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TRIPLICATE

August 21, 2003

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AUG 21 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 -12th Street, SW
Washington, DC 20554

Re: File No. BPH-20021107AAD
Radio Station WPAT-FM
Patterson, New Jersey
Facility ID No. 51668

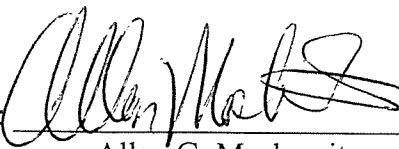
Dear Ms. Dortch:

On behalf of WPAT Licensing, Inc., licensee of Radio Station WPAT-FM, Patterson, New Jersey, we are herewith filing an original and four copies of the licensee's Petition for Reconsideration of the Media Bureau Staff's action in its letter of July 28, 2003 denying the licensee's request for waiver of the Commission's Rules with respect to the above-referenced application.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

KAYE SCHOLER LLP

By 
Allan G. Moskowitz

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)
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Application of)
WPAT Licensing, Inc.)
)
WPAT(FM), Patterson, New Jersey)
(Facility ID No. 51663))
)
)
For Modification of Facilities)

AUG 21 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No. BPH-20021107AAD

To: Chief, Media Bureau

PETITION FOR RECONSIDERATION

WPAT Licensing, Inc. ("WLI"), licensee of Radio Station WPAT-FM, Patterson, New Jersey, pursuant to Section 1.106 of Commission's Rules, hereby respectfully requests that the Chief, Media Bureau, reconsider the Media Bureau staff's action in its letter of July 28, 2003 denying WLI's request for waiver of Section 73.213(a) of the Commission's Rules and the dismissal of the above-referenced application to modify Radio Station WPAT-FM by relocating its transmitter site. In support thereof the following is respectfully shown:

BACKGROUND

1. On September 11, 2001, the World Trade Center ("WTC") in New York City was destroyed by terrorists. WPAT-FM, two other FM radio stations and eight television stations, all serving the New York City metropolitan area and all of which had transmitter sites on the World Trade Center, went silent. WPAT-FM was able to return to the air on Friday, September 14,

2001 by operating at low power at the Empire State Building (“ESB”) and has continued to operate pursuant to Special Temporary Authority.

2. From 1977 until September 11, 2001, Radio Station WPAT-FM had been licensed at the World Trade Center with 5.4 kilowatts effective radiated power at 433 meters HAAT which produced a 60 dBu F(50, 50) contour distance of 52.2 kilometers and which is the maximum distance allowable for Class B FM facilities.

3. Attached hereto is the Engineering Statement of William J. Getz of Carl T. Jones Corporation. As indicated therein, the currently licensed WPAT-FM transmitter site (i.e., pre-September 11, 2001), is short-spaced to 6 FM stations.¹ WPAT-FM has been short-spaced to co-channel Class B station WHYN-FM, Springfield, Massachusetts and first adjacent channel Class B WMMR(FM), Philadelphia, Pennsylvania continuously from prior to November, 1964 to the present time. The distance separation between WPAT’s licensed WTC transmitter site and WHYN(FM)transmitter site is 204.5 kilometers. The distance separation between WPAT’s licensed transmitter site at WTC and the WMMR(FM) transmitter site is 129.4 kilometers.

4. After the destruction of WPAT-FM’s licensed transmitter site, the licensee and its engineers began an exhaustive search for a new transmitter site that would best approximate the station’s former coverage and comply with the Commission’s Rules. As stated in the application and by the attached Statement, no fully-spaced site exists at which to relocate WPAT-FM’s transmitter. Furthermore, the licensee examined 101 tower sites in the New York City area and only one, the WNYE(FM) tower, improves the necessary WPAT-FM short spacings. However,

¹ The short-spacings to four of the stations were discussed in the application and otherwise comply with the Commission’s Rules.

the WYNE(FM) tower cannot provide the requisite city-grade coverage to Patterson, New Jersey. Consequently, after a lengthy analysis, it was determined that the proposed transmitter site, the Empire State Building, the only multi-use FM site which could offer service comparable to the licensed WPAT WTC facility, was also the least short-spaced available site.

THE APPLICATION

5. WPAT-FM's instant application proposing permanent facilities at ESB requested 6.0 kilowatts ERP at 415 meters. This facility would produce a 60 dBu F(50,50) contour distance of 52.2 kilometers which is the maximum distance allowable for a Class B FM facility and would most closely duplicate the coverage produced by WPAT-FM's now demolished licensed facility. While the proposed facilities would not create any new shortspacings, the existing shortspacings were necessarily modified by the proposals 2.9 mile (4.66 kilometer) move from WTC to ESB.

6. Specifically, since the site move was essentially north, it ameliorated the shortspacing to first adjacent Channel WMMR(FM), Philadelphia, Pennsylvania, from 129.4 kilometers to 133.8 kilometers, i.e., 4.4 km. Essentially, the WPAT-FM proposal would decrease the predicted area of interference caused to WMMR(FM) by 155 square kilometers and reduce the interference population within that area by 24,704 persons. Similarly, because the station is moving north and, therefore, closer to WHYN-FM, WPAT-FM is increasing the shortspacing to that station from 204.5 kilometers to 199.9 kilometers, i.e., 4.6 km. Whereas the licensed WPAT-FM main facility is predicted to cause interference to a population of 43,183 persons within a land area of 146 square kilometers, the proposed WPAT-FM facility is predicted

to cause interference to a population of 66,537 persons within a land area of 248 square kilometer, i.e., an increase of 23,354 persons within an increased area of 102 square kilometers.

7. WPAT-FM's application noted that the increase in interference to WHYN(FM) represented only 1.36% of the 1,715,068 persons within the presently licensed WHYN-FM 54 dBu protected contour and that the entire population will continue to be well served by at least five aural services. In fact, the area would receive primary service from a minimum of seventeen and forty-three of seventeen FM services. As a result of the increase of predicted interference caused individually to WHYN-FM, the licensee requested waiver of Section 73.213(a).²

8. The waiver request cited the foregoing and noted that the proposal would result in a net increase in "interference population" of 4,025 persons which represented only 0.016% of the total population within the WPAT-FM, WHYN-FM and WMMR(FM) protected service contours. Moreover, the licensee argued that not one person which presently receives interference-free service from WPAT-FM would be subject to new interference received as a result of this proposal and that the entire area of population predicted to receive interference within WHYN-FM's relevant contour and those predicted to receive interference from WHYN-FM will continue to be well served by at least five aural services.³

² Section 73.213(a) provides that a co-channel or first-adjacent channel grandfathered short-spaced station may modify its facilities if the applicant demonstrates: (1) there is no increase in either the total predicted interference area (caused and received) or the associated population; (2) there is no increase in interference caused by the proposal to any individual grandfathered short-spaced station; and (3) any area predicted to lose service as a result of interference has adequate service remaining.

³ WLI also noted that prior to 1978 and WPAT-FM's move to the master antenna atop the WTC, the station was licensed to operate from atop the Chrysler Building in mid-town
(continued...)

THE COMMISSION'S LETTER

9. The Staff's letter considered each of WPAT-FM's grounds for waiver of Section 73.213(a). Despite acknowledging the loss of WPAT-FM's transmitter site as an "exceptional circumstance," the letter noted that the

"proposed facility will nevertheless increase the interference caused to WHYN-FM by 23,354 people. Furthermore, WPAT-FM fails to cite any instances of the Commission granting an interference waiver of the magnitude proposed in the application. Therefore, we find that, notwithstanding the special circumstances involved in the loss of the WPAT-FM transmitter site, waiver of Section 73.213(a) is not warranted because WPAT-FM has the opportunity to specify alternative facilities at the ESB site that would cause less interference to WHYN-FM and reduce the total predicted interference area..."

Essentially, the Commission's Staff noted at Footnote 4 that if WPAT-FM's proposal were reduced to 4.9 kilowatts, the proposed facility would comply with Section 73.213(a).⁴

Consequently, in light of the alternative, the Commission did not find that waiver of the Rule would serve the public interest.

THE BUREAU CHIEF MUST RECONSIDER WPAT-FM'S REQUEST FOR WAIVER

10. First, the licensee believes that the Staff's alternative proposal, i.e., 4.9 kilowatts, would severely diminish WPAT-FM's historic service area and lead to a further curtailment of service when a facility at the World Trade Center site is rebuilt. Reducing WPAT-FM's proposed power to 4.9 kilowatts removes approximately 275,000 people from WPAT-FM's city

³

(...continued)

Manhattan at a transmitter site 41.9 kilometers shortspaced to WHYN-FM. From the proposed ESB site, WPAT-FM would be 41.1 kilometers shortspaced to WHYN-FM and, therefore, would improve that shortspacing by 0.8 kilometers.

⁴

WPAT-FM operating at 4.9 kw would still increase interference to 1,548 persons with WHYN's protected service area.

grade contour and nearly 207,000 people from its 50 dBu contour. In fact, as indicated in the Engineering Statement, limiting WPAT-FM at ESB to 4.9 kilowatts would force WPAT-FM to cover 145,000 less people than they did from the WTC license site in their city grade contour, and nearly 100,000 people less than their licensed 54 dBu contour. Apart from the mere reduction in service to its listeners and listening area, the additional power is essential for WPAT-FM's signal to penetrate the dense concentration of high-rise buildings in an urban area. It would be hard to name a denser concentration of high-rise construction than the island of Manhattan and the surrounding area.⁵ Consequently, there are valid technical reasons why WLI rejected the staff's "alternative".

11. Furthermore, and significantly, by dismissing the WPAT-FM ESB application the Commission has established a poor precedent for dealing with New York City FM station relocations. Utilizing the logic established in the instant decision, no grandfathered shortspaced New York City station ever would be permitted to relocate and maintain their authorized technical facility if their proposed relocation would cause any increased interference to even one grandfathered co-channel or first adjacent channel shortspaced station. Each of the fourteen Class B stations presently operating from the Empire State Building have at least one such shortspacing to contend with.⁶

⁵ WPAT-FM broadcasts a Spanish language format. According to the FY 2000 US Census nearly 25 percent of the New York City population speaks Spanish at home.

⁶ In comparison, see the Commission's policy in Sutro Tower, Inc., 32 FCC 2d 826 (1972) wherein the Commission considered a coherent waiver policy to encourage the relocation of FM stations in the Bay area to a new master antenna on MT Sutro and fashioned a limited waiver process to achieve this goal.

12. Here, the Staff's policy would severely restrict WPAT-FM and many other New York City FM stations' flexibility in relocating to any new master New York City radio/TV tower. For example, as shown in the attached Engineering Statement, if WPAT-FM were licensed at the 4.9 kilowatt power level at ESB "offered" by the Media Bureau Staff, WPAT-FM would have to reduce power further to 3.2 kw to move back south to the WTC site when it is rebuilt to protect WMMR-FM. Consequently, WPAT-FM could never recover its licensed facilities, or in fact anything close to it, if the WTC site is rebuilt and would be penalized both technically and financially through no fault of its own. The logical conclusion of the Bureau Staff's policy is inimical to good sense, the service requirements of the New York City area and, therefore, the public interest.

ACTUAL INTERFERENCE IS DE MINIMIS

13. Significantly, the engineering interference analysis used both in the WPAT-FM waiver request and in the Commission's instant decision relies upon conventional FCC methods to predict interference in population within the interference area. However, the Longely-Rice alternate prediction method more accurately predicts a station's field strength by incorporating more precise terrain data and other unique path characteristics.⁷ In the instant situation, the Berkshire Mountain range and other mountains intervene in the relevant interference area. As a result, utilizing the Longely-Rice prediction method, the proposed 6.0 kilowatt ESB facility will

⁷ WPAT-FM's original request for waiver did not include a Longely-Rice showing in that it is Commission policy not to accept Longely-Rice showings for allocation purposes. Consequently, the licensee respectfully requests that the Commission determine that consideration of the instant Longely-Rice showing is required in the public interest pursuant to Section 1.106(c)(2) of the Commission's Rules.

only cause interference to 958 people in the WHYN-FM protected service area. Longely-Rice also predicts that the current licensed 5.4 kilowatt WTC facility only causes interference to 830 people in the WHYN-FM protected service. Consequently, rather than new interference caused to 23,354 persons, in reality, as a practical matter, new interference is predicted to occur to only 128 persons, which must be considered de minimis under the circumstances.

14. Consequently, besides all of the other technical reasons cited by the licensee, i.e., the fact that no less shortspaced site exists, the fact that the proposed facilities allow the station to best duplicate its previous facilities, the need for the higher power in a densely constructed, urban area, and the short-sighted nature of the Commission Staff's policy, in reality, WPAT-FM's proposed facility will create almost no new interference to anyone in the WHYN-FM protected service area.

WAIVER WOULD CREATE NO PRECEDENT

15. The destruction of the World Trade Center was an "exceptional circumstance" in American history.⁸ There has never been another disaster, either natural or manmade, which caused such instantaneous destruction to radio and television facilities at one time. Consequently, grant of the requested waiver under these circumstances would create no troublesome precedents for the Media Bureau. No applicant will be able to equate the loss of its

⁸ While the Audio Division gave "lip service" to the tragedy, the Video Division actually recognized that it was an "exceptional circumstance". See the attached "Public Notice." DA 02-1440, released June 18, 2002 where the Media Bureau invited waivers of the TV and DTV filing freeze from "broadcast stations that seek new tower sites due to the events of September 11, 2001."

transmitter site as a result of any natural disaster or manmade calamity to that which transpired on September 11, 2001. This is especially true in light of the number of television and radio facilities situated at the multi-use facility that was the WTC. “The exceptional circumstances” of September 11, 2001 should yield an exceptional solution to a problem facing a number of broadcasters in the New York City radio market. The Staff’s imposition of the strict and literal reading of the Rules in the instant case does not serve the public interest.

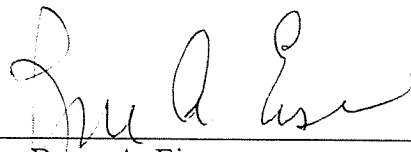
16. When an applicant requests waiver of the Commission’s Rules, the Commission must afford the waiver the “hard look” called for under the WAIT doctrine. See, WAIT Radio v. FCC, 418 F.2d 1153(D.C. Cir. 1969). WLI submits that the Commission staff has not given the waiver request a “hard look” and has not considered all of the circumstances underlying the waiver request or that would flow from denial of the waiver request. WLI submits that the grant of the requested waiver would be in the public interest.

17. Therefore, in conclusion, WPAT-FM Licensing, Inc. respectfully requests the Chief, Media Bureau to reconsider his Staff’s July 28, 2003 letter decision denying the licensee’s request for waiver and dismissal of the above-referenced application, reinstate the above-reference application and grant the requested waiver and application.

Respectfully submitted,

WPAT-FM LICENSING, INC.

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August 21, 2003



**STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF A
PETITION FOR RECONSIDERATION
WPAT-FM - PATERSON, NEW JERSEY
CHANNEL 226B, 6.0 kW, 415 METERS HAAT**

Prepared for: WPAT Licensing, Inc.

I am a Radio Engineer in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by WPAT Licensing, Inc., ("WPAT Licensing") licensee of FM broadcast station WPAT-FM, Paterson, New Jersey, to prepare this statement and the associated exhibits in support of a Petition for Reconsideration of the Audio Division's July 28, 2003, dismissal of the WPAT-FM Application for Construction Permit for a minor change in the WPAT-FM technical facility. On September 11, 2001, radio station WPAT-FM's currently licensed main transmitter site, at the World Trade Center, was destroyed by terrorists. WPAT-FM is presently operating from the ERI master antenna located atop the Empire State Building with an Effective Radiated Power (ERP) of 3.4 kW pursuant to Special Temporary Authority.¹

After a suitable permanent lease at the Empire State Building was negotiated and agreed upon, WPAT Licensing filed an Application for Construction Permit (FCC File No. BPH-20021107AAD) requesting permanent authority to re-establish the WPAT-FM main transmission facility at the Empire State Building ("2002 ESB Application").

¹ The WPAT-FM main facility STA was granted on March 7, 2003, and expires on September 7, 2003.

The 2002 ESB Application simply requested authority to replace the former WPAT-FM maximum Class B facility at the World Trade Center ("WTC") with an equivalent facility at the Empire State Building. No further changes were proposed.

The involuntary nature of the WPAT-FM proposed relocation, and the events of September 11, 2001, which led to the filing of the 2002 ESB Application are well-documented and in the Audio Division's words "clearly unprecedented". However extraordinary and unprecedented the circumstances, the Audio Division nevertheless failed to permit WPAT-FM to re-establish its technical facility lost at the WTC at the only viable transmitter site for New York City FM stations. On July 28, 2003, the Audio Division dismissed the WPAT-FM 2002 ESB application, because (1) circumstances do not warrant an interference waiver of the magnitude proposed in the application and (2) WPAT-FM has the opportunity to specify a lesser facility at the Empire State Building.

This material addresses the "magnitude" of the waiver request and the widespread impact of the Audio Division's decision on all New York City Class B FM stations if the WPAT-FM dismissal were allowed to stand. Moreover, the applicant refutes the Audio Division's declaration that an inferior WPAT-FM technical facility at the Empire State Building somehow serves the public interest.

Equivalent Technical Facility

At the World Trade Center (WTC), the formerly licensed WPAT-FM facility operated with an ERP of 5.4 kW at an antenna Height Above Average Terrain (HAAT) of 433 meters pursuant to FCC License BLH-820223AR. The WTC facility produces a 60 dBu F(50,50) contour distance of 52.2 kilometers which is the maximum distance allowable for a Class B FM facility pursuant to Section 73.211(b) of the FCC Rules.

The WPAT-FM 2002 ESB Application proposed an ERP of 6.0 kW at 415 meters HAAT, the identical technical facility of the maximum Class B facilities in the radio market. The ESB facility is located 4.66 km from WTC. The ESB facility produces a 60 dBu F(50,50) contour distance of 52.2 kilometers which is the maximum distance allowable for a Class B FM facility pursuant to Section 73.211(b) of the FCC Rules.

Because both the formerly licensed and the proposed 60 dBu contours extend a predicted 52.2 kilometers based on each ERP/HAAT combination, both facilities are considered to be equivalent.

WPAT-FM Section 73.213(a) Grandfathered Short-Spacings

The Empire State Building is located 4.66 kilometers from the former World Trade Center transmitter site. The WPAT-FM cochannel and first-adjacent channel short-spacings governed by Section 73.213(a) are discussed below.

Radio station WPAT-FM (Channel 226B) has been short-spaced to cochannel Class B station WHYN-FM, Springfield, MA, continuously from prior to November, 1964, to the present time. The distance separation between the former World Trade Center transmitter site and the WHYN-FM transmitter site is 204.5 kilometers. From the proposed ESB site, WPAT-FM would be 199.9 kilometers from the WHYN-FM licensed transmitter site.

Radio station WPAT-FM has been short-spaced to first-adjacent channel Class B station WMMR(FM), Philadelphia, PA, (Channel 227B) continuously from prior to November, 1964, to the present time. The distance separation between the former World Trade Center transmitter site and the WMMR(FM) transmitter site is 129.4

kilometers. From the proposed ESB site, WPAT-FM would be 133.8 kilometers from the WMMR(FM) licensed transmitter site.

As stated in the 2002 ESB Application, with respect to WHYN-FM, re-establishing the WPAT-FM main facility at ESB will result in a 49,227 person net increase in "interference population" (i.e. the population within the area of WPAT-FM interference caused plus the population within the area of WPAT-FM interference received). With respect to WMMR, the proposal will result in a 45,202 person net decrease in "interference population". Considered together, the proposed re-establishment of the WPAT-FM main facility at the ESB will result in a net increase in "interference population" of 4,025 persons. The net "interference area" will actually decrease by 150 km².

Magnitude of the Interference Waiver

Paragraph 4 of the Audio Division's July 28, 2003, states:

"However, although the total predicted interference population is increased by 4,025 persons, the proposed facility nevertheless will increase interference caused to WHYN by 23,354 people. Furthermore, WPAT fails to cite any instances of the Commission granting a waiver of the magnitude proposed in the application."

The 2002 ESB Application cited the instance of the events of September 11, 2001, as evidence for the proposed, involuntary relocation of WPAT-FM. The magnitude of the events of that day seemed justification enough for the new interference caused to a net population of 4,025 persons within the combined WPAT-FM, WMMR(FM) and WHYN(FM) service area. As stated in the original application,

these 4,025 people represent only 0.016% of the total population within the combined WPAT-FM, WMMR(FM) and WHYN(FM) primary service area. These 4,025 people within the predicted interference area would continue to be well served by a minimum of 17 and a maximum of 43 other aural services (See Exhibit 1). Further justification also provided in the original application, and omitted from the Audio Division's July 28 dismissal letter, was the fact that the WPAT-FM 2002 ESB Application would result in a net decrease in the total area subject to interference by 150 km². Rather than give careful consideration and equal weight to these facts, the Audio Division instead relied upon the 23,354 persons within the WHYN protected contour predicted to receive new interference from the WPAT-FM 2002 ESB Application, and dismissed the application because of the predicted interference caused to WHYN.

The Audio Division's Alternative ESB Facility

Footnote 4 of the Audio Division's July 28 letter, states, "Our studies indicate that if the effective radiated power were reduced to 4.9 kW, the proposed facility would comply with Section 73.213(a)." The Table below shows the predicted interference caused to WHYN considering the licensed WTC facility, the 2002 ESB Application (6 kW ERP), and the Audio Division's ESB 4.9 kW "Alternative" using the FCC's standard propagation curves and the protection ratios prescribed in Section 73.213(a) of the FCC Rules.

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WPAT-FM, PATERSON, NEW JERSEY
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WPAT-FM Facility	WPAT-FM Interference Caused to:			
	WHYN		WMMR	
	Population	Area	Population	Area
Licensed WTC 5.4 kW	43,183	146	163,192	929
ESB-APP 6.0 kW	66,537	248	138,488	774
ESB 4.9 kW	44,731	154	122,056	670

As shown in the Table above, the 4.9 kW "Alternative" would increase interference to a population of 1,548 persons within the WHYN protected service area. Clearly, the Audio Division decided that the magnitude of a waiver involving 23,354 persons receiving new interference was just too great to justify. However, if that interference population was reduced to 1,548 persons, then the WPAT-FM application was grantable.

As shown below, considering the more realistic Longley-Rice alternate prediction method to compute the interference between WPAT-FM and WHYN, the actual interference the 2002 ESB Application would cause to WHYN is substantially less than predicted by the FCC's standard propagation curves, and well below the 1,548 person "threshold" established by the Audio Division.

Predicted Interference to WHYN

The Longley-Rice Irregular Terrain Model, using a 3-second terrain database, was employed to more accurately predict the real world interference between the WPAT-FM 6.0 kW ESB facility and WHYN. The appropriate radio climate, dielectric constant, conductivity and refractivity for this unique radio path considering the specific transmitter site location and surrounding terrain characteristics were determined by the computer model. Calculations were performed every 0.1 km to a maximum study distance of 100 kilometers.

Exhibit 1 depicts the WHYN 54 dBu F(50,50) protected contour and the WHYN Longley-Rice 54 dBu coverage area shown in blue. Also shown on Exhibit 1 is the 34 dBu F(50,10) interfering contour from the WPAT-FM 2002 ESB Application. The WPAT-FM Longley-Rice 34 dBu area is shown in green. Areas of predicted interference area (where the desired-to-undesired field strength ratio is below 20 dB) is shown in red. As shown on the map, the topography of Western Connecticut, most notably the extension of the Berkshire Mountain range, the Connecticut Southwest Hills region, and Wooster Mountain, Connecticut, area, abruptly degrades the WPAT-FM interfering signal to the point that there is almost no interference potential between WPAT-FM and WHYN.

According to the Longley-Rice model, the proposed 6.0 kW ESB facility will cause interference to 958 people in the WHYN protected service area. Longley-Rice predicts that the current 5.4 kW WTC facility causes interference to 830 people in the WHYN protected service area. Rather than new interference caused to 23,354 persons as predicted by the FCC's propagation curves, in reality, new interference is predicted to occur to only 128 persons with the WHYN protected service area. Considering,

- the events of September 11th and the involuntary nature of the WPAT-FM relocation;
- the WPAT-FM proposal is to simply re-establish the identical technical facility lost on September 11th
- that new interference caused would affect only 128 persons or 0.0074% of the population within the WHYN protected service area (1,715,068 persons);
- the overabundance of other aural services available to any interference area
- the unavailability of any other suitable transmitter site;

the magnitude of the interference waiver requested in 2002 ESB application pales in comparison to the justifications for waiver and the public interest factors associated with the grant of the WPAT-FM 2002 ESB application.

WPAT-FM Dismissal -- Impact on Empire State Building FM Stations

By dismissing the WPAT-FM ESB application, the Audio Division established a bright-line policy for dealing with New York City FM station relocations. Under the Audio Division's policy, no grandfathered short-spaced New York City station would be permitted to relocate and maintain their authorized technical facility if their proposed relocation would cause increased interference to even one grandfathered cochannel or first-adjacent channel short-spaced station. Each of the 14 Class B stations presently operating from the Empire State Building, has at least one such short-spacing (See attached Table 1).

The FCC's bright-line policy would severely impact WPAT-FM's (and many other NYC FM stations) flexibility in relocating to any new master New York City Radio/TV tower built to replace the World Trade Center broadcast facility. For example, if WPAT-

FM were licensed at the 4.9 kW power level at ESB, as offered by the Audio Division, WPAT-FM would have to *reduce power further* to move back to the WTC site to protect WMMR. Studies revealed that if WPAT-FM is licensed at 4.9 kW at ESB, and if WPAT-FM were to later propose moving back to a replacement tower at the WTC site, WPAT-FM would only be permitted an ERP of 3.2 kW (as compared to the presently licensed WTC power of 5.4 kW). Further, if WPAT-FM were licensed at the full 6 kW ERP at ESB, and proposes later to relocate to a WTC replacement tower, WPAT-FM would only be permitted an ERP of 3.9 kW (as compared to the presently licensed WTC power of 5.4 kW). The Audio Division's strict adherence to the letter of Section 73.213(a) of the Rules in light of the extraordinary events of September 11th and the unique allocation situation common to all New York City Class B FM stations, not only impacts WPAT-FM, but also potentially impacts all of the FM stations in the New York City area.²

The Lesser Facility and the Public Interest

In its July 28 letter, the Audio Division dismissed the 6.0 kW 2002 ESB Application partly because "waiver of Section 73.213(a) is not warranted because WPAT has the opportunity to specify alternate facilities at the ESB site that would cause less interference to WHYN and reduce the total predicted interference area, while providing service to millions of listeners in the New York metropolitan area". As stated above, in footnote 4 of the July 28th letter, the alternative is 4.9 kW ERP rather than the

² Of immediate concern is the pending WNYC-FM FCC application for Construction Permit. Radio station WNYC-FM, New York, NY (Channel 230B) also lost its main transmission facility atop the WTC. WNYC-FM also filed with the FCC to re-establish its main facility at ESB with the full 6 kW Class B ERP (Application File Number BPH-20011120AAW). According to the WNYC-FM application, the proposed ESB 6 kW facility will cause increased interference to a population of 60,000 persons within the WZMX(FM), Hartford, CT, protected service area (Channel 229B). The WNYC-FM application has not yet been acted upon by the Audio Division. Considering the Audio Division's action on the WPAT-FM application, the pending WNYC-FM application cannot be granted.

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WPAT-FM, PATERSON, NEW JERSEY
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maximum equivalent Class B power of 6.0 kW.

The financial impact of September 11, 2001, on New York City and the broadcast stations lost at the World Trade Center has been well documented. Now, the Audio Division declares in its July 28th letter that WPAT-FM is not permitted to re-establish a technical facility equivalent to the facility lost on September 11th. Not only is there a substantial 54 dBu primary service loss on the WPAT-FM fringe service area associated with the Audio Division's 4.9 kW alternative in comparison to the full Class B proposal, but also WPAT-FM's urban and close-in coverage would experience a similar degradation of service. The WPAT-FM city-grade coverage and WPAT-FM's ability to serve the market would suffer at the lesser power because the weaker signal's ability to penetrate buildings would not be comparable to other stations in the market – or as good as previously authorized at the World Trade Center.

The Table below shows the population loss associated with the Audio Division's 4.9 kW "Alternative".

Population Data	WTC-LIC 5.4 kW	ESB-APP 6.0 kW	ESB 4.9 kW	Population Loss ESB 4.9 kW vs.	
				WTC-LIC	ESB-APP
City-Grade 70 dBu Contour	12,037,785	12,167,805	11,892,856	144,929	274,949
Primary Service 54 dBu Contour	16,720,828	16,831,682	16,624,794	96,034	206,888

Relative to the 2002 ESB Application, the Audio Division would require WPAT-FM to lose over one-quarter of a million people within its city-grade coverage contour to reduce the negligible interference caused to WHYN. In its letter, the Audio Division

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WPAT-FM, PATERSON, NEW JERSEY
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seems to indicate that 4.9 kW is enough for WPAT-FM because WPAT-FM would continue to "serve millions of people in the New York metropolitan area". The fact of the matter is, the lesser WPAT-FM facility would result in loss of service to thousands of people, degraded service to hundreds of thousands of people, position the WPAT-FM Spanish language programming at a competitive disadvantage, and adversely impact the financial worth of the station relative to the facility lost on September 11, 2001, and relative to other market stations.

This statement and the supporting Exhibits were prepared by me or under my direct supervision and are believed to be true and correct.

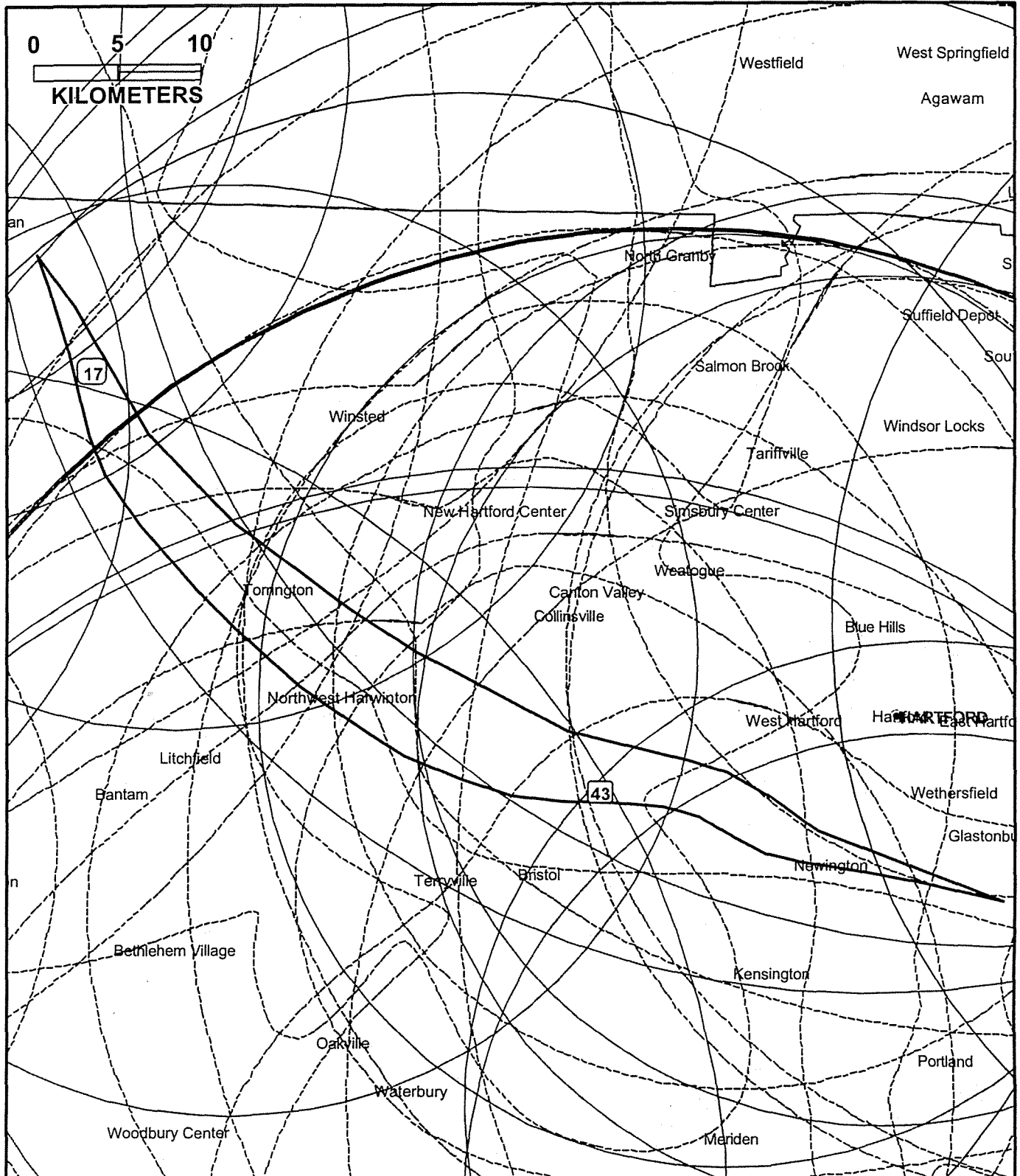
DATED: August 20, 2003



William J. Getz

Outline of Interference Area
 Minimum AM/FM Services: 17
 Maximum AM/FM Services: 43

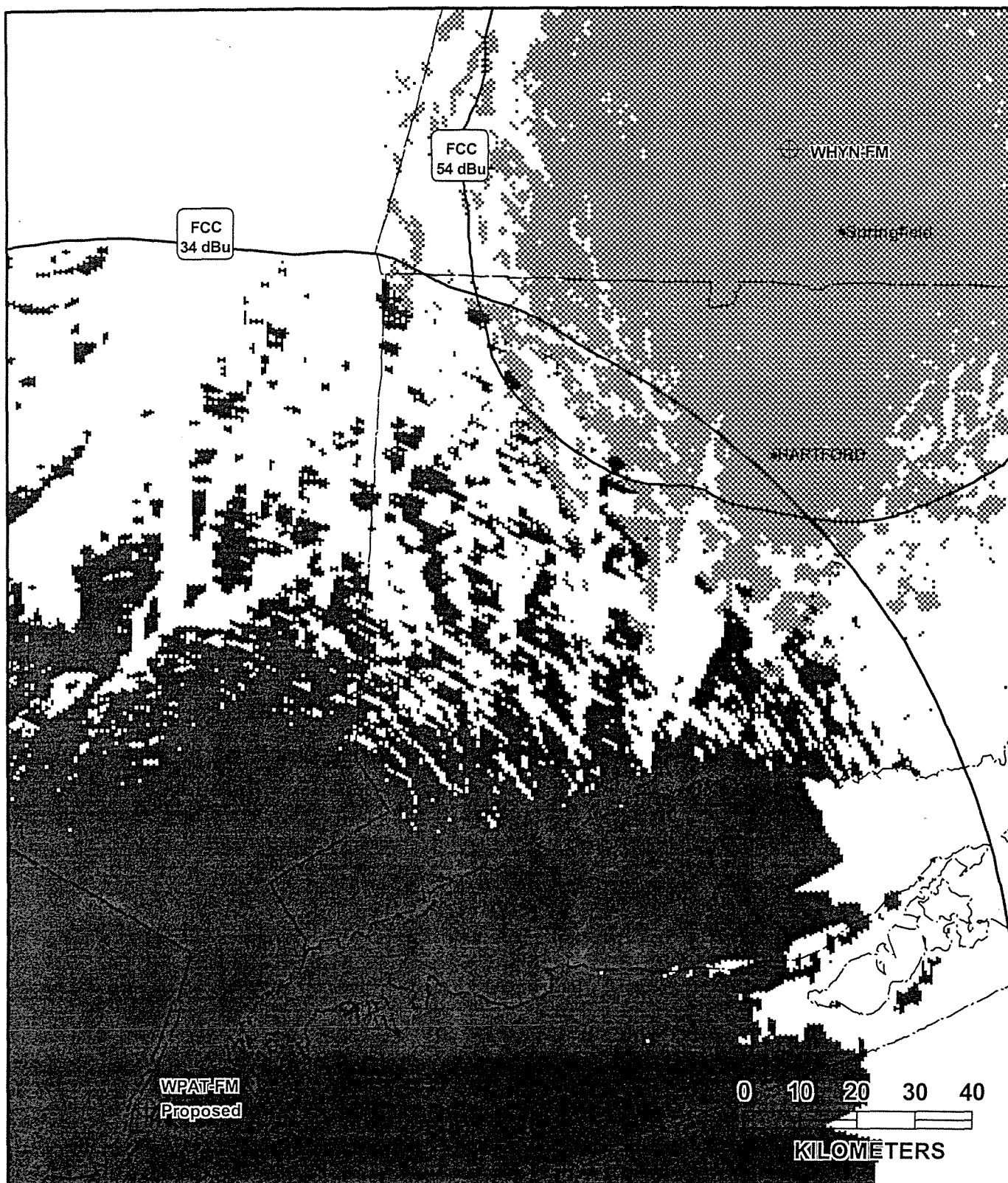
EXHIBIT 1



----- AM Radio Stations
 ----- FM Class B Radio Stations
 ----- FM Class A Radio Stations
 ----- FM Class B1 Radio Stations

OTHER AURAL SERVICES AVAILABLE
 TO PREDICTED AREA OF
 INTERFERENCE CAUSED BY WHYH
 WPAT-FM, PATERSON, NJ
 CH. 226B, 6.0 kW ERP, 415 m HAAT
 AUGUST, 2003

CARL T. JONES
 CORPORATION



WHYN-FM Protected 54 dBu

WPAT-FM Interfering 34 dBu (Proposed)

Interference Area

CARL T. JONES
CORPORATION

PREDICTED LONGLEY-RICE COVERAGE
WPAT-FM (Proposed), PATERSON, NEW JERSEY
CH. 226B, 6.0 kW ERP, 413 m HAAT
AUGUST, 2003

TABLE 1

**FULL SERVICE COMMERICAL FM STATIONS ON EMPIRE STATE
BUILDING AND ASSOCIATED SECTION 73.213(A) SHORT-SPACINGS**

Call	Channel	Short Stations	Channel	Short-Spacing Distance	Short-Spacing Rule Section
WXRK	222B	WFLY, Troy, NY	222B	-31.14	73.213(a)
		WXTU, Philadelphia, PA	223B	-36.79	73.213(a)
		WWYX, Waterbury, CT	223B	-37.24	73.213(a)
WPLJ	238B	WYJB, Albany, NY	238B	-31.30	73.213(a)
		WKSS, Hartford-Meride, CT	239B	-37.31	73.213(a)
		WMWX, Philadelphia, PA	239B	-36.79	73.213(a)
WQXR	242B	WCTO, Easton, PA	241B	-46.63	73.213(a)
		WTIC-FM, Hartford, CT	243B	-18.11	73.213(a)
		WPTP, Philadelphia, PA	243B	-36.79	73.213(a)
WQHT	246B	WFPG-FM, Atlantic City, NJ	245B	-11.86	73.213(a)
WSKQ	250B	WBSX, Hazleton, PA	250B	-71.57	73.213(a)
		WOGL, Philadelphia, PA	251B	-37.01	73.213(a)
WRKS	254B	WKRZ, Wilkes-Barre, PA	253B	-6.87	73.213(a)
		WUSL, Philadelphia, PA	255B	-37.01	73.213(a)
WBAI	258B	WRVE, Schenectady, NY	258B	-31.24	73.213(a)
		WJBR-FM, Wilmington, DE	258B	-75.48	73.213(a)
WCBS	266B	WGGY, Scranton, PA	267B	-2.86	73.213(a)
		WKCI-FM, Hamden, CT	267B	-53.11	73.213(a)
WQCD	270B	WAVT-FM, Pottsville, PA	270B	-53.17	73.213(a)
		WJIV, Cherry Valley, NY	270B	-6.35	73.213(a)
		WIOQ, Philadelphia, PA	271B	-36.73	73.213(a)
WNEW	274B	WRFY-FM, Reading, PA	273B	-0.64	73.213(a)
		WMGK, Philadelphia, PA	275B	-36.79	73.213(a)
		WDRC-FM, Hartford, CT	275B	-37.27	73.213(a)
WZXQ	282B	WAEB-FM, Allentown, PA	281B	-33.01	73.213(a)
		WMRQ, Waterbury, CT	281B	-37.31	73.213(a)
		WSNI-FM, Philadelphia, PA	283B	-36.75	73.213(a)
WWPR	286B	WIOV-FM, Ephrata, PA	286B	-46.05	73.213(a)
		WDAS-FM, Philadelphia, PA	287B	-36.75	73.213(a)
WLTW	294B	WKDN, Camden, NJ	295B	-36.17	73.213(a)
		WCCC-FM, Hartford, CT	295B	-15.80	73.213(a)
WBLS	298B	WBYN, Boyertown, PA	298B	-94.82	73.213(a)



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 02-1440

Released: June 18, 2002

Freeze on the Filing of TV and DTV "Maximization" Applications in Channels 52-59

The Media Bureau announces an immediate freeze on the filing of "maximization" applications, as defined below, by analog and digital television broadcast stations in the 698-746 MHz spectrum band, currently comprising television channels 52-59. This freeze will assist participants in Auction No. 44, consisting of spectrum licenses in the 698-746 MHz band (Lower 700 MHz band) and scheduled to commence June 19, 2002, to determine the areas potentially available in the band for the provision of service by auction winners before the channels are cleared of broadcast stations at the end of the DTV transition.

Beginning immediately, and until further notice, the Commission will not accept for filing television modification applications that would increase a station's analog or DTV service area in channels 52-59 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) the DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of this Public Notice. We will continue to process applications on file as of the date this Public Notice is released. The Bureau may consider, on a case by case basis and consistent with the public interest, amendments to those applications to, for example, resolve interference with other stations or pending applications or resolve mutual exclusivity with other pending applications.

The Bureau will consider, on a case-by-case basis, requests for waiver of this freeze where the modification application: (1) would permit co-location of transmitter sites in a market in circumstances consistent with the Commission's policy of encouraging co-location to reduce the cost of construction, particularly of DTV facilities, or to achieve more efficient spectrum use; or (2) is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as where zoning restrictions preclude tower construction at a particular site or where unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. In particular, we would be inclined to grant waivers of the freeze for broadcast stations that seek new tower sites due to the events of September 11, 2001.

As with any request for waiver of our rules, a request for waiver of the freeze imposed in this Notice will be granted only upon a showing of good cause and where grant of the waiver will serve the public interest.

For additional information, contact Kim Matthews of the Policy Division, Media Bureau, at (202) 418-2120.

CERTIFICATE OF SERVICE

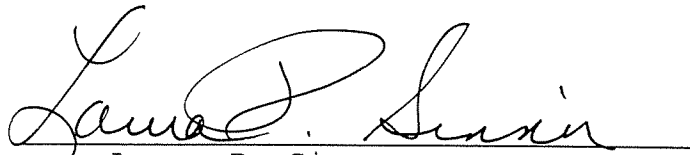
I, Laura P. Sinner, Secretary at the law firm of Kaye Scholer LLP, hereby certifies that a copy of the foregoing *Petition for Reconsideration* was delivered by hand, this 21st day of August, 2003 to the following:

Peter Doyle
Chief, Audio Division
Media Bureau
Room 2-A267
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Barbara Kreisman, Esq.
Chief, TV Branch
Media Bureau
Room 2-A666
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445 - 12th Street, SW
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and sent by first-class mail to:

Doran Bunkin, Esq.
Wiley Rein & Felding
1776 K Street, NW
Washington, DC 20006


Laura P. Sinner