

Request for Waiver

Ace Television, Inc. ("Ace"), the licensee of WACY-TV, Appleton, Wisconsin, hereby requests a waiver of the Commission's current freeze on the filing of certain DTV applications in order to permit WACY-DT to use a combined antenna with co-located station WGBA-DT, Green Bay, Wisconsin. As detailed below, the instant application seeks a slight modification of WACY-DT's current DTV construction permit in order to permit the station to diplex its signal with the signal of WGBA-DT, using an existing antenna currently employed by WGBA-DT. WACY-DT's current construction permit authorizes operations from the same height and the same location, but with a different directional antenna pattern than that which would be generated by the existing antenna. Accordingly, as detailed in the attached engineering statement, this application seeks to modify the construction permit slightly in order to specify operation with the existing WGBA-DT antenna. Although this proposed operation would cause a *de minimis* extension of WACY-DT's contour beyond that which is currently authorized on Channel 27 for WACY-DT by the DTV Table of Allotments, the result is a cost-effective way for WACY-DT to quickly and effectively implement DTV operations, as well as to comply with the station's DTV replication requirement. Accordingly, a grant of the requested waiver is in the public interest and would speed the introduction of digital service by WACY-DT to the market.

By Public Notice released August 3, 2004, the Commission announced a freeze on the filing of certain types of DTV applications, including those that would extend the station's proposed contour beyond that predicted by the station's current allotment, DTV construction permit, or pending construction permit application. "*Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*," Public Notice, DA 04-2446, released August 3, 2004. As detailed in the attached engineering statement prepared by Carl E. Smith Consulting Engineers, the instant proposal contemplates a slight extension of WACY-DT's contour, in contravention of the FCC's filing freeze. However, the Commission's Public Notice states that the "Bureau will consider, on a case-by-case basis, requests for waiver of this freeze when a modification is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public..." Public Notice at 2. Similarly, pursuant to Section 1.3 of the Commission's Rules, the Commission may suspend, revoke, amend, or waive any of its rules upon a showing of good cause and where grant of the extension will serve the public interest. 47 C.F.R. § 1.3; *see also*, WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Ace submits that good cause exists in this case to permit a waiver of the Commission's filing freeze. WACY-DT is a UPN affiliate located in the Green Bay, Wisconsin DMA, which is ranked number 69 in the country Nielsen Media Research. WACY-DT was initially allotted out-of-core Channel 59 for its paired DTV channel. Following a rule making proceeding initiated by Ace, the Commission substituted the present Channel 27 for WACY-DT's paired DTV channel. Thereafter, WACY-DT sought and obtained a DTV construction permit for Channel 27, which was recently granted on January 25, 2006. Although WACY-DT has only had a construction permit for Channel 27 for a brief period of time, it has been operating in digital on its previous channel 59 pursuant to STA for over four years. In this manner, WACY-DT previously has

commenced digital operations consistent with the Commission's guidelines, and introduced digital service to Green Bay with this UPN affiliate. The station is now working to rapidly build out full its authorized DTV facilities on Channel 27.

To that end, the requested modification will enable WACY-DT to employ an existing antenna and avoid the costly and time-consuming need to install an additional antenna and transmission line on the existing tower – an endeavor that will likely require substantial structural work to the existing tower, or possibly an entirely new tower. Allowing WACY-DT to modify its permit to specify the use of the proposed diplexed antenna is an efficient and cost-effective solution that will enable the station to quickly complete its full-power digital build-out. The public interest is served by a waiver of the Commission's freeze, as the modification will cause only a *de minimis* extension of the station's contour, while allowing the station to replicate its analog contour consistent with its certification. As detailed in the attached Engineering Statement, the proposed WACY-DT facilities is predicted to provide 41 dBu service to a land area of 82.4 square kilometers containing a population of 2,295 people, which is located outside the predicted 41 dBu contour for the WACY-DT allotment facilities. While it is theoretically possible to engineer the proposed modification to prevent this slight contour extension, it would require reducing WACY-DT's maximum ERP from the currently authorized 50 kW to barely 9.5 kW, and in the process reduce the station's service area by over 150,000 people. Such a drastic reduction in service and power level simply to avoid a *de minimis* contour extension would not serve the public interest. Accordingly, based on the minimal extension of the station's contour and the significant efficiencies and cost-savings to be realized from the use of a single diplexed antenna, Ace submits that good cause exists for a waiver of the DTV freeze.