

## **WARZ-CD Filing Freeze Waiver Request**

This application proposes to relocate Class A television station WARZ-CD, Smithfield-Selma, North Carolina, from its licensed location back to its formerly licensed transmitter site, which is also its FCC Incentive Auction baseline facility location. The proposed relocation is not possible absent a waiver of the current filing freeze.

Specifically, in April 2013, the Media Bureau (“Bureau”) announced that it would not accept for filing modification applications for changes to existing television service areas that would increase a full power television station’s noise-limited contour or a Class A station’s protected contour in one or more directions beyond the area resulting from the station’s authorized facilities as of that date.<sup>1</sup> The Bureau explained that these limitations were necessary to (1) create a stable database of full power and Class A facilities that would allow for development and analysis of potential repacking methodologies; and (2) avoid further expansion of broadcast television stations’ use of spectrum.<sup>2</sup> With the exception of a limited window in 2017, this filing freeze has been in place for more than 7 years.

Capitol Broadcasting Company, Inc. (“CBC”), the proposed assignee of WARZ-CD,<sup>3</sup> respectfully requests a waiver of the filing freeze for the reasons set forth below.

The FCC may grant a waiver for good cause shown.<sup>4</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>5</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>6</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>7</sup>

CBC submits that good cause exists for waiving the filing freeze in this instance. First, the policy reasons underlying the filing freeze have now been resolved, and the Incentive Auction and subsequent repacking have been completed for all relevant purposes associated with the instant application.

Second, as the engineering information accompanying this application demonstrates, no harmful interference is predicted either to existing broadcast operations or to any new mobile

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<sup>1</sup> *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd 4364 (MB 2013).

<sup>2</sup> *Id.* at 4364-65.

<sup>3</sup> File No. BALDTA-20200917AAY (accepted for filing Sept. 22, 2020). CBC has included in this application a letter from the current licensee consenting to the filing of this application pursuant to 47 C.F.R. § 73.3517.

<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</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>7</sup> *Northeast Cellular*, 897 F.2d at 1166.

broadband licensees. Indeed, the proposed facility would operate with facilities that are identical to that issued by the FCC for the Incentive Auction repack.

Third, a waiver of the filing freeze in this instance will serve the public interest because it will help expedite the delivery of ATSC 3.0 facilities to the viewing public. Once the WARZ-CD facilities have been relocated as proposed in this application, CBC intends to coordinate with the current licensee to help convert the station into an ATSC 3.0 facility for the Raleigh-Durham market.<sup>8</sup> The Commission has consistently highlighted the numerous benefits of ATSC 3.0 technologies for the public, including for NextGen television offerings and Broadcast Internet services.<sup>9</sup> Granting a waiver of the filing freeze as requested herein will further that purpose and lead to a more effective implementation of the Commission's overall policy of advancing ATSC 3.0 deployment. CBC stands ready to work with the current licensee to activate ATSC 3.0 facilities as soon as possible in the market, and to continue those ATSC 3.0 services upon consummation of the assignment of WARZ-CD's license to CBC.

For all of these reasons, CBC respectfully submits that good cause has been shown for a waiver of the filing freeze with respect to this application.

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<sup>8</sup> In a further effort to expedite this process, CBC has already submitted a request for Special Temporary Authority to relocate the WARZ-CD facilities back to its formerly licensed transmitter site. See File No. 0000122865 (filed Sept. 29, 2020).

<sup>9</sup> See, e.g., *Promoting Broadcast Internet Innovation through ATSC 3.0*, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5916 (2020).