

## REQUEST FOR WAIVER OF MODIFICATION FREEZE

Mountain Broadcasting Corporation, licensee of full-power commercial television station WMBC-TV (“WMBC-TV”), Newton, New Jersey (Fac. Id. No. 43952), respectfully requests the Media Bureau to waive its freeze on the filing and processing of facilities modification applications with respect to WMBC-TV based on the showing of good cause set forth herein.<sup>1</sup> The Media Bureau implemented the freeze on modification applications in April, 2013 to “facilitate analysis of repacking methodologies and to assure that the objectives of the broadcast television incentive auction are not frustrated.”<sup>2</sup> Now that the incentive auction has been completed and the post-incentive auction transition has successfully reached the July 13, 2020, deadline for television stations to move off their pre-auction channel assignments, the rationale for continuation of the modification freeze no longer exists.<sup>3</sup>

### BACKGROUND

WMBC-TV is an independent, minority-owned, full-power, commercial TV station licensed to Newton, New Jersey, and serves the New York City metropolitan area of 18 million people, with programming available to the public over-the-air, on cable TV, FIOS, DirecTV and Dish Network. WMBC-TV reaches more than 7 million TV households with a 24-hour niche program schedule featuring a lively and informative program mix for viewers of all ages.

WMBC News, a daily production of WMBC-TV, features local news and community events in the tri-state metropolitan region. The station also airs other locally produced programs,

---

<sup>1</sup> See *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications*, Public Notice, 28 FCC Rcd. 4364 (MB 2013) (“Modification Freeze Notice”).

<sup>2</sup> *Id.*

<sup>3</sup> See *FCC Release, Post-Incentive Auction Transition Successfully Meets 39-Month Deadline* (July 13, 2020).

as well as foreign language news and an array of international programs. WMBC-TV's schedule also features a lineup of children's programming that is fun and engaging, as well as educational and informative. WMBC-TV is wholly owned by Mountain Broadcasting Corporation, which in turn is entirely minority-owned by Korean Americans.

WMBC-TV currently broadcasts from the Empire State Building and a tower in Montclair, NJ, employing a Distributed Transmission System ("DTS"). While WMBC-TV's use of DTS technology at considerable out-of-pocket expense has provided a substantial improvement over its prior single stick system, the results have not been optimal, and the station's signal has been unable to reach significant portions of the New York City DMA. Indeed, as the Bureau is aware, many television broadcasters have experienced mixed results with DTS. This is largely due to the fact that certain television receivers are often unable to overcome the reception of more than one signal arriving at the receiver at slightly different times. The station has discovered that terrain shielding between WMBC-TV's main facility and the DTS node is not substantial enough to overcome this ongoing reception issue. This is a common problem faced by similarly situated stations using DTS technology.<sup>4</sup>

---

<sup>4</sup>See, e.g., *DTS – Distributed Transmission System or SFN (Single Frequency Network)*, Smith and Fisher Blog (May 29, 2020) available at <https://www.smithandfisher.com/dts-distributed-transmission-system-or-sfn/> (last viewed July 17, 2020). For example, KRBK, Springfield, MO, has reported receipt of thousands of complaints from viewers about poor or unavailable reception, mainly due to self-interference among DTS transmitters. See FCC LMS File Nos. 0000035634 and 0000034148.

## DISCUSSION

The Commission may grant a waiver for good cause shown.<sup>5</sup> Waiver is appropriate where the “particular facts would make strict compliance inconsistent with the public interest.”<sup>6</sup> The Commission may grant a waiver where the requested relief would not undermine the policy objective in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>7</sup> The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>8</sup> In the present case, a waiver is appropriate because the policy objective of the modification freeze is no longer applicable in light of the successful completion of the incentive auction repack. Moreover, special circumstances exist because the minor amendment proposed by WMBC-TV would involve a reduction in costs, an installation process that is less complicated and minimizes potential risks, and results in a more efficient use of spectrum by expanding WMBC-TV’s signal coverage and reliability. In short, the requested waiver would allow WMBC-TV to significantly improve the availability of its niche and minority-focused programming to the station’s viewers in the market.

On October 19, 2017, the Media Bureau temporarily lifted the modification freeze, creating a filing window from November 28, 2017 through December 7, 2017, for modification applications proposing to expand the contours of full power and Class A television stations, up to any limitations imposed by applicable FCC rules.<sup>9</sup> On November 28, 2017, WMBC-TV filed a

---

<sup>5</sup> See 47 C.F.R. § 1.3.

<sup>6</sup> See *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>7</sup> See generally *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>8</sup> See *id.* at 1159; *Northeast Cellular* at 1166.

<sup>9</sup> See *Freeze on the Filing of Modification Applications to be Lifted Temporarily to Permit Filing of Applications to Expand the Contours of Full Power and Class A Television Stations that are not Part of the Post Incentive Auction Repack Process*, Public Notice, DA 17-1033 (MB 2017).

minor modification application proposing to operate at 700 kW ERP using a directional antenna to be mounted at 403.5 meters AGL on an existing tower at 1 World Trade Center (“WTC”). *See* LMS File No. 0000035693.<sup>10</sup> While this application is fully compliant with all of the Commission’s applicable rules and processing standards -- and has not been opposed -- it nevertheless remains pending. This is despite the fact that the pending application would provide significantly improved coverage to viewers in the New York City DMA and, through use of a single transmitter, would avoid problems often encountered with DTS systems. While it remains unclear to the Applicant why the application has not yet been granted, delays in processing the existing application presumably were due to concerns that the proposed modification could somehow adversely impact available repack options. In any case, any such concerns are now obviously moot due to the conclusion of the incentive auction repack process.

As explained more fully below, changed circumstances allow WMBC-TV to propose a safer, more efficient and less costly facility modification compared to WMBC-TV’s application that is currently pending in LMS. In other words, WMBC-TV is seeking a waiver of the modification freeze now to amend its pending application, thereby minimizing administrative burdens by avoiding the need for the Bureau to process and grant the existing modification application, and to then require WMBC-TV to seek subsequent approval to modify that granted CP.

WMBC-TV’s currently pending modification application proposes the use of an expensive, customized directional antenna and a complex and potentially dangerous installation at high altitude. Moreover, at the time its application was filed, WMBC-TV was somewhat

---

<sup>10</sup> Upon discovering that certain of its technical exhibits may have been submitted in an obscure format, WMBC-TV revised its pending application on October 15, 2018 to resubmit those exhibits in a different format.

constrained by interference considerations relating to WVVH-CD, South Hampton, New York, and WEKW-TV, Keene, New Hampshire. Such interference considerations prevented WMBC-TV from utilizing the existing “master” antenna used by other licensees at the WTC site. Rather, WMBC-TV was required to design a customized directional antenna that proposes to share the same aperture on the WTC mast with WJLP, Middletown Township, New Jersey, further complicating an expensive and potentially dangerous construction process.

In the interim, changed circumstances afford the opportunity for WMBC-TV to propose an amended facility modification that would incur lower costs, and involve a less complicated installation process as well as more efficient use of spectrum. In particular, WVVH-CD has subsequently modified its facilities to substantially expand its coverage area and population served. *See* LMS File No. 0000098161. Similarly, WEKW-TV has abandoned its previous CP for a 1000 kW facility and has instead obtained a CP for a substantially reduced transmitter power of 95 kW. *See* LMS File No. 0000100752.<sup>11</sup> Thus, incremental interference stemming from WMBC-TV’s amended application will fall well within allowable parameters, and indeed would reduce existing interference to WVVH-CD.

In sum, WMBC’s amended proposal will provide expanded and more reliable signal to additional viewers in the New York City DMA, consistent with long-standing FCC goals to promote efficient use of spectrum. In particular, the proposed amendment would reach more viewers in Northern New Jersey, Hudson Valley, Central Long Island and Fairfield County, CT

---

<sup>11</sup> Based on representations from WEKW-TV that it is intended to construct its then-granted CP for a 1000 kW facility, on December 23, 2019 WMBC-TV entered into an interference agreement whereby WEKW-TV agreed to accept interference from WMBC-TV to more than 0.5% of the total population within its service area, but not in excess of 3.25% of such population. Just barely over one month later, on January 27, 2020, WEKW-TV abandoned its 1000 kW CP and obtained authority for its currently operational facility at a power of 95 kW. Because WMBC-TV’s amendment proposed herein does not cause interference to more than 0.5% of the total population within the current noise-limited contour of WEKW-TV, it is unnecessary for WMBC-TV to rely on the December 23, 2019 interference agreement for the purposes of this amendment.

compared to either WMBC-TV's currently authorized facility or that proposed in its pending 2017 amendment. Additionally, the proposed amendment would utilize the existing "master" antenna already installed at the WTC site. Thus, this proposal would place far less strain on available tower installation crews, freeing them up to concentrate on any required post-repack projects for other stations.

Accordingly, for the reasons set forth herein, Mountain Broadcasting Corporation respectfully requests that the Media Bureau expeditiously waive its freeze on the filing and processing of facilities modification applications, thereby allowing this amendment to WMBC-TV's pending minor modification application.