

**REQUEST FOR WAIVER TO FILE A MODIFICATION APPLICATION
FOR A DIGITAL BROADCAST STATION IN THE 698-746 MHz SPECTRUM BAND**

WSTM License Subsidiary, Inc. (“Applicant”), licensee of WSTM-TV, Channel 3, and permittee of WSTM-DT, Channel 54 (Syracuse, New York), requests waiver of the Media Bureau’s freeze on the filing of “maximization” applications to modify digital television broadcast stations in the 698-746 MHz spectrum band, Channels 52-59,¹ and accept for filing Applicant’s modification application to its DTV construction permit (BPCDT-19991025ADK; granted May 12, 2000) to amend the authorized geographic tower coordinates, height above average terrain, and effective radiated power in order to permit WSTM-TV to commence digital service on a new, joint tower that it is constructing in the Syracuse market. As shown below, grant of the waiver and modification application will permit Applicant to promptly commence its DTV operations upon completion of its new joint tower.

Failure to grant the requested waiver and modification application would contravene the goals of the DTV transition and result in extreme hardship for Applicant. It would strand Applicant without a DTV tower and prevent its transition to digital because Applicant requires a new tower for digital operations, but no other tower sites are available in the market due to zoning restrictions. In addition, failure to grant the requested waiver and modification application would render futile Applicant’s investments of money, time, and other resources in building out its digital operations and in constructing a joint tower which will permit WSTM-TV and other broadcasters in the market to commence DTV operations.

¹ *Freeze on the Filing of TV and DTV “Maximization” Applications in Channels 52-59*, Public Notice, DA 02-1440 (June 18, 2002).

Applicant submits, therefore, that waiver of the freeze on “maximization” modification applications for DTV stations in the 698-746 MHz spectrum band (1) would permit the co-location of transmitter sites consistent with the Commission’s stated waiver policy and continuing policy of encouraging co-location in order to reduce the construction costs of DTV facilities, and (2) is necessary and in the public interest for technical reasons in order to maintain quality service to the public. Waiver is particularly appropriate in this instance because Applicant alerted the Commission to its difficulties and plans with respect to a joint tower and made substantial progress in implementing those plans prior to the announcement of Media Bureau’s freeze.²

First, as detailed in its request for an extension of the DTV construction deadline (BEPCDT-20020228ABO; extension granted March 6, 2002), Applicant experienced unforeseen delays in its efforts to locate a suitable tower site to accommodate the DTV facilities of WSTM-TV. The station’s analog television facilities are housed on an old tower that, according to a structural analysis, could not support the station’s DTV facilities and could not be upgraded. Zoning restrictions in the Syracuse market, however, severely limited options for the construction of a new broadcast tower. For example, American Tower Corporation was denied a permit to construct a new tower due to zoning restrictions.

As a result of these zoning difficulties, Applicant and other DTV permittees in the Syracuse market determined that a new community tower site for their digital facilities would

² Applicant discussed the need for a new, joint tower in its request for extension of the DTV construction deadline, which was filed February 28, 2002 (BEPCDT-20020228ABO), and granted March 6, 2002. The freeze on modification applications for television broadcast stations in the 698-746 MHz spectrum (channels 52-59) was not announced until June 18, 2002.

best serve their needs while also complying with local law. After thorough investigation and extended negotiations with local real estate companies, the parties decided to build a new community tower close to WSTM-TV's existing tower. Applicant's parent company, Raycom Media, Inc. ("Raycom"), took the lead in constructing the new joint tower and has committed at least \$3.5 million to build the new tower and building. The new tower, which will be completed by September 1, 2002, will be capable of supporting the antennas of the other television broadcast stations, including digital stations under construction, in the Syracuse market. Therefore, not only will joint tower operation allow Applicant and other broadcasters in the market avoid the expense of building separate towers—an expense which would have seriously impeded the DTV build-out—but it also was the *only* permissible tower option given the local zoning restrictions.

Second, the increased height of the new tower (as compared to Applicant's old tower), which will result in a slight extension of WSTM-DT's digital coverage even though the station will be operating at a reduced power, was necessary to accommodate the other broadcasters in the Syracuse market who also required space on the new tower in order to accomplish their DTV build outs. One other DTV permittee in the Syracuse market, New York State Public Television's Public Broadcasting Council of Central New York, has signed a lease with Raycom for space on the new tower, and another DTV permittee owned by Sinclair Broadcast Group has signed a letter of intent to lease space on the new tower. Negotiations with the remaining DTV permittees in the market are ongoing. Thus, because local zoning restrictions permitted the construction of only one tower, the new tower needed to be designed to accommodate other broadcasters in the market, resulting in an increase of the tower height needed.

Third, zoning restrictions require Applicant to tear down its old tower once the new tower is operational, which is estimated to occur by September 1, 2002. After that date, therefore, Applicant will need to use the new tower to broadcast the signals of its existing NTSC facility, WSTM-TV, and its soon-to-be completed digital facility, WSTM-DT. Because the continuation of Applicant's television service is in the public interest, Applicant requests that that the Commission expedite this waiver request and grant the modification application in order to avoid any disruptions in broadcast service.

Grant of the requested waiver therefore would be consistent with the Commission's announced waiver policy because Applicant's new, joint tower is being built on the only site available for new tower construction in the Syracuse market under the highly restrictive local zoning ordinances. Further, grant of the waiver and modification application will facilitate the expeditious initiation of DTV service by WSTM-TV and promote the DTV transition. In contrast, failure to grant the requested waiver and modification application would impose extreme hardship on Applicant because it would render futile the time, money, and other resources that Applicant had invested towards building out its DTV operations prior to Commission's freeze on "maximization" modification applications for broadcast stations in the 698-746 MHz spectrum band. Further, such a failure to grant the waiver and modification application would strand Applicant without DTV facilities and therefore prevent its transition to digital operations.