

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Abacus Television) GN Docket No. 12-268
WPTG-CD, Pittsburgh, PA)
Facility ID No. 272)
Channel No. 49)
BLDTL-20130702ABO)

To: Marlene Dortch, Secretary
Attn: Barbara A. Kreisman, Chief
Video Division, Media Bureau Room 2-A666

PETITION FOR ELIGIBLE ENTITY STATUS

Pursuant to the Media Bureau’s Public Notice, DA 15-679 (rel. June 9, 2015), Abacus Television (“Abacus”), licensee of Class A Station WPTG-CD, Pittsburgh, PA, Facility ID No. 272 (“WPTG-CD” or the “Station”), respectfully requests that the Commission designate WPTG-CD eligible for protection in the repacking process and for relinquishment in the reverse auction (e.g., “eligible facility”). Abacus believes the Station is eligible for discretionary protection consistent with the Report and Order, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, 29 FCC Rcd 6567 (2014).

WPTG-CD is a formerly out-of-core, Class A eligible station that applied for and received its Class A license after February 22, 2012. Notwithstanding a conclusion in the Second Order on Reconsideration Docket No. 12-268, Abacus believes it is identically situated to Class A station KHTV-CD insofar as it took steps to remove its secondary status in a timely

manner, and therefore should be extended discretionary protection in the upcoming spectrum repack.¹ This is the only equitable resolution of the question, because Abacus did everything in its power to document its continued compliance with the requirements for Class A license eligibility, to build its in-core digital Station in a timely manner, and to file an accurate, truthful and timely application for its Class A license.

A more detailed history of Abacus's efforts to move this Station in-core and construct its digital facility would be helpful in demonstrating its similarity to the pre-licensing efforts of KHTV-CD.

- On September 9, 1988 Abacus was selected in a lottery for UHF channel 69.
- On August 29, 2002 Abacus received its construction permit for channel 69, after a long difficult tower search, BPTTL-20010122ABB.
- On August 28, 1997 Abacus received its license on channel 69, BLTTL-19970522JC.
- On October 19, 2009 Abacus filed a displacement application for in-core channel 32, BDISDTL-20091019AAJ.
- On March 15, 2010 Abacus received a 30 day letter saying that its application for channel 32 caused interference to the recently filed maximization application for channel 33 by WBNP-TV, Morgantown, WV.
- On September 17, 2010 Abacus's move-in application was dismissed.
- Abacus hired a consulting engineer to adjust is channel 32 parameters to specify a directional pattern and reduced ERP to protect the WBNP-TV construction permit and re-filed its channel 32 move-in request, BDISDTL-201101830ADX.

¹ By email on 3/26/2014 Abacus submitted a "History of WPTG-LD efforts to gain Class A status" to Barbara.kreisman@fcc.gov in an effort to demonstrate how long and hard it had tried to get this Station into Class A status. This ex parte filing apparently did not make its way into the record of GN Docket No 12-268, because the Report and Order in that proceeding did not conclude that WPTG-CD was similarly situated to KHTV-CD.

- On September 27, 2011 Abacus received a thirty day letter regarding predicted interference to WNBPTV, BLCDT-20051018ACE (33D).
- In November of 2011 Abacus commissioned a terrain study of each azimuth between its proposed channel 32 facility and WNBPTV, which study did not satisfy the Commission's engineer that no interference would be caused to WNBPTV.
- Abacus again engaged a consulting engineer to study the problems with its application for channel 32. On January 25, 2012 Abacus received a letter from that consulting engineer explaining that WNBPTV would probably not build the upgrade, that the conflicting construction permit would expire on May 13, 2012, at which point the pending displacement application would become grantable.
- On March 15, 2012 Abacus wrote a letter to Mr. Acker at WNBPTV requesting a no objection letter if Abacus specified a "sharp tuned" filter that would protect its adjacent channel 33. Despite repeated follow up calls Abacus got no response to its request for a no objection letter from WNBPTV.
- On October 12, 2012 Abacus's channel 32 move-in application was again dismissed.
- In 2009 Larry Schercongost, licensee of WLLS-LP (49A) died. His spouse was appointed Executrix and on November 23, 2010 the license for WLLS-LP was transferred to her.
- For a one year period beginning in January 2011 Abacus negotiated with Mrs. Schercongost to purchase WLLS-LP so it could use channel 49. Despite extensive negotiations Abacus could not reach agreement on an acceptable price.
- On March 17, 2012 the Commission cancelled the license for WLLS-LP, because it had been off the air for more than one year.

- On April 27, 2012 Abacus filed an application to use channel 49 as a digital companion channel for its station WQVC-CA in nearby Greensburg, PA, BDCCDTL-20120427ABF.
- Despite an exhaustive channel search Abacus was unable to locate a usable channel on which to move WPTG-LP into core. In desperation Abacus decided to voluntarily dismiss the construction permit it had received on channel 49 for WQVC-CA and simultaneously file an application on channel 49 for WPTG-LP, BDISDTL-20120924AJD.
- December 8, 2012 Abacus received a grant of its displacement onto channel 49 for WPTG-LD, BDISDTL 20120924AJD.
- Upon receiving its in-core construction permit Abacus immediately constructed its digital facility and on January 16, 2013 Abacus filed an application to convert WPTG-LD to Class A, BLDTA-20130116AEB.
- On January 18, 2013 Abacus's Class A conversion application was dismissed Broadcast Action Report 27909.
- On January 18, 2013 re-filed its conversion application, BLDTA-2013018ABY.
- After waiting six months Abacus consulted with the Commission staff to find out why its pending Class A conversion application had not been granted. Abacus was advised to file an application to license its constructed station as a LP first, and only then ask for its license to be converted to Class A.
- On July 2, 2013 Abacus filed a license to cover digital 49 as an LP, as directed by the Commission staff, BLDLTL-20130702ABO.

- On July 9, 2013 Abacus amended its pending conversion application from a request to convert its LP construction permit to a request to convert a LP license to Class A.
- On December 23, 2013 Abacus was granted a Low Power license modification for WPTG-LD on channel 49 digital.
- On April 25, 2014 the Commission granted its pending application BLDTA-20130118ABY converting WPTG-CD to Class A.

In summary, Abacus has worked on a continuous basis since mid 2011 to bring WPTG-LP in-core and convert it to Class A status, but was unable to do so until early 2013 because of the lack of a suitable channel on which to displace from analog channel 69. It was only of virtue of the cancellation in mid 2012 of an LP license in its television market that Abacus was finally able to move in-core. Accordingly, the Commission should use its discretion to allow WPTG-CD to participate in the reverse auction and protect its service area and viewer population during the spectrum re-pack.

Abacus wishes to emphasize at all times since the 3rd quarter of 2000 WPTG-LP was operated consistent with its status as a Class A eligible station. The Commission can be confident that this is the case, because of the way Abacus ran its station network. Abacus was the licensee of thirteen Class A and Class A eligible stations arranged in a contiguous network covering the Pittsburgh television market as well as the adjacent Johnstown-Altoona and Steubenville-Wheeling TV markets. The stations were spaced so that each of the stations could receive the off-air signal of one or more of the other stations and had an LPTV protected contour that overlapped the LPTV protected contour of one or more of the stations in the network. The station in the center of the market was WPTG-LP. Abacus transmitted its programming from its studio in North Versailles, PA (which was in the WPTG-LP Grade B contour), by an on channel

STL to WPTG-LP which rebroadcast the studio feed. Each of the other stations in the network then picked up the WPTG-LP signal and retransmitted it on their respective channels.

When the opportunity arose in mid-2000 to become Class A, Abacus filed for Class A eligibility for all of its stations and immediately filed for Class A status for all of its constructed, in-core facilities (e.g., WBYD-CD, WQVC-CD, WTOO-CD, WWAT-CD). It programmed its Pittsburgh area network to include at least 3 hours and often more hours of E/I certified children's programming. In addition Abacus produced an auction show that ran Friday, Saturday, and Sunday evenings from 6:00 until midnight, for a total of 18 hours of locally produced locally originated programming. All of this Class A qualifying programming was delivered to the outlying Class A stations by first being transmitted by WPTG-CD. The Class A stations filed their Form 398's quarterly, providing the Commission with documentation of their compliance. As a result, the Commission also has documentation of WPTG-CD's compliance with the children's programming requirements, since WPTG-CD by definition transmitted the same programming as the outlying Class A stations. In addition, Abacus has filed Form 398's for WPTG-CD covering the period from the First Quarter 2006 (one year prior to its previous license renewal date) to present.

WPTG-CD similarly automatically complied with its obligation to transmit locally originated locally produced programming and programming addressing issues of importance to its community of license, because Abacus originated programming meeting those requirements for its Class A stations and that programming always passed through WPTG-CD first, on the way to the Class A's. The Class A stations filed their Certification of Continued Eligibility, their Public Issues Programming statements, and their Commercial Limitations in Children's programming statement on line quarterly, providing the Commission with documentation of their

compliance. As a result, the Commission also has documentation of WPTG-CD's compliance with the Certification of Continued Eligibility, Public Issues Programming and Commercial Limitations in Children's programming requirements, since WPTG-CD by definition transmitted the same programming as the outlying Class A stations. In addition, since the 3rd quarter of 2000, WPTG-CD on a quarterly basis has prepared and placed in its Station Public File Certification of Continuing Eligibility. In April 2014 Abacus uploaded all of WPTG-CD's Certifications of Continuing Eligibility back to the 3rd quarter of 2000 into its FCC on line Public File where they can easily be reviewed by the Commission.

In summary, the Commission has in its possession extensive documentation of and multiple certifications of WPTG-CD's continuing compliance with the Full Power television rules and all Class A television eligibility requirements. Abacus moved into core at the very first possible moment, constructed its digital facility quickly and sought Class A status immediately. When changes in the Commission's processing methodology required it to seek a Low Power TV license first, it immediately did so and then received its Class A license. The happenstance that it did not file for a Class A license until January of 2013 does not negate the fact that Abacus spent an excess of \$100,000 constructing WPTG-CD in reliance of a construction permit that did not expire until September 2015. Lastly, given the lack of available channels in the Pittsburgh, PA DMA, not affording WPTG-CD the same rights and protections as other Class A licensees will be tantamount to revoking its license, denying its audience of the last 18 years the programming, EAS, and free over the air television provided by WPTG-CD.

Accordingly, for all the reasons stated herein, pursuant to the Commission's discretionary authority, WPTG-CD should be designated an eligible facility subject to protection in the re-packing process and for relinquishment in the reverse auction.

Respectfully Submitted,

ABACUS TELEVISION

By: /s/ Benjamin Perez
Benjamin Perez, Owner

July 9, 2015