

**December 2017 Amendment
Request for Waivers**

The instant minor change application was filed on May 16, 2011, pursuant to which Hearst Properties Inc.¹ (“Hearst”), licensee of WGAL, Lancaster, PA, seeks permanent authority to increase WGAL’s maximum effective radiated power (“ERP”) from 32.2 kW to 59 kW at a height above average terrain of 419 meters.

The instant application requests waivers of Sections 73.616(e) and 73.622(f) of the Commission’s Rules because the requested power increase is predicted to cause interference in excess of the Commission’s 0.5 percent new interference limit under Section 73.616(e) and because the requested power increase exceeds the power limit for WGAL’s antenna height under 73.622(f).

In connection with the Media Bureau’s temporary lifting of the freeze on processing certain minor modification applications, as announced by the FCC by Public Notice in DA 17-1086 (November 6, 2017), the purpose of the instant amendment is to supplement Hearst’s request for waivers based on the results of the broadcast television incentive auction and post-auction television channel reassignments.

Background

As previously explained to the Commission, an increase in WGAL’s authorized ERP to 59 kW is necessary in order to mitigate high-band VHF digital reception issues that WGAL started to experience with its lower power allotment following the 2009 digital television transition.

In connection with the original filing of this application in 2011, Hearst entered into interference agreements with WNJB, New Brunswick, New Jersey, and WBPH-TV, Bethlehem, Pennsylvania, who are each predicted to receive interference from WGAL’s 59 kW ERP operation in excess of the 0.5 percent limit in Section 73.616(e).

During the pendency of the instant application, for over six (6) years, Hearst has been operating WGAL with 59 kW ERP pursuant to WGAL’s experimental authority in FCC File Number BDSTA-20110602ACR, which was most recently extended in FCC LMS File Number 0000027210. On both August 30, 2012, and May 21, 2013, Hearst filed supplemental amendments to the application noting that WGAL’s experimental operation has significantly helped improve reception for the station’s viewers and that Hearst has received no complaints of interference from any television station or viewers.

Hearst’s original request for waivers and supplemental waiver amendments are attached hereto.

On April 5, 2013, in DA 13-618, the Commission froze the processing of modification applications that involved any coverage contour extension pending the completion of the repacking of the broadcast television bands following the broadcast television incentive auction. Accordingly, the instant application remains pending.

¹ When the application was originally filed in 2011, the licensee of WGAL was WGAL Hearst Television Inc. In accordance with the Commission’s consent to *pro forma* assignment in FCC File No. BALCDT-20160906ACM, the license for WGAL was assigned to Hearst Properties Inc. on December 31, 2016.

However, in accordance with the DA 17-1086, the Commission recently temporarily lifted the processing freeze. The instant amendment is filed during the window in which the processing freeze is temporarily lifted.

Supplemental Request for Waivers

Waivers of Section 73.616(e) and Section 73.622(f) continue to be warranted and in furtherance of the public interest.

As explained in the Engineering Exhibit to the instant amendment, WGAL's proposed permanent 59 kW ERP operation is not predicted to cause interference in excess of the 0.5 percent limit to any new post-auction television channel reassignments. Accordingly, as with the original application, a waiver of Section 73.616(e) is still only required as to WNJB and WBPH-TV,² each of whom has previously entered into an interference agreement with Hearst to accept such interference. Copies of these interference agreement are attached to the instant application.

As noted above, WGAL has been operating with 59 kW ERP for over six (6) years pursuant to WGAL's experimental authorization. As previously reported, since commencing operations with 59 kW ERP in 2011, Hearst has received no complaints of interference from any television station or viewers. To this day, WGAL's experimental operation continues to be free of interference complaints.

WGAL's experimental 59 kW ERP operation has been, and continues to be, a success. The increased power has enabled WGAL to continue to maintain service to public—a service that was provided by WGAL's analog facility prior to the 2009 digital transition but that was not adequately replicated by WGAL's digital television allotment due to high-band VHF digital reception issues. Grant of the instant application would permanently restore this service to the public.

For the forgoing reasons, and for the reasons previously submitted, Heart submits that waivers of Section 73.616(e) and Section 73.622(f) to authorize WGAL's current operation on a permanent basis would clearly advance the public interest, and, in connection with the temporary lifting of the application processing freeze, Hearst respectfully requests that the Commission grant the instant application.

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² Neither WNJB nor WBPH-TV was reassigned a new channel in the repacking of the television broadcast band.

Original Waiver Request
(Attached)

Request for Waivers

Pursuant to the instant application, WGAL Hearst Television Inc. (“Hearst”), licensee of WGAL, Lancaster, PA, proposes to increase WGAL’s maximum effective radiated power (“ERP”) from 32.2 kW to 59 kW ERP (“WGAL’s Proposed Operation”). In connection therewith, Hearst respectfully requests waivers of Section 73.616(e) of the Commission’s Rules to permit predicted interference in excess of the Commission’s 0.5 percent new interference limit and Section 73.622(f) to permit an ERP in excess of the power limit for WGAL’s height above average terrain (“HAAT”) of 419 meters.

Background

WGAL is currently authorized on Channel 8 under program test authority to operate with 32.2 kW ERP pursuant to its construction permit in FCC File Number BPCDT-20100111AER and pending license application in FCC File Number BLCDT-20110323ABF.

Hearst desires to further increase WGAL’s ERP to 59 kW because of post-transition viewer reception problems experienced immediately after the digital transition on June 12, 2009, and which continue to persist.

As Hearst has previously reported, after WGAL commenced its post-transition 7.5 kW ERP DTV facility, and shortly thereafter, its 8.1 kW facility, Hearst received numerous complaints of poor or no reception from viewers. Hearst confirmed the WGAL viewer reception issues with multiple field tests, including one test on June 29, 2009, in coordination with the FCC’s field office at a cable headend in Walnut Bottom, PA. Even with its current 32.2 kW ERP, viewer complaints continue to persist.

As the Commission is aware, high-band VHF digital reception issues like those WGAL is facing have been experienced by many stations across the country, particularly in the northeast, and power increases have been helpful in mitigating such problems. As noted in the Engineering Exhibit accompanying the instant application, the Commission’s digital power levels are too low for adequate replication of former analog facilities. This is primarily because of the ineffectiveness of many indoor antennas and “noise” from consumer electronics devices. *See generally Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rule Making, 25 FCC Rcd 16498 (2010), ¶¶ 42-57 (discussing the various sources of interference, causes of poor reception, and suggesting potential strategies to mitigate the issues).

WGAL’s most recent “maximized” power increase to 32.2 kW ERP has helped some, but WGAL’s viewers continue to experience reception problems. Hearst projects that a power increase to 59 kW ERP will significantly help improve reception for WGAL’s viewers.

As explained in Hearst’s Engineering Exhibit accompanying the instant application, WGAL’s Proposed Operation is predicted to cause interference in excess of the 0.5 percent limit in Section 73.616(e) of the Commission’s Rules with respect to WNJB, New Brunswick, New

Jersey, and WBPH-TV, Bethlehem, Pennsylvania. In addition, WGAL's Proposed Operation exceeds the maximum ERP and HAAT combination for WGAL in Section 73.622(f).

To the extent necessary, waivers of Section 73.616(e) and Section 73.622(f) are hereby requested.

Request for Waivers

In accordance with Section 1.3 of the Commission's Rules, "[a] waiver is appropriate when special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Hearst submits that such special circumstances are present here.

Hearst has entered into interference acceptance agreements with both WNJB and WBPH-TV. With respect to WNJB, the licensees of WNJB and WGAL have agreed to mutually accept up to 6% additional interference to and from each others' facilities. Similarly, WBPH-TV and WGAL have agreed to accept mutual interference of up to 2%. Copies of both agreements are attached. Accordingly, while WGAL's Proposed Operation does not comply with Section 73.616(e) with respect to WNJB and WBPH-TV, both of those stations have consented to the additional interference.

While WGAL's proposed power increase would exceed the maximum power permitted under Section 73.622(f), the power increase is not intended to expand WGAL's coverage area. Rather, the purpose of WGAL's Proposed Operation is to restore service losses to WGAL's viewers who previously were able to receive WGAL's higher power Channel 8 analog signal but cannot receive WGAL's post-transition digital signal despite being located in WGAL's digital service area.

As discussed earlier and in the Engineering Exhibit, WGAL's service losses are principally due to WGAL's low power high-band VHF Channel 8 authorization (compared to its prior Channel 8 analog power of 110 kW), the widespread use by viewers of poor indoor antennas, and high levels of consumer electronic "noise." Due to such factors, application of Section 73.622(f) to WGAL's Proposed Operation would actually contravene the public interest by precluding Hearst from serving WGAL's former analog viewers. The Commission's recent proposal to permit Zone I VHF-band TV stations to increase their power by 6 dB, *see Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rule Making, 25 FCC Rcd 16498 (2010), ¶¶ 42-49, makes clear that the Commission understands the hardship to viewers caused by high-band VHF signal issues.

As the Commission is aware from prior WGAL applications, Hearst has worked diligently towards identifying possible solutions to help restore service to its affected viewers. After an exhaustive channel study, given the frequency congestion in the Lancaster market, Hearst has concluded that there is no available in-core full-power UHF channel to which WGAL could consider moving. WGAL has applied for several digital low power television

translator stations which are projected to help in certain areas.¹ And, despite WGAL's power increase to 32.2 kW, WGAL continues to experience viewer reception problems. Hearst projects that a further increase to 59 kW, as proposed in the instant application, will go a long way towards restoring service to WGAL's viewers.

Hearst respectfully submits that the instant request satisfies the Commission's waiver standard. WGAL's high-band VHF digital reception issues, the need to restore service to WGAL's former analog viewers who can not receive WGAL's post-transition digital service, and the consent of WNJB and WBPH-TV, the only potentially affected stations, to WGAL's Proposed Operation are special circumstances that warrant deviation from Section 73.616(e) and Section 73.622(f), and such deviations will serve the public interest by improved television service to the public.

For the foregoing reasons, Hearst respectfully requests that the Commission waive Sections 73.616(e) and 73.622(f) and grant the instant application.

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¹ See FCC File Numbers BDRTCDT-20100329ACY, BDRTCDT-20100329ACU, BDRTCDT-20090824ADX, BDRTCDT-20090824ADR, BDRTCDT-20090824ADP, and BDRTCDT-20090824ADN.

**August 30, 2012 Supplemental
Amendment to Waiver Request**

(Attached)

Amendment

Pursuant to the Licensee's experimental authority in FCC File Number BDSTA-20110602ACR, as most recently extended in FCC File Number BEDSTA-20120813ABA, the Licensee has been operating WGAL(DT) pursuant to the technical parameters proposed in the instant minor change application for more than one year.

The purpose of this amendment is to supplement the Request for Waiver and report that WGAL(DT)'s experimental authorization has significantly helped improve reception for the station's viewers, and as expected, the Licensee has received no complaints of interference from any television station or viewers.

As such, the Licensee's experimental operation of WGAL(DT) for over a year now demonstrates that operation pursuant to the proposed technical parameters clearly advances the public interest and satisfies the Commission's waiver standard by improving television service to the public without complaints—and, therefore, with no evidence—of interference caused to other television stations.

Accordingly, the Licensee respectfully requests that the Commission proceed with granting the instant application to authorize WGAL(DT)'s current operation on a permanent basis.

Other than as provided in this Exhibit, this amendment revises no other portions of the application.

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**May 21, 2013 Supplemental
Amendment to Waiver Request**

(Attached)

**Further Amendment
Request for Waiver Pursuant to *Public Notice* DA 13-618**

In accordance with the Commission's April 5, 2013, *Public Notice* in DA 13-618, the instant amendment further supplements the Request for Waivers of Section 73.616(e) and Section 73.622(f) of the Commission's rules.

The instant minor change application, including the Request for Waivers, was filed on May 16, 2011. Pursuant to the Licensee's experimental authority in FCC File Number BDSTA-20110602ACR, as most recently extended in FCC File Number BEDSTA-20130221AAE, the Licensee has been operating WGAL pursuant to the technical parameters proposed in this application for nearly two years.

On August 30, 2012, the Licensee filed a supplement to the Request for Waivers to report that WGAL's experimental operation has significantly helped improve reception for the station's viewers, and as expected, the Licensee has received no complaints of interference from any television station or viewers. The licensee hereby reports that WGAL's experimental operation continues to be free of interference complaints.

This application requests waivers of Section 73.616(e) of the Commission's Rules to permit predicted interference in excess of the Commission's 0.5 percent new interference limit and Section 73.622(f) to permit an ERP in excess of the power limit for WGAL's height above average terrain of 419 meters. A waiver is hereby further requested pursuant to DA 13-618 because the proposed operation would increase—and the current experimental authorization does in fact increase—WGAL's noise-limited contour in one or more directions beyond the station's licensed parameters.

As demonstrated in the Request for Waivers, special circumstances warrant the requested waivers because:

- (1) the only stations potentially affected have consented to the additional predicted interference;
- (2) the increased power is necessary to restore service to WGAL's former analog viewers due to VHF digital reception issues; and
- (3) WGAL has operated with the requested parameters pursuant to experimental authority for nearly two years without complaints of interference caused to viewers or other television stations.

The waivers are further warranted in accordance with DA 13-618 because grant of the instant application is necessary to maintain WGAL's service to the public—a service that was provided by WGAL's analog facility, has been restored by WGAL's experimental digital facility, and is in jeopardy if this application for permanent authorization is not granted.

The Media Bureau has previously granted similar waivers requests. For example, in FCC File Number BPCDT-20090617ADQ (Granted March 16, 2011), the Bureau granted a waiver of Section 73.622(f) to permit WPVI-TV, Philadelphia, PA, to increase its ERP to 30.2 kW, and subsequently in FCC File Number BMPCDT-20110831ABM (Granted October 5, 2011) to 34 kW; in FCC File Number BPCDT-20090622ABV (Granted March 16, 2011), the Bureau granted a waiver of Section 73.622(f) to permit WRGB(TV), Schenectady, NY, to increase its ERP to 30.2 kW; and in FCC File Number BPCDT-20120216ADO (Granted October 11, 2012), the Bureau granted a waiver of Section 73.622(f) to permit WABC-TV, New York, NY, to increase its ERP to 34.0 kW.

Due to WGAL's special circumstances, which are similar to those the Media Bureau has previously recognized in connection with the grant of other waiver requests, the technical parameters proposed in the instant application clearly advance the public interest and satisfy the Commission's waiver standard.

Significantly, grant of the waivers would not undermine the principles espoused in DA 13-618. As set forth in the *Public Notice*,

the imposition of limits on the filing and processing of modification applications is now appropriate to facilitate analysis of repacking methodologies and to assure that the objectives of the broadcast television incentive auction are not frustrated. The repacking methodology the Commission ultimately adopts will be a critical tool in reorganizing the broadcast TV spectrum pursuant to the statutory mandate. Additional development and analysis of potential repacking methodologies is required in light of the technical, policy, and auction design issues raised in the rulemaking proceeding. This work requires a stable database of full power and Class A broadcast facilities. In addition, to avoid frustrating the central goal of "repurpos[ing] the maximum amount of UHF band spectrum for flexible licensed and unlicensed use," we believe it is now necessary to limit the filing and processing of modification applications that would expand broadcast television stations' use of spectrum.

Public Notice, DA 13-618, at 1-2 (footnotes omitted). Because WGAL's construction permit has been pending (and, as such, its proposed parameters protected from other filers), the stability of the Commission's database would not be undermined by a grant. Moreover, WGAL has been actually operating at the proposed parameters (pursuant to experimental authority), so the real-world RF environment already accounts for the proposed construction permit. Finally, WGAL operates on a VHF channel, and the Spectrum Act forbids the Commission from involuntarily repacking any UHF station to the VHF band—as a result, it is unlikely the spectrum auction or repacking methodologies could be impacted by grant of WGAL's longstanding proposal; any

station that might wish at some point in the future to voluntarily relocate to Channel 8 (WGAL's channel) would have been aware of WGAL's actual operations for *years*, just as the Commission has. For those reasons, grant of the request would not undermine the freeze imposed by the *Public Notice*.

For the forgoing reasons, the Licensee respectfully requests that the Commission proceed with granting the instant application to authorize WGAL's current operation on a permanent basis.

Other than as provided in this Exhibit, this amendment revises no other portions of the application.

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