KOAT Hearst Television Inc.
FCC Form 346
Waiver Request

Request for Waiver of Filing Freeze

Applicant KOAT Hearst Television Inc. ("Hearst") respectfully requests waiver of the Commission's freeze on the filing of applications for new TV Translator stations imposed on October 28, 2010. *See Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (2010) ("*Freeze PN*"). This request is part of two separate applications for new digital TV translator facilities—one in Carlsbad, New Mexico, and the other in Silver City, New Mexico. In support of this waiver request, Hearst shows the following.

In accordance with Section 1.3 of the Commission's Rules, "[a] waiver is appropriate when special circumstances warrant a deviation form the general rule and such deviation will serve the public interest." *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Hearst submits that such special circumstances are present here. The FCC's "case law on waivers provides that deviation from the general rule . . . is justified only where special circumstances exist and the public interest will be served. Additionally, requests for waiver must demonstrate that the underlying purpose of the rule of which waiver is sought would not be served or would be frustrated by application to the particular case and that a grant of the request for waiver would be in the public interest." *Stephen Diaz Gavin, Esq., Janet Fitzpatrick Moran, Esq., Carly T. Didden, Esq.*, Letter Decision, 23 FCC Rcd 12060, 12062 (Audio Div. 2008). Hearst respectfully submits that its proposal meets this threshold.

Hearst currently operates three full-power stations in New Mexico: KOAT-TV, Albuquerque, New Mexico, KOCT, Carlsbad, New Mexico, and KOVT, Silver City, New Mexico. Both KOCT and KOVT are full-power satellites of KOAT-TV. By previous order of the Commission, KOCT and KOVT are required to maintain public inspection files in their communities of license, despite the fact that their respective main studios are collocated with KOAT-TV's main studio in Albuquerque.

Hearst desires to terminate operation of KOCT and KOVT and surrender their licenses and, essentially, replace those facilities with digital TV translator facilities that would, just as the full power satellite stations, rebroadcast the programming of KOAT-TV. Significantly, the population centers of Carlsbad and Silver City will be well covered by the proposed translator facilities. Over the years, maintenance of the KOCT and KOVT public inspection files in locations far remote from the main studio in Albuquerque has become something of a regulatory "trap," as it is difficult as a practical matter to ensure that all materials are timely placed in each of the public files and that the public files remain intact throughout each station's license period.

Each proposed digital TV translator will operate on the same channel as the corresponding full-power satellite station, i.e., Channel 19 in Carlsbad and Channel 10 in Silver City. As such, neither facility will cause interference to any other station (because the service areas are no bigger

than the current full-power service areas), and no aspect of the Commission's freeze would be undermined. Indeed, the *Freeze PN* states that the reason for the freeze is "[t]o permit the Commission to evaluate its reallocation and repacking proposals and their impact on future licensing of low power television facilities." *Freeze PN*, p.1. Because there are currently full-power television facilities on Channel 19 in Carlsbad (KOCT) and Channel 10 in Silver City (KOVT), permitting low power facilities on those same two channels in Carlsbad and Silver city, respectively, cannot possibly undermine the Commission's evaluation of its reallocation and repacking proposals or their impact on future licensing of low power TV facilities. In addition, both Channels 10 and 19 are virtually certain to remain TV channels even following any reallocation and/or repacking.

In short, grant of the instant waiver request and application would not undermine the purpose of the freeze, i.e., to permit the Commission, in the context of the National Broadband Plan, to evaluate its reallocation and repacking proposals and their impact on future licensing of low power television facilities. *See Freeze PN*, p.1. Furthermore, as noted in the Engineering Statement, no objectionable interference to any other facilities is predicted.

For the foregoing reasons, Hearst believes that a waiver of the Commission's October 2010 filing freeze is warranted in this case and is necessary or otherwise in the public interest. Absent a grant of the instant waiver request, continued service to the public from facilities in Carlsbad and Silver City, New Mexico, may be impeded.

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