

Legal Statement

In the instant application, American Broadcasting Companies, Inc. (“ABC”), licensee of WABC-TV, New York, New York (“WABC”), proposes to amend its pending application (“Application”) for a construction permit for facilities (“Proposed Facility”) located at One World Trade Center (“1WTC”) to increase the effective radiated power (“ERP”) for the Proposed Facilities from 5.59 kilowatts (“kW”) ERP to 34.0 kW ERP, the same power level at which it currently broadcasts from the Empire State Building.¹ Grant of the Application, as amended hereby, is in the public interest because it will enable WABC to provide reliable over-the-air digital television (“DTV”) service to the viewers it currently serves from its licensed facilities at Empire State Building, many of whom had temporarily lost service from WABC when WABC permanently transitioned from analog to digital broadcasting, and also will likely enable WABC to once again serve certain viewers who have not been able to receive a reliable DTV signal from WABC since the digital transition in 2009.²

As the Commission is aware, WABC currently is broadcasting using licensed facilities located at the Empire State Building, pursuant to waivers of certain technical rules; a four-way interference agreement with the licensees of stations WBNG(DT), Binghamton, New York (“WBNG”), WWNY-TV, Carthage, New York, and WXXA-TV, Albany, New York (“4-Way Interference Agreement”); and a three-way interference agreement with the licensees of stations WNJB(DT), New Brunswick, New Jersey and WGAL(DT), Lancaster, Pennsylvania (“3-Way Interference Agreement” and, together with the 4-Way Interference Agreement, the “Interference Agreements”).³ Specifically, the licensed facilities for WABC operate at 34.0 kW ERP. The licensed facilities at the Empire State Building are the result of the WABC’s ongoing and diligent efforts since mid-2009 to improve over-the-air service for its viewers.⁴

¹ See FCC File No. BMPCDT-20080620AMV.

² ABC currently is evaluating its options with respect to the best location to serve its viewers, and thus has not yet determined conclusively whether it will elect to operate facilities at 1WTC, or if it will choose to remain at the Empire State Building. See FCC File No. BDSTA-20141016ACR (authorizing WABC and other VHF stations in New York to conduct signal measurement tests from 1WTC). Nevertheless, ABC is filing the instant amendment to the Application in order to enable it to construct the Proposed Facilities if it determines that operations at 1WTC best serve its viewers.

³ See FCC File No. BLCDDT-20121031ABC (covering BPCDDT-20120216ADO, and granting request for waivers of Sections 73.622(f)(7)(ii) (ERP v. HAAT limits) and 73.622(f)(5) (largest station in the market) of the FCC’s rules. To the extent necessary, ABC hereby requests that the FCC grant continued waivers of these rules, for the reasons set forth in the aforementioned file numbers.

⁴ See, e.g., Comments of The Walt Disney Company, MB Docket 12-268, 4-7 (Jan. 25, 2013) (explaining WABC’s experiences with the DTV transition and the challenges it has faced in restoring service to its former analog viewers); FCC File No. BPCDDT-20120216ADO (same). Note that ABC initially applied for 5.59 kW ERP at 1WTC because, at the time it submitted the Application, this was the highest power at which ABC could operate in compliance with the FCC’s rules. Because it was not until recently that the FCC expressly stated that its will, at the option of the broadcaster, protect facilities located at 1WTC as part of the incentive auction process, ABC has not previously sought to amend the Application.

Nevertheless, even with the currently licensed facilities, WABC still has many viewers that cannot receive a reliable over-the-air digital signal.⁵ Accordingly, WABC currently is evaluating its options with respect to how best to serve its viewers following completion of construction of 1WTC.⁶

To this end, in the *Incentive Auction R&O*, the Commission stated that the stations in New York impacted by the 9/11 terrorist attacks will have the option of electing interference protection for either their existing facilities at the Empire State Building, or for facilities at 1WTC, as specified in each station's pending construction permit application.⁷ A key factor in WABC's ability to serve its viewers from 1WTC will be based on its ability to operate facilities at 34.0 kW ERP, the same power level authorized for its licensed operations at Empire State Building. Indeed, as has been well-documented before the Commission, WABC simply cannot serve its viewers with a reliable over-the-air digital signal with facilities that operate at 5.59 kW ERP as specified in the Application.⁸

As explained in the attached Engineering Statement, with the exception of WBNG, WABC's proposed power increase for the Proposed Facility complies with the terms of the Interference Agreements, copies of which are attached hereto, and thus satisfies the FCC's rules governing interference. With respect to WBNG, the Proposed Facility is predicted to cause 0.232% additional interference beyond the amount specified in the 4-Way Interference Agreement and, as demonstrated in Exhibit 3, attached hereto, the vast majority of this interference is predicted to occur at the far edge of WBNG's service contour (i.e., near Wilkes-Barre and Wayne County, Pennsylvania), and thus is outside WBNG's designated market area of Binghamton, New York. Indeed, if WABC maintains its current power level of 34 kW ERP, only 2,448 of WBNG's viewers – approximately 0.2% of WBNG's viewers – are predicted to experience interference from the Proposed Facility.⁹ Accordingly, grant of the proposed power increase will have a minimal impact on WBNG, and thus ABC requests a waiver of the FCC's rules governing interference to the extent necessary.¹⁰ By contrast, the

⁵ Indeed, many viewers in the New York DMA can receive over-the-air service from UHF stations but not VHF stations, even though the DTV transition occurred over three years ago and stations like WABC have expended substantial time and money to attempt to improve reception for the viewers.

⁶ See, *supra*, at note 2.

⁷ In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 29 FCC Rcd 6567, ¶¶ 219-220 (2012) (*"Incentive Auction R&O"*).

⁸ See *supra* n. 2.

⁹ See Engineering Statement at 4-5.

¹⁰ The Commission may grant a waiver of its rules for good cause shown. 47 C.F.R. § 1.3. Specifically, the Commission has discretion to waive any rule where "particular facts would make strict compliance with the rule inconsistent with the public interest" and "special circumstances warrant a deviation from the general rule." *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)). In evaluating a request for waiver, the Commission should "take into account considerations of hardship, equity, or more effective implementation of overall policy." *WAIT Radio*, 418 F.2d at 1159. In addition, the Commission should consider whether "application of the rule would be inequitable, unduly burdensome or contrary to the

move from the Empire State Building to 1WTC will have a large, positive impact on WABC's ability to serve its viewers in the New York, New York designated market area. Specifically, simply by moving from its current location at the Empire State Building to the proposed location at 1WTC and maintaining the same power level as currently authorized, it is predicted that WABC can deliver an interference-free signal to 921,420 additional persons, and thus can attempt to recapture viewers that it lost in the digital transition several years ago.¹¹ In short, on balance, the public interest is served by grant of the Application, as amended herein, because, without the ability to operate facilities at 34.0 kW ERP (i.e., facilities comparable to the WABC facilities at the Empire State Building), WABC likely would not be able to serve its existing viewers with a reliable over-the-air digital signal, and thus its viewers would once again be in the untenable position of losing access to ABC network or locally-produced programming (including news, emergency information, and other public affairs programming).

public interest, or the applicant has no reasonable alternative.” 47 C.F.R. § 1.925(b)(3). For the reasons set forth in the text, the Application satisfies this waiver standard.

¹¹ See Engineering Statement at 5.