



Federal Communications Commission
Washington, D.C. 20554

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In Re: Arkansas Educational Television Commission
LPTV Experimental STA Application
LMS File Number: 0000121336
Facility ID No. 756258

Representatives:

This letter refers to the above-referenced application (Application), filed by the Arkansas Educational Television Commission (AETC), requesting (1) Special Temporary Authority (STA) to allow AETC to stand up five Low Power Television (LPTV)/TV translators in four unserved and largely rural areas in Arkansas to address transmission gaps during the emergency situation created by the COVID-19 pandemic; and (2) waivers of the 3 kW limit to serve two of those areas.¹ As we explain below, we grant these requests.

Background. According to its Application, AETC is the licensee of a network of six noncommercial educational TV broadcast stations that comprise Arkansas PBS and reach 76% of the state's population. In mid-March 2020, in response to the pandemic, Arkansas PBS formed a collaborative partnership with the Arkansas Department of Education's Division of Elementary and Secondary Education to create Arkansas Alternative Methods of Instruction (Arkansas AMI) to keep students learning from home. PBS then produced and broadcast the standards-based AMI programming for the state's pre-K through 8th grade students for eight weeks, five hours a day and five days a week, "becoming the state's de facto 'schoolhouse' and keeping students engaged in learning until the end of the school year."²

To reach the remaining 24% of the state population, AETC undertook a survey that identified four significant areas with no or deficient coverage: Gaither (the Northern Valley Region of Harrison and Mountain Home); Ouachita Mountains (the Arkansas River Valley); Forrest City (the plains extending to West Memphis); and Yancy (the southwest corner of Arkansas). In an effort to reach these areas, AETC intends to leverage existing state-owned towers and site infrastructure to reduce time to commence service, contain costs and to expedite the establishment of these five new LPTV/TV translator transmitter sites to fill in those areas.³ The Arkansas governor and legislature of the State of Arkansas deemed AETC broadcast service to these areas to be a very important state need, and have allocated \$5.18 million

¹ See STA Request and Rule Waiver Narrative at 1, 4, LMS File No. 0000121336.

² *Id.* at 2.

³ *Id.* at 4.

from CARES federal funding to expand the broadcast reach of Arkansas PBS to these areas. The federal funding comes from the 2020 CARES ACT, which also stipulates these funds must be spent by December 30, 2020.⁴

AETC further submits that it identified two gap areas in Arkansas -- Forrest City and Yancy that will require power levels above the 3 kW limits in order to reach the citizens that need it most. Because those sites require additional power to optimize coverage, AETC requests over-power waivers to serve those areas. Specifically, AETC requests that the Commission grant waivers to operate the proposed STA for Forrest City at 17.5 kW ERP and Yancy at 12kW ERP above the 3kW LPTV limit in order to maximize the coverage and audience reach in these regions.⁵ AETC argues that this power increase is necessary to provide the required coverage without having to build additional sites and infrastructure and stay within the CARES ACT grant funding limits. Moreover, it asserts that the alternative -- adding more sites and complexity to the network -- would only serve to delay and put at risk the public benefit.⁶

Discussion. We grant AETC's request in its entirety. The Commission has authority under section 309(f) of the Act to grant an STA if it finds "there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest."⁷ We conclude that the public interest would be served by the grant of AETC's request due to the critical in-home educational service that AETC will be able to provide to previously unserved children. With the addition of the new transmitter locations, the Arkansas PBS potential broadcast audience coverage with reliable over-the-air signal would increase by 685,607 people, which equates to 99.5 percent of the state.⁸ Providing essential educational programming during the COVID-19 pandemic through the facilities that can be most quickly deployed is unquestionably in the public interest. We emphasize that our conclusion is based on the close collaborative partnership with the Arkansas Department of Education, and that the Application is akin to a direct governmental request for assistance. In particular, we rely on the fact that the Arkansas state government specifically allocated \$5.18 million from CARES ACT federal funding for the project identified in the Application -- to expand the broadcast reach of Arkansas PBS to unserved areas⁹ -- and this funding is not general or discretionary. Given that the licensee will help to carry out a core governmental function by facilitating and providing access to vital educational services for K-8 students using CARES ACT federal funding, we find that the circumstances here are truly extraordinary and in the public interest.

After a thorough review of the technical specifications, we are persuaded that no interference is likely to occur from grant of the proposed STAs. Accordingly, we grant the STAs subject to the conditions set forth below. However, we caution that these are secondary facilities and our authorization may be summarily terminated if their operation causes interference to any other broadcast facility. Also, compliance with section 1.1307(b) of the Commission's rules (radio frequency radiation) is required.¹⁰ In the interest of public safety, and consistent with conditions that apply to all television stations operating a digital facility, we also impose a requirement to identify and notify healthcare facilities to protect against any inadvertent interference to medical equipment.¹¹

⁴ *Id.* at 1.

⁵ *Id.* at 4-5.

⁶ *Id.* at 5.

⁷ 47 U.S.C. § 309(f).

⁸ STA Request and Rule Waiver Narrative at 7.

⁹ *Id.* at 1.

¹⁰ 47 CFR § 1.1307(b).

¹¹ 47 CFR § 15.242(a)(1)).

In addition, we waive the 3 kW power limitations for the transmitters in Forrest City and Yancy. Generally, the Commission may waive any rule for good cause shown.¹² The Commission may also grant a request for waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹³ Waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁶

We conclude that grant of the waiver of the LPTV power restrictions is in the public interest based on the unique factual circumstances in this case. Specifically, grant of a waiver for operation in Forrest City and Yancy is in the public interest in this particular instance because: (1) the novelty and urgency of the COVID-19 crisis and the dangers of significant educational disruption to schoolchildren; and (2) the time-sensitive nature of meeting the 2020 year-end deadline to qualify for CARES ACT funding. In the present case, we conclude that strict compliance with the power limitation would perpetuate hardship on thousands of schoolchildren that would not otherwise be able to receive the AMI educational programming broadcast by PBS.

Accordingly, the above facts considered, the request for Special Temporary Authority to operate five new LPTV/TV translator stations **IS GRANTED**, subject to the following conditions:

1. The grant of this construction permit is subject to the condition that, with ample time before commencing operation, AETC makes a good faith effort to identify and notify health care facilities (e.g., hospitals, nursing homes, *see* 47 CFR § 15.242(a)(1)) within your service area potentially affected by your operations. Contact with state and/or local hospital associations and local governmental health care licensing authorities may prove helpful in this process. During this pre-broadcast period, you must provide all notified entities with relevant technical details of your operation, such as channel, targeted on-air date, effective radiated power, antenna location, and antenna height. You are required to place in the station's public inspection file documentation of the notifications and contacts made and you may not commence operations until good faith efforts have been made to notify affected health care facilities. During this pre-broadcast period and for up to twenty (20) days after commencing operations, should you become aware of any instances of medical devices malfunctioning or that such devices are likely to malfunction due to your operations, you must cooperate with the health care facility so that it is afforded a reasonable opportunity to resolve the interference problem. At such time as all provisions of this condition have been fulfilled, and either upon the expiration of twenty (20) days following commencement of operations or when all known

¹² 47 CFR §§ 1.3; 1.925(3).

¹³ 47 CFR § 1.925(3).

¹⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *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.

¹⁶ *Northeast Cellular*, 897 F.2d at 1166.

interference problems have been resolved, whichever is later, this condition lapses; and

2. This authority expires 180 days from the date of this letter.

The Arkansas Educational Television Commission's request for waiver for its operation of LPTV transmitters in Forrest City and Yancy, Arkansas, **IS GRANTED** and the 3 kW limitation on LPTV transmission **IS WAIVED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau