

Statement in Support of Waiver Request

Station KBTF-LP is Class A eligible and operates on an out of core channel. The applicant is simultaneously filing an application on FCC Form 346 to displace to an in-core channel which has just been vacated by another low power television station. Apart from the pending application in FCC File No. BPET-19960328KH, the proposed facility satisfies the requirements for Class A operation and no other channel is currently available for Class A use in the market. Accordingly, a waiver of the current freeze on the filing of Class A displacement applications¹ is respectfully requested and a grant of Class A status on Channel 39, subject to action on the application in FCC File No. BPET-19960328KH, is requested.

Pursuant to Section 1.3 of the Commission's Rules, the Commission may suspend, revoke, amend, or waive any of its rules for good cause shown. 47 C.F.R. § 1.3. Generally, a waiver will be granted upon a showing of good cause and where grant of the extension will serve the public interest.² Furthermore, the DTV Freeze Public Notice reiterates that the Commission will consider, on a case-by-case basis, requests for waiver of the freeze upon a showing of good cause and when grant of the waiver will serve the public interest.³ Good cause for the waiver is shown, as the freeze on the filing of Class A displacement applications was instituted solely to prevent changes that would affect the ability of the FCC to develop a final DTV Table of Allotments. However, because the above-referenced application for a new NCE Channel 39 is currently pending, Class A operations on Channel 39 would require no additional interference protection for that channel and will therefore not affect DTV allocation issues. Accordingly, grant of the instant request will not prejudice the Commission with respect to its DTV allotment activities.

Should the application in FCC File No. BPET-19960328KH be granted and the specified facilities constructed, the applicant undertakes to locate another channel upon commencement of operations of the proposed NCE station. Accordingly, grant of the instant request will not interfere with the operations of any NCE station authorized and built on Channel 39.

There are substantial public interest benefits to grant of the instant request. The community of Bakersfield, California has a large and growing Hispanic population, and an affiliate of the Univision Network has served that population on Channel 39 for some 20 years. Grant of the instant request will permit station KABE-LP to continue that service on Channel 39, where both local residents and cable headends are tuned to receive Univision programming.

In the alternative, it is respectfully requested that KABE-LP's eligibility for Class A Television Status be continued, and that the station be permitted to file a Class A license

¹ Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, Public Notice, DA 04-2446 (rel. August 3, 2004) ("DTV Freeze Public Notice").

² *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

³ DTV Freeze Public Notice, at 2.

application on FCC Form 302-CA at such time as it files another displacement application for the station or when the station no longer causes impermissible interference to any facility authorized and built pursuant to FCC File No. BPET-19960328KH.⁴

⁴ See *e.g.*, FCC File No. BLTTA-20010712AHT.