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August 6, 2001

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington DC 20554

Re: Pegasus Broadcast Television, Inc.
Ultimate Owner of WOLF-TV
Channel 56, Hazleton, Pennsylvania
Request for Waiver of Television LMA Grandfathering Policy

Dear Ms. Salas:

Pegasus Broadcast Television, Inc. ("Pegasus"), the ultimate owner of WOLF License Corp., licensee of WOLF-TV, Hazleton, Pennsylvania, by its undersigned attorneys, hereby submits this request for a waiver of the FCC's television LMA grandfathering policy adopted by the Commission in its 1999 Local Television Ownership *Report & Order*.¹ Specifically, Pegasus requests a waiver of the LMA grandfathering policy so that Pegasus' Time Brokerage Agreement dated June 26, 1997 and currently in effect with KB Prime Media LLC ("KB") covering programming supplied to WSWB(TV), Scranton, Pennsylvania (hereinafter the "Scranton TBA") will be afforded so-called 5-year grandfathering through the 2004 biennial review. In the *Local Television Order*, the Commission decided that all LMAs or TBAs entered into before November 5, 1996, the date the Commission announced its tentative conclusion to

¹ See *Review of Commission's Regulations Governing Television Broadcasting, Report & Order*, MM Docket No. 91-221, FCC 99-209, released August 6, 1999, ¶¶ 133, 139-142 (hereinafter "*Local Television Order*").

Ms. Magalie Roman Salas

August 6, 2001

Page 2

make LMAs and TBAs attributable to the programming station, would be entitled to 5-year grandfathering.²

Pegasus submits the instant request pursuant to paragraph 52 and footnote 109 of the *Second Reconsideration Order* issued by the Commission in the Local Television Ownership proceeding earlier this year.³ In the *Second Reconsideration Order*, the Commission denied Pegasus' request for a former satellite station exception to its television LMA grandfathering policy but recognized that Pegasus had presented a compelling case for individualized relief in Scranton. Specifically, the Commission acknowledged that the Scranton TBA, which involves a station formerly owned by Pegasus and operated as part of a three station satellite network designed to cover the market, would have predated the November 5, 1996, cut-off date but for FCC delay in processing an underlying application proposing to move the transmitter site of one of the satellite stations. Because this processing delay was beyond the control of Pegasus and because the Scranton TBA did not reduce overall diversity in the Scranton market, the FCC clearly endorsed "a case specific waiver of the grandfathering date."⁴

Background: Since 1993, Pegasus had operated three full power stations (one main station and two satellites) in the Scranton-Wilkes Barre DMA collectively as the Fox affiliate. The three stations were what was then WOLF-TV, channel 38 in Scranton (the main station), WWLF(TV), channel 56 in Hazleton (satellite) and WILF(TV), channel 53 in Williamsport (satellite).⁵ The use of a three station mini-network was needed because the Scranton-Wilkes Barre DMA is criss-crossed by mountains that make coverage of the entire market very difficult. Any one of the stations could have been identified as the main station or a satellite station because none of them covered the entire market. For administrative simplicity, the station with the best coverage, at the time WOLF-TV on channel 38 in Scranton, was deemed the main station.

On December 15, 1995, nearly 11 months before the so-called 5-year television LMA grandfathering cut-off date, WOLF Licensee Corp. (a wholly-owned Pegasus subsidiary)

² Without a waiver, the Scranton TBA would only be entitled to so-called 2-year grandfathering under the FCC's grandfathering policy because it was entered into after November 5, 1996. Because the Scranton-Wilkes Barre DMA does not have eight (8) independently owned and operated television stations, the parties would be forced to modify the LMA to comply with the FCC's Local Television Ownership rules.

³ See *Review of Commission's Regulations Governing Television Broadcasting, Second Memorandum Opinion & Order of Reconsideration*, MM Docket No. 91-221, FCC 00-431, released January 19, 2001 (hereinafter "*Second Reconsideration Order*").

⁴ *Second Reconsideration Order* ¶ 52 n.109.

⁵ The Commission licensed what was then WOLF-TV on channel 38 and WWLF on channel 56 in 1985. The Commission approved the operation of WWLF as a satellite of what was then WOLF-TV as early as 1984. WILF was licensed as a satellite of what was then WOLF-TV in 1993. A Pegasus subsidiary acquired all three stations in 1993.

Ms. Magalie Roman Salas
August 6, 2001
Page 3

filed a construction permit application to move the transmitter site of WWLF(TV), the satellite station operating on channel 56 in Hazleton, to the antenna farm located on Penobscot Mountain that was (and is) used by all the other stations in the Scranton market. In support of the application, Pegasus noted that the proposed operations of WWLF from Penobscot Mountain would achieve technical equivalency with the other stations operating in the market, substantially increase WWLF's coverage of the Scranton market and, as a result, free up one of the existing stations in its three station mini-network to be separately programmed. Due to the Commission's existing local television ownership rule and satellite station policy, Pegasus also pledged to divest the separately programmed station once the proposed WWLF facilities were constructed.

On April 21, 1997, the Chief of the Video Services Division granted the WWLF construction permit application.⁶ The WWLF construction permit issued that day required that Pegasus divest what was then WOLF-TV prior to commencing program tests for WWLF from the new transmitter site.⁷ To take advantage of the increased market coverage and technical equivalency from the Penobscot Mountain site, before completing construction and commencing program tests, Pegasus decided to transfer (i) the Fox affiliation, (ii) the WOLF-TV call sign and (iii) the main station status from its channel 38 station in Scranton to its channel 56 station in Hazleton. Thus WOLF-TV became 56 in Hazleton and channel 38 in Scranton, the former WOLF-TV, became available to be separately programmed. Recognizing that constructing and launching a separately programmed, stand-alone station in the Scranton-Wilkes Barre DMA would be extremely difficult economically given the relatively small revenue base of the market and the terrain limits on that individual station's market coverage, Pegasus entered into the Scranton TBA in June 1997 to program the new station on channel 38. KB assumed this TBA when it acquired channel 38 and ultimately signed WSWB on the air in 1998 as an affiliate of the new WB network.

Argument: In the *Local Television Order*, the FCC recognized that LMAs produced economic efficiencies that lead to "programming and other service benefits that serve the public interest."⁸ The Commission specifically recognized that these public interest benefits included "enabling a struggling station to continue to provide service to the public or returning a dark station to the air, possible activation of a new or unused radio or TV allocation, and improvement in the technical facilities of the stations."⁹ In Scranton, Pegasus provided this very type of public interest benefit by converting a three station satellite network serving a single market into a two station mini-network, thereby converting a station that simply repeated programming into a separately programmed station that contributed to programming diversity

⁶ See Letter from Barbara Kreisman, Chief Video Services Division to Syracuse Minority Television c/o Gene A. Bechtel, Esq. *et al.* dated April 21, 1997 (1800E-LJ/JLB).

⁷ See FCC Construction Permit No. BPCT-951215KF.

⁸ *Local Television Order* ¶ 37.

⁹ *Id.* ¶ 36.

Ms. Magalie Roman Salas

August 6, 2001

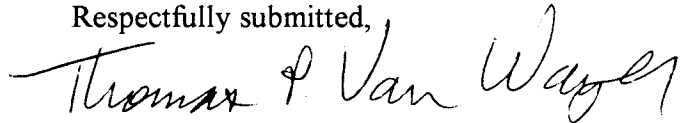
Page 4

and enhanced the competition for viewers and advertising in that same market. These actions, which also made it possible for one of the new broadcast networks to find an affiliate in a relatively small market, were unequivocally in the public interest.

The *Local Television Order* also recognized that certain of these pro-public interest LMAs or TBAs, specifically those entered into before November 5, 1996, were entitled to 5-year grandfathering protection through the 2004 biennial review. Here, Pegasus effectively proposed to commence separately programming one of the three stations in its mini-network in December of 1995. Given the terrain and economics in the market, there can be little question that Pegasus would have entered into an LMA relationship with the new, separately programmed station as soon as the FCC approved the proposed operations from the Penobscot Mountain site. Because the approval of that pending application was beyond its control, Pegasus submits that a waiver of the FCC's LMA grandfathering policy is warranted so that its Scranton TBA can receive so-called 5-year grandfathering through the 2004 biennial review. Pegasus submits that such a result is especially warranted here given that there was no overall reduction in diversity in the market from the Scranton TBA because, prior to the TBA, all three stations in its mini-network broadcast identical programming.

Please direct any questions regarding this request to the undersigned.

Respectfully submitted,



Thomas P. Van Wazer

Jennifer Tatel

cc: Barbara Kreisman (Video Services Division)
Clay Pendarvis (Video Services Division)