

DESCRIPTION OF THE APPLICATION

Overview. American Broadcasting Companies, Inc., licensee of WABC(TV) and permittee of WABC-DT, New York, New York (“WABC”), respectfully requests acceptance and delayed processing of the instant application (“Application”) for a construction permit for post-transition DTV facilities. Through this Application, WABC seeks interference protection for a post-transition DTV facility in Lower Manhattan, near the previous site of the World Trade Center, which was destroyed in the September 11, 2001 terrorist attacks. WABC understands that acceptance of the Application without further processing effectively will provide interference protection for the Lower Manhattan facilities without restricting WABC’s ability to operate under, and ultimately license, its post-transition DTV facilities at the Empire State Building, as authorized in BPCDT-20080529AJT.

Background. WABC, which began analog broadcasts on 1948, relocated its transmitting facility to the World Trade Center in 1980. In June 2001, WABC began digital operations from the World Trade Center. Both of these facilities were destroyed in the September 11, 2001 terrorist attacks. WABC’s DTV facilities set forth in Appendix B remain based on the coverage of its analog facilities at the World Trade Center. However, no replacement structure suitable for television transmitting has been constructed at that site. Thus, the exact DTV facility specified in Appendix B for WABC cannot be constructed at this time. Given this situation, WABC has constructed replacement analog and pre-transition DTV facilities at the Empire State Building.¹ On June 18, 2008, the Bureau granted a construction permit for WABC’s planned post-transition DTV facilities at the Empire State Building.²

The Application. For the immediate future, WABC plans to operate its post-transition DTV facilities at the Empire State Building, as authorized in BPCDT-20080529AJT. However, WABC also seeks to retain interference protection for its previous World Trade Center facilities destroyed on 9/11. Presently, it is believed that a new structure, known as the “Freedom Tower,” will be built in Lower Manhattan at the previous site of the World Trade Center. Thus, WABC seeks to maintain interference protection for a possible DTV facility at the Freedom Tower site. As noted above, WABC understands that acceptance of the Application without further processing effectively will provide interference protection for the planned Freedom Tower facilities without restricting WABC’s ability to operate under, and ultimately license, the post-transition DTV facilities at the Empire State Building, as authorized in BPCDT-20080529AJT.

¹ WABC also constructed additional auxiliary facilities at the Four Times Square building in Manhattan and in Alpine, New Jersey.

² See BPCDT-20080529AJT.

Public Interest Justification and Waiver. Acceptance of the Application is in the public interest because it will ensure that WABC retains interference protection for its pre-9/11 World Trade Center facility that formed the basis for its Appendix B facility. Continued interference protection will benefit WABC's pre-9/11 viewers because it likely will enable WABC to provide them with improved DTV service if/when the Freedom Tower is complete. WABC also requests any waiver(s) the Bureau deems necessary to the acceptance and delayed processing of the Application.³ Any necessary waiver is warranted because the destruction of the World Trade Center facilities—and the present lack of a new, replacement structure at that site—is a circumstance beyond WABC's control.⁴ Further, the higher ERP requested also increases the likelihood that WABC will reach viewers in high-rise buildings, which contain steel and concrete that can cause severe signal attenuation and multi-path effects. Additionally, the fact that the Freedom Tower facility is predicted to cause in excess of 0.5% interference to another authorized DTV facility, WNJB-DT, does not preclude the Bureau from accepting the Application because the Commission already has granted a waiver permitting WABC to cause more than 0.5% interference to WNJB-DT and the reasons supporting that waiver continue to apply now.⁵

Conclusion. For the reasons stated herein, WABC respectfully requests acceptance and delayed processing of the Application.

³ For example, the Bureau may determine that a waiver of the 0.5% interference threshold in section 73.616 section is necessary.

⁴ The Commission previously found that “[t]he September 11th terrorist attack clearly qualifies as an uncontrollable and unforeseeable event warranting extension of DTV construction deadlines of WABC-DT and WNBC-DT.” *In the Matter of DTV Build-out, Requests for Extension of the Digital Television Construction Deadline, Network Affiliated Television Stations Located in the Top Thirty Television Markets*, Order, 19 FCC Rcd 10064, 10064 (2004).

⁵ In 2007, the Commission found that it was in the public interest for WABC to exceed the 0.1% interference standard used to calculate interference conflicts in the channel election process. *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking, 22 FCC Rcd 15581, ¶ 108 (2007) (“*Seventh Report and Order*”); *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, Seventh Further Notice of Proposed Rulemaking, 21 FCC Rcd 12100 (2007) (“*Seventh Further Notice*”). The Commission's waiver grant was premised on two key facts—that WNJB's additional service losses “would affect areas outside of its current service area and primarily outside of the state of new Jersey” and WNJB “still has not constructed its full, authorized DTV facility in contrast to WABC's early construction and rebuilding of full DTV facilities.” *Seventh Report and Order* at ¶ 109; *Seventh Further Notice* at ¶ 36. Both facts remain true, though the amount of interference is changing. When the initial waiver was issued, the predicted interference to WNJB-DT was 2.8%.