

AGM California, Inc.
Form 349 Application
FM Translator K251BY
***Mattoon* Waiver Request**

Exhibit 1

With this application (the “Application”), AGM California, Inc. (“AGM”) is requesting a construction permit for a one-step move of translator K251BY (the “Station”) from Wasco, CA to Bakersfield, CA as a fill-in translator for station KGEO(AM) (“KGEO”) in Bakersfield, CA. A waiver of Section 74.1233(a)(1) of the Commission’s rules is requested because the proposed relocation would otherwise constitute a major change. *See John F. Garziglia*, 26 FCC Rcd 12685 (MB 2011) (“*Mattoon*”).

As a starting point, it should be emphasized that this Application was necessitated by circumstances beyond AGM’s control. Shortly after it acquired the Station, AGM was required to change the Station’s channels in order to avoid creating and receiving interference from a full-powered station. *See* File No. BPFT-20150209ACO. However, AGM could not secure the use of a permanent tower facility at the newly-licensed site, and, as a result, AGM was required to take the Station off the air on July 17, 2015. To resolve the tower issue and restore the Station to on-air service, AGM seeks to move the Station’s transmitter site to the KGEO transmitter site (which is owned by AGM) and pair the Station with KGEO. Grant of this waiver will therefore serve the public interest by enabling the Station to resume on-air operation. However, grant of the Application requires a waiver of Section 74.1233(a)(1) of the Commission’s rules under the *Mattoon* standard.

Grant of a *Mattoon* waiver requires the applicant’s satisfaction of four conditions: (1) the translator modification applicant does not have a history of filing serial minor modification applications; (2) the proposed site is mutually exclusive with the licensed facility; (3) the proposed move is not in an LPFM spectrum-limited market; and (4) the translator would rebroadcast an AM station as an AM fill-in translator. *See Mattoon*; *Russell M. Perry*, 27 FCC Rcd 5955 (2012) (“*Perry*”). As explained below, each of these conditions is satisfied here. Accordingly, grant of a *Mattoon* waiver would be fully consistent with the Commission’s established waiver policy.

First, AGM does not have a history of filing serial minor modification applications. AGM has previously filed only one minor modification application for the Station, and that modification application was totally unrelated to the *Mattoon* waiver being requested by this Application. The earlier application was filed to request a channel change for the Station from Channel 295 to Channel 251 in order to avoid interference to and from KJUG-FM, Tulare, CA 294B. *See* File No. BPFT-20150209ACO. Stated another way, AGM’s prior modification application was not an intermediate step designed to facilitate AGM’s ability to seek a *Mattoon* waiver and is thus distinguishable from other situations where the Commission concluded that an intermediate modification application was designed “to manipulate the Commission’s modification and waiver policies” *See, e.g., Harry S. Martin*, 29 FCC Rcd 12718, 12720 (2014) (denying *Mattoon* waiver request where the prior modification application was designed to satisfy the mutual exclusivity condition of the *Mattoon* waiver criteria).

Second, the Station's proposed transmitter site is mutually exclusive with the Station's licensed facility. As demonstrated by the contour map in Exhibit 13 of the Application, the Station's proposed 40 dBu F50,10 contour overlaps the Station's existing licensed 60 dBu F50,50 contour. See, e.g., *Mattoon*, 26 FCC Rcd at 12688; *Perry*, 27 FCC Rcd at 5958.

Third, the proposed community of license for the Station is not in a spectrum limited market. The Commission has identified Bakersfield, CA as a "spectrum available" market because that market has 17 channels at 27 locations for LPFM use. See *Creation of a Low Power Radio Service*, 27 FCC Rcd 3364, 3400 App. A (2012). Consequently, a grant of the Application would not foreclose future licensing opportunities in the LPFM service. See *Perry*, 27 FCC Rcd at 5959.

Lastly, AGM proposes to use the Station to rebroadcast KGEO as an AM fill-in translator. Approving AGM's waiver request is therefore consistent with the Commission's efforts to revitalize the AM service and to make the most efficient use of limited spectrum. See *Educational Media Foundation*, 29 FCC Rcd 15051 (2014) (grant of a *Mattoon* waiver serves the public interest goal in AM revitalization); *Perry*, 27 FCC Rcd at 5959 (same).

For the foregoing reasons, AGM respectfully requests a waiver of Section 74.1233(a)(1) of the Commission's rules and a grant of the Application.