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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

FM Translator Station W208AE
Mayaguez, Puerto Rico

)

)

) File No. BLFT-20140827ABX

) Facility ID #42888

TO: The Secretary
ATTN: Chief, Audio Division,
Media Bureau

Accepted / Filed

JAN 31 2019

Federal Communications Commission
Office of the Secretary

REQUEST FOR WAIVER

La Gigante Siembra, Inc., ("LGS"), licensee of FM translator station W208AE (Facility ID No. 42888), Mayaguez, Puerto Rico, by counsel and pursuant to §1.3 of the Commission's rules, hereby respectfully requests a waiver of §74.1235 of the Commission's rules with respect to W208AE. LGS seeks the Commission's consent to operate W208AE with 250 watts of effective radiated power, which exceeds the normal power limit for this facility specified in the rule.

Under its current license, W208AE is authorized to operate with 250 watts ERP. In the construction permit application that led to this license, the applicant envisioned that the translator would rebroadcast WVID, with respect to which it would qualify as a fill-in translator that could operate with 250 watts.

Subsequently, the licensee has sought to rebroadcast the programming of co-owned noncommercial station WZCA, Quebradillas, Puerto Rico, on W208AE. Although the 60 dbu service areas of WZCA and W208AE are adjacent, W208AE does not meet the definition of a

fill-in translator within the meaning of §74.1201(h). Nonetheless, for the reasons shown below, the public interest would be served by allowing W208AE to operate at 250 watts.

Attached as an exhibit to this petition is a map depicting the coverage area of W208AE with 10 watts ERP as compared to the coverage area with 250 watts ERP. The exhibit also indicates the difference in the population covered by the two 60 dbu service areas. At 10 watts, the population in the W208AE service area is 105,542. However, at 250 watts, that figure swells to 348,739. The population served by W208AE increases by 243,197, or about 230%. Thus the reduction of the facilities for W208AE would represent a loss of a discrete aural service for 243,197 members of the public.

The FCC is charged under §307(b) of the Communications Act to provide for “a fair, efficient, and equitable distribution of radio service” to the public. This mandate includes the consideration of preservation of existing service. The Commission has “concluded that our Section 307(b) policies must take into account the public’s legitimate expectation that existing broadcast services will be maintained.” *Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14230 (2006). This issue has permeated the Commission’s decision-making in the post-incentive auction television transition and repack. Faced with the incredible complexity of remaking the television allotment map in a smaller spectrum footprint, the Commission nonetheless said, “We believe it is unnecessary and unfair to require these already-operational facilities to reduce service.” *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, 23 FCC Rcd 4220, 4239 (2008). The Media Bureau has recently reiterated and reaffirmed this principle in its

recent decision to deny an application by the licensee of an AM station to move its nighttime service away from the station's community of license – a move that would have resulted in a significant loss of nighttime service. *KTAE(AM), Elgin, Texas*, Letter, DA 18-881 (MB released August 24, 2018).

These same §307(b) considerations about the loss of service should come into play regarding the downgrade of facilities for W208AE. Indeed, in the rulemaking decision in which it established the maximum power levels for FM translator stations set forth in §74.1235, the Commission acknowledged the need for flexibility and stated that “we will entertain waiver requests where service to the public would be lost” *In the Matter Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7213 (1990).

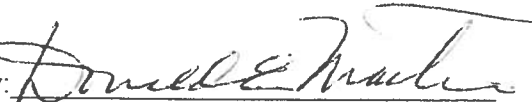
In complete compliance with the FCC rules and policies, W208AE was originally authorized to broadcast with 250 watts ERP. Now, because of a change in the translator's parent station, W208AE would have to reduce its facilities to 10 watts ERP to be completely rule-compliant. However, that reduction results in a loss of an aural service to nearly a quarter million people. Absent some countervailing harm, a waiver of §74.1235 to allow the preservation of this service would certainly be in the public interest. There is no countervailing harm. The Commission's rules permit a noncommercial station to retransmit its signal on a co-owned translator outside of the parent's service area. WZCA is a noncommercial station. The additional spectrum utilized by W208AE at 250 watts as compared to its 10-watt operation will otherwise lie fallow and unused if W208AE is not transmitting a 250-watt signal. There is no public interest benefit in arbitrarily precluding a quarter million people from receiving another fresh

any other use could be made of this small plot of spectrum. However, because W208AE is a secondary station, it would of course give way to any primary station that found a way to exploit this frequency. There is absolutely no harm to come from allowing W208AE to operate with 250 watts ERP, and much benefit to be gained by transmitting with the higher power.

The Commission must give all waiver requests the "hard look" mandated by *Wait Radio v. FCC*, 418 F.2d 1152 (D.C.Cir. 1969). Upon a hard look at all of the factors described above, it is clear that a waiver of §74.1235 to permit W208AE to continue to broadcast with 250 watts ERP would be in the public interest. LGS respectfully urges the Media Bureau grant this request and waive the rule.

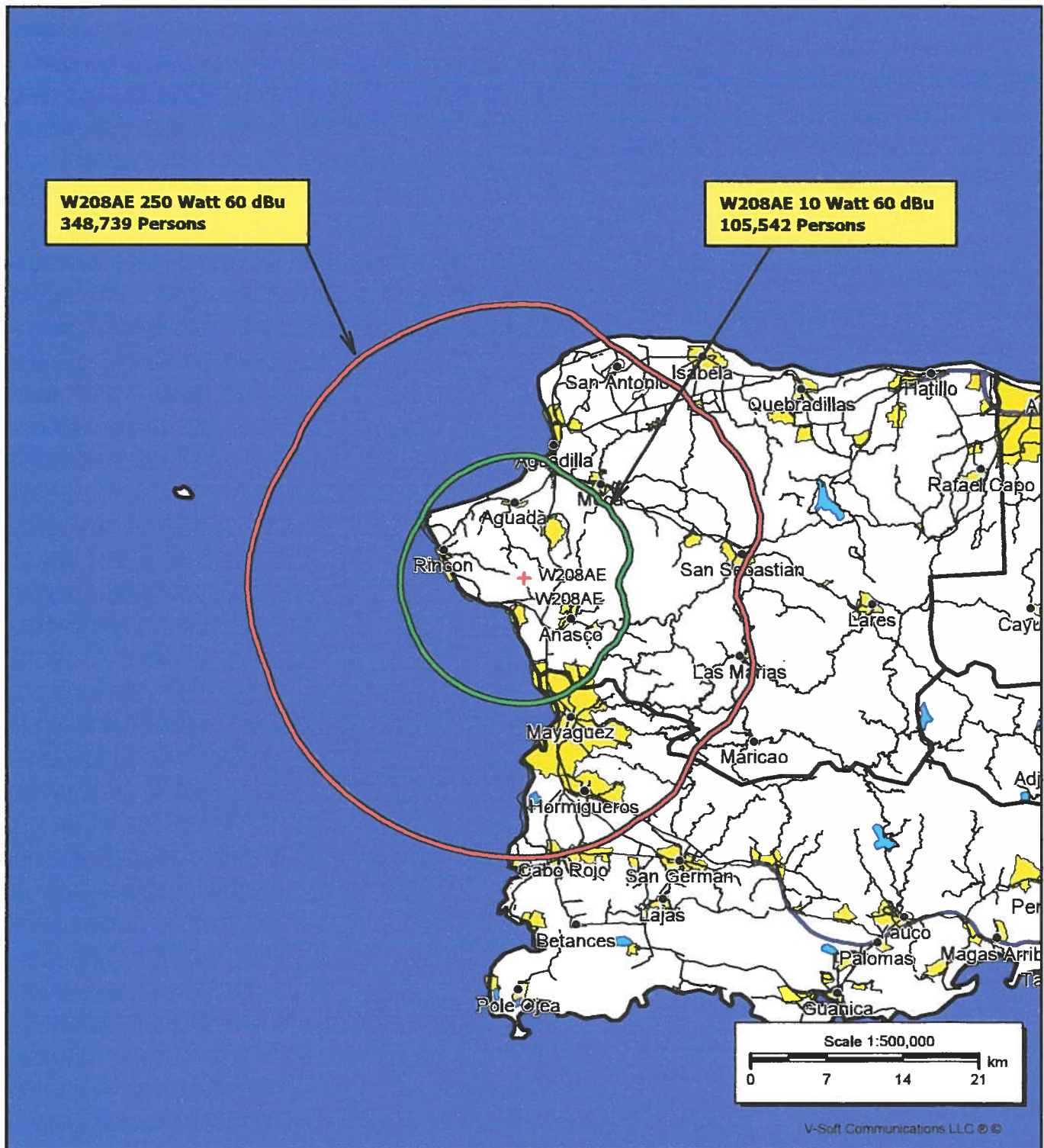
Respectfully submitted,

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W208AE 250 VS 10 Watt Signal Comparison Mayaguez, PR

Bromo Communications, Inc.

January 2019