WBNG-TV, Binghamton, New York (Facility ID No. 23337)
Request for Waiver to Increase VHF ERP
DTV Channel 7
July 2012

WBNG License, Inc. ("Broadcaster"), licensee of WBNG-TV, Binghamton, New York, hereby requests a waiver of Section 73.622(f)(7) of the Commission's rules for WBNG-TV to increase its ERP on VHF Channel 7 to 34 kW.

Background. As the Commission is well aware, following the DTV transition on June 12, 2009, dozens of stations that transitioned to VHF channels immediately reported substantial service losses. Over the next several months the Media Bureau granted many requests for VHF stations to increase power via experimental authority and special temporary authority.[1] These power increases ameliorated some of the reception difficulties those stations were experiencing.

For stations in the Northeast, because of spectrum congestion and the low VHF power limits for Zone I stations, the situation was particularly acute. For example, over the last three years, WABC-TV, New York, New York has experienced significant reception difficulties.[2] Accordingly, the licensee of WABC-TV negotiated a complex four-way interference acceptance agreement with the licensees of WBNG-TV; WWNY-TV, Carthage, New York; and WXXA-TV, Albany, New York. Under the agreement, all three stations (including WBNG-TV) consented to a power increase by WABC-TV. But to lessen the new incoming interference from WABC-TV, each of the three stations would increase its own ERP. Thus, under the agreement, WBNG-TV accepted the incoming interference from WABC-TV in exchange for the ability to increase its ERP to 34 kW. This mutual power increase and interference acceptance agreement would allow both WBNG-TV and WABC-TV to better serve their respective viewers and to better withstand any incoming interference from the other station.

Request. To implement the WBNG-TV power increase, Broadcaster requests a waiver of VHF ERP limits in Section 73.622(f)(7) of the Commission's rules. The Commission already recognizes that the VHF power limits, particularly as applied to stations in Zone I like WBNG-TV, are insufficient.[3] Thus, the Commission has proposed to increase the maximum ERP for high VHF stations in Zone I to 120 kW.[4] In the meantime, the Commission has granted waivers of this rule for several other stations to allow those stations to increase VHF power.[5] Moreover,

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1 *See, e.g.*, FCC File No. BDSTA-20100101ACK (increasing WABC-TV's ERP on Channel 7 to 26.9 kW); BDSTA-20091218ACS (increasing WUSA(TV)'s ERP on Channel 9 to 52 kW); BDSTA-20090827ABP (increasing WJLA-TV's ERP on Channel 7 to 52 kW).

2 *See* FCC File No. BPCDT-20120216ADO.

3 *See* Innovation in the Broadcast Television Bands, *Notice of Proposed Rulemaking*, 25 FCC Rcd 16498, ¶ 48 (2011).

4 *Id.*

5 *See, e.g.*, BPCDT-20100625AZO (waiving Section 73.622(f)(7) to grant a construction permit for WUSA(TV) to increase ERP to 52 kW on Channel 9); BPCDT-20090626ABL (waiving Section 73.622(f)(7) to grant a construction permit for WABC-TV to increase ERP to 26.9 kW on Channel 7).

the licensee of WABC-TV is currently requesting a second waiver of the VHF power limit as part of its application for a construction permit to further increase its ERP to 34 kW.[6] Like these other broadcasters, Broadcaster seeks a waiver of the outmoded VHF power limits in Section 73.622(f)(7) to allow Broadcaster to increase its ERP to ensure adequate over-the-air reception of WBNG-TV. The Commission must treat Broadcaster's waiver similarly as these other similarly situated licensees.[7]

Grant of a waiver also serves the public interest. Broadcaster is filing the instant application as one of four related applications to increase VHF power as part of a complex negotiated interference agreement with the licensees of WABC-TV, WWNY-TV, and WXXA-TV. Each licensee is seeking to better serve its respective local viewers and believes a mutual power increase will allow its station to better replicate its analog service area.

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6 FCC File No. BPCDT-20120216ADO (pending).

7 *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).