

REQUEST FOR WAIVER OF SECTION 74.787(b)(iii)

Serestar Communications Corporation, licensee of low power digital television station KCSO-LD, hereby requests waiver of Section 74.787(b)(iii). That section limits a transmitter move to 30 miles (48 kilometers) from the station's licensed reference coordinates. Although the commission has waived this rule only infrequently, it has stated that waiver requests will be entertained based upon a significant showing that the public interest will be benefited from the move, provided that the new site will have contour overlap with the original contour and a showing that there is no other useful site within the 30 mile radius of the transmitter.

For example, In *White Park Broadcasting, Inc.*, 24 FCC Rcd 3549 (2009), the commission stated that the spacing waiver policy requires consideration of three key elements: (1) the suitability (or lack thereof) of the present site; (2) the availability of other non-short-spaced sites; and (3) consideration of all public interest factors concerning the short-spacing.

Citing *Edens Broadcasting, Inc.*, 2 FCC Rcd 689, 695 (rev. BD. 1987), aff'd 5 FCC Rcd 2576 (1990), *Edens* confirmed that the commission considers an applicant's relocation to a *de facto* antenna farm to be a positive public interest factor. *Edens* is guided by the earlier order of the full commission in *Beasley Broadcasting of Philadelphia, Inc.*, Memorandum Opinion and Order, 1007 FCC 2d 106 (1985), at Note 6.

Indeed, our recent actions in MM Docket 80-90, cause us to devote more attention to the potential hazards to air safety that the expected growth in the number of tall FM towers may create. In view of that, we intend to consider location on a recognized antenna farm, whether officially designated or not, as a positive factor to be weighed in requests in FM spacing waivers. (emphasis added)

Additional important public interest factors in *Beasley* included: (a) the applicant could cover only 48.5% of its city of license for the city-grade signal; (b) no other site available to the licensee would provide 70 dB μ coverage over the entire city of license; (c) a good faith protracted effort to secure a suitable site was unsuccessful; (d) the applicant committed to provide other stations protection equivalent to full spacing and to resolve any interference problems; and (e) the *de facto* antenna farm was comprised of a concentrated number of stations serving the community of license.

The FCC adopted its antenna farm policy in 1967 to facilitate the siting of broadcast towers and further the interest of their navigation and safety.¹ In *Beasley*, the commission stated that although it has never established a designated antenna farm under Part 17 of the rules, it recognized that *de facto* antenna farm areas exist with beneficial effect and that *de facto* antenna farms are within the aims and objectives of the commission's antenna farm policy.

The instant application presents meets all of the criteria for recognition of a *de facto* antenna farm move and a waiver of the commission's rules.

¹ *Antenna Farms*, 8 FCC 2d 559, 1967

Suitability of the Present Site.

Attached to this application and in support of the requested waiver is the Technical Statement of du Treil, Lundin & Rackley, Inc. The Technical Statement fully demonstrates why the present site at San Andreas is unsuitable. KCSO-LD is licensed to Sacramento, California. From the current San Andreas site, the 43 dB μ f (50, 90) service contour falls over 5 km short of coverage of the Sacramento city limits. This situation was made much worse with the transition to digital. Receiving hundreds of viewer complaints, in 2010 KCSO requested Special Temporary Authority to increase its power to 5 kilowatts. Since that time, the STA has been regularly extended. In support of the STA request, KCSO-LD detailed reception complaints from 565 regular pre-transition KCSO viewers.

Figure 1 submitted with that 2010 STA application and with each subsequent extension request graphically demonstrates that those complaining viewers were not outliers, many being in the heart of the KCSO analog service area and clustered around Sacramento, Stockton and Modesto. Following grant of the 5 kW STA, KCSO was able to significantly reduce the number of viewers reporting reception problems in receiving KCSO-LD's now digital unique Spanish language programming.

However, reception problems have not been entirely eliminated. While they have been reduced by about two-thirds, KCSO remains extremely concerned over the remaining viewers unable to receive its signal. Of 129 recent viewer reception complaints, fifty-two, or nearly half, have been unable to be successfully resolved.

City of License Coverage

Beasley and its progeny recognize full city of license coverage to be an extremely important public interest factor. This move will finally achieve that coverage for KCSO. The Technical Statement concludes that from the Walnut Grove Antenna Farm, the KCSO-LD 43 dB μ service contour will finally fully encompass the Sacramento city limits, eliminating the 5 km shortfall. In other words, for the first time, viewers three miles into the city will receive a city-grade digital signal. Furthermore, the Technical Statement calculates that the antenna discrimination angle improvement resulting from this relocation will result in a very significant reception improvement for KCSO-LD viewers, and that these combined improvements provide a truly comprehensive solution to KCSO-LD's low-band VHF coverage and reception issues in its city of license.

Again, it must be noted that achieving 100% city of license – city grade coverage was a matter of decisional significance in *Beasley*.

No Other Suitable Site

The third important factor in *Beasley*, and recognized in *White Park*, was that no other closer site would provide a city-grade signal to the licensed community. In the six years since its digital transition, KCSO has been trying to improve its signal and reach all of its former analog viewers. As a part of that effort, the applicant made a good-faith protracted effort to find and secure a suitable site within the 30 mile area of the San Andreas transmitter that would otherwise be permitted under Section 74.787(b)(iii). The Technical Statement demonstrates why there are

no usable structures available. Of the 62 identified locations, only 13 have structures exceeding the 61 meter (200 foot) height threshold for usability required by KCSO. Of those only 2 are useful for a television station and fall within the arc of angles towards Sacramento, KCSO's city of license. However, they are too far away to achieve 43 dB μ city-grade service to Sacramento.

Equivalent Protection and Commitment to Resolve Interference Problems

The Technical Statement affirms that at its current site and at the new Walnut Grove Antenna Farm site, KCSO-LD is and will be fully compliant with the FCC's interference protection requirements, with the sole exception of Station K03HY-D, San Francisco, CA, (formerly K14MW-D) and the applicant already enjoys an interference consent agreement with K03HY-D. A copy of that agreement is attached hereto. Notably, the Technical Statement establishes that a grant of this application will actually resulting in a reduction of predicted interference with K03Y-D from 6.7% to 5.2%, a resulting reduction of 1.5%. Accordingly, a grant of this application will actually *improve* the situation, serving the public interest by reducing predicted interference.

De facto Antenna Farm

Finally, as previously noted, the commission considers a move to a *de facto* antenna farm to *ipso facto* be a positive factor in the public interest. That Walnut Grove constitutes a *de facto* antenna farm is undeniable. The Technical Statement provides a detailed analysis of the DTV stations serving the Sacramento DMA. Fully nine out of the ten stations that provide over-the-air (OTA) service the Sacramento metro are located in the Walnut Grove antenna farm. Locating at the Walnut Grove antenna farm will improve reception of KCSO-LD merely by being co-located with 90% of all the major network stations in the Sacramento market.

Low Band VHF Flexibility

In the Incentive Auction order², the Commission declared its intention to provide Low Band VHF television stations with flexibility post-auction when allowing flexibility will not cause interference to adjacent channel services. While the intent is to allow greater flexibility to post-auction during relocation when the licensee has determined that its viewers are experiencing reception problems, it agreed to afford such requests favorable consideration and grant them where possible. The same considerations the FCC addressed there apply here. The grant of this waiver request will remedy viewer reception problems and will actually reduce mutual interference.

Other Public Interest Factors: The EAS

Chairman Tom Wheeler has called the broadcast Emergency Alert System "one of the most important tools broadcast, cable, and satellite providers use to keep the public safe in times of crisis." Commissioner Pai said "the emergency alert system (EAS) still serves the basic and

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, FCC 14-50, 29 FCC Red 6567 (2014), at ¶ 371.

important purpose of providing the American public with timely access to emergency information.”³

Keeping in mind that Spanish speaking homes in the Sacramento DMA rely on KCSO to deliver emergency notifications to their homes in their native language with its EAS and news content, it is of critical importance that we do all we can to assure that KCSO reaches the all-Spanish speaking homes possible in times of emergency. Time and again, from New Orleans to Joplin Missouri, serving the public in this way has been proven to be of utmost importance. The website Earthquake track reports that the Sacramento area has had 73 earthquakes in the past year of Magnitude 1.5 or greater and within the last two years, and five nearby earthquakes over Magnitude level 5.⁴ Sacramento, CA has a high earthquake risk, with a total of 17 earthquakes since 1931. The USGS database shows that there is a 45.42% chance of a major earthquake within 50km of Sacramento, CA within the next 50 years. The largest earthquake within 30 miles of Sacramento, CA was a 4.4 Magnitude in 1978.⁵

This move will allow KCSO to advance the public interest by serving this unique audience when lives may depend on it.

Conclusion

KCSO has met all the requirements and criteria previously set forth by the commission in its most definitive cases addressing the antenna farm waiver. A waiver of Section 74.787(b)(iii) permitting KCSO to relocate at the Walnut Grove antenna farm would allow it to provide substantially improved service to its city of license and reduce the population of viewers still unable to receive an adequate digital signal despite six years of 5 kW service. This move would not establish new service: as the supporting documentation to KCSO’s many STAs establishes, it would return service to viewers previously able to receive a viewable KCSO analog signal. They deserve to receive it again. Accordingly, the requested move is manifestly in the public interest. Serestar Communications respectfully requests that this waiver be granted.

³ See Statements of Chairman Tom Wheeler and Commissioner Pai in *Notice of Proposed Rulemaking, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, 81 FR 15792, PS Docket No. 15-94, Wireless Emergency Alerts, PS Docket No. 15-91, Adopted: January 28, 2016

⁴ See: <http://earthquaketrack.com/us-ca-sacramento/recent> Last viewed April 14, 2016

⁵ <http://www.homefacts.com/earthquakes/California/Sacramento-County/Sacramento.html> Last viewed April 14, 2016

SAINTE 51 L.P. / KCSO-LD

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02/05/2011

FEDERAL COMMUNICATIONS COMMISSION
VIDEO DIVISION, MEDIA BUREAU
WASHINGTON DC 20554

Gentlemen:

We intend to file an application requesting an increase in effective radiated power 5.0 KW for KCSO-LD on DTV Channel 3 with stringent emission mask. One Ministries, Inc. has construction permits / licenses for LPTV stations nearby for which we accept and Waive any and all interference that may be caused by any application or grant caused to KCSO-LD by One Ministries, Inc's LPTV stations / applications. Furthermore, we encourage One Ministries, Inc to also seek an increase in power to 5.0 kW for K14MW-D / K03HY-D on channel 3 at Sutro Tower in San Francisco, CA.

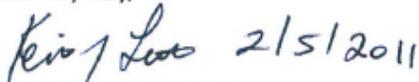
One Ministries, Inc on behalf of our LPTV construction permits / LPTV stations, accept and Waive any and all interference that may be caused by any application or grant by Sainte 51 L.P. for KCSO-LD.

This reciprocal agreement is for the following LPTV applications / permits / stations:

Sainte 51 L.P.: KCSO-LD on DTV Channel 3

One Ministries, Inc: K14MW-D (K03HY-D) Petaluma, CA
K02QO-D Santa Rosa, CA
K02QX-D Morgan Hill, CA
K02QP Keyes, CA, CA
K03IC-D, Santa Rosa, CA
KQRM-LP Petaluma, CA Channel 2

Yours very truly,


Keith Leitch for One Ministries

Paul W. Johnson Sainte 51 L.P.

