

WAIVER REQUEST AND SUMMARY  
KWEX-DT, San Antonio Texas  
Facility ID No. 35881

KWEX License Partnership LP (“Univision”), the licensee of KWEX-DT, San Antonio, Texas (Facility ID No. 35881) (“KWEX” or “the Station”) respectfully requests a waiver of 47 CFR §§ 73.3517 and 73.3518, the rules governing contingent and inconsistent applications, in order to file concurrent applications for two alternative replacement channels for KWEX in the first priority window.<sup>1</sup> Univision asks that the waiver remain in effect for a period of fourteen (14) days from the closing of the first priority window or, alternatively, the opening of the second priority window, whichever period of time is longer.

The FCC may grant a waiver for good cause shown.<sup>2</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>3</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>4</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>5</sup> This is exactly such a case. For the past few weeks, Univision has been in discussions with the Commission staff regarding options for the Station to preserve its existing service to viewers following the post-auction repack. We appreciate the Commission staff’s efforts in examining possible solutions to protect KWEX’s viewers. A waiver is necessary to facilitate resolution of KWEX’s ultimate channel reassignment following the close of the first priority window.

KWEX is a very special station with a unique place in history. 60 years ago, this Station was the birthplace of Spanish language television in the United States and the broadcaster that would one day become Univision. Today, the Station provides one of the highest rated newscasts in its market, in any language. Spanish-speaking families rely disproportionately on over the air television service for news and information.

The Commission’s interference analysis software provided the basis for the initial channel reassignments in the repack and designated KWEX for transition from its current Channel 41 to Channel 14.<sup>6</sup> This channel assignment is not viable for a full power station in the San Antonio

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<sup>1</sup> See *Incentive Auction Task Force and Media Bureau Extend the Filing Deadline for the First Priority Filing Window for Eligible Full Power and Class A Television Stations*, Public Notice, DA 17-849 (rel. Sept. 6, 2017).

<sup>2</sup> 47 C.F.R. § 1.3.

<sup>3</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>4</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>5</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>6</sup> See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced*; (continued...)

DMA, however, because more than 300 land mobile licensees operate on adjacent frequencies, some of which are located in close proximity to the Station's transmitter site. The Commission has long recognized that Channel 14 may present unique challenges to television station channel assignments in certain markets.<sup>7</sup> Accordingly, on June 28, 2017, the FCC granted the Station's request for an "unable-to-construct" waiver of the initial construction permit deadline (LMS file No. 0000024880).

Univision has diligently researched potential alternatives to Channel 14 and has identified two possible candidates in the San Antonio DMA -- Channels 24 and 19. Both channels, while preferable to Channel 14, present significant challenges, including the need to change other stations' channel assignments. Univision's preference is for the FCC to reassign the Station to Channel 24. However, this alternative will require several steps to accomplish:

- Another repacked station, KXLK-CD, Austin, Texas, would need to accept an estimated 3.9% additional interference or an assignment to an alternative repack channel. Univision has made an initial inquiry to the owner of KXLK-CD to explore whether it would be willing to take steps to accommodate the reassignment of KWEX to Channel 24.
- KNVA(TV), Austin TX, assigned to Channel 23, would need to accept interference from KWEX outside its own DMA.
- Another Univision station, KNIC-CD, San Antonio, TX, would need to be reassigned from Channel 24 to Channel 27. Univision hereby consents to such reassignment.
- A low power station located on the KWEX tower, K27LF-D, operating on Channel 25, would need to implement a new antenna radiation pattern.

Please see the attached Engineering Statement.

Should the staff determine that it is unable to reassign KWEX to Channel 24, then the only remaining alternative for KWEX appears to be relocation to Channel 19. This option, while certainly preferable to Channel 14, is less desirable than Channel 24, as it would result in an approximately 8% loss of population coverage in the northeast portion of the Station's DMA. Further, in order to accommodate this reassignment and eliminate potential interference, KWEX's sister station KNIC-DT likely would need to relocate its transmitter site. This, in turn, may require a waiver of the allotment criteria in order to change that station's community of license from Blanco, Texas, to another community located further to the south.

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*Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017).

<sup>7</sup> See *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, 30 FCC Rcd 8975, 9101 (2016) at ¶ 273 ("[T]he final television channel assignment plan selection procedure will take into account . . . prioritizing assignments . . . off of channel 14 in the UHF band.").

(continued...)

In short, grant of the requested waiver would afford Univision and the Commission staff additional time to explore a viable channel reassignment for the Station, while preserving priority one window status for both of the alternatives described above. It also would allow Univision time in which to continue discussions with the licensee of KXLK-CD regarding a mutually agreeable proposal for the reassignment of both stations. We believe the challenges of a Channel 14 assignment, coupled with KWEX's unique and special history, justify grant of a waiver and would also help fulfill the statutory directive that the Commission make "all reasonable efforts" to maintain current service of post-Incentive Auction broadcasters.<sup>8</sup>

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<sup>8</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §6403(b)(2) 126 Stat. 156 (2012).