

## **Request for Waiver**

On August 25, 2009, Point Broadcasting Company (“PBC”) filed a construction permit application (FCC File No. BNPDTL-20090825BPG) for a new Low Power TV (“LPTV”) station on channel 18 (“Channel 18 Application”). The Channel 18 Application is currently first-adjacent channel to KCVU, Paradise, CA (Facility ID 58605). 0.7% increased interference is predicted to be caused to KCVU’s channel 17 facility. Therefore, The Channel 18 Application qualifies for channel displacement.

The Channel 18 Application is also co-channel to KHSL-TV’s Digital Replacement Translator at Redding that is licensed on channel 18 (Facility ID 24508), which was displaced from Channel 36 in a channel displacement filing as of May 18, 2018 (LMS File No. 05375). The Channel 18 Application is predicted to cause greater than 90% co-channel interference to the Digital Replacement Translator. Thus, PBC is filing the instant amendment to propose operation on Channel 35.

In the Public Notice<sup>1</sup> announcing the filing window for pending new rural LPTV stations that were displaced by the Incentive Auction and repack process, the Commission stated that, in order to be considered “displaced” for the purposes of the window, the applicant must: (1) be subject to displacement by a full-power or Class A television station on the repacked television band as a result of the Incentive auction and repacking process; (2) have proposed a frequency repurposed for new, flexible use by a 600 MHz Band wireless licensee, or (3) have proposed a frequency that will serve as part of the 600 MHz Band guard bands (“*Window Eligibility Criteria*”).

PBC believes that the instant amendment meets the *Window Eligibility Criteria* because of the interference that would be caused to KCVU’s facilities. However, the interference caused to KHSL’s Digital Replacement Translator provides an equally valid basis for filing the instant amendment. While the *LPTV PN* does not specifically contemplate the displacement of an LPTV applicant by another LPTV station, to the extent necessary, PBC respectfully requests a waiver of the *Window Eligibility Criteria* so that the Commission may process and grant the instant amendment. LPTV applications precluded by LPTV displacements are every bit as much displaced as applications precluded by full-power or Class A displacements. It can be argued that the displacement of Point’s application is in fact a displacement by a full-power or Class A station, only the displacement in this case is indirect rather than direct, as the full-power or Class A station displaced the LPTV station that is now threatening this application. The displacement of PBC’s application was just as much a result of the Incentive Auction as was that of any LPTV application that was directly displaced by a full-power or Class A station. In either case, if an applicant cannot file in this window, it will not be able to provide a new service to the areas that it is proposing to serve. Accepting an amendment from PBC for this application and from other similarly-situated applicants is in the public interest, as it will allow for new services to be provided to the public by applicants who have had their applications on file and on hold for more than a decade. Accordingly, the instant waiver request should be granted.

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<sup>1</sup> See *Filing Window for New Rural Digital Low Power Television and TV Translator Applicants Displaced By Incentive Auction and Station Repack*, Public Notice, DA 19-1215 (MB Dec. 2, 2019) (“*LPTV PN*”).