

## EXHIBIT A

### REQUEST FOR WAIVER OF SECTION 74.1233(a)(1)

This application and waiver request are being filed by the applicant as an accommodation to Aruba Capital Holdings, LLC, licensee of proposed primary station WXEX(AM) and proposed assignee of this facility (File No. BALFT-20151015ADY.)

Since this application does not qualify as a minor change under Section 74.1233(a)(1) of the Commission's rules, which requires that the 60 dBu contours of W246BP's existing and proposed facilities overlap, the applicant respectfully requests waiver of 74.1233(a)(1) in accordance with the factors set forth by the Media Bureau in connection with an identical waiver granted to The Cromwell Group, Inc. with respect to W263AQ, Mattoon, IL, in FCC File No. BPFT-20101025ABR. (the "Mattoon Waiver")<sup>1</sup>.

In accordance with Section 1.3 of the Commission's Rules, "[a] waiver is appropriate when special circumstances warrant a deviation from 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). As with the Mattoon Waiver, the applicant submits that such special circumstances are present here. The Media Bureau found that the Mattoon Waiver was in the public interest because (1) the licensee did not have a history of filing serial minor modification applications; (2) the proposed site was mutually exclusive to the licensed facility; (3) the proposed move did not implicate the concerns raised by the Commission in the low-power FM proceeding<sup>2</sup>; and (4) the FM translator would be rebroadcasting an AM station.

First, neither the proposed assignee, Aruba, nor the licensee and proposed assignor of the facility, Light of Life Ministries, Inc., has ever moved the station, nor has a history of filing serial minor modification applications.

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□ See Letter to John F. Garziglia, Esq., In re: W263AQ, Mattoon, IL., DA 11-1495, September 2, 2011.

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□ *In the Matter of Creation of A Low Power Radio Service, and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rule Making, FCC 11-105, July 12, 2011 ("Third Further Notice").

Second, the instant application proposes facilities that are mutually exclusive with W246BP's licensed facilities. That is, W246BP's licensed 60 dBu F(50,50) primary service area lies within the proposed 40 dBu F(50,10) interference area. See Figure 1 of the Technical Statement in this application. As noted in the Mattoon Waiver, the translator modification rule is more restrictive than the general full-power minor change rule such that the instant proposal would be a minor modification if the facilities were full service FM facilities processed under Part 73 of the Commission's Rules. Accordingly, as a practical matter, such mutual exclusivity alleviates any *Ashbacker* concerns.

Third, the instant application proposes a site in an area where the Commission has identified adequate frequencies available for Low Power FM stations. As illustrated in the attached Technical Statement, both the licensed and proposed antenna sites are outside of any market named in the *Third Further Notice, supra*, and, therefore, the proposed move will not foreclose any further licensing opportunities for LPFM.

Fourth, the instant application proposes that W246BP rebroadcast the AM signal of radio station WXEX(AM), Exeter, New Hampshire which is licensed to Aruba, the proposed assignee. In fact, the sole reason for the assignment of the translator's license and the relocation of its transmitter site is to rebroadcast the signal of WXEX(AM). As recognized by the Media Bureau, the Commission's deregulatory measure to permit the use of certain FM translators to rebroadcast the signal of local AM stations has been an "unqualified success." Because W246BP was first authorized in 2004 in FCC File Number BNPFT-20030828ABL and licensed in 2007 in BLFT-20070621ABV, prior to the May 1, 2009, "cutoff" date, W246BP may be used to provide fill-in service for an AM station. As such, the proposed use with WXEX(AM) is permissible and consistent with the Commission's efforts to revitalize the AM service and make the most efficient use of limited spectrum.

For the foregoing reasons, the applicant respectfully submits that the instant request satisfies the Commission's waiver standard and is consistent with the factors in the Mattoon Waiver. Based on the four Mattoon Waiver factors, the instant application presents special circumstances that warrant deviation from 74.1233(a)(1), and such deviation will serve the public interest by permitting W246BP to provide improved service to the public. Accordingly, the applicant respectfully requests that the Commission waive Section 74.1233(a)(1) and permit the instant application to be processed as a minor change application.