

Exhibit 1 - - Request for Waivers

The applicant, KM LPTV of Chicago-13, L.L.C. (“KM”), is the licensee of Class A television station WOCK-CA, Channel 13, Chicago, Illinois (Facility ID No. 35092, “WOCK”). WOCK is currently authorized to operate with 3 kilowatts effective radiated power (“ERP”) using a directional antenna mounted on top of the John Hancock Building in downtown Chicago. By this minor change application (the “Application”), KM proposes to relocate its antenna from the East Tower to the West Tower on top of the John Hancock Building, slightly modify its directional antenna pattern, and increase the beam tilt of its antenna downward while increasing power at that angle to provide better service within its protected contour, but continuing to operate with its power limited to 3 kilowatts ERP toward the radio horizon.

The slight change in the directional antenna pattern necessary to permit the increase in beam tilt and power in the downward angle and still provide the interference protection required to other stations results in a *de minimis* change in WOCK’s protected contour, such that WOCK would serve some areas not currently within WOCK’s protected contour. Therefore, KM respectfully requests a waiver of the Commission’s freeze on Class A minor change applications “that would serve any area that is not already served by that Class A station’s authorized facilities” (the “Class A Change Freeze”),¹ on the grounds set forth in this waiver request. In addition, since the power proposed in the Application would exceed the maximum peak ERP that Class A stations are permitted under Section 73.6007 of the Commission’s rules, 47 C.F.R. § 73.6007, at the downward angle proposed in the Application (but not towards the radio horizon), KM also requests waiver of the maximum peak ERP provisions of Section 73.6007 (which incorporates by reference the same power limits imposed on Low Power Television (“LPTV”) stations by Section 74.735 of the Commission’s rules, 47 C.F.R. § 74.735).

The purpose of the proposed minor changes in WOCK is to allow WOCK to better serve the Hispanic population within its service area. WOCK currently broadcasts the Spanish-language programming of the “TV Azteca” network distributed by Azteca International Corporation (“TV Azteca”), under an agreement with a third party. As a TV Azteca affiliate, WOCK competes directly with as many as four other commercial full power television stations in the Chicago, Illinois Designated Market Area (“DMA”) that broadcast the programming of competing Spanish-language networks (including the Univision, Telefutera and Telemundo networks) over-the-air to the growing Hispanic population in the market; in addition, WOCK must compete with other Spanish-language programming aired by direct broadcast satellite (“DBS”) providers and cable television system operators. However, in doing so WOCK, as a Class A television station, is at a distinct competitive disadvantage *vis-a-vis* these other full power television stations in the market that air Hispanic programming, since (i) Class A stations are permitted much less power than full power television stations, greatly limiting their off-air service areas, and (ii) Class A stations are not entitled to mandatory carriage of their stations on cable television systems in their DMA, as are full power television stations. KM also has found that many potential Hispanic viewers may have to rely on reception of the over-the-air broadcast signals, while often residing in urban areas with tall buildings that limit reception.

¹ See Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03-15, Report and Order, FCC 04-192 at ¶ 68 (released September 7, 2004)(the “2nd DTV Review Order”).

Therefore, the purpose of KM's proposal to increase the downward beam tilt of WOCK's antenna and increase power at that downward angle, is to improve the ability of its targeted Hispanic audience to receive WOCK and its TV Azteca programming off-the-air, thereby serving the public interest by improving the over-the-air Spanish-language programming choices of the rapidly growing Hispanic population in the Chicago DMA, without causing any new interference to any other full power television station entitled to protection, which is the purpose of the Class A Change Freeze and the maximum ERP limit on Class A stations. Since grant of the requested waivers and this Application would serve the public interest and would not be inconsistent with the underlying purposes of the rules and policies being waived, KM respectfully requests that the Commission grant its waiver requests.

Criteria for Waiver Requests. The Commission may waive any provision of its rules "if good cause therefor is shown." See 47 C.F.R. § 1.3. For broadcast applications such as this, "[r]equests for waiver shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof." See 47 C.F.R. § 73.3566. More generally, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest"; in addition, "waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." See Northeast Cellular Telephone Co. v. F.C.C., 897 F.2d 1164, ___, 67 RR 2d 761 (D.C. Cir. 1990) ("Northeast Cellular"), citing WAIT Radio v. F.C.C., 418 F.2d 1153, 1159, 16 RR 2d 2107 (D.C. Cir. 1969) ("WAIT Radio").

Waiver of the Class A Change Freeze. The purpose of the Class A Change Freeze is to provide a "stable database" during the digital television ("DTV") channel election process. See 2nd DTV Review Order at ¶ 68. However, the freeze imposed is not absolute, and the Commission expressly recognized certain exceptions and bases for waivers of the freeze, in recognition that a strict and rigid application of the freeze would not serve the public interest; for example, the Commission will continue to process certain rule making proposals, and will allow change applications that would help resolve international coordination issues. Id. The Commission also expressly stated that "the Media Bureau will consider, on a case-by-case basis, requests for waiver of the freeze when the modification application is necessary **or otherwise in the public interest** for technical or other reasons". Id. at ¶ 69 (emphasis added).

In this case, KM's request for waiver of the freeze is necessary for technical reasons, to permit the improvement of reception of WOCK within its current service area, and to permit better service to its targeted viewers in the Hispanic population within the Chicago DMA. KM notes that the slight change proposed in the directional antenna pattern is *de minimis*, involving only a slight rotation of the pattern, and that this change in the pattern is necessary to continue the station's protection of another station. In addition, KM notes that the underlying purpose of the rule would not be disserved, since the *de minimis* change proposed in the Application would not materially alter the Commission's engineering database, nor adversely affect the DTV

channel election choices that may be made by any other potentially affected station.² KM has also demonstrated that the proposed change would serve the public interest, by improving the Spanish-language programming choices available to Hispanic viewers in the Chicago DMA. As a result, the requested waiver of the Class A Change Freeze satisfies the requirements for a waiver on a case-by-case basis established in the 2nd DTV Review Order, as well as the general waiver criteria established by WAIT Radio and other Commission precedent.

Waiver of the Maximum ERP Limits. The Commission has granted waiver of the maximum ERP limit imposed on Class A stations by Section 73.6007, including with respect to a competing Class A station in the Chicago DMA.³ Although the Commission did not issue a written decision in granting that prior waiver, to “articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation” as required by precedent, see Northeast Cellular at ____, the basis for that prior waiver of Section 73.6007 may be ascertained from the WFBT Waiver Request. In summary, the basis for the waiver of Section 73.6007 granted in response to the WFBT Waiver Request were: that (i) no interference to other stations entitled to interference protection; (ii) the power increase would allow an increase in the station’s service coverage area; (iii) the station provided programming serving ethnic and minority populations; (iv) the ERP of the station toward the radio horizon did not exceed the maximum ERP imposed by Section 73.6007; and (v) grant of the waiver would facilitate resolution of a private contractual dispute (despite the fact that the Commission has a long-standing policy of not involving itself in private contractual matters, see, e.g., Telemundo Communications Group, 17 FCC Rcd 6958, 26 CR 526 at ¶ 18 (2002)), and would some how foster DTV implementation (despite the fact that the Class A statute and the Commission’s rules already require Class A stations to protect DTV stations, applications and allotments). See WFBT Waiver Request, *passim*.

² To this effect, KM would accept a condition on the grant of its Application that it would modify WOCK’s facilities in the future to the extent that may be necessary to protect the DTV facilities of any full power television station in the same or an equivalent manner as may be required of WOCK’s currently licensed technical parameters (File No. BLTVA-20021125AAU).

³ See Application of Weigel Broadcasting Co. (now Channel 23 Limited Partnership, but hereinafter “Weigel”) for a minor change in the facilities of Class A television station WFBT-CA (now WWME-CA), Chicago, Illinois (Facility ID No. 71425, hereinafter “WFBT”), File No. BPTTA-20030617AAJ, granted October 17, 2003 (the “WFBT Application”). The WFBT Application included a “Petition for Acceptance and Conditional Grant of Minor Change Application to Allow Greater Distribution of Minority and Ethnic Programming Through Interference-Free and Preclusion-Free Waiver of 150 kw ERP Limit”, which was attached to the WFBT Application as Attachment 4 (the “WFBT Waiver Request”), and which was granted with the WFBT Application (without any written decision). A petition for reconsideration or clarification of the grant of the WFBT Application and WFBT Waiver filed by KM remains pending (the “KM Petition”); however, a Commission grant of this waiver request would provide the necessary clarification as to make the KM Petition moot, and would permit KM to request dismissal of the KM Petition.

KM's request for waiver of Section 73.6007 meets all of these criteria which were the asserted basis of the Commission's grant of the WFBT Waiver Request, at least to the extent that such factors are of matters which the Commission considers (i.e., KM and WOCK have not involved themselves in any private contractual dispute to be resolved by grant of the waiver), and as such KM's waiver request must be granted to avoid the "discriminatory application" of the waiver process precluded by Northeast Cellular, and in addition to ensure the similar treatment of similarly situated applicants, as the Commission is required to do. See Melody Music, 345 F.2d 730, 732 (D.C. Cir. 1965). Specifically, minor change in WOCK proposed by KM's Application demonstrates the factors considered in the Commission's grant of the WFBT Waiver Request, as follows: (i) no interference to other stations entitled to interference protection; see Application, Engineering Exhibit attached as Exhibit 4 ("Engineering Exhibit") at 3-6; (ii) the power increase would allow an increase in the station's service coverage area, of about 8% by population or households and 13% by area (although some of that area appears to be over water), see Application, Engineering Exhibit at 2 and Figure 2; (iii) the station provides Spanish-language programming serving the Hispanic minority population in the Chicago DMA; (iv) the ERP proposed in the Application would not exceed the maximum ERP imposed by Section 73.6007 toward the radio horizon, id. at 1 and 5; and (v) grant of the waiver may not facilitate resolution of a private contractual dispute *per se*, but as noted above the Commission has a long-standing policy of not involving itself in private contractual matters, see, e.g., Telemundo at ¶ 18 (and similar to a private contractual dispute, grant of the waiver would permit dismissal of the KM Petition, see *infra* at n.3), and the proposed WOCK facilities would continue protect DTV stations, applications and allotments. See Application, Engineering Exhibit at 3-6.

Last, KM notes that the WFBT Waiver Request and WFBT Application were granted with certain special conditions on the construction permit; KM agrees to accept the same conditions for grant of its Application. Specifically, KM would accept the conditions that (i) no impermissible electromagnetic interference under the Commission's rules and policies may be caused to the operation of any authorized or operating analog or digital full service television station, Class A television station, LPTV station, television translator station or television booster station; and (ii) the proposed operation in excess of the 3 kilowatt maximum ERP permitted by Section 73.6007 of the Commission's rules shall be "cancelable" [*sic*] by the Commission upon 30 days notice in order to authorize operation of any analog or digital full service television broadcast station, Class A television station, LPTV station, television translator station or television booster station which, without waiver of any FCC rule, could not otherwise be authorized to provide new or additional service solely by reason of WOCK's operation in excess of the 3 kilowatt maximum ERP. See Construction Permit BPTTA-20030617AAJ.

Since the public interest would be served by the grant of the Application and the waiver of Section 73.6007 requested herein, for the same public interest reasons articulated herein with respect to the request for waiver of the Class A Change Freeze, and since KM has demonstrated the existence of all of the factors on which the Commission has found "special circumstances" sufficient for grant of a waiver of Section 73.6007 in at least one other instance, the Commission must grant the Application and the request for waiver of Section 73.6007 requested by KM herein.