

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of)	
)	
Tower of Babel Sacramento Licensing, LLC)	
licensee of KBTB-CA, Sacramento, California)	
(Facility ID 2424))	File No.
)	
Petition for Waiver of Freeze on filing of Class A)	
Displacement Applications)	
)	
WAIVER – EXPEDITED ACTION REQUESTED)	

**TOWER OF BABEL SACRAMENTO LICENSING, LLC, INC. PETITION FOR
WAIVER OF FREEZE ON FILING OF CLASS A DISPLACEMENT APPLICATIONS**

Tower of Babel Sacramento Licensing, LLC (“Tower of Babel”), licensee of KBTB-CA, Sacramento, CA (Facility ID 2424), pursuant to Section 1.3 of the Commission’s rules,¹ hereby petitions the Commission for a waiver of the freeze on the filing of Class A low power television (LPTV) displacement applications for the reasons set forth below.

**I. KBTB-CA REPRESENTS THE FULFILLMENT OF CONGRESS’ OBJECTIVES
IN ESTABLISHING THE CLASS A LPTV SERVICE**

Congress recognized the important role that Class A LPTV stations could play in their communities when it enacted the Community Broadcasters Protection Act of 1999 (the “CBPA”).² The CBPA created this special class of LPTV stations and gave them “primary status” as a measure of protection during the digital transition. As the Commission has recognized, Class A television stations promote diversity and localism in television by providing

¹ See 47 C.F.R. §1.3.

² Community Broadcasters Protection Act of 1999, 47 U.S.C. §336(f) (1999).

“niche programming, often locally produced, to residents of specific ethnic, racial and interest communities within the larger area, including programming in foreign languages.”³

KBTV-CA provides the very kind of programming that Congress intended to preserve and promote when it enacted the CBPA. Established in 2005, KBTV-CA serves the multicultural audiences of central California with unique niche and foreign-language programming. KBTV-CA dedicates 100% of its prime time programming to local ethnic audiences across the Sacramento, Fresno and Chico DMAs. The station’s strong over-the-air signal and cable carriage reaches more than 1.7 million Hispanics, 650,000 Asians, and 200,000 Slovaks (Russians and Ukrainians) who call the central California region home. In these markets, KBTV-CA is the only source of televised local and international news for these audiences, broadcasting in numerous foreign-languages. In short, KBTV-CA embodies the realization of the dream Congress and the FCC hoped would become a reality when they created the LPTV service and the Class A designation in particular.

II. WAIVER OF THE COMMISSION’S FREEZE ON CLASS A DISPLACEMENT APPLICATIONS SERVES THE PUBLIC INTEREST BECAUSE IT WILL PRESERVE THE UNIQUE ETHNIC PROGRAMMING ENJOYED BY THE MILLIONS OF VIEWERS WHO WATCH KBTV-CA

On August 3, 2004, the Commission released Public Notice DA 04-2446 which imposed a freeze on the filing of certain TV and DTV requests.⁴ Specifically, the Commission stated that, until further notice, it would not accept for filing any Class A station displacement applications. The FCC indicated that the freeze was necessary to “ensure a stable television database prior to

³ *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, 6357 (rel. April 4, 2000).

⁴ *Public Notice*, “Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes,” DA 04-2446 (rel. Aug. 3, 2004) (“*Filing Freeze Public Notice*”).

the commencement of the channel election process.”⁵ However, in the Public Notice, the Commission also stated that that it would “consider requests for waiver of this freeze when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public....”⁶

The Commission may grant a waiver where (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation would better serve the public interest than would strict adherence to the general rule.⁷ Accordingly, the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”⁸

KBTV-CA currently broadcasts on Channel 8, but will be displaced as soon as KVIE-DT begins broadcasting its digital service on Channel 9.⁹ Tower of Babel can solve this problem by moving KBTV-CA to Channel 51, but the Commission’s freeze prevents it from filing the requisite displacement application.¹⁰ Tower of Babel respectfully requests that the Commission waive its freeze because strict application in this instance turns Congressional intent on its head.

⁵ See *Filing Freeze Public Notice* at page 2.

⁶ *Id.*

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (stating “[a] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest”). See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166 (citing *WAIT Radio*, 418 F.2d at 1159).

⁹ See Letter from Michael Wall, KVIE, Inc. Vice President of Technology, to Frank Washington, CEO KBTV-CA, of Dec. 21, 2006, attached as Exhibit 1. See also Technical Exhibit prepared by Charles Cooper of du Treil, Lundin & Rackley, Inc. (“Technical Exhibit”), at page 2.

¹⁰ Tower of Babel is filing a displacement application to move KBTV-CA from Channel 8 to Channel 51, and therefore is filing this waiver petition concurrently therewith.

The freeze prevents KBTV-CA from filing a displacement application, leaving it vulnerable to displacement by secondary low power television stations or TV translator applicants, which are not subject to the freeze. KBTV-CA is therefore unable to compete with LPTV stations for the precious few replacement channels available in the market and very soon will find itself with no viable on-air alternatives, thereby depriving the public of an important source of ethnic programming.

As noted above, the FCC indicated that the freeze was necessary to ensure a stable DTV database prior to commencement of the channel election process. Yet, the channel election process commenced two years ago and the digital TV transition is nearly complete. Thus, the purpose for the freeze is no longer present. Moreover, grant of this waiver would not harm the operations of any full service television station within the DMA. Outside the DMA, only one television station within close proximity to KBTV-CA, station KIEM, is eligible to request an alternate assignment channel.¹¹ Even if KIEM were to select Channels 50 or 51, the proposed operation of KBTV-CA on Channel 51 would not adversely impact KIEM's operations.¹² Thus, the purpose of the freeze is not undermined by permitting KBTV-CA to relocate to Channel 51.

The Commission should grant the waiver and permit KBTV-CA to file for relocation to Channel 51 so that it can continue broadcasting its brand of unique specialized programming to local ethnic communities. For the reasons stated herein, Tower of Babel respectfully requests that the Commission grant this Petition without delay.

¹¹ KIEM is eligible to select an alternate channel because it received a low-VHF channel as its tentative designation. *See Seventh Further Notice of Proposed Rule Making*, FCC 06-150 (rel. Oct. 20, 2006) at ¶25.

¹² *See* Technical Exhibit at page 4.

Respectfully submitted,

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