

Displacement Application Waiver Request

By this request, Roy William Mayhugh (“Mayhugh”) respectfully seeks a waiver of the Commission’s rules, to the extent necessary, to obtain a grant of this application. Pursuant to this application, Mayhugh seeks a construction permit to change KFLA-LD, Los Angeles, CA from Channel 8 to Channel 19, with no change in transmitter site.

Grant of this application is in the public interest for the reasons described herein. KFLA-LD is being displaced by a recent grant of construction permit to co-channel full-power station KFMB-TV, San Diego, CA (File No. 0000035772). Mayhugh respectfully requests that the Commission evaluate this waiver request only if the Commission finds that this application is not otherwise grantable, absent a waiver.

KLFA provides free, over the air television programming to viewers in Los Angeles to a broad cross-section of the market. In particular, there are six programming streams available on KFLA, including national networks NewsNet,¹ The Country Network, American Classic Entertainment (“ACE”) TV, Biz TV,² Shop LC, and Diya TV.³

All but Shop LC are “exclusive,” meaning KFLA is the only station in the Los Angeles market on which viewers can enjoy the offerings of NewsNet, The Country Network, Ace TV, Biz TV, and Diya TV on free, over-the-air television.

Pursuant to the KFMB-TV construction permit, KFMB-TV now is authorized to construct a facility that would increase that station’s effective radiated power from 19.8 kW to 87.4 kW and would increase the radiation center height above average terrain from 227 meters to 258.5 meters. As a result, the continued operations of KFLA-LD on Channel 8 are predicted to cause excessive interference to many households in KFMB-TV’s new protected contour area, and moreover, KFLA-LD viewers would receive excessive interference from KFMB-TV’s operations.

KFLA-LD’s transmitter is co-located with other Los Angeles area TV stations at Mt. Wilson. KFMB-TV’s populated protected contour lies between 130° and 160° from the KFLA-LD transmitter. The existing KFLA-LD antenna (on Channel 8) radiates just 5.29 watts at 130° and 160° and just 0.01 watt (1/100th of a watt) toward 140° and 150°. Even at these very low levels new interference from KFLA-LD to KFMB-TV on Channel 8 is just barely below the 0.5% maximum amount.

¹ NewsNet, which is KLFA’s primary stream, is the only 24/7 pure news voice available in Los Angeles via free, over-the-air television. *See* yournewsnet.com.

² Biz TV is the only 24/7 business news voice available in Los Angeles via free, over-the-air television. *See* biztv.com.

³ Diya TV, which is the first-ever 24/7 South Asian broadcast TV network available in the United States, is the only program stream in Los Angeles that is targeted at the Indian-American audience. *See* Seediyatvusa.com.

The combination of increased ERP and increased HAAT of the new KFMB-TV facility on Channel 8 represents an increase of about 7 db in all of the D/U interference calculations. In addition, the new protected contour from KFMB-TV extends an additional eight miles into the most heavily populated parts of Orange County, dramatically increasing the population that KFLA-LD would have to protect. There is simply no way for KFLA-LD to operate on Channel 8 from Mt. Wilson, resolve this new interference to KFMB-TV, and also remain financially viable.

Following the grant of the KFMB-TV construction permit, Mayhugh and his consulting engineer, Darryl Delawder, worked extremely hard to identify a channel in the crowded Los Angeles market to which KFLA-LD could move. There are two other TV transmitter sites used in the Los Angeles area: Flint Peak, located in La Canada below Mt. Wilson; and Box Springs, located near Moreno Valley. Neither is a feasible location on which to relocate KFLA-LD and remain on Channel 8, because in both cases, interference to KFMB-TV would remain, and KFLA-LD's coverage would be dramatically reduced.⁴

Messrs. Mayhugh and Delawder have determined that Channel 19 is the only channel that satisfies all criteria for KFLA-LD, including compliance with Section 74.709 of the Commission's rules, which governs protection to users in Los Angeles of the land mobile radio service ("LMRS") on first-adjacent Channel 20. The Engineering Report that is included with this application describes the manner in which KFLA-LD could operate on Channel 19 and fully protect LMRS users in Los Angeles on Channel 20, including by employing a full-service emissions mask and a low pass filter, each of which would be specifically designed to protect LMRS users operating on a first-adjacent channel.

Section 74.709(c) of the Commission's rules states that an application for a low power TV station construction permit will not be accepted if "it specifies a site that is within the protected contour of a co-channel or first adjacent channel land mobile assignment." However, despite such admonition, the Commission nevertheless granted an application filed by Alma Vision Hispanic Network, Inc., the licensee of KTAV-LD, Los Angeles, CA (File No. 0000120186), which requested the use of Channel 21, without the need for Alma Vision to file a request for a waiver of Section 74.709(c). Similarly, the Commission also granted an application filed by Philadelphia Television Network, Inc., the licensee of WCFG-LD, Philadelphia, PA (File No. 0000053972), which also requested the use of Channel 21, without the need for Philadelphia Television Network to file a request for a waiver of Section 74.709(c) (the Commission has set aside Channel 20 in Philadelphia for LMRS use).

Importantly, Section 74.709(c) does not draw any distinction whatsoever between an LPTV displacement application that proposes first-adjacent Channel 21 from an application that proposes first-adjacent Channel 19. Accordingly, there is nothing in Section 74.709(c) that would require the Commission to fail to grant an application proposing Channel 19, especially

⁴Mayhugh notes that all of the new KFMB-TV population subject to protection is located outside the San Diego DMA, the existing KFLA-LD facilities do not cause objectionable interference to even a single "cell" inside the San Diego DMA and the KFMB-TV power increase further widens the D/U margin by about 7 db. With this in mind, Mayhugh has had numerous discussions with the licensee of KFMB-TV in an effort to negotiate an interference agreement between the two parties, but such discussions have not yet been successful.

when the Commission has already granted – on multiple occasions – substantially similar applications to applicants proposing Channel 21.

Furthermore, despite the fact that Section 74.709(c) does not reserve Channel 15 for LMRS use in Los Angeles, nevertheless the Commission has granted nearly 20,000 applications for LMRS licenses on Channel 15 within 130 km of Los Angeles, even though Channel 15 in Los Angeles has been reserved for *broadcast television* use.

Indeed, television stations and LMRS users have operated in adjacent spectrum for over 80 years, and during this time those parties generally have worked together to resolve any instances of interference that occurs. When Section 74.709 of the Commission's rules was enacted, LPTV stations were allowed to operate with very relaxed standards with regards to spurious emissions and filtering. When the Commission adopted the ATSC rules, which allow full power stations to operate on adjacent channels, the LPTV rules also were revised to permit operations on adjacent channels if they used a stringent mask filter. Subsequently, the Commission also allowed LPTV stations to use full service mask specifications to ensure compatible adjacent channel operations.

As set forth above and in the Application, Mayhugh proposes a facility that employs all full power emission specifications, including a full service mask and full service transmitter, even though such equipment is not required by the Commission's rules. In addition, Mayhugh plans to employ an additional low pass filter to further insure interference free operation. Following grant of the Application, Mayhugh pledges to notify all LMRS users prior to testing the facility, and moreover will coordinate with each such user a testing plan to ensure that there is either no interference, or such interference is merely negligible.

Based on Mayhugh's extensive experience in the television industry, especially associated with constructing new and modified television stations, he contends that LMRS users and broadcast television stations, operating on first adjacent channels, indeed can peacefully co-exist. As set forth on Exhibit 1, as an example, there are fifteen LMRS facilities within five miles of the KABC-TV transmitter in Los Angeles, and three of them are just a few hundred feet away. To Mayhugh's knowledge, both the television and the LMRS facilities have operated interference-free for sixty years or longer. This should be more than enough evidence to satisfy the Commission that KFLA may operate on Channel 19 without causing any noticeable interference to any LMRS use of Channel 20 in the Los Angeles area.

As the Commission is aware, the D.C. Circuit commands that the Commission treat similarly-situated applicants in the same manner (*see, e.g., Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965)). Accordingly, consistent with *Melody Music*, the Commission is obligated to treat Mayhugh in the same manner as Alma Vision, Philadelphia Television Network, KABC-TV, and 20,000 other Los Angeles area LMRS users, meaning the Commission must grant this application, which proposes to operate on a channel that is first-adjacent to LMRS users, just as it granted the applications for Alma Vision and Philadelphia Television Network (and nearly 20,000 additional LMRS license applications on Channel 15 in Los Angeles), and just as it has allowed KABC-TV to operate on adjacent frequencies with LMRS users for over sixty years.

To the extent that the Commission may be relying on Section 73.623(e) of its rules to find that the KFLA-LD application is not grantable absent a waiver, such reliance is misplaced. Section 73.623(e) states, in pertinent part, that the Commission “will not accept petitions to amend the DTV Table of Allotments, applications for new DTV stations, or applications to change the channel or location of authorized DTV stations that would use channels 14-20 where the distance between the DTV reference point as defined in section 73.622(d), would be located less than 250 km from the city center of a co-channel land mobile operation or 176 km from the city center of an adjacent channel land mobile operation.”

But this application does not seek to amend the DTV Table of Allotments, is not an application for a new DTV station, nor is it an application to change the channel or location of an authorized DTV station. This application is for a low power digital TV station. Accordingly, Section 73.623(e) of the Commission’s rules is inapposite, and any application of Section 73.623(e) to the present situation cannot be corroborated because the plain meaning of that rule very clearly does not apply to applications involving low power digital TV stations.

Moreover, in *Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window April 10, 2018 Through May 15, 2018, and Make Location and Channel Data Available*, Public Notice, DA 18-124 (rel. Feb. 9, 2018), at Appendix A, Note 14, the Commission stated that even if the Commission’s TV Study software reveals that a given channel may not be usable, the Commission still will grant a LPTV displacement application if, based on a “technical showing,” the applicant can operate on the requested channel. In this case, Mayhugh is able to make the required “technical showing.”

Specifically, not only would Mayhugh install a full service emission mask and an additional low pass filter to ensure that there is no interference to any LMRS users (as set forth in the Delawder Engineering Report that already is a part of this application), but also, Mayhugh can confirm that there are no LMRS facilities in use on Channel 20 at either Mt. Wilson (where KFLA-LD operates) or Mt. Harvard or, indeed anywhere within threemiles of Mt. Wilson. As indicated on Exhibit 1, the closest LMRS sites are 3.2 milesfrom Mt. Wilson. In both cases hills intervene between the two sites, meaningaccordinglyneither site is “line of sight” with respect to the KFLA-LD transmitter on Mt. Wilson, therebyfurther reducing the potential for interference from KFLA-LD to LMRS users.

In addition, KFLA-LD also is willing to accept any interference from any incoming land mobile users, and Mayhughhereby pledges to immediately reduce power (or take KFLA-LD off the air) if the station causes interference to any LMRS users on Channel 20.Further, Mayhugh understands that LPTV is a secondary service and, as such, the grant of this application would be subject to further displacement or the outright revocation of its license in the event Channel 19 is allocated to a different service. Mayhugh would accept a construction permit for KFLA-LD that includes these conditions.

There also are two additional reasons why a grant of this application would serve the public interest. First, Mayhugh proposes to build out KFLA-LD as an ATSC 3.0 facility. As the Commission is aware, the public interest benefits of having ATSC 3.0 service are enormous and far outweigh the benefits of prohibiting all Channel 19 broadcast operations in Los Angeles.

Further, the emerging benefits of ATSC 3.0 also flow to LMRS users. ATSC 3.0 presents a paradigm shift, as it allows “one to many” datacasting that no other wireless data delivery system can offer. As a result, data users, including LMRS users, will be able to utilize new high speed data delivery being developed for ATSC 3.0. These services would allow Los Angeles Public Safety and educational entities at the individual field unit level to obtain instant and simultaneous local and nationwide real-time data, such as Amber Alerts and instant detailed satellite weather data. Indeed, ATSC 3.0 datacasting on Channel 19 presents a unique opportunity that would allow current and future LMRS, Public Safety and educational users to use much of their existing in-place infrastructure (antennas and receivers already designed to operate on T-Band channels) that could expedite and reduce the cost of implementing these many new services.

But the most prominent reason for the Commission to grant this application is that it would prevent an independent television voice from being removed from the airwaves. Once KFMB-TV elects to implement its facilities on Channel 8, there will be no financially viable options for KFLA-LD to go, other than Channel 19 or off the air altogether.

Based on the foregoing, a grant of this application would serve the public interest, because not only is it fully-compliant with the Commission’s rules and policies, but also it would allow Channel 19 to be used as an ongoing television service, instead of lying “fallow” until the next time the Commission elects to conduct an auction for new full-power television stations. Mayhugh has demonstrated that the potential for interference is nearly non-existent.

Exhibit 1

This study compares the potential for interference between two Land Mobile bands that operate adjacent to TV channels in the vicinity of Mt. Wilson. In the first case, we have the VHF 148 to 174 Mhz Land Mobile Band that operates adjacent to VHF TV Channel 7 (174 to 180 Mhz). The second case looks at the proposed relationship that would exist if the instant application were granted.

1) KABC-TV, Los Angeles. FCC ID# 282, TV Channel 7 (174 MHz to 180 MHz). The station operates with 28.7 KW ERP and holds a construction permit to increase to 50 KW ERP. Note the power increase construction permit allows this station to operate at a power level well in excess of that normally allowed for a full power station on this channel and at this HAAT. The KABC antenna is 6,157' HAMSL. KABC is the first adjacent spectrum adjacent to land mobile stations operating within the 169MHz to 174 MHz segment of this band. In this case there are 15 LMR facilities within five miles of the KABC transmitter and three of them are just a few hundred feet away. It should be noted that these facilities have operated interference free for many years.

2) KFLA-LD, Los Angeles. FCC ID# 28566, seeks TV channel 19 (500 MHz to 506 MHz). The station proposes to operate at 15 KW ERP, the maximum allowed power for LPTV stations. The KFLA antenna is located 5,848' HAMSL. This station proposes to operate in spectrum adjacent to Land Mobile operators operating in TV channel 20 spectrum (506 MHz to 512 MHz). In this instance the closest LMR facilities are 3.2 miles away and in total there would be 8 LMR facilities within five miles of the proposed transmitter.

Note the KABC and KFLA antennas are adjacent to each other at the top of Mt. Wilson. The distance between the two is 143 feet.

The FCC's Station Finder on line Utility was used to identify all Land mobile facilities, both licensed and pending, in each of these adjacent bands. The search criteria used was: Latitude: 34° 13' 36" N, Longitude: 118° 4' 2.2" The search radius was five miles for each band.

The study identified fifteen licensed or pending facilities within five miles of the KABC transmitter operating within the adjacent spectrum. Four of these facilities were within one mile of the KABC transmitter.

It must be noted that KABC has operated in spectrum adjacent to land mobile spectrum for more than 60 years.

The study identified eight licensed or pending facilities within five miles of the proposed KFLA transmitter operating within the adjacent spectrum. None of these was within one mile of the transmitter. The closest three were 3.1 miles away and all three operated at a site that is NOT line of sight to the KFLA transmitter.

It is apparent that the potential for interference between the two circumstances is much greater for KABC operating at "superpower" and within .2 of a mile to three adjacent channel facilities as compared to low power KFLA operating with the closest adjacent channel land mobile facility operating more than three miles away from a site that is NOT line of sight.

Land Mobile facilities within five miles of the KABC transmitter:

Universal Licensing System Database Sites										
Callsign	Licensee Name	Licensee	Lice	Site Address	Location City	Location	Distance	Azimuth	Assigned	
WQHI280	Los Angeles County Dept of Public Works	Alhambra	CA	Mt. Wilson	Pasadena	CA	0.2	355.8	169.475	
WQHI280	Los Angeles County Dept of Public Works	Alhambra	CA	Mt. Wilson	Pasadena	CA	0.2	355.8	170.275	
WQHI280	Los Angeles County Dept of Public Works	Alhambra	CA	Mt. Wilson	Pasadena	CA	0.2	355.8	171.125	
WNSZ607	LOS ANGELES, CITY OF	ANGELES	CA	MOUNT HARVARD	ALTADENA	CA	1	162.8	173.075	
WQIA582	Los Angeles County Dept of Public Works	Alhambra	CA	Mt. Lowe Rd.	Mt. Wilson	CA	2.3	258.7	170.275	
WQHI282	Los Angeles County Dept of Public Works	Alhambra	CA	West Fork Helipad, Precip #452 incon-Redbox Fire Road	Sierra Madre	CA	2.9	76	170.275	
KNAB502	LOS ANGELES, COUNTY OF	ANGELES	CA	SHERIFFS AIR RESCUE BARLEY FLATS	LA CANADA FLINTRIDGE	CA	3.4	354.9	169.95	
KNAB502	LOS ANGELES, COUNTY OF	ANGELES	CA	SHERIFFS AIR RESCUE BARLEY FLATS	LA CANADA FLINTRIDGE	CA	3.4	354.9	171.575	
KNAB502	LOS ANGELES, COUNTY OF	ANGELES	CA	SHERIFFS AIR RESCUE BARLEY FLATS	LA CANADA FLINTRIDGE	CA	3.4	354.9	172.375	
3	Los Angeles County Dept of Public Works	Alhambra	CA	Santa Anita Dam, Level #344 ast of Santa Anita Canyon Road	Sierra Madre	CA	4	137.4	170.275	
WQH5743	Los Angeles County Dept of Public Works	Alhambra	CA	Santa Anita Dam Precip, #346 anta Anita Canyon Road	Sierra Madre	CA	4	137.4	170.275	
3	Los Angeles County Dept of Public Works	Alhambra	CA	Road	Sierra Madre	CA	4.1	136.9	170.275	
3	Los Angeles County Dept of Public Works	Alhambra	CA	Eaton Dam, Outflow #341 986 New York Drive	Pasadena	CA	4.2	198.8	170.275	
3	Los Angeles County Dept of Public Works	Alhambra	CA	Eaton Dam, Level #342 986 New York Drive	Pasadena	CA	4.2	198.9	170.275	
WQH5743	Los Angeles County Dept of Public Works	Alhambra	CA	Eaton Dam Precip, #343 986 New York Drive	Pasadena	CA	4.3	199.7	170.275	

Land Mobile facilities within five miles of the proposed KFLA transmitter

Universal Licensing System Database Sites											
Callsign	Licensee Name	Grant	Expiration	Status	Radio	Site Name	Location	Location	Distance	Azimuth	Assigned
KMA769	ARCADIA, CITY OF	4/24/2014	6/23/2024	Active	Safety	SANTA ANITA RIDGE	ARCADIA	CA	3.2	145.1	507.0625
KMA769	ARCADIA, CITY OF	4/24/2014	6/23/2024	Active	Safety	MOBILE SANTA ANITA	ARCADIA	CA	3.2	145.1	507.0625
KMA769	ARCADIA, CITY OF	4/24/2014	6/23/2024	Active	Safety	MOBILE SANTA ANITA	ARCADIA	CA	3.2	145.1	510.0625
KMA769	ARCADIA, CITY OF	4/24/2014	6/23/2024	Active	Safety	CANYON DRIVE	ARCADIA	CA	4.1	145	506.5625
KMA769	ARCADIA, CITY OF	4/24/2014	6/23/2024	Active	Safety	CANYON DRIVE	ARCADIA	CA	4.1	145	507.0625
KMA769	ARCADIA, CITY OF	4/24/2014	6/23/2024	Active	Safety	MOBILE CANYON	ARCADIA	CA	4.1	145	509.5625
KMA769	ARCADIA, CITY OF	4/24/2014	6/23/2024	Active	Safety	MOBILE CANYON 2	ARCADIA	CA	4.1	145	506.4
KMA769	ARCADIA, CITY OF	4/24/2014	6/23/2024	Active	Safety	MOBILE CANYON 2	ARCADIA	CA	4.1	145	509.4