

## Displacement Freeze Waiver Request

Pursuant to Section 1.3 of the Commission's Rules,<sup>1</sup> this displacement freeze waiver request respectfully requests waiver of the Media Bureau's freeze on the filing of construction permit applications for displaced low power television and TV translator facilities. *See Freeze on the Filing of Applications for Digital Replacement Translator Stations and Displacement Applications*, Public Notice, 29 FCC Rcd 6063 (MB 2014). Although the licensee has not received a 120-day letter from a new 600 MHz wireless licensee (which is an eligibility criterion in the Commission's June 14, 2017, LPTV Public Notice<sup>2</sup>), the factual and legal circumstances present here with respect to K51LO-D warrant similar treatment of K51LO-D as outlined in the June LPTV Public Notice.<sup>3</sup>

Pursuant to the Commission's waiver standard, the applicant must show "good cause" for granting this request.<sup>4</sup> Further, the

Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *See id.*<sup>5</sup>

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (2017) (the "June LPTV Public Notice").

<sup>3</sup> The licensee has received an interference notice letter from T-Mobile, and a copy of that letter is attached to this application (the "August 3 T-Mobile Letter"). The August 3 T-Mobile Letter makes clear that T-Mobile is acting in its capacity as a 700 MHz licensee, as opposed to its capacity as a new 600 MHz licensee. Thus, this situation does not fit neatly and perfectly into the circumstances identified in the June LPTV Public Notice. Nonetheless, as discussed above, the licensee believes that the circumstances warrant similar treatment.

<sup>4</sup> *See* 47 C.F.R. § 1.3. *See also, e.g., Broadcast Transition Procedures Public Notice*, 32 FCC Rcd 858, n.36.

<sup>5</sup> *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd 858, n.36.

For the same reasons discussed in the June LPTV Public Notice,<sup>6</sup> the public interest counsels strongly in favor of grant of this waiver request. Indeed, denial of this waiver request and application for use of a temporary channel will result in the licensee's channel 51 translator (K51LO-D) going off the air prior to the Special Displacement Window, a result that would directly undermine the public interest because an alternative—interference-free operation on the temporary channel sought herein—is readily available. Grant of this waiver request will “permit displaced station[] [K51LO-D] to continue providing service to viewers with as little disruption as possible.” June LPTV Public Notice, ¶ 1.

In addition, while T-Mobile sent the August 3 T-Mobile Letter in its capacity as a 700 MHz licensee, K51LO-D is a 600 MHz band station, and the licensee's move off of channel 51 will help in the rapid clearing of the 600 MHz band. Thus, even though T-Mobile didn't send a 120-day 600 MHz letter to the licensee regarding K51LO-D, it is a 600 MHz operation (channel 51) that is affected, which means that K51LO-D is similarly situated to 600 MHz low power operators that receive a 120-day letter.

Furthermore, as is evident in the August 3 T-Mobile Letter, T-Mobile itself views the K51LO-D / 700 MHz licensee situation as virtually identical in nature as it would if T-Mobile were acting in its capacity as a 600 MHz licensee issuing a 120-day letter. *See* August 3 T-Mobile Letter at n.3 (“T-Mobile has notified the FCC it will compensate *certain . . .* low power television stations that operate on a secondary basis and are unable to obtain a permanent channel in time to accommodate T-Mobile's rapid deployment of broadband service in the 600 MHz band. *We extend this same offer to K51LO-D's relocation to accommodate T-Mobile's 700 MHz deployment.*” (first emphasis in original; second emphasis added)).

Finally, allowing the licensee to operate with a temporary channel while awaiting the Special Displacement Window will not undermine any Commission rule or policy because (i) the temporary operations will meet all interference constraints, (ii) the temporary operations will be terminable at the Commission's discretion because they will be pursuant to special temporary authority, and (iii) the channel will be temporary unless and until other applicants file for the same channel in the Special Displacement Window (in other words, the licensee's temporary operations will not preclude or prejudice the operations of any competing low power operator to apply for the same channel during the Special Displacement Window).

For these reasons, the licensee respectfully requests a grant of this waiver request and a prompt processing of the legal STA request accompanying this displacement application.

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<sup>6</sup> *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (2017) (the “June LPTV Public Notice”).