission indicated that it would consider such waiver requests “for technical or other reasons to maintain quality service to the public, such as when...unforeseen events...require relocation to a new tower site.”³ Media General submits that its waiver request meets this standard and would serve the public interest.

EXISTING TOWER INADEQUATE

On November 5, 2004, Media General submitted the Station’s Form 381 Pre-Election Certification⁴ in which it certified to operate post-transition facilities as specified in the Station’s DTV construction permit. That permit specified operation from the existing KIMT-TV tower at the maximum ERP (i.e., 1000 kW). Media General had conducted due diligence in determining whether the existing tower could support the proposed DTV facilities, and reasonably believed at that time that it could upgrade the tower and timely commence full-power DTV operations. A few weeks later, in a report dated November 24, 2004, Tower Engineering Corporation identified the tower upgrades necessary to conform with the industry standard in place at the time (i.e., ANSI/TIA/EIA-222-F).

In September 2005, Tower Engineering Corporation reevaluated the KIMT-TV tower in light of (and pursuant to) a newly adopted tower standard (ANSI/TIA/EIA-222-G) introduced the prior month. On or about October 1, 2005, Tower Engineering Corporation notified Media General that an upgrade of the KIMT-TV would be insufficient to meet the new tower standard and that the proposed DTV facilities accordingly could not be placed on the KIMT-TV tower.

¹ Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, Public Notice, DA 04-2446 (rel. Aug. 3, 2004) (“Public Notice”). The Public Notice stated that the Commission would not accept any “[t]elevision modification applications that would increase a station’s analog service area in channels 2-51 in one or more directions beyond the combined area resulting from the station’s parameters as defined in the following: (1) Commission authorizations (license and/or construction permit) and (2) applications on file with the Commission prior to release of this Public Notice.” Public Notice at 1.

² FCC File No. BMPCDT-20000501ACT.

³ Public Notice at 2.

⁴ See FCC File No. BCERCT-20041105ALM.

RELOCATION TO NEW TOWER

By October 2005, Media General's construction options were fairly limited. The only practical alternative allowing for relatively expeditious completion of the Station was placement on a nearby community tower that Iowa Public Television is developing. The site is approximately nine and a half miles northeast of the existing KIMT-TV tower. Because the Station's existing construction permit specified operation at the maximum allowable ERP of 1000 kW, Media General cannot further increase the Station's ERP to maintain coverage of the full service area population to which it certified in the November 2004 Form 381. Accordingly, the proposed site move necessarily will result in a small loss area southwest of the Station.

To minimize this loss and to serve as much of the certified population as possible, Media General is proposing to maintain operation at 1000 kW. As the contour map in Exhibit 44 shows,⁵ this shifts the Station's entire service area slightly to the northeast, thereby creating a service area increase (in addition to the aforementioned loss area). Media General explored alternative arrangements that would avoid this service area increase, but those alternatives all would create additional losses in the service area to which Media General had certified. Accordingly, to minimize losses to the certified service area population, Media General is seeking waiver of the freeze on expansion applications.

DELAY IN OBTAINING INTERFERENCE CONSENT

Upon developing this plan after learning of the tower problems in October 2005, Media General determined that operation as proposed was predicted to cause impermissible interference to WKBT-DT (La Crosse, Wisconsin). Accordingly, Media General sought the consent of the WKBT-DT licensee to the excessive predicted interference. After lengthy negotiations, the WKBT-DT licensee finally consented earlier this week,⁶ clearing the way for submission of this application. As such, Media General has been unable to submit this construction permit application until now.

WAIVER JUSTIFICATION

Media General believes grant of the requested waiver is in the public interest as it would enable the Station to serve as much of the population certified in the Form 381 as possible. A subsequently introduced tower standard essentially has rendered the existing KIMT-TV tower unsuitable for supporting the facilities authorized in the Station's construction permit and certified in its pre-election form. This has forced Media General to relocate the proposed DTV facilities to a new site, which in turn has increased the Station's proposed service area. Alternative arrangement that would have avoided the service area increase instead would create additional losses the certified service area.

⁵ Figure 2.

⁶ See Exhibit 42.

The Commission, of course, may waive any provision of its rules or orders if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁷ The Court of Appeals for the D.C. Circuit has stated that a waiver may permit a more rigorous adherence to an effective regulation by allowing the agency to take into account considerations of hardship, equity, or more effective implementation of overall policy on an individualized basis.⁸ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁹ Under the WAIT Radio doctrine, the Commission is bound to consider waiver requests.¹⁰

Grant of the instant waiver request would not undermine the purposes of the freeze, as the vast majority of stations already have elected their post-transition channel. Additionally, the only station predicted to receive impermissible interference from the proposed operation has consented to that interference. If the waiver is not granted, the purposes of the DTV transition would be frustrated and Media General would be forced to reduce its certified service area further than already proposed here. Accordingly, Media General believes this request squarely fits within the Commission's articulated standard for granting waivers "to maintain quality service to the public, such as when...unforeseen events...require relocation to a new tower site."¹¹ As such, Media General respectfully requests that the Commission grant this waiver request.

⁷ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Northeast Cellular") citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) ("WAIT Radio").

⁸ WAIT Radio, 418 F.2d at 1157.

⁹ Northeast Cellular, 897 F. 2d at 1166.

¹⁰ WAIT Radio, 418 F.2d at 1159.

¹¹ Public Notice at 2.