

## Request for Waiver

WTVD Television, LLC (“WTVD”), licensee of commercial television station WTVD(TV), Durham, North Carolina (the “Station”)<sup>1</sup>, respectfully requests a waiver of Sections 73.622(f)(5) and 73.622(f)(7)(ii) of the rules of the Federal Communications Commission (“FCC” or “Commission”).<sup>2</sup> Grant of such waivers will permit the Station to increase its effective radiated power (“ERP”) from 20.7 kW to 45 kilowatts (“kW”). More specifically, the instant waiver request would enable the Station to operate its post-transition DTV facilities with 45 kW ERP at 615 meters (“m”) height above average terrain (“HAAT”) (“Proposed Facility”). With the Proposed Facility, the Station anticipates that it will be able to restore over-the-air DTV service to many of its former analog viewers who lost the Station’s signal after it permanently transitioned to all-digital broadcasting on its post-transition channel 11 on June 12, 2009. Accordingly, grant of the instant waiver request and construction permit application is in the public interest.

### I. BACKGROUND

WTVD Facilities. The Station has served the Raleigh-Durham, North Carolina designated market area (“Durham DMA”) on channel 11 since September 2, 1954. The Station was an early adopter of DTV technology, commencing operation with a full-power DTV facility on channel 52, its pre-transition channel, in November 1999.<sup>3</sup> The initial channel 52 allotment was out of core and, therefore, WTVD was not permitted to remain on its initial allotment. The Station elected and was granted authority by the FCC to operate its post-transition DTV facilities on channel 11, its former analog channel. Specifically, pursuant to Appendix B of the DTV Table of Allotments, the FCC allotted to the Station a DTV facility on channel 11 with 19.2 kW ERP at 607 m HAAT (“Appendix B Allotment”).<sup>4</sup> Because the Appendix B Allotment for the station’s digital channel 11 operation specified a lower HAAT (607 m) than the Station’s analog channel 11 operation (615 m), the Station requested and was granted a construction permit to operate its antenna at 615 m (the same HAAT as its channel 11 analog facilities).<sup>5</sup> On September 25, 2008, at the Station’s request, the Station’s construction permit was modified to authorize construction of WTVD’s post-transition DTV facilities with HAAT of 615 m with an increased ERP of 20.7 kW.<sup>6</sup> The Station commenced operations of the WTVD CP Facility on June 12, 2009 and has filed a license application to cover this facility (“WTVD DTV Facility”).<sup>7</sup>

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<sup>1</sup> WTVD filed a license application for the Station’s post-transition digital television (“DTV”) facilities on June 12, 2009. FCC File No. BLCDDT-20090612ACW. This application remains pending.

<sup>2</sup> 47 C.F.R. §§ 73.622(f)(5) and 73.622(f)(7)(ii).

<sup>3</sup> FCC File No. BLCDDT-19991117ABU.

<sup>4</sup> See Appendix B attached to Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eight Report and Order*, MB Docket 87-268, FCC 08-72 (Mar. 6, 2008).

<sup>5</sup> FCC File No. BPCDDT-20080317AIJ.

<sup>6</sup> FCC File No. BMPCDDT-20080822AAF.

<sup>7</sup> FCC File No. BLCDDT-20090612ACW.

The WTVD DTV Facility, which was predicted to serve 2,839,454 persons after consideration of losses from terrain and interference, specifies the largest facility the Station could operate without causing impermissible interference to any other DTV station in violation of Section 73.616(e) of the FCC's rules. However, following its transition to all-digital broadcasts on June 12, 2009, WTVD promptly learned that many of the Station's former over-the-air-analog viewers no longer can receive the Station's signal from the WTVD DTV Facility.<sup>8</sup> Specifically, WTVD received many calls from viewers who were able to receive WTVD on analog channel 11 prior to the transition to DTV on June 12, 2009, but could no longer receive the WTVD signal on channel 11 after the transition. Thus, at the time of the transition, such viewers no longer had access to ABC network or locally-produced programming (including news, emergency information, and other public affairs programming) received prior to the DTV transition.<sup>9</sup> WTVD applauds the FCC not only for its recognition of the unique problems faced by the Station and other VHF stations, but also for its prompt attention to working with affected stations to find a solution to the unique signal reception issues faced by stations such as the Station.<sup>10</sup> In this regard, WTVD urges grant of the instant application and request for waivers to enable it to serve its former analog viewers on channel 11.

Interference Agreements. With the exception of stations WNCT-TV, WVPT-DT, WTVI-TV, and WCTI-TV, the Station's proposed 45 kW power increase meets the requirements of Section 73.616(a) and all applicable FCC rules regarding interference. WTVD has entered into separate interference acceptance agreements with the four stations with which WTVD's Proposed Facility is predicted to cause additional interference beyond the Commission's interference limit of 0.5%. Specifically, station WNCT-TV, Greenville, North Carolina, licensed to Media General Communications Holdings, LLC ("Media General");<sup>11</sup> station WVPT-DT, Staunton, Virginia, licensed to

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<sup>8</sup> See Brooke Cain, "Digital TV gets gripes from some: Over-the-Air Signals Prove Temperamental," THE NEWS & OBSERVER, June 18, 2009.

<sup>9</sup> The Station currently broadcasts over 30 hours of original local news and public affairs programming per week. Additionally, the Station is the only station in the market to have an organized minority board that gives the station guidance and advise on issues regarding the minority community. Further, the Station actively provides opportunities for elected representatives to communicate with viewers by frequently hosting debates and candidate forums. In addition, the Station airs "Heart of Carolina Perspectives," which provides a half-hour look at community leaders, issues and events that reflect the vast diversity of the viewing area. See Broadcast Localism, *Comments of The Walt Disney Company*, MB Docket 04-233, DA 01-1264 (filed Apr. 28, 2008) (detailing the Station's extensive efforts to serve its local community); see also Broadcast Localism, *Comments of The Walt Disney Company*, MB Docket 04-233, DA 01-1264 (filed Nov. 1, 2004) (same). The Station also broadcasts over 300 public service announcements per month.

<sup>10</sup> See Brooke Cain, Conversion Sticks TV Stations with Low Power and Poor Reception," THE NEWS & OBSERVER, June 16, 2009 (noting that the FCC is working with the Station to explore its options for restoring service to the Station's former analog viewers and that the FCC visited the Durham DMA following the DTV transition to conduct field testing); see also John Eggerton, "ABC, FCC Working on DTV Reception Issues," BROADCASTING & CABLE, June 14, 2009 (noting that the FCC had spoken with affected stations and "is trying to figure out how to 'adjust the technical parameters of these stations to improve service in the cities'").

<sup>11</sup> See Negotiated Conflict Resolution Agreement entered into on September 18, 2009, by and between Media General and WTVD (attached hereto as Attachment A – Interference Agreements).

Shenandoah Valley Educational Television Corporation (“SVETC”);<sup>12</sup> station WTVI-TV, Charlotte, North Carolina, licensed to Charlotte-Mecklenburg Public Broadcasting Authority (“CMPBA”);<sup>13</sup> and WCTI-TV, New Bern, North Carolina, licensed to North Carolina License Holdings, Inc. (“NC Holdings”),<sup>14</sup> agreed to accept predicted additional interference of 2.38%, 2.49%<sup>15</sup> 1.98%,<sup>16</sup> and 2.35%,<sup>17</sup> respectively.

## II. REQUEST FOR WAIVER

Section 73.622(f)(7)(ii) of the FCC’s rules provides that the maximum permissible ERP for a Zone II facility on channels 7-13 with an antenna HAAT above 610 m is determined using a mathematical formula (“ERP v. HAAT Limit”).<sup>18</sup> Applying this formula to WTVD, the maximum ERP standard for WTVD is 29.55 kW (i.e., 14.706 dBk). Thus, the 45 kW ERP proposed by the Station is greater than the power obtained when calculated pursuant to Section 73.622(f)(7)(ii) of the Commission’s rules. Section 73.622(f)(5) of the Commission’s rules prohibits stations from increasing their ERP beyond “that needed to provide the same geographic coverage area as the largest station within their market. (“Largest Facility Limit”).<sup>19</sup> Under the FCC’s rules, the Proposed Facility likely will be defined as the largest station in the Durham DMA. However, given that the ERP of the Proposed Facility is necessary to serve WTVD’s former analog viewers, over-the-air real-life experience has shown that the underlying premise of the ERP v. HAAT Limit and the Largest Facility Limit is not served by application of either rule to WTVD in the post-transition world. Indeed, it contravenes the public interest to limit WTVD’s ERP based on these rules (and thereby preclude it from serving its former analog viewers with an over-the-air DTV signal). Accordingly, WTVD respectfully requests a waiver of both the ERP v. HAAT Limit and the Largest Facility Limit as applied to the Proposed Facility. Such a waiver will permit WTVD to operate a facility on channel 11 that will enable the Station to restore over-the-air digital service to the Station’s former analog viewers.

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<sup>12</sup> See Interference Acceptance Agreement entered into on September 17, 2009, by and between SVETC and WTVD (attached hereto as Attachment A- Interference Agreements).

<sup>13</sup> See Negotiated Conflict Resolution Agreement entered into on September 10, 2009, by and between CMPBA and WTVD (attached hereto as Attachment A- Interference Agreements).

<sup>14</sup> See Interference Acceptance Agreement entered into on September 18, 2009, by and before NC Holdings and WTVD (attached hereto as Attachment A-Interference Agreements).

<sup>15</sup> WVPT-DT agreed to accept interference to both its licensed post-transition facility (FCC File No. BLEDT-20021220ADX) (2.49% predicted interference) and its modified post-transition facility (FCC File Nos. BDSTA-20090817ACM and BPEDT-20081022ABK) (2.41% predicted interference).

<sup>16</sup> WTVI-TV agreed to accept additional interference to both its post-transition facility (FCC File No. BMLDT-20030428AAT) (1.98% predicted interference) and its outstanding construction permit (FCC File No. BPEDT-20080620ALW) (1.87% predicted interference).

<sup>17</sup> WCTI agreed to accept interference to both its authorized post-transition DTV facility (FCC File No. BLCDDT-20090622ADU) (2.26% predicted interference) and pending request for special temporary operating facilities (FCC File No. BDSTA-200906294ACQ) (2.36% predicted interference).

<sup>18</sup> 47 C.F.R. § 73.622(f)(7)(ii).

<sup>19</sup> 47 C.F.R. § 73.622(f)(5).

The Commission may grant a waiver of its rules for good cause shown.<sup>20</sup> Specifically, the Commission has discretion to waive any rule where “particular facts would make strict compliance with the rule inconsistent with the public interest” and “special circumstances warrant a deviation from the general rule.”<sup>21</sup> In evaluating a request for waiver, the Commission should “take into account considerations of hardship, equity, or more effective implementation of overall policy.”<sup>22</sup> In addition, the Commission should consider whether “application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”<sup>23</sup>

Grant of the instant request is in the public interest as it furthers the Commission’s long-standing objective of ensuring that all of a station’s former analog viewers continue to receive over-the-air television service following the DTV transition.<sup>24</sup> Moreover, grant of the instant request will enable WTVD to avoid disenfranchising many of its former over-the-air analog viewers who previously had received – but, at the time of the transition, could not receive – ABC network or locally-produced programming from the Station.<sup>25</sup> Indeed, as the Commission is well-aware, television stations operating DTV facilities on VHF channels, such as channel 11, face unique reception problems, particularly indoor reception.<sup>26</sup> In fact, it is well-established that the maximum ERP levels allotted by the FCC to television stations operating on VHF channels are insufficient to reach certain analog viewers who rely on indoor antennas for reception of DTV service.<sup>27</sup> As a result, in the aftermath of the DTV transition on June 12, the Station received a significant number of telephone calls from its former analog viewers in the Durham area, with many viewers reporting signal reception issues.<sup>28</sup> Many of the Station’s former analog viewers report not being able to receive the Station’s signal even after trying all the FCC’s recommended rescanning techniques.<sup>29</sup> Thus, it has become abundantly clear that the Station’s current ERP simply does not enable the Station to serve its former analog viewers over-the-air on channel 11. FCC approval of the instant application for the Proposed Facility and request for waiver of the ERP v. HAAT Limit and the Largest Facility Limit, however, will enable the Station to increase the strength of

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<sup>20</sup> 47 C.F.R. § 1.3.

<sup>21</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>22</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>23</sup> 47 C.F.R. § 1.925(b)(3).

<sup>24</sup> Advanced Television Systems and Their Impact on Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, FCC 97-115, ¶ 29 (Apr. 21, 1997).

<sup>25</sup> See notes 8, 9, and 10, *supra*.

<sup>26</sup> See, e.g. Doug Lung, “Solving VHF DTV Reception Problems,” TV TECHNOLOGY, April 23, 2009, available at <http://www.tvtechnology.com/article/79862>.

<sup>27</sup> *Id.*

<sup>28</sup> See Michael Futch, “Digital Switch Zaps Reach of WTVD,” FAYOBSERVER, June 16, 2009, available at <http://www.fayobserver.com/Articles/2009/06/15/909646>.

<sup>29</sup> See comments posted by the Station’s former analog viewers at John Eggerton, “FCC Spokesman: VHF Issues Solvable,” MULTICHANNEL NEWS, June 17, 2009, available at [http://www.multichannel.com/article/294830-FCC\\_Spokesman\\_VHF\\_Issues\\_Solvable.php](http://www.multichannel.com/article/294830-FCC_Spokesman_VHF_Issues_Solvable.php) (commenting that “[i]n Cary, North Carolina, ABC 11 came in fine when they were on UHF before June 12. Then it vanished, even after many attempts at rescanning”).

its signal within its existing analog service area and will minimize the loss of ABC network and WTVD-produced programming to viewers who currently rely on over-the-air reception from digital receivers with indoor antennas to receive the Station's digital signal.<sup>30</sup> Accordingly, grant of the instant request for waiver is in the public interest.

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For the reasons, set forth herein, WTVD respectfully requests that the FCC grant the instant application and request for waiver of Sections 73.622(f)(5) and 73.622(f)(7)(ii) of the FCC's rules to enable the Station to construct and operate the Proposed Facility in order to restore service to its former over-the-air analog viewers.

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<sup>30</sup> See note 8, 9, and 10 *supra*.