

Request for Waivers

Pursuant to the instant application, WGAL Hearst Television Inc. (“Hearst”), licensee of WGAL, Lancaster, PA, proposes to increase WGAL’s maximum effective radiated power (“ERP”) from 32.2 kW to 59 kW ERP (“WGAL’s Proposed Operation”). In connection therewith, Hearst respectfully requests waivers of Section 73.616(e) of the Commission’s Rules to permit predicted interference in excess of the Commission’s 0.5 percent new interference limit and Section 73.622(f) to permit an ERP in excess of the power limit for WGAL’s height above average terrain (“HAAT”) of 419 meters.

Background

WGAL is currently authorized on Channel 8 under program test authority to operate with 32.2 kW ERP pursuant to its construction permit in FCC File Number BPCDT-20100111AER and pending license application in FCC File Number BLCDT-20110323ABF.

Hearst desires to further increase WGAL’s ERP to 59 kW because of post-transition viewer reception problems experienced immediately after the digital transition on June 12, 2009, and which continue to persist.

As Hearst has previously reported, after WGAL commenced its post-transition 7.5 kW ERP DTV facility, and shortly thereafter, its 8.1 kW facility, Hearst received numerous complaints of poor or no reception from viewers. Hearst confirmed the WGAL viewer reception issues with multiple field tests, including one test on June 29, 2009, in coordination with the FCC’s field office at a cable headend in Walnut Bottom, PA. Even with its current 32.2 kW ERP, viewer complaints continue to persist.

As the Commission is aware, high-band VHF digital reception issues like those WGAL is facing have been experienced by many stations across the country, particularly in the northeast, and power increases have been helpful in mitigating such problems. As noted in the Engineering Exhibit accompanying the instant application, the Commission’s digital power levels are too low for adequate replication of former analog facilities. This is primarily because of the ineffectiveness of many indoor antennas and “noise” from consumer electronics devices. *See generally Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rule Making, 25 FCC Rcd 16498 (2010), ¶¶ 42-57 (discussing the various sources of interference, causes of poor reception, and suggesting potential strategies to mitigate the issues).

WGAL’s most recent “maximized” power increase to 32.2 kW ERP has helped some, but WGAL’s viewers continue to experience reception problems. Hearst projects that a power increase to 59 kW ERP will significantly help improve reception for WGAL’s viewers.

As explained in Hearst’s Engineering Exhibit accompanying the instant application, WGAL’s Proposed Operation is predicted to cause interference in excess of the 0.5 percent limit in Section 73.616(e) of the Commission’s Rules with respect to WNJB, New Brunswick, New

Jersey, and WBPH-TV, Bethlehem, Pennsylvania. In addition, WGAL's Proposed Operation exceeds the maximum ERP and HAAT combination for WGAL in Section 73.622(f).

To the extent necessary, waivers of Section 73.616(e) and Section 73.622(f) are hereby requested.

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In accordance with Section 1.3 of the Commission's Rules, "[a] waiver is appropriate when special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Hearst submits that such special circumstances are present here.

Hearst has entered into interference acceptance agreements with both WNJB and WBPH-TV. With respect to WNJB, the licensees of WNJB and WGAL have agreed to mutually accept up to 6% additional interference to and from each others' facilities. Similarly, WBPH-TV and WGAL have agreed to accept mutual interference of up to 2%. Copies of both agreements are attached. Accordingly, while WGAL's Proposed Operation does not comply with Section 73.616(e) with respect to WNJB and WBPH-TV, both of those stations have consented to the additional interference.

While WGAL's proposed power increase would exceed the maximum power permitted under Section 73.622(f), the power increase is not intended to expand WGAL's coverage area. Rather, the purpose of WGAL's Proposed Operation is to restore service losses to WGAL's viewers who previously were able to receive WGAL's higher power Channel 8 analog signal but cannot receive WGAL's post-transition digital signal despite being located in WGAL's digital service area.

As discussed earlier and in the Engineering Exhibit, WGAL's service losses are principally due to WGAL's low power high-band VHF Channel 8 authorization (compared to its prior Channel 8 analog power of 110 kW), the widespread use by viewers of poor indoor antennas, and high levels of consumer electronic "noise." Due to such factors, application of Section 73.622(f) to WGAL's Proposed Operation would actually contravene the public interest by precluding Hearst from serving WGAL's former analog viewers. The Commission's recent proposal to permit Zone I VHF-band TV stations to increase their power by 6 dB, *see Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rule Making, 25 FCC Rcd 16498 (2010), ¶¶ 42-49, makes clear that the Commission understands the hardship to viewers caused by high-band VHF signal issues.

As the Commission is aware from prior WGAL applications, Hearst has worked diligently towards identifying possible solutions to help restore service to its affected viewers. After an exhaustive channel study, given the frequency congestion in the Lancaster market, Hearst has concluded that there is no available in-core full-power UHF channel to which WGAL could consider moving. WGAL has applied for several digital low power television

translator stations which are projected to help in certain areas.¹ And, despite WGAL's power increase to 32.2 kW, WGAL continues to experience viewer reception problems. Hearst projects that a further increase to 59 kW, as proposed in the instant application, will go a long way towards restoring service to WGAL's viewers.

Hearst respectfully submits that the instant request satisfies the Commission's waiver standard. WGAL's high-band VHF digital reception issues, the need to restore service to WGAL's former analog viewers who can not receive WGAL's post-transition digital service, and the consent of WNJB and WBPH-TV, the only potentially affected stations, to WGAL's Proposed Operation are special circumstances that warrant deviation from Section 73.616(e) and Section 73.622(f), and such deviations will serve the public interest by improved television service to the public.

For the foregoing reasons, Hearst respectfully requests that the Commission waive Sections 73.616(e) and 73.622(f) and grant the instant application.

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¹ See FCC File Numbers BDRTCDT-20100329ACY, BDRTCDT-20100329ACU, BDRTCDT-20090824ADX, BDRTCDT-20090824ADR, BDRTCDT-20090824ADP, and BDRTCDT-20090824ADN.