

## EXHIBIT 13

### REQUEST FOR WAIVER OF 47 C.F.R. §§73.37(a) and 73.3517

**Background and Reason for Request.** InterMart Broadcasting of Georgia, Inc. (“InterMart”), is permittee of Expanded Band Station WSWK(AM), 1690 kHz, Adel, Georgia. By this instant application, InterMart proposes to relocate WSWK from Adel to Avondale Estates, Georgia. InterMart respectfully requests the Commission to waive (to the extent necessary) the provisions of 47 C.F.R. §§73.37(a) [overlap rule] and 73.3517 [contingent application rule] to permit the acceptance and processing of InterMart’s application at this time. **Absent a waiver, an unbuilt construction permit for Expanded Band Station WHITE(AM), 1690 kHz, Johnson City, Illinois, would preclude the use of 1690 kHz at Avondale Estates.** However, on July 19, 2001, Clear Channel Broadcasting Licenses, Inc. (“Clear Channel”), the permittee of WHITE, filed an application to relocate WHITE to Berwyn, Illinois. The relocation of WHITE to Berwyn clears all constraints to the use of 1690 kHz at Avondale Estates, Georgia, by WSWK.

**Request for Waiver of Section 73.37.** Section 73.37(a) of the Rules provides in part, “No application will be accepted for a new station if the proposed operation would involve overlap of the signal strength contours with any other station as set forth below in this paragraph...” Typically, the Commission would not accept InterMart’s application until a license were first granted for WHITE at Berwyn, Illinois. InterMart seeks a waiver of this rule so that the WSWK application may be processed simultaneously with the WHITE application.

**Request for Waiver of Section 73.3517.** InterMart also seeks a waiver of Section 73.3517 of the Rules, which bars “contingent applications” except in certain circumstances. That rule was adopted to insure that the Commission would not be burdened by applications that would remain on file for many years waiting for a grant of some other application. That cannot happen in the case of the Expanded Band. Because applications for new facilities in the expanded band cannot be filed and because applications for major changes must always provide absolute and complete protection from interference to other expanded band facilities, the WHITE application is, under current rules, a grantable application. It can never become the subject of competing applications. Therefore, InterMart’s application will be grantable as soon as the WHITE application is granted.

**Grant of a Waiver Will Serve the Public Interest.** There are many reasons why grant of a waiver would serve the public interest. The Expanded Band has grown rather slowly. Quite a few licensees declined to accept expanded band construction permits. Others who received permits did not complete construction and allowed them to lapse upon expiration. One of the reasons seems to be the difficulty of developing a viable audience for expanded band stations. Permitting InterMart to file its application

now would result in provision of a **first local service** to Avondale Estates, Georgia, as opposed to leaving the station in Adel where there remain two other services. The relocation of WSWK would also result in the provision of new service to **2,593,853** more persons<sup>1</sup> than would be served by WSWK's existing construction permit. InterMart also believes the ability to serve a greater number of persons makes the construction and operation of the expanded band station a viable proposition. These are factors the Commission considers under Title 47 USC §307(b) when determining whether the relocation of a station results in a fair, efficient, and equitable distribution of radio service to the several states and communities.

**Community Attributes of Avondale Estates.** Avondale Estates is an incorporated city with a 2000 population of 2,609. Avondale Estates is located in DeKalb County which had a 2000 population of 665,865. Avondale Estates has an elected mayor. Avondale Estates has its own U. S. Post Office located at 2800 Washington Street and ZIP Code, i.e., 30002. Avondale Estates has commercial businesses. An elementary school is located within the city limits. Avondale Estates provides police protection to its residents. Avondale Estates has a bank, insurance agency, and law offices. Avondale Estates has its own churches.<sup>2</sup> Therefore, Avondale Estates possesses the requisite "social, economic and cultural components that are commonly associated with community status." *See, FM Table of Allotments (East Hemet, CA)*, 67 RR 2d 146, 147 (1989). WSWK would bring first local service to Avondale Estates, since Avondale Estates currently does not have a local station. Avondale Estates is located within the Atlanta, Georgia, Urbanized Area. As noted in the Technical Exhibit, WATB(AM), 1420, Decatur, Georgia, originally was licensed to Avondale Estates. The FCC has, therefore, previously considered Avondale Estates a separate community deserving of its own station. Although this is not an FM proceeding, the applicant believes it has satisfied the showing requirements of *Headland, Alabama, and Chattahoochee, Illinois*, 10 FCC Rcd 10342 (1995) that stations licensed to Urbanized Areas should not be attributed to Avondale Estates. *See, Rose Hill, Trenton, Aurora and Ocracoke, North Carolina*, DA 96-2062, released December 13, 1996. Avondale Estates warrants a first local service preference. The applicant believes Avondale Estates warrants a first local service preference and does so under the elements of *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998). The applicant was told by an employee of the Avondale Estates City Hall that residents of Avondale Estates consider themselves separate and not residents of Atlanta. Avondale Estates is not dependent on Atlanta, and the stations licensed to the Atlanta Urbanized Area should not be attributed to Avondale Estates. If the Commission desires a more comprehensive *Tuck* showing, the applicant will provide it upon request. Additional information gathered from Avondale Estates is attached hereto. (See also Technical Exhibit #1 which provides an additional showing of compliance with Section 307(b).)

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<sup>1</sup> The population within the 0.5 mV/m contour of the WSWK construction permit at Adel, Georgia, is 205,675. The population within the 0.5 mV/m contour of the proposed construction permit at Avondale Estates, Georgia, is 2,799,528, resulting in a net gain of 2,593,853 persons. The population of Adel, Georgia, is 5,307. The population of Avondale Estates is 2,609. All figures are from the 2000 census.

<sup>2</sup> Source: Internet, Yahoo! Yellow Pages (Data by Lookup USA).

**Why a Waiver is Necessary Now.** In light of the expiration date of InterMart's existing construction permit (December 6, 2003), InterMart cannot take the risk of waiting until the WHITE license application is granted before filing its own application. For example, the Commission's rules may change in such a way that InterMart's later-filed may not be acceptable. The Commission might open a window to accept new expanded band applications, which could render it impossible for InterMart to file its application later when WHITE has been licensed. Granting a waiver of Section 73.37(a) and 73.3517 of the Rules and processing the WSWK application now would permit the Commission to make efficient use of the staff's time and would result in a prompt grant of a construction permit for WSWK so that the facilities could be built before expiration of the underlying construction permit. During the time when the WHITE application is pending, the Commission could consider InterMart's application, and a construction permit could be granted InterMart upon the grant of a construction permit for WHITE at Berwyn. Commencement of program tests by WSWK could be conditioned on the prior commencement of program tests by WHITE and grant of a license to WSWK could be conditioned on grant of a license for WHITE. InterMart would accept such conditions on its permit.

**Interference Reduction.** Additionally, the relocation of WHITE to Berwyn and the relocation of WSWK to Avondale Estates would insure that there would be no electrical interference between the facilities; thus, in a sense, the relocation of WSWK is akin to an interference reduction arrangement. Good cause exists for a waiver of the cited rules. The public interest will benefit from such a waiver.

**General Waiver Request.** The applicant has identified Sections 73.37 and 73.3517 as requiring waivers; however, if there are other Commission Rules that would preclude acceptance of this application at this time, the applicant requests a waiver of them also for the grounds set out above.