

Request for Waiver

On August 25, 2009, Point Broadcasting Company (“PBC”) filed a construction permit application (FCC File No. BNPDTL-20090825BPH) for a new Low Power TV (“LPTV”) station on channel 31 (“Channel 31 Application”). The Channel 31 Application is currently co-channel to K31PS-D (Facility ID 189720), an LPTV that was displaced from Channel 35 in a channel displacement filing as of April 18, 2019 (LMS File No. 71865). The Channel 31 Application is predicted to cause greater than 20% co-channel interference to the facility of K31PS-D. As a result of this displacement, PBC is filing the instant amendment to propose operation on Channel 32.

In the Public Notice¹ announcing the filing window for pending new rural LPTV stations that were displaced by the Incentive Auction and repack process, the Commission stated that, in order to be considered “displaced” for the purposes of the window, the applicant must: (1) be subject to displacement by a full-power or Class A television station on the repacked television band as a result of the Incentive auction and repacking process; (2) have proposed a frequency repurposed for new, flexible use by a 600 MHz Band wireless licensee, or (3) have proposed a frequency that will serve as part of the 600 MHz Band guard bands (“*Window Eligibility Criteria*”).

The *LPTV PN* does not specifically contemplate the displacement of an LPTV applicant by another LPTV station. To the extent necessary, PBC respectfully requests a waiver of the *Window Eligibility Criteria* so that the Commission may process and grant the instant amendment. LPTV applications precluded by LPTV displacements are every bit as much displaced as applications precluded by full-power or Class A displacements. It can be argued that the displacement of Point’s application is in fact a displacement by a full-power or Class A station, only the displacement in this case is indirect rather than direct, as the full-power or Class A station displaced the LPTV station that is now threatening this application. The displacement of PBC’s application was just as much a result of the Incentive Auction as was that of any LPTV application that was directly displaced by a full-power or Class A station. In either case, if an applicant cannot file in this window, it will not be able to provide a new service to the areas that it is proposing to serve. Accepting an amendment from PBC for this application and from other similarly-situated applicants is in the public interest, as it will allow for new services to be provided to the public by applicants who have had their applications on file and on hold for more than a decade. Accordingly, the instant waiver request should be granted.

¹ See *Filing Window for New Rural Digital Low Power Television and TV Translator Applicants Displaced By Incentive Auction and Station Repack*, Public Notice, DA 19-1215 (MB Dec. 2, 2019) (“*LPTV PN*”).